Buck v Bavone - [1976] HCA 24

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HIGH COURT OF AUSTRALIA

Barwick C.J., Gibbs, Stephen, Mason, Jacobs and Murphy JJ.

BUCK v. BAVONE
(1976) 135 CLR 110
14 May 1976

Constitutional Law (Cth)

Constitutional Law (Cth)—Freedom of interstate trade—Prohibition of sale of potatoes by unregistered grower—Whether prohibition valid against unregistered grower who sells potatoes interstate—Whether registration provisions regulatory—Provision for exaction of contributions from registered growers—Whether burden on interstate trade—Whether valid—Effect upon validity of requirements for registration—The Constitution *(63 &64 Vict. c. 12) s. 92—Potato Marketing Act, 1948-1973 (S.A.), ss. 12, 18—Acts Interpretation Act, 1915 (S.A.), as amended, s. 22a.*

Decisions

1976, May 14.
The following written judgments were delivered:-
BARWICK C.J. The respondent, Luigi Bavone, in the course of his business as a potato grower and seller which he carried on at Salisbury Downs, South Australia, in November 1974 sold to a Mr. Pasarelli of Broken Hill, New South Wales, a quantity of potatoes which he had grown. The potatoes were to be

delivered to Broken Hill. At the time of this sale the respondent was not registered as a grower of potatoes under the provisions of the Potato Marketing Act, 1948-1973 (S.A.) ("the Act"). (at p113)

2. The appellant, an inspector employed by the South Australian Potato Board ("the Board") which is set up by s. 4 of the Act, complained that such selling by the respondent was contrary to s. 18 of the Act. Subsection (1) of that section provides that "a person shall not grow potatoes for sale, or sell potatoes grown by him unless he is registered by the board as a grower". (at p113)

3. The learned magistrate who heard the complaint held that there was no case for the respondent to answer since s. 18, properly construed, did not prohibit the interstate sale of potatoes by the respondent to a New South Wales buyer, though the respondent was not a registered grower under the Act. The basis of the construction placed upon s. 18 of the Act by the magistrate was that a prohibition of the grower unless registered under the Act would infringe s. 92 of the Australian Constitution. Thus, s. 18 was construed to avoid invalidity and held to have no application to the transaction in question. (at p113)

4. To be registered as a grower, a person must apply on a prescribed form, furnishing the information which it seeks and satisfy the Board that in the period for which registration is required he is growing or will grow potatoes for sale, either on land owned by or occupied by him, or under a share-farming agreement. A certificate when granted remains in operation for the period it specifies, not being more than eighteen months (s. 18 (2) , (3) and (4)). (at p113)

5. The form of application to be registered as a grower is not determined by the Act but is left to be prescribed by regulations. Thus the Act does not itself determine the information the form may require. (at p113)

6. The power to make regulations is contained in s. 24. They may be made on the recommendation of the Board and may prescribe matters permitted by the Act to be prescribed. Pursuant to this power, regulations were made in March 1949 and amended from time to time and ultimately, so far as is presently relevant, in August 1964. An application under s. 18 for registration as a grower is required by the regulations to be in writing in the form in the 1st Schedule thereto (reg. 2(c)). This form calls for, amongst other things, a description of the land on which "potatoes are or will be planted", a statement as to the period for which registration is required, and it contains the following undertaking to be signed by the applicant:

> "I undertake that if granted a certificate of registration as a potato grower, I will, during the period for which registration is required, grow potatoes for sale on the above described land and will plant the above described acreages and varieties." (at p114)

7. A person dissatisfied with a decision of the Board may request the Minister to reverse the decision. The Minister may give that person an opportunity to submit information and argument and may give the Board a direction relating to the request. The Minister's decision is binding on the Board (s. 23). (at p114)

8. Section 20 gives the Board authority, amongst other things, by order, to fix the quantity of potatoes "a grower may sell or deliver at any time or place specified in the order and prohibit the sale or delivery of potatoes in contravention" of the order (s. 20 (1) (a)). The other provisions of s. 20 give to the Board

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complete control of the marketing of potatoes. (at p114)

9. The first matter to be observed is that in terms the Act embraces sales and deliveries in the course of interstate trade. To use the expression used by the Privy Council about the statutory provisions the subject of decision in Peanut Board v. Rockhampton Harbour Board (1933) 48 CLR 266 , the Board is given power to enforce a "compulsory marketing scheme, entirely restrictive of any freedom of action on the part of the producers". It involves "a compulsory regulation and control of all trade, domestic, inter-State and foreign", see James v. The Commonwealth (1936) 55 CLR 1, at p 52; (1936) AC 578, at p 623 . It needs no reference to authority now to establish the proposition that a State may not so control interstate trade. Quite apart from what the Act purports to empower the Board to do, the Act itself purports to prohibit the sale, including the interstate sale, of potatoes except by persons chosen by or on behalf of the State by means of a system of registration of growers. Only a registered grower may sell. Section 18(1) clearly embraces an interstate sale within the terms of its prohibition. (at p114)

10. Further, a consequence of being registered as a grower is that a person becomes subject to the power of the Board to require him to pay to the Board contributions towards the costs of the administration of the Act and of carrying out the powers and duties of the Board (see s. 12). Included in the powers of the Board is a power to buy and sell, amongst other things, potatoes (s. 16(d)). Thus recoupment of trading losses by means of the levy would seem to be within the scope of s. 12. (at p115)

11. There is no limit to the amount of the levy, nor is there any prescription of the manner in which its amount is to be calculated. There is no requirement of the levy being ratable to any fact or circumstance: nor is it necessarily to be non-discriminatory as between growers. The amount of the levy when fixed and notified by the Board becomes a debt recoverable by the Board. (at p115)

12. It was submitted on behalf of the appellant that registration as a grower is really as of right, so that the State through the Act and regulations in so far as registration is concerned, is merely recording those who are growing or will grow potatoes in order to amplify the Board's statistical information as an aid to marketing control. It is claimed that there is a sufficient specification in s. 18 of what is required for registration as a grower to fulfill the requirements mentioned in Hughes and Vale Pty. Ltd. v. New South Wales (No. 2) (1955) 93 CLR 127 . But, if registration places the registered grower at the risk of a financial impost, the fact, if it be the fact that registration is as of right, may not save the relevant sections of the Act from invalidity unless restrained by construction to exclude interstate trade from its operation. (at p115)

13. It is clear, in my opinion, that the effect of ss. 12 and 18 is that, unless the grower of potatoes for sales has become registered, he may not sell his potatoes at all. If he registers as a grower, and thus enables himself so far as s. 18 is concerned to sell his potatoes, he may become liable to pay such sum as the Board determines: that is to say, the grower is told "You may only sell if you submit yourself to the possibility of being liable to the Board for an unspecified amount of money". (at p115)

14. It was submitted that, by reason of s. 22a of the Acts Interpretation Act 1915 (S.A.), as amended, s. 12 should be construed so as not to authorize a levy upon a grower in respect of his interstate trade. But, in my opinion, by no process of construction could the language of s. 12 be so confined. The levy is not in respect of any transaction but is in respect of a person registered as a grower. Further, the levy may be required to be paid before the grower has decided whether or not he will sell interstate: and he may be both a seller intrastate and interstate. (at p116)

15. It was also submitted that the operation of ss. 12 and 18 could be severed so that their provisions did

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not cumulate. It was then said that, if s. 12 were read as inseverably authorizing a levy on interstate trade, it would as a whole be void, leaving s. 18 standing. (at p116)

16. But this submission misconceives the relevant operation of s. 92 . It is the prohibition on sale without being registered which brings s. 92 into consideration in this case. If registration is not as of right, the prohibition on sale will itself offend s. 92 . But a consequence of registration is a compulsory levy. This will afford a separate reason for concluding that the constitutional provision has been breached, even if registration is as of right. These are the two bases on which ss. 12 and 18 may deny the freedom of interstate trade protected by s. 92 : first, unless registration as a grower is of right, s. 18 itself will offend. Secondly, if the grower has a right to be registered, the combination of the prohibition on sale without registration and the subjection by s. 12 of the registrant to the risk of a levy will also offend. If it be right, as I think it is, to read the Act as forbidding an interstate sale by a grower who is not registered but who, if registered, will be exposed to the possibility of a levy of uncertain and, perhaps, unlimited amount, s. 18 of the Act, in my opinion, infringes s. 92 . A State cannot make the liability to such a levy a condition of its permission to engage in interstate trade. That, in my opinion, is precisely what the Act, properly understood, effects to do. For this reason, I am of opinion that s. 18 must be construed so as to be inapplicable to the interstate selling of potatoes. A grower may sell his potatoes by an interstate sale without being registered under the Act. (at p116)

Following paragraph cited by:

Coal and Allied Operations v Full Bench of AIRC and Ors (13 April 2000) (Gleeson CJ, Gaudron J, Kirby J, Hayne J, Callinan J)

17. There is another ground on which I would reach the same conclusion. A grower has no right to a licence until he satisfies the Board that he is growing or will grow potatoes, presumably of stated varieties and at stated times on specific areas of land. That satisfaction of the Board is subjective. The grower has no right to the Board's satisfaction. Further, the fact about which the Board is to be satisfied may, in some circumstances, be irrelevant to the sale of the potatoes the grower wishes to sell. The Board's satisfaction is as to a period, which is not necessarily the period in which the potatoes to be sold have been grown. Thus, a grower with a stock on hand may not sell those potatoes unless he is registered in respect of a period in which they were not, nor would be, grown. For example, a grower with potatoes on hand after the expiry date of an earlier registration could not sell them until he was registered again. In such a case, the Act and regulations (including the scheduled form) provide that the grower, in order to be able to sell his stock of potatoes, must undertake to grow further potatoes as described in the form of application for registration. (at p117)

18. Further, the satisfaction of the Board as to whether the applicant is growing or will grow potatoes for sale depends, at least in part, upon the intention of the grower. This involves questions of credit: as I have said, the applicant has no certainty that he will be believed. It is quite inappropriate, in my opinion, to describe the applicant in such a case as entitled to be registered. It can only be said that he must be registered if he can convince a State board of what he is relevantly doing or will do. (at p117)

19. In my opinion, the provisions of the Act do not satisfy the requirement that the registration should be obtainable as of right or subject only to the performance of ascertained and defined conditions which do not in themselves constitute a violation of the guaranteed freedom. (at p117)

20. In my opinion, the Act does endeavour, on the one hand, inadmissibly to subject interstate trade to the burden of a financial levy: and, on the other hand, in substance, to select who shall be permitted to engage in interstate trade according to the discretion of the Board or of the Minister. (at p117)

21. In either case s. 92 is infringed. The magistrate's decision to dismiss the complaint was correct. This appeal should be dismissed. (at p117)

GIBBS J. The respondent was charged that, being a person who was not registered as a grower of potatoes, he sold a quantity of potatoes grown by him contrary to s. 18 (1) of the Potato Marketing Act, 1948-1973 (S.A.) ("the Act"). It was proved that the respondent, who was not registered as a grower, sold some potatoes, which he had grown at Salisbury Downs in South Australia, to a buyer at Broken Hill in New South Wales and agreed to deliver them in Broken Hill. The magistrate who heard the complaint held that s. 18 (1) must be construed in such a way that it would not infringe s. 92 of the Constitution and that so construed it did not extend to interstate trade. Since it was not disputed that the sale the subject of the charge was an act of interstate trade the magistrate accordingly dismissed the complaint. (at p117)

Following paragraph cited by:

- KEPCO Bylong Australia Pty Ltd v Bylong Valley Protection Alliance Inc (14 September 2021) (Basten and Payne JJA at [1]; Preston CJ of Lec at [84])
- Bushfire Survivors for Climate Action Incorporated v Environment Protection Authority (26 August 2021) (Preston CJ)
- Braun v Health Ombudsman (23 August 2021) (Jackson J)
- AB v Attorney General for New South Wales (24 May 2021) (Rothman J)
- Application by Peter James Holland pursuant to s 78 Crimes (Appeal and Review) Act 2001 (28 April 2021) (Davies J)
- Folbigg v Attorney General of New South Wales (24 March 2021) (Basten JA; Leeming JA; Brereton JA)
- Town of Cambridge v The Hon David Templeman MLA, Minister for Local Government; Heritage; Culture and the Arts (02 October 2020) (Tottle J)
- AUSTRALIAN LEISURE AND HOSPITALITY GROUP PTY LTD -v- COMMISSIONER OF POLICE (24 September 2020) (Quinlan CJ, Buss P, Vaughan JA)
- Clark v Attorney General of New South Wales (30 April 2020) (Basten JA at [1]; Macfarlan JA at [11]; McCallum JA at [12])
- Clark v Attorney General of New South Wales (30 April 2020) (Basten JA at [1]; Macfarlan JA at [11]; McCallum JA at [12])
- Commissioner of Police v Thayli Pty Ltd (19 February 2020) (Smith J)
- Burgess v Assistant Minister for Home Affairs (30 August 2019) (Kerr, White and Charlesworth JJ)
- Commissioner of Police v Australian Leisure and Hospitality Group Pty Ltd (05 April 2019) (McGrath J)
- CMD v NSW Office of Children's Guardian (31 August 2018) (McCallum J)
- Minister for Immigration and Border Protection v SZVFW (08 August 2018) (Kiefel CJ, Gageler, Nettle, Gordon and Edelman JJ)
- Fordham v Environment Protection Agency (01 August 2018) (Meagher JA at [1]; Leeming JA at [45]; Sackville AJA at [46])
- GAR v Attorney General of New South Wales (No 2) (12 December 2017) (Beazley A/CJ at [1]; Simpson JA at [4]; Payne JA at [95])

Chehade v Commissioner for Consumer Affairs (11 July 2016) (Judgment of The Honourable Justice Hinton)
Obeid v Independent Commission Against Corruption (14 December 2015) (Davies J)
R v IBAC (07 August 2015) (Riordan J)
R v IBAC (07 August 2015) (Riordan J)
Buttrose v Attorney General of New South Wales (31 July 2015) (Beazley P and Leeming JA at [1]; Macfarlan JA at [30])
Moorebank Recyclers Pty Ltd v Benedict Industries Pty Ltd (18 March 2015) (Preston CJ)
McCarthy v NSW Racing Appeals Tribunal (18 June 2014) (Beech-Jones J)
Woolworths Ltd v Commissioner of Police (15 November 2013) (Edelman J)
Woolworths Ltd v Director of Liquor Licensing (01 October 2013) (Martin CJ, Buss JA, Murphy JA)
D'Amore v Independent Commission Against Corruption (21 June 2013) (Bathurst CJ at [1]; Beazley P at [2]; Basten JA at [194])
SZQVA v Minister for Immigration (06 July 2012) (Cameron FM)
Samootin v Hannigan (04 May 2012) (Bennett J)
Re Australian Paper Pty LTDApplicant and Renewable Energy REGULATORRespondent (07 February 2012) (Deputy President S A ForgieSenior Member E Fice)
Re Australian Paper Pty LTDApplicant and Renewable Energy REGULATORRespondent (07 February 2012) (Deputy President S A ForgieSenior Member E Fice)
Brennan v New South Wales Land and Housing Corporation (20 September 2011) (Giles JA at 1; Basten JA at 21; Handley AJA at 110)
Brennan v New South Wales Land and Housing Corporation (20 September 2011) (Giles JA at 1; Basten JA at 21; Handley AJA at 110)
Sweetwater Action Group Inc v Minister for Planning (07 July 2011) (Biscoe J)
Tisdall v Webber (07 June 2011) (Greenwood, Tracey and Buchanan JJ)
Australians for Sustainable Development Inc v Minister for Planning (10 March 2011) (Biscoe J)
SZONQ v Minister for Immigration (14 February 2011) (Driver FM)
Russell and Secretary, Department of Families, Housing, Community Services and Indigenous Affairs (03 February 2011) (Professor RM Creyke, Senior Member)
Martyniak v Secretary Department of Families, Housing, Community Services and Indigenous Affairs (12 January 2011) (Professor RM Creyke, Senior Member)
SZLGP v Minister for Immigration (26 August 2010) (Driver FM)
Minister for Immigration and Citizenship v SZMDS (26 May 2010) (Gummow ACJ, Heydon, Crennan, Kiefel and Bell JJ)
Minister for Immigration and Citizenship v SZMDS (26 May 2010) (Gummow ACJ, Heydon, Crennan, Kiefel and Bell JJ)
Minister for Immigration and Citizenship v SZMDS (26 May 2010) (Gummow ACJ, Heydon, Crennan, Kiefel and Bell JJ)
Repacholi Aviation Pty Ltd v Civil Aviation Safety Authority (11 December 2009) (McKerracher J)
Accused A v Callanan (18 February 2009) (Applegarth J)
Chahal v Director of Public Prosecutions (03 July 2008) (Giles JA ; Ipp JA; Basten JA)
Dunstan v von Doussa (No 2) (05 June 2008) (Flick J)
Lillywhite v Chief Executive, Liquor Licensing Division, Dept of Tourism Fair Trading and Wine Industry Development (11 September 2007) (Judge Brabazon QC)
Re Minister for Resources; Ex parte Cazaly Iron Pty Ltd (28 August 2007) (Wheeler JA ; Pullin JA; Buss JA)
Commissioner of Police v Ryan (09 August 2007) (Spigelman CJ at 1; Santow JA at 2; Basten JA at 3)
Re Minister for the Environment; Ex Parte Elwood (29 June 2007) (Roberts-Smith JA)

Garland v Chief Executive, Department of Corrective Services (07 September 2006) (Atkinson J)
Yallingup Residents Association (Inc) v State Administrative Tribunal (04 August 2006) (Johnson J)
Spencer v Knox CC (25 May 2006) (Justice Stuart Morris, President)
Cummins v Chief Executive, Department of Corrective Services (22 July 2005) (White J)
McMahons Road Pty Ltd v Frankston City Council (04 May 2005) (Dodds-Streeton J)
Lewenberg v Victoria Legal Aid; White v Victoria Legal Aid (21 February 2005) (Gillard J.)
Martin Francis Flynn v Dianne Ryan (20 November 2003) (Moynihan Sja)
Re City of Subiaco; Ex Parte Gardiner (24 October 2003) (Pullin J)
NAKF v Minister for Immigration and Multicultural and Indigenous Affairs (17 July 2003) (Gyles J)
Westfield Management Ltd v Brisbane City Council & Anor (17 April 2003) (Judge Brabazon Q.C.)
Dermer v The Shire of Busselton (02 August 2002) (Roberts-Smith J)
Bankstown Chatswood Rifle Club Inc v Commissioner of Police NSW (10 September 1999) (Barr J at 1)
Viney v George's Jet Gas Pty Ltd (29 August 1985) (Tadgell J)

2. The provisions of s. 18 (1) of the Act can only validly apply to an interstate sale if they are "regulatory" within the principles laid down in The Commonwealth v. Bank of New South Wales (1949) 79 CLR 497; (1950) AC 235 and later authorities. The sub-section prohibits all sales except by registered growers, and such a provision could not validly apply to interstate trade unless it was sufficiently certain that any grower who wished to make interstate sales and who sought registration could obtain it. It was submitted on behalf of the respondent that the provisions of s. 18 (2) of the Act did not bring about that result, first, because the entitlement to registration depends on the Board being satisfied of the matters mentioned in s. 18 (2) (b) rather than on the existence in fact of such matters and, secondly, because that sub-section does not entitle a person to registration unless in the period for which registration is required he is growing or intends to grow potatoes for sale and there may be cases in which a person who has grown potatoes and wishes to sell them interstate cannot obtain registration. It was further submitted that the requirement of registration is itself an impermissible burden on interstate trade and that the fact of registration exposes the grower to a levy under s. 12 of the Act which could not be exacted consistently with s. 92 . (at p118)

Following paragraph cited by:

Karmakar v Minister for Health (No 2) (06 August 2021) (Logan J)
Director of Public Prosecutions (NSW) v SB (12 June 2020) (Walton J)
Sing v Minister for Home Affairs (07 February 2020) (Logan, Reeves and Derrington JJ)
EHF17 v Minister for Immigration and Border Protection (14 October 2019) (Derrington J)
Kerr v Insurance Australia Limited (25 February 2019) (Harrison AsJ)
Sun v Minister for Immigration and Border Protection (05 April 2016) (Logan, Flick and Rangiah JJ)
XX v WW and Middle South Area Mental Health Service (17 December 2014) (McDonald J)
Undag v Bupa Care Services Pty Ltd (14 October 2014) (Deputy President Bill Roche)
Rich v Attorney General of New South Wales (09 December 2013) (Bathurst CJ at [1]; Beazley P at [2]; Leeming JA at [3])
St George Leagues Club Ltd v Wretowska (26 November 2013) (Deputy President Bill Roche)

148. Consistent with this statement, Spigelman CJ observed in *Vines v Australian Securities and Investment Commission* [2007] NSWCA 126 (at [8]):

> "8 Where, as here, the relevant statutory test turns on whether or not the Court is 'satisfied' of a matter involving a broad evaluative judgment, then the case law indicates that the degree of restraint which an appellate court should manifest is of the same order as that applicable to a discretion, in the strict sense of that word. (See *Norbis v Norbis* (1986) 161 CLR 513 esp at 517-518, 540 ; *Singer v Berghouse* (1994) 181 CLR 201 esp at 210-212 ; *Coal and Allied Operations Pty Limited v Australian Industrial Relations Commission* (2000) 203 CLR 194 esp at [19], [27], [32] ; Russo v Aiello (2003) 215 CLR 643 at [27] ; *Director of Public Prosecutions v El Mawas* (2006) 66 NSWLR 93; (2006) NSWCA 154; at [3]-[4] and [64]-[70].) A statutory provision expressed in terms of whether a decision maker is 'satisfied' of a particular matter is accurately characterised as conferring 'a very wide discretion'. (See *Buck v Bavone* (1976) 135 CLR 110 at 119 .)"

Dao v The Queen (01 April 2011) (Spigelman CJ at 1; Allsop P at 71; Simpson J at 108; Kirby J at 211; Schmidt J at 212)
Minister Administering the Crown Lands Act v New South Wales Aboriginal Land Council (11 December 2009) (Hodgson JA Basten JA Macfarlan JA)
Jerrinja Local Aboriginal Land Council v Minister Administering the Crown Lands Act (13 September 2007) (Jagot J)
Vines v Australian Securities and Investments Commission (22 June 2007) (Spigelman CJ; Santow JA; Ipp JA)
Director of Public Prosecutions v El Mawas (19 June 2006) (Spigelman CJ at 1; Handley JA at 12; McColl JA at 13)
Perpetual Trustee Co Ltd v Khoshaba (20 March 2006) (Spigelman CJ at 1; Handley JA at 99; Basten JA at 105)
Perpetual Trustee Co Ltd v Khoshaba (20 March 2006) (Spigelman CJ at 1; Handley JA at 99; Basten JA at 105)
Sinanovic v NSW Director of Public Prosecutions (25 February 2002) (Studdert J)
Dinh v Commissioner of Corrective Services (27 October 2000) (Kirby J)
AMI Toyota Ltd v Chief Executive Officer of Customs (21 February 2000) (Heerey J)
AMI Toyota Ltd v Chief Executive Officer of Customs (21 February 2000) (Heerey J)
Minister for Immigration and Ethnic Affairs v Guo (13 June 1997) (Brennan CJ, Dawson, Toohey, Gaudron, McHugh, Gummow and Kirby JJ)
O'Toole v Charles David Pty Ltd (06 November 1990) (Mason C.J., Brennan, Deane, Dawson, Toohey, Gaudron and McHugh JJ.)
Smith v Corrective Services Commission (NSW) (28 October 1980) (Gibbs A.C.J., Stephen, Mason, Murphy, Aickin and Wilson JJ.)
Permewan Wright Consolidated Pty Ltd v Trewhitt (22 November 1979) (Barwick C.J., Gibbs, Stephen, Mason, Murphy and Aickin JJ.)

3. The first question that arises is whether s. 18 (2) of the Act gives the Board an arbitrary or very wide discretion to decide whether a grower who applies for registration should be granted it. If so, the authority of such cases as Hughes and Vale Pty. Ltd. v. New South Wales (No. 2) (1955) 93 CLR 127 establis hes that the provision will be invalid. It is not uncommon for statutes to provide that a board or other authority shall or may take certain action if it is satisfied of the existence of certain matters specified in

the statute. Whether the decision of the authority under such a statute can be effectively reviewed by the courts will often largely depend on the nature of the matters of which the authority is required to be satisfied. In all such cases the authority must act in good faith; it cannot act merely arbitrarily or capriciously. Moreover, a person affected will obtain relief from the courts if he can show that the authority has misdirected itself in law or that it has failed to consider matters that it was required to consider or has taken irrelevant matters into account. Even if none of these things can be established, the courts will interfere if the decision reached by the authority appears so unreasonable that no reasonable authority could properly have arrived at it. However, where the matter of which the authority is required to be satisfied is a matter of opinion or policy or taste it may be very difficult to show that it has erred in one of these ways, or that its decision could not reasonably have been reached. In such cases the authority will be left with a very wide discretion which cannot be effectively reviewed by the courts. Hughes and Vale Pty. Ltd. v. New South Wales (No. 2) itself was a case of that kind. Where the authority is required to be satisfied of the existence of particular matters of objective fact, the position may be very different. It may then be possible to show clearly not only that the material facts existed but that an authority acting in accordance with its duty could have reached no other conclusion than that they existed. Under s. 18 (2) of the Act the matters of which the Board must be satisfied before an applicant will be entitled to registration are clearly defined, and they do not permit the Board to exercise any judgment as to the fitness of the applicant or to apply its own notions of policy in reaching its decision. The Board has to be satisfied that "in the period for which registration is required he" (the applicant) "is growing or will grow potatoes for sale, either on land owned or occupied by him, or under a share-farming agreement". It is impossible to suppose that the Board acting in good faith could fail to be satisfied that a person was growing potatoes if that were the fact. No doubt the questions whether the applicant will grow potatoes, and whether they are being grown or will be grown for sale, make it necessary for the Board to decide whether it accepts an applicant's statements as to his intent, but having regard to the nature of the issue the possibility that the Board acting honestly might wrongly fail to be satisfied of those matters seems to me theoretical rather than practical. In the nature of things an erroneous decision by the Board on such a question could be readily reviewed by the courts. The requirement that a grower who effects an interstate sale shall be registered does not burden the grower's interstate trade, because the grower will be entitled to be registered, and for reasons which I shall give registration does not entail any burdensome consequences. The possibility that the Board may wrongly refuse to grant registration, thus putting the grower to the trouble and expense of resorting to the courts, does not mean that s. 18 would be invalid if it applied to interstate trade: Wilcox Mofflin Ltd. v. New South Wales (1952) 85 CLR 488, at p 522 ; Kerr v. Pelly (1957) 97 CLR 310, at p 318 . (at p119)

Following paragraph cited by:

Ackroyd v McKechnie (06 August 1986) (Gibbs C.J., Mason, Wilson, Brennan, Deane and Dawson JJ.)

4. However, as I have already indicated, a person will not be entitled to registration unless he satisfies the Board that in the period for which registration is required he is growing or will grow potatoes. According to the submission of the respondent the section defines too narrowly the class of persons entitled to registration and does not allow the registration of every grower who may wish to sell his potatoes interstate. Clearly enough a person who had grown potatoes for a purpose other than sale - for example, for his own consumption or for use as seed potatoes on his own land - and then, after he had taken the whole crop off the land, had changed his mind and wished to sell the potatoes interstate, could not obtain registration if he did not intend to grow potatoes for sale in the future. He would not be

a person who "is growing or will grow potatoes for sale". Also a person who had grown potatoes for sale and who had been registered, but whose registration had expired after he had harvested his entire crop but before he had sold it, and who did not intend again to grow potatoes for sale, could not obtain further registration, and the section if valid would render a sale by him unlawful. Perhaps a case could also arise in which the land on which potatoes were grown was neither owned nor occupied by the grower, and there was no share-farming agreement. These however are exceptional cases, unlikely to arise in the normal course of trading. To establish a breach of s. 92 it is not enough to suggest the possibility of theoretical infringements of freedom that are remote from reality: cf. Hughes and Vale Pty. Ltd. v. New South Wales (No. 2) (1955) 93 CLR, at p 160 . Moreover, it is unnecessary to consider hypothetical cases that may never arise. It has not been shown that the respondent would not have been entitled to registration if he had sought it before he sold the potatoes to the buyer in Broken Hill. All that appears in the evidence is that the respondent had been growing potatoes only for the one year during which the alleged offence occurred; there is not the least suggestion that he was growing them otherwise than for sale and it does not appear whether or not he had harvested his whole crop. He has not shown that in the circumstances he was not entitled to registration as of right; he has therefore not shown that his freedom to sell interstate has been affected. (at p120)

5. The form on which an application for registration must be made is prescribed by regulations made under the Act. The applicant for registration is required to supply the following particulars: (1) Description of the land on which the potatoes are or are to be planted; (2) The name and address of the owner or occupier of the land;
(3) If potatoes are grown in partnership, the full names and addresses of the partners;
(4) If potatoes are grown pursuant to a share-farming agreement, the full names and addresses of other parties to the agreement;
(5) The total acreage planted or to be planted, showing the varieties to be planted and whether the planting is to be effected in the early season, the mid-season or the late season;
(6) The period for which registration is required (not exceeding eighteen months); and
(7) Whether the applicant was previously registered as a grower, and if so his registration number. The information required to be supplied is not such as to be either difficult to obtain or to amount to unwarranted invasion of the privacy of the grower supplying it. Its purpose would appear to be to inform the Board as to the likely size of the potato crop, the times when and the places at which potatoes are likely to be available and the varieties likely to be available - information of value to the Board in carrying out its marketing functions. The grower on the application form is required to give an undertaking that if granted a certificate of registration he will during the period for which registration is required grow potatoes for sale on the land described in the application and will plant the acreages and varieties there described. This is not burdensome; it is left entirely to the grower to say when, where and what he will plant; he need undertake nothing that he does not wish to perform. No means is provided for enforcing the undertaking; the continuance of the registration is not dependent on its observance - indeed, there is no provision for cancelling a registration once granted. The necessity to sign the form and give information and an undertaking does not of itself constitute a burden on the respondent's interstate trade. In this respect the case is not unlike Rogers v. Jordan (1965) 112 CLR 580 . (at p121)

Following paragraph cited by:

Australians for Sustainable Development Inc v Minister for Planning (10 March 2011) (Biscoe J)

6. The respondent's final contention is that upon registration a grower is liable to pay a levy which itself would constitute an impermissible burden if applied to interstate trade. Section 12 of the Act provides, inter alia, as follows:

> "(1) The board may, by notice in the Gazette from time to time require all or any of the persons who are registered or licensed under this Act to pay to the board contributions towards the costs of the administration of this Act and towards carrying out the powers and duties of the board under this Act. (2) The notice shall specify the persons or classes of persons who are required to pay contributions, the amount
> of the contributions or the manner in which they are computed and the time on or before which they must be paid."

No limit is placed by the statute on the amount of levy and since the Board is empowered to buy and sell potatoes s. 16(d)) the power to levy might be used to help make up trading losses incurred by the Board in dealing in potatoes other than those of the grower levied. The levy is not simply a tax on production of potatoes, justifiable within the principle of such cases as Damjanovic &Son Pty. Ltd. v. The Commonwealth (1968) 117 CLR 390 . Nor is it a fee paid towards the cost of registration, or as recompense for services or facilities provided by the Board, within the principles discussed in Freightlines and Construction Holdings Ltd. v. New South Wales (1967) 116 CLR 1; (1968) AC 625 . It was not contested that a grower could not be compelled to pay the levy as the price of engaging in interstate trade or as a tax on that trade. If s. 12 were given its full effect, so that it applied to growers making interstate sales, its provisions could not stand consistently with s. 92 of the Constitution . However, the Act is to be construed so as not to exceed the legislative power of the State of South Australia, and is to be treated as valid to the extent to which it does not exceed that power: s. 22a of the Acts Interpretation Act, 1915 (S. A.), as amended. That section reverses the presumption that the Act is to operate as a whole, and reveals the legislative intention that any parts of the enactment found constitutionally unobjectionable should be carried into effect independently of those which fail: Bank of New South Wales v. The Commonwealth (1948) 76 CLR 1, at p 371 . It is unnecessary to consider whether s. 12 is wholly invalid, and I express no opinion on that question. However, I can find no indication of any intention that ss. 12 and 18 should be interdependent, or that the rules of interpretation contained in s. 22a should not apply to the Act. If s. 12 is pro tanto invalid, it does not apply to a grower engaged in interstate trade. If it is wholly invalid, its invalidity does not infect s. 18. The two sections are distinct and severable. Liability to pay the levy is not a condition of registration. There is no other reason why s. 18 cannot be given effect independently of s. 12. Section 12 purports to enact that a consequence of registration may be liability to pay the levy; that consequence cannot validly be made to follow registration of an interstate trader; however, the intention of the legislature is that if s. 18 is valid in itself it should be given effect notwithstanding that the provisions of s. 12 fail wholly or in part; therefore, since s. 18 is not otherwise objectionable, it takes effect although registration under it does not expose an interstate trader to the consequences provided by s. 12. The result is that a grower who sells his crop interstate is obliged to register, but does not by reason of his registration become liable to the levy. (at p123)

7. For these reasons the provisions of s. 18 of the Act were merely regulatory, and validly applicable to sales made in the course of interstate trade. The magistrate was wrong in dismissing the complaint. I would allow the appeal. (at p123)

STEPHEN J. The respondent, a South Australian potato grower, faced a charge that, not being registered as a grower of potatoes, he had, contrary to s. 18(1) of the Potato Marketing Act, 1948-1973 (S. A.), sold potatoes grown by him. By way of defence he relied upon s. 92 of the Constitution; the charge

was dismissed. The sale the subject of the charge was one to an interstate buyer in Broken Hill for delivery to the buyer in that city and in dismissing the charge the magistrate construed s. 18(1) as not applying to sales of potatoes in interstate trade. From the dismissal of the charge the appellant, a Potato Board inspector who was the complainant below, now appeals. (at p123)

2. The respondent seeks to impugn the validity of s.18(1) upon two grounds, each concerned with the impact upon interstate trade of the section's prohibition upon the sale of potatoes by an unregistered grower. First it is said that the requirement of registration is no mere regulation of trade and that the prohibition of sale by unregistered growers does, in relation to interstate trade, offend against s. 92 ; additionally it is contended that because registration carries with it a liability to pay levies imposed by the Board, this is in itself enough to make even an otherwise innocuous requirement of registration a burden obnoxious to s. 92 . (at p123)

3. To obtain registration as a grower a form must be filled in giving information as to production of potatoes and containing an undertaking to grow potatoes for sale. An applicant must then satisfy the Board that he is growing or will grow potatoes for sale; he thereupon becomes entitled, without fee, to registration. (at p123)

4. The respondent points out that a grower of potatoes for sale who defers his application for registration until all his crop has been garnered and who does not intend to grow another crop will be unable to establish any entitlement to registration. However the apparent injustice involved in this seeming anomaly may be more apparent than real; because the prohibition in s. 18(1) extends not only to the selling but also to the growing of potatoes while unregistered, such a grower's inability to obtain registration will be a consequence of his earlier failure to comply with the law and obtain, while his crop was still in the ground, the registration to which he would then not only be entitled to but also bound by law to seek. (at p124)

5. The respondent also draws attention to the situation of a grower who does not grow for sale, instead intending his potatoes exclusively for use as seed potatoes or for home consumption; he will neither be entitled to, nor required to obtain, registration so long as his intention not to sell his crop remains unchanged. However, should he change his mind after all his potatoes have been garnered, while at the same time having no intention of growing further potatoes for sale in the immediate future, he will not be entitled to be registered and his want of registration will mean that any sale of his crop, albeit interstate, will constitute an offence under s. 18(1). (at p124)

6. There is nothing to suggest that the respondent falls within any such category. He was growing potatoes on about one and a half acres, sufficient on the evidence to yield about fifteen tons of potatoes, certainly a large quantity for consumption by family or friends or for his own use as seed potatoes; he had, in fact, sold some of his crop to his Broken Hill buyer. There is no evidence whatever that he had grown his crop without any intention of selling it and that, after digging all his crop, he changed his mind and formed the intent to sell some or all of it to the Broken Hill buyer, at the same time intending not to grow a further crop. (at p124)

7. The respondent seeks, nevertheless, to rely upon this feature of the registration requirements of s. 18 (1), that in certain conceivable circumstances a grower will be unable to qualify for registration, to counter the view that registration is no more than a permissible regulation of trade not inconsistent with s. 92 . He relies also upon the requirement that an applicant for registration must "satisfy" the Board of certain matters before being entitled to registration. (at p124)

8. Before dealing with these contentions I should state what I understood to be the position at law so far as concerns the impact upon interstate trade of a requirement of registration. Such a requirement, applicable alike to intra- and interstate sellers, will not offend s. 92 if merely regulatory of trade. If registration is readily available without onerous prerequisites and without payment of any fee, and is a reasonable and relevant requirement in the circumstances of the trade it will, being non-discriminatory, be a valid regulatory law, so that although framed in terms of a prohibition upon sale without prior registration it will not relevantly burden interstate trade (Hughes and Vale Pty. Ltd. v. New South Wales (No. 2) (1955) 93 CLR 127, at pp 160-161). The requirement of registration as a grower for sale, involving the furnishing of the information and the giving of the undertaking called for in the present case is, in the context of the present legislation, in my view both relevant and reasonable. (at p125)

Following paragraph cited by:

Clubb v Edwards (10 April 2019) (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ)

9. This being so, can the respondent none the less rely upon instances, not shown to be applicable to his case, in which a particularly situated grower might not be able to satisfy the requirements of registration, using those instances to deny to the requirement of registration what is, in the respondent's own circumstances, its character of mere innocuous regulation? I think not. The relevance of the distinction between mere regulation on the one hand and burden or prohibition on the other lies in the different effect each produces upon the trade of he who invokes s. 92 . One who relies upon s. 92 "cannot roam at large over the regulations and attack them generally. He must be confined to those which affect his rights ..." (Real Estate Institute of New South Wales v. Blair, per Starke J. (1946) 73 CLR 213, at p 227); this is as true of an attack based upon s. 92 as it was in the facts of that case. The burden or obstruction complained of must be real and not merely "some theoretical or speculative transgression" of freedom - Hughes and Vale (No. 2) (1955) 93 CLR, at p 160 ; cf at p 205 ; there must be "an actual burden upon interstate trade - a real impediment in its way" (Williams v. Metropolitan and Export Abattoirs Board (1953) 89 CLR 66, at p 74). Otherwise "the argument is left to general reasoning and hypothetical cases" (Wilcox Mofflin Ltd. v. New South Wales (1952) 85 CLR 488, at p 518), whereas there is "much to be said for the view that s. 92 should be applied only for the protection of transactions actually existing which come within it and not to imaginary cases" (1952) 85 CLR, at p 520 . The requirement of registration is not shown to have involved any burden or prohibition upon the respondent's interstate trade and the fact that it is possible to conceive of others who might be so circumstanced that the requirement would impose a prohibition upon their interstate trade affords him no standing to assert invalidity. (at p126)

10. The objection to reliance upon such hypothetical instances of the burdening of trade is based upon no mere technicality. It may very well be that there neither is nor ever will be a grower of potatoes in South Australia whose circumstances are such as to preclude him from registration in a manner offensive to s. 92 . Such a grower would have to have grown potatoes for a purpose other than sale, to have changed his mind and decided to sell them after they had all been dug, to have engaged in a transaction involving the interstate sale of his potatoes and, additionally, to have possessed the intention to refrain from again growing potatoes for sale. Without the coincidence of all these circumstances the requirements of registration can readily be satisfied and will prove no relevant impediment to interstate trade. A law should not, in my view, be declared invalid when no interested party's interstate trade is shown to have been burdened by it and when there may never exist any trade so circumstanced as to be liable to be so burdened. (at p126)

11. The requirement that the Board must be "satisfied" in certain respects before registration can be attained means, says the respondent, that registration, far from being a matter of right, lies very much in the discretion of the Board and may quite arbitrarily be denied to an applicant. Were this so the law would clearly enough offend against s. 92 but I cannot regard s. 18 as having this effect. The satisfaction of the Board is made to turn upon a quite precise question of fact, whether the applicant "is growing... potatoes for sale, either on land owned or occupied by him, or under a share-farming agreement" or, alternatively, whether the applicant "will grow potatoes for sale" on such land or under such an agreement. Having regard to the remedies available should the Board fail to perform the duty cast upon it to determine according to law a grower's application, there appears to me to be nothing so arbitrary in the Board's function of determining applications for registration as to deprive the requirement of registration of its character as permissible regulation of trade. (at p126)

Following paragraph cited by:

Clubb v Edwards (10 April 2019) (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ)

12. I turn therefore to the quite distinct ground of attack, based upon the exposure to the levy-making power of the Board which is involved in becoming a registered grower. This arises because of the terms in which s. 12 of the Act imposes liability to levies made by the Board; it is those who are registered under the Act who alone may be required to contribute, by way of levies, towards costs of the administration and execution of the Act. Hence, so the argument goes, to require registration as a prerequisite to sale, including interstate sale, is to burden interstate trade by imposing upon it a potential liability to levies. The argument concludes by drawing attention to the nature of the Board's power to make levies. Levies may be confined to particular persons or classes of persons registered under the Act, no limits are placed upon their amount or their frequency and the moneys raised by levies may be used for a wide variety of purposes, including the making good of any losses incurred by the Board in the course of its own trading in potatoes. The respondent accordingly points to the fact that the Board's power to make levies could be used to impose real and perhaps discriminatory burdens upon the trade of growers trading interstate. (at p127)

13. Assuming for the moment that s. 12, if made applicable to a grower engaged in interstate trade, would offend against s. 92 , this does not, in my view, bear upon the application of s. 18 to such a grower. The two sections are quite distinct provisions, in no way interdependent and linked only by the fact that those growers who may be made liable to a levy under s. 12 are identified by reference to their registration under s. 18. Any immunity from exactions under s. 12 which a grower's engagement in interstate trade may confer upon him will leave s. 18 unaffected; s. 22a of the Acts Interpretation Act, 1915 (S.A.) permits s. 18 to operate whether or not s. 12 is capable of valid application and in doing so ensures that, in accordance with s. 22a, the legislation is accorded effect to the full extent to which it does not exceed State legislative power. (at p127)

14. I would not, therefore, regard the existence of s. 12 as affording to the respondent any defence to a charge founded upon his breach of s. 18. I have earlier assumed, in considering the effect of s. 22a, that s. 12 is offensive to s. 92 of the Constitution in its purported application to a grower engaged in interstate trade. I am not, however, to be taken as necessarily accepting the correctness of this assumption, and this for two reasons. First, had the respondent been registered as a grower under the Act there is nothing to suggest that he would in fact have become liable to pay a levy at all, let alone a levy capable of being regarded as burdening his interstate trade; the evidence does not establish that the Board has

ever made use of or threatens to use its power to impose a levy, still less that a levy burdening interstate trade would be imposed. If a levy were imposed it might be imposed only upon that class of grower whose trade is confined to sales intrastate; again, if it did extend to those engaged in interstate trade, it might be confined to the recovery from all growers of a fair proportion of the Board's costs of providing services to them - Freightlines and Construction Holding Ltd. v. New South Wales (1967) 116 CLR 1; (1968) AC 625 and Harper v. Victoria, per Taylor J. (1966) 114 CLR 361, at p 378 and per Menzies J. (1966) 114 CLR, at p 379 - at which passages the imposition of fees for services was considered in the context of s. 92 as well as that of s. 90. Reliance upon the levying power in s. 12 as tainting with invalidity the requirement of registration imposed by s. 18 may thus be thought to be a further instance of the use of a hypothetical case with which to seek to establish the burdening of interstate trade in circumstances in which the particular interstate trader can show no real burden whatever which either affects or is likely to affect him. (at p128)

15. Secondly the view is at least open that s. 12 does not itself impose any burden upon any trade. It does no more than authorize the Board to strike levies payable by registered growers, the Board having a very wide discretion both as to the incidence and amount of any levy and as to the application of the proceeds. Whereas a levy struck by the Board might or might not burden interstate trade the power to impose a levy may not itself do so. A statute which itself imposes a burden upon interstate trade, whether or not its operation is subject to a discretionary power to alleviate, is one thing; a statute which confers a power of delegated legislation or some executive power, either of which may be used in a manner burdensome of interstate trade, is quite another. If such powers be used so as to burden interstate trade s. 92 will strike them down but the source of those powers, the statute itself, may stand in a different position. (at p128)

16. A ready illustration lies in the field of road transport. It is common legislative practice to enact that speed limits and other rules of conduct on the road may be declared by regulation; s. 4 of Victoria's Road Traffic Act is such a provision. It was to such regulations that the joint judgment of Dixon C.J. and McTiernan and Webb JJ. in Hughes and Vale (No. 2) referred (1955) 93 CLR, at p 163 ; prima facie they were but regulation of the interstate transportation of goods by motor vehicle and were unlikely to be inconsistent with the freedom of that traffic. However their nature would necessarily depend upon their content, "for a law which under the guise of regulating an incident of interstate transport by road creates a real obstruction or impediment to carrying it on does impair the freedom which s. 92 guarantees. For example, a regulation of the hours during which certain goods may be carried upon the Hume Highway or be brought into Sydney or Melbourne may fix times and periods that make the use of motor vehicles for the purpose practically impossible". In similar vein Dixon C.J., in Greutner v. Everard (1960) 103 CLR 177, at pp 183-184 , quoted at length from the judgment of Fullagar J. in McCarter v. Brodie (1950) 80 CLR 432 , a passage also cited in extenso in the judgment delivered by Lord Morton of Henryton in the Hughes and Vale Case (No. 1) (1954) 93 CLR 1, at pp 23-28; (1955) AC 241, at pp 297-301 . Fullagar J. there emphasized the essentially regulatory character of the prescription of rules of conduct on the road, while at the same time pointing out that they might become a means of burdening of interstate trade if, as in the example given by his Honour, a speed limit of one mile per hour were fixed for traffic on the Hume Highway. If such were to occur the statute under which regulations of such a character were made would, I think, remain valid, only the regulation made under it being void as offensive to s. 92 . In Wilcox Mofflin v. New South Wales, in the joint judgment of Dixon C.J. and McTiernan and Fullagar JJ., their Honours said (1952) 85 CLR, at p 522 :

> "In our opinion in the case of wide executive and administrative authorities depending upon statute, s. 92 does not operate to invalidate the whole statutory authority because, in

> the purported exercise of the authority, administrative measures may be taken which conflict with s. 92 . Unless upon the face of the statute some purpose appears of authorizing some impairment of the freedom of interstate commerce, the wide terms of the authority should not be read as attempting to do so." (at p129)

17. In Kerr v. Pelly (1957) 97 CLR 310 it was sought to invalidate part of an Ordinance empowering transport inspectors to stop vehicles and order that they be weighed. In the joint judgment of Dixon C.J. and Fullagar, Kitto and Taylor JJ., their Honours referred to the argument that the possibility of misuse of this power involved invalidity and said (1957) 97 CLR, at p 318 :

> "To this particular argument it is enough to say that if such a use of the power were made in any given case it would amount to an interference with trade commerce and intercourse which would be void; but the possibility of an attempt being made to use the authority conferred by cl. 11 for such a purpose does not itself invalidate the authority".

In the earlier case of Tasmania v. Victoria (1934) 52 CLR 157, at p 177 Starke J. made the same point succinctly when he said:

> "It was said, however, than an Act in these terms might be abused. But the possibility of abuse cannot affect the validity of the Act. And an allegation that an Act is in fact abused is referable to the validity of the proclamation purporting to have been made under it, and not to the validity of the Act itself." (at p130)

18. The present legislation, and in particular s. 12, is of course rather different from the type of legislation which was under consideration in the foregoing cases; it could not be said of a non-discriminatory levy imposed by the Board which in fact involved casting of a burden upon interstate trade that, in the words of Starke J., it involved any abuse of the Board's powers. On the contrary such a levy might be directly within the contemplation of the legislation. However the fact that an exercise by the Board of its power to strike levies will, as I have said, not necessarily result in a levy offensive to s. 92 does in my view raise real doubts whether in the present circumstances s. 12 can be said to at all burden interstate trade. In view of my conclusion as to the effect of s. 22a of the Acts Interpretation Act it is unnecessary for the decision of this case that the point should be finally decided. (at p130)

19. I would allow this appeal. (at p130)

MASON J. The respondent, a potato grower and seller in South Australia, was acquitted on a charge of selling potatoes grown by him, not being registered by the South Australian Potato Board. He was charged with an offence against s. 18(1) of the Potato Marketing Act, 1948-1974 (S.A.) which provides that "a person shall not grow potatoes for sale, or sell potatoes grown by him unless he is registered by the board as a grower". The magistrate held that the section had no application to an interstate sale as it would infringe s. 92 if otherwise construed. The sale on which the charge was based was an interstate

sale. (at p130)

> **Following paragraph cited by:**
>
> Clubb v Edwards (10 April 2019) (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ)

2. Section 18(1) and (2) provides:

> "(1) A person shall not grow potatoes for sale, or sell potatoes grown by him unless he is registered by the board as a grower.

(2) A person who -

> (a) applies for registration in the prescribed form and furnishes the board with the information indicated on the form; and
>
> (b) satisfies the board that in the period for which registration is required he is growing or will grow potatoes for sale, either on land owned or occupied by him, or under a share-farming agreement;
>
> shall be entitled to registration as a grower." (at p131)

3. To obtain registration an applicant must satisfy the Board that in the period for which registration is required he is growing or will grow potatoes for sale - that and no more. Only if it is not so satisfied can the Board refuse an application; it cannot refuse an application capriciously. In the event that it refuses to hear and determine an application according to law it is compellable by mandamus to perform its statutory duty. Its power to refuse an application is so limited that the provisions of s. 18 do not constitute an obstacle to a person intending to engage in interstate trade in potatoes: cf. the wide administrative discretions which were held to contravene s. 92 in Hughes and Vale Pty. Ltd. v. New South Wales (No. 1) (1954) 93 CLR 1; (1955) AC 241 and Hughes and Vale Pty. Ltd. v. New South Wales (No. 2) (1955) 93 CLR 127 . The information which an applicant is required to furnish in his application includes particulars of the acreage planted or to be planted, thereby providing the Board with material from which it may be able to estimate the volume of future production, which in turn may assist it in the exercise of powers conferred upon it by s. 20. This section enables the Board to control the sale, delivery and price of potatoes. The system of registration consequently ensures that on application growers or intending growers will provide information necessary or valuable to it in the performance of its statutory functions. In this context s. 18 is regulatory and does not contravene s. 92 . (at p131)

> **Following paragraph cited by:**
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> Clubb v Edwards (10 April 2019) (Kiefel CJ, Bell, Gageler, Keane, Nettle, Gordon and Edelman JJ)
> Brownlee v The Queen (21 June 2001) (Gleeson CJ,Gaudron, McHugh, Gummow, Kirby, Hayne and Callinan JJ)

Attorney-General (WA) v Australian National Airlines Commission (17 December 1976) (Barwick C.J., Gibbs, Stephen, Mason and Murphy JJ.)

4. Having read the judgments of Gibbs and Stephen JJ. I agree for the reasons stated by their Honours that s. 12 is a distinct provision independent of s. 18. Whether s. 12 is obnoxious to s. 92 is not a question which I find it necessary to decide, although I recognize the force of the reasons for judgment of Stephen J. which would suggest that the question should be answered in the negative. It is enough for me to say that, if s. 12 involves a contravention of s. 92 , then, as Gibbs J. has said, there is no reason why the rules of interpretation contained in s. 22a of the Acts Interpretation Act, 1915 (S.A.) should not apply. (at p132)

5. I would therefore allow the appeal. (at p132)

JACOBS J. In the absence of material to show or even to suggest that the respondent would not have been able to obtain registration without impediment or that registration would in fact have imposed or have been likely to impose substantial burdens on the respondent I am of the opinion that the requirement of registration did not operate to impose an impermissible burden on the trade of the respondent in selling his potatoes interstate. I agree with the reasons given by Stephen J. and with his conclusion that the appeal should be allowed. (at p132)

MURPHY J. This case raises the question of the meaning and application of the first sentence of s. 92 of the Constitution . Section 92 is in Ch. IV of the Constitution , which is headed "Finance and Trade". This chapter deals with financial matters and the leit-motif of the sections surrounding s. 92 (ss. 88-90 and 93-95) is duties of customs. (at p132)

2. Section 92 reads:

> "92. On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free. But notwithstanding anything in this Constitution , goods imported before the imposition of uniform duties of customs into any State, or into any Colony which, whilst the goods remain therein, becomes a State, shall, on thence passing into another State within two years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods into the Commonwealth, less any duty paid in respect of the goods on their importation." (at p132)

3. Section 92 is generally taken out of context and abbreviated, eliminating the reference to duties of customs and facilitating its misinterpretation. When s. 92 is read in whole and in context, the command in the first sentence clearly concerns freedom from customs duties or similar taxes (often referred to as fiscal imposts) on trade, commerce and intercourse among the States. Section 92 does not guarantee economic anarchy. It is not a laissez-faire provision freeing trade, commerce and intercourse among the States from regulation. (at p133)

4. The judicial approach of injecting into s. 92 the philosophy of laissez-faire has caused a substantial and serious inroad into the spheres of State and Federal legislatures. Many laws (mainly State) have

been declared invalid and parliaments have consequently been inhibited from passing laws which might affect interstate trade and commerce. In this area, the Court has adopted a legislative role. It acts as an additional House but its role is necessarily negative. It can veto but not initiate. (at p133)

5. One of the architects of this approach, Lord Wright (who delivered the judgment of the Privy Council in James v. The Commonwealth (1936) 55 CLR 1; (1936) AC 578) made a dramatic recantation. In "Section 92 - A Problem Piece" (Sydney Law Review, vol. 1 (1954), p. 146), he wrote:

> "... the question ... should be asked ... what words or context there are to justify so unfortunate and obscure a reading of the section". (p. 147)
>
> "...surely all this difficulty follows from not taking the words in their obvious sense. No doubt to do so will mean a great and concerted effort on the part of the judges. But it may come in time." (p.147) "...that s. 92 deals with fiscal matters alone gives sense and efficacy to s. 92 ". (p. 155) "The idea of s. 92 as a power in the air brooding and ready in the name of freedom to crush and destroy social and industrial or political experiments in Australian life ought, I think, to be exploded. In truth, as I said, s. 92 is both pedestrian and humble, though very essential from the point of view of the founders of the Constitution who wished to establish interstate free trade in fiscal matters for all time." (p. 157) (at p133)

6. The misreading admitted by Lord Wright would have been avoided if the Privy Council had applied what it recognized was the ordinary meaning of free trade: "Free trade means in ordinary parlance freedom from tariffs" (James' Case (1936) 55 CLR, at p 56; (1936) AC, at p 627). (at p133)

7. There has also been wide academic criticism. Professor Colin Howard observed in 1968 that s. 92 (on the prevailing interpretation):

> "...is little, if anything, more than an impediment to the effective ordering of the economy on a nationwide basis. This result approaches the antithesis of what the section was originally intended to do." ("Freedom of Interstate Trade" Melbourne University Law Review, vol. 6 (1968), p. 258.)

Professor Geoffrey Sawer said:

> "The handling of this section by the Courts has been their one great constitutional failure... The failure may be partly due to the bad drafting of s. 92 , but it is also due partly to limitations of our legal technique, which make it difficult for our Courts to handle complex political and economic conceptions". (Commonwealth of Australia (British Commonwealth Series), vol. 2 (1952), p. 76.) "This section has caused more differences of judicial opinion and greater conflict between decisions than any other provision of the Constitution . There has never been any doubt as to the primary intention of the Founders. They wished to do away between States with the border tariffs the abolition of which was one of the main reasons for federating at all, and they wished to embody this objective in a specific provision, instead of leaving it to implication as in the U.S. Constitution . There is also no doubt that

the Founders anticipated the possibility of 'indirect' fiscal protection by methods other than border tariffs and differential excises, and accordingly desired their guarantee of fiscal free trade between the States to be stated with some generality and to be capable of some flexibility of application." (p. 71)

See also Professor P.E. Nygh, "An Analysis of Judicial Approaches to the Interpretation of the Commerce Clause in Australia and the United States (Sydney Law Review, vol. 5 (1967), p. 353) and "The Concept of Freedom in Interstate Trade" (University of Queensland Law Journal, vol. 5 (1967), p. 317); Professor Howard, Australian Federal Constitutional Law, 2nd ed. (1972), Ch. 5; Professor P.H. Lane, Australian Federal System with United States Analogues (1972), pp. 595-675. (at p134)

9. An even more severe criticism of the judicial approach has been made by Professor Julius Stone in "A Government of Laws and Yet of Men being a Survey of Half a Century of the Australian Commerce Power" (New York University Law Review, vol. 25 (1950), p. 451). (at p134)

10. Latham C.J. said on his retirement from this Court "When I die, s. 92 will be found written on my heart...A new approach is required to s. 92 , and no approach has been made towards reconsideration of that provision" (85CLR ix). (at p134)

Following paragraph cited by:

Smith v Capewell (04 October 1979) (Barwick C.J., Gibbs, Stephen, Mason, Murphy and Aickin JJ.)

ANALYSIS OF THE COMMAND IN S. 92 .

11. Meaning of "Trade and Commerce...Among the States". There has been a tendency to narrow the meaning of the phrase, "trade and commerce" in order to lessen the destructive effects of interpreting s. 92 so that it applies to other than fiscal charges. "...Among the States" has been treated as simply meaning "interstate". The phrase should not be given a narrow meaning. It is obviously comprehensive. (at p135)

12. "Trade and commerce...Among the States" extends into areas of intrastate commerce. The supposed line between interstate and intrastate the "straight, undeviating, Euclidian line" as Isaacs J. called it (Ex parte Nelson (No. 1) (1928) 42 CLR 209, at p 234), does not exist. (at p135)

13. Meaning of "intercourse". In the United States Constitution, "intercourse" has been implied into the concept of "commerce". Marshall C.J. said in Gibbons v. Ogden (1824) 9 Wheat 1, at p 189 (6 Law Ed 23, at p 68) "Commerce, undoubtedly, is traffic, but it is something more, it is 'intercourse'." As Corwin pointed out, "Marshall qualified the word 'intercourse' with the word 'commercial', thus retaining the element of monetary transactions" (see Constitution of United States of America (Annotated) (1973) Senate Document No. 92-82, p. 143). However, the word was included expressly in our s. 92 . The absence of the word from s. 51(i) suggests that "intercourse" in s. 92 is not restricted to commercial intercourse. (at p135)

14. Meaning of "Absolutely Free". The inclusion of this phrase means that s. 92 contains a command subject to no exceptions. It frees absolutely trade, commerce and intercourse among the States from customs duties or similar taxes, direct or indirect. A toll on passage of persons is an example of a fiscal charge on intercourse among the States. A good example of an indirect imposition is found in Fox v. Robbins (1909) 8 CLR 115 . Absolute freedom can be applied to fiscal charges without difficulty, but it

would produce chaos if applied to laws generally on interstate trade, commerce and intercourse. (at p135)

15. The consequences of giving full expression to the words "absolutely free" used in a wide sense not restricted to fiscal imposts are so intolerable that a doctrine has arisen by which the words "absolutely free" have been converted to "relatively free", that is, "subject to permissible regulation" on grounds such as health and safety. Such a meaning can not be given to "absolutely free". Under the doctrine of permissible "regulatory laws", laws on interstate trade and commerce may be regarded as regulatory. and therefore permissible, if they conform to certain tests. The tests are so obscure that (like the prophecies of the Oracle at Delphi) they can generally be shown to agree with any outcome. As the Privy Council said in the Bank Nationalization Case, this means that "the problem to be solved will often be not so much legal as political, social or economic. Yet it must be solved by a court of law" (The Commonwealth v. Bank of New South Wales (1949) CLR 497, at p 639; (1950) AC 235, at p 310). (at p136)

16. Section 92 has been described as guaranteeing freedom to the individual (James v. The Commonwealth (1936) 55 CLR 1; (1936) AC 578) and the party claiming protection in this case is an individual. Departure from the fiscal interpretation of s. 92 leads to difficulties when a corporation claims exemption from the laws of the legislature which created it. These difficulties have not been explored in cases on the section. The James Case concerned an individual. In the Bank Nationalization Case, the claim was for protection from the legislature which did not create the banking companies. With suitable drafting, legislatures could end the laissez-faire exemption from their laws claimed by companies created under their laws. (at p136)

RELATIONSHIP OF S. 92 TO THE COMMERCE POWER (S. 51(i.)) AND FREEDOM OF MOVEMENT.

17. I will refer briefly to the relationship of s. 92 and s. 51(i.) and to how the free movement of persons fits into the constitutional framework. (at p136)

18. Power of States over Trade and Commerce. Subject to s. 92 (and other constitutional limitations), the States have plenary power to pass laws even if they impose a non-fiscal burden (direct or indirect) on interstate trade or commerce. Cases which have declared marketing and other State laws (not imposing fiscal burdens) invalid for contravention of s. 92 were wrongly decided. (at p136)

Following paragraph cited by:

- Gerner v Victoria (10 December 2020) (Kiefel CJ, Gageler, Keane, Gordon and Edelman JJ)
- New South Wales v Commonwealth (14 November 2006) (Gleeson CJ, Gummow, Kirby, Hayne, Callinan, Heydon and Crennan JJ)
- APLA Ltd v Legal Services Commissioner (NSW) (01 September 2005) (Gleeson CJ, McHugh, Gummow, Kirby, Hayne, Callinan and Heydon JJ)
- AMS v AIF (17 June 1999) (Gleeson CJ,Gaudron, McHugh, Gummow, Kirby, Hayne and Callinan JJ)
- Higgins, Barry Thomas Patrick v The Commonwealth of Australia (03 February 1998) (Finn J)
- Newcrest Mining (WA) Ltd v the Commonwealth (14 August 1997) (Brennan CJ, Dawson, Toohey, Gaudron, McHugh, Gummow and Kirby JJ)
- Kruger v The Commonwealth (31 July 1997) (Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ)

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McGinty v Western Australia (20 February 1996) (Brennan CJ, Dawson, Toohey, Gaudron, McHugh and Gummow JJ)
Stevens v Head (18 March 1993) (Mason CJ, Brennan, Deane, Dawson, Toohey, Gaudron and McHugh JJ)
Australian Capital Television Pty Ltd v The Commonwealth (30 September 1992) (Mason CJ, Brennan, Deane, Dawson, Toohey, Gaudron and McHugh JJ)
Cole v Whitfield (02 May 1988) (Mason C.J., Wilson, Brennan, Deane, Dawson, Toohey and Gaudron JJ.)
Miller v TCN Channel Nine Pty Ltd (21 October 1986) (Gibbs C.J., Mason, Murphy, Wilson, Brennan, Deane and Dawson JJ.)
Miller v TCN Channel Nine Pty Ltd (21 October 1986) (Gibbs C.J., Mason, Murphy, Wilson, Brennan, Deane and Dawson JJ.)
Miller v TCN Channel Nine Pty Ltd (21 October 1986) (Gibbs C.J., Mason, Murphy, Wilson, Brennan, Deane and Dawson JJ.)
Koowarta v Bjelke-Petersen (11 May 1982) (Gibbs C.J., Stephen, Mason, Murphy, Aickin, Wilson and Brennan JJ.)
Queensland v The Commonwealth (28 November 1977) (Barwick C.J., Gibbs, Stephen, Mason, Jacobs, Murphy and Aickin JJ.)

19. The States are entitled (subject only to the prohibition against fiscal imposts in s. 92 , any other constitutional limitations (for example, s. 117), and any overriding legislation of the Australian Parliament (see s. 109)) to deal with the general law of trade, commerce and intercourse. Section 92 does not prevent them from exercising the powers of regulating such trade and commerce by marketing acts or otherwise. The mere existence of the commerce power (s. 51(i.)) does not operate as a restraint upon State legislative power (as it does in the United States of America). (at p137)

20. Powers of Commonwealth over Trade and Commerce. The Parliament of the Commonwealth has (subject to the command in s. 92 against fiscal charges and to other constitutional limitations, such as s. 99) full power to legislate for interstate trade and commerce (s. 51(i.)), and this "extends to navigation and shipping, and to railways the property of any State" (s.98). The Parliament has ample power to regulate the national economy by appropriate exercise of its powers under s. 51(i.) (supplemented if necessary by other powers). If a State marketing law hinders interstate trade, then it is in the discretion of the parliament of the Commonwealth to legislate so that (by the operation of s. 109) the offending provisions of State law become invalid. (at p137)

21. Section 92 and Freedom of Movement. The right of persons to move freely across or within State borders is a fundamental right arising from the union of the people in an indissoluble Commonwealth. This right is so fundamental that it is not likely it would be hidden away in s. 92 , restricted to interstate intercourse in a clause dealing with uniform duties of customs, in a chapter headed "Finance and Trade". The right is not an absolute right, but is almost absolute and could not be impaired, except on extremely strong grounds such as the administration of criminal justice in serious cases (see R. v. Smithers; Ex parte Benson (1912) 16 CLR 99 , particularly the judgments of Griffith C.J. and Barton J.). (See also Crandall v. Nevada (1867) 6 Wall 35 (18 Law Ed 744) ; Slaughter-House Cases (1872) 16 Wall 36 (21 Law Ed 394) .) I think that freedom to move across State borders arises from this fundamental implication of the Constitution and not, as held in Gratwick v. Johnson (1945) 70 CLR 1 , from s. 92 . (at p137)

22. The doctrine of stare decisis should not be applied to continue the effect of reasoning which has

made the State and federal Parliaments almost impotent in fields of social and economic importance. The task is to apply the Constitution , not the judicial decisions. (at p137)

23. The Potato Marketing Act, 1948-1974 (S.A.) extends to trade and commerce among the States. It does not impose fiscal charges. Even if there were a latent possibility of such imposition, there is no actual or threatened imposition and certainly nothing in the nature of a discriminatory imposition against interstate trade or commerce. (at p137)

24. The Act has not contravened s. 92 . It was not submitted that an appeal does not lie against dismissal of the charges against the respondent. I would allow the appeal. (at p138)

Orders

Appeal allowed with costs.

Orders of the Adelaide Court of Summary Jurisdiction set aside and in lieu thereof order that the respondent be convicted of the second charge specified on the complaint.

Matter be referred back to that Court for determination of the question of penalty and costs.

Cited by:

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KEPCO Bylong Australia Pty Ltd v Bylong Valley Protection Alliance Inc [2021] NSWCA 216 -
Bushfire Survivors for Climate Action Incorporated v Environment Protection Authority [2021] NSWLEC 92 -
Bushfire Survivors for Climate Action Incorporated v Environment Protection Authority [2021] NSWLEC 92 -
Braun v Health Ombudsman [2021] QSC 209 -
Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v FAK19 [2021] FCAFC 153 -
QJYD v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] FCA 962 -
Karmakar v Minister for Health (No 2) [2021] FCA 916 -
Darnell v Stonehealth Pty Ltd (No 4) [2021] FCA 823 -
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Marsh v Insurance Group Limited t/as NRMA Insurance Limited [2021] NSWSC 619 -
Egan v Minister for Home Affairs [2021] FCAFC 85 -
AB v Attorney General for New South Wales [2021] NSWSC 575 -
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BFM16 v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs [2021] FCA 312 -
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Solomon v Commissioner of Police (NSW) [2021] NSWSC 236 -
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AAI Ltd t/as AAMI v Chan [2021] NSWCA 19 -
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EXW18 v Minister for Home Affairs [2020] FCA 1802 -
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Gerner v Victoria [2020] HCA 48 -
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DMJ17 v Minister for Immigration [2020] FCCA 2688 -
Cooper v The Owners - Strata Plan No 58068 [2020] NSWCA 250 -
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Town of Cambridge v The Hon David Templeman MLA, Minister for Local Government; Heritage; Culture and the Arts [2020] WASC 350 -
Gubbay v Minister for Home Affairs [2020] FCA 1417 -
AUSTRALIAN LEISURE AND HOSPITALITY GROUP PTY LTD -v- COMMISSIONER OF POLICE [2020] WASCA 157 -
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Makarov v Minister for Home Affairs (No 2) [2020] FCA 1275 -
Somasundaram v Luxton [2020] FCA 1076 -
Birdseye v Tax Practitioners Board [2020] FCA 1235 -
MNLR v Minister for Home Affairs [2020] FCA 948 -
Ali v Minister for Home Affairs [2020] FCAFC 109 -
Director of Public Prosecutions (NSW) v SB [2020] NSWSC 734 -
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EFX17 v Minister for Immigration and Border Protection [2019] FCAFC 230 -
Fastbet Investments Pty Ltd v Deputy Commissioner of Taxation (No 5) [2019] FCA 2073 -
Fastbet Investments Pty Ltd v Deputy Commissioner of Taxation (No 5) [2019] FCA 2073 -
Fastbet Investments Pty Ltd v Deputy Commissioner of Taxation (No 5) [2019] FCA 2073 -
DVO18 v Minister for Home Affairs [2019] FCCA 3293 -
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BTP18 v Minister for Home Affairs [2019] FCCA 2608 -
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Burgess v Assistant Minister for Home Affairs [2019] FCAFC 152 -
Coventry v Insurance Australia Ltd T/as NRMA Insurance [2019] NSWSC 1096 -
Coventry v Insurance Australia Ltd T/as NRMA Insurance [2019] NSWSC 1096 -
Coventry v Insurance Australia Ltd T/as NRMA Insurance [2019] NSWSC 1096 -
Pollentine v Attorney-General [2019] QSC 200 -
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BOY19 v Minister for Immigration and Border Protection [2019] FCA 574 -
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Nyoni v Cho [2019] FCA 560 (24 April 2019) (Griffiths J)

36. In *Rahman v Hedge* [2012] FCA 68 at [5]-[6] (***Rahman***) Perram J held that the Registrar's "satisfaction" of the particular state of affairs referred to in the predecessor to r 2.26 (i.e. Order 46 r 7A) was amenable to judicial review, including by reference to Gibbs J's well-known statements in *Buck v Bavone* 135 CLR 110 at 118-119 . I respectfully agree.

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Clubb v Edwards [2019] HCA 11 -
Clubb v Edwards [2019] HCA 11 -
Clubb v Edwards [2019] HCA 11 -
Clubb v Edwards [2019] HCA 11 -
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DTP17 v Minister for Immigration [2019] FCCA 10 -
4 yearly review of modern awards - Pharmacy Industry Award 2010 [2018] FWCFB 7621 (14 December 2018) (Vice President Hatcher, Deputy President Dean, Commissioner Spencer)

75 See e.g. *Buck v Bavone* (1976) 135 CLR at 118-119 per Gibbs J ; *Coal and Allied v AIRC* (2000) 203 CLR 194 at [18]-[20], [28] per Gleeson CJ, Gaudron and Hayne JJ

CMO17 v Minister for Immigration and Border Protection [2018] FCAFC 227 -
Diamond Offshore General Company v Baldwin & Ors [2018] FWCFB 6907 (12 November 2018) (Vice President Hatcher, Deputy President Asbury, Commissioner McKenna)

17 *Buck v Bavone* (1976) 135 CLR 110 ; *Wei v Minister for Immigration and Border Protection* (2015) 257 CLR 22 at 35 (per Gageler and Keane JJ)

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Kemppi v Adani Mining Pty Ltd (No 4) [2018] FCA 1245 (17 August 2018) (Reeves J)

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Burragubba on behalf of the Wangan and Jagalingou People v State of Queensland

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Chetcuti v Minister for Immigration and Border Protection [2018] FCA 477 -
Thomas; Secretary, Department of Defence and (Freedom of information) [2018] AATA 604 -
DYS16 v Minister for Immigration and Border Protection [2018] FCAFC 33 -
Sabharwal v Minister for Immigration and Border Protection [2018] FCA 10 -
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MC v The Director General of the Community Services Directorate [2017] ACTSC 354 -
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14 *Buck v Bavone* (1976) 135 CLR 110 ; *Wei v Minister for Immigration and Border Protection* (2015) 257 CLR 22, 35 [33] (per Gageler and Keane JJ).

4nature Inc v Centennial Springvale Pty Ltd [2017] NSWCA 191 -
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AKD16 v Minister for Immigration & Anor [2016] FCCA 3026 -
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Insurance Australia Limited t/as NRMA Insurance v Asaner [No 2] [2016] NSWSC 1078 -
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Body Corporate for Surfers International Community Titles Scheme 12247 v Gold Coast City Council [2016] QPEC 29 -
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Buck v Bavone [1976] HCA 24 ; 135 CLR 110

Butler v R

Buttrose v Attorney General of New South Wales [2015] NSWCA 221 -
Buttrose v Attorney General of New South Wales [2015] NSWCA 221 -
Bannister v Allianz Australia Insurance Ltd [2015] NSWSC 796 (19 June 2015) (Hall J)

41. As characterisation of the information is a matter to be considered in the first instance by the Proper Officer and not one to be determined by this Court afresh on a judicial review application, the review proceedings are limited to determining whether the Proper Officer's opinion *"has been properly formed according to law"*: *Buck v Bavone* (1976) 135 CLR 110 at 118-9 per Gibbs J ; *D'Amore v ICAC* [2013] NSWCA 187 at [220] ; *Miller* at [36] .

Bannister v Allianz Australia Insurance Ltd [2015] NSWSC 796 -
Trives v Hornsby Shire Council [2015] NSWCA 158 -
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Allianz Australia Insurance Ltd v Gonzalez (No 2) [2015] NSWSC 693 -
Allianz Australia Insurance Ltd v Gonzalez (No 2) [2015] NSWSC 693 -
SZSFS v Minister for Immigration and Border Protection [2015] FCA 534 (29 May 2015) (Logan J)

Buck v Bavone (1976) 135 CLR 110 applied

SZSFS v Minister for Immigration and Border Protection [2015] FCA 534 (29 May 2015) (Logan J)

26. The submission made by the Minister corresponded with the critique of the prosecutor's formulation of his case offered by Gummow J in *Eshetu* at [119] to [137] . In that critique, Gummow J highlighted that the statutory regime in relation to a Protection Visa, materially the same as that applicable in this case, did not entail the exercise of a discretionary power but rather a provision the operation of which depended upon a state of administrative satisfaction with respect to particular matters. His Honour drew this distinction so as to demonstrate why, in his view, reliance by the prosecutor upon what was said by Lord Greene MR in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 at 229-231 (*Wednesbury*) was misconceived, because those statements concerned unreasonableness in the exercise of a discretionary power. As Gummow J explained (*Eshetu* , at [136]), that did

not mean that a decision with respect to such "satisfaction" could not be effectively challenged on judicial review but that such review occurred not on the basis of " *Wednesbury* unreasonableness" but rather on the basis explained by Gibbs J in *Buck v Bavone* (1976) 135 CLR 110 at 118-119 (*Buck v Bavone*):

> In all such cases the authority must act in good faith; it cannot act merely arbitrarily or capriciously. Moreover, a person affected will obtain relief from the courts if he can show that the authority has misdirected itself in law or that it has failed to consider matters that it was required to consider or has taken irrelevant matters into account. Even if none of these things can be established, the courts will interfere if the decision reached by the authority appears so unreasonable that no reasonable authority could properly have arrived at it. However, where the matter of which the authority is required to be satisfied is a matter of opinion or policy or taste it may be very difficult to show that it has erred in one of these ways, or that its decision could not reasonably have been reached.

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27. The Appellants accepted that the psychological evidence was not a "relevant consideration" in the *Peko-Wallsend* sense but stated that it was not intended that it be regarded as such in amended ground 1. Rather, that evidence, so it was submitted, was a relevant matter the treatment of which by the Tribunal in its reasons for decision demonstrated either that it had not truly been taken into account or grounded a conclusion as to absence of satisfaction which was unreasonable in the sense described by Gibbs J in *Buck v Bavone* . Further, so the submission went, the discussion of unreasonableness in *Li* ought at least to inform what amounted to unreasonableness in a conclusion by the Tribunal as to an absence of the requisite "satisfaction".

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29. *Avon Downs Pty Ltd v Federal Commissioner of Taxation* (1949) 78 CLR 353 (*Avon Downs*), to which Hayne, Kiefel and Bell JJ refer in this passage in *Li* , concerned not the exercise of a discretionary power but rather a provision the operation of which, like the present, depended upon an officer of the Executive being "satisfied" as to particular matters. Further, even though, in *Buck v Bavone* , Gibbs J did not, in the passage set out above, expressly cite *Avon Downs* , the way his Honour cast his summary of the bases of judicial review of a decision as to "satisfaction" makes it inherently likely that he had in mind what Dixon J had said in *Avon Downs* (at 360). In turn, what Dixon J said in *Avon Downs* was, as Hayne, Kiefel and Bell JJ stated in *Li* , "evidently informed" by the same principles as had been stated by Lord Greene MR in *Wednesbury* . In these circumstances, the excerpting of passages from either *Avon Downs* or *Wednesbury* would be repetitious.

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31. In *Singh* , the Full Court (at [47]) expressly left open a question as to whether there was any distinction to be drawn between "reasonableness review which concentrates on the outcome of the exercise of power and reasonableness review which concentrates on an examination of the reasoning process by which the decision-maker arrived at the exercise of power". Any such distinction may well be elusive, for a reasoning process flawed by an error ground identified, for example, in *Buck v Bavone* , may yield an outcome which is unreasonable. And the same may hold true in relation to a conclusion as to an "anterior matter" such as "satisfaction". What *Singh* (at [47]) counsels is that, "where there are reasons for the exercise of a power, it is in those reasons to which a supervising court should look in order to understand why the power was exercised as it was". The same must hold true in this case in relation to a decision where the Tribunal furnished reasons why it was not "satisfied" that the First Appellant was a person to whom a protection obligation was owed. In either circumstance, it must be recalled that the power or, as the case may be, the task of being "satisfied" has been consigned by Parliament to an officer of the Executive, not to the

Judiciary. For a judge to go beyond the justification given by that officer may be seen as an exercise of that power or a conclusion as to satisfaction by someone to whom that task is not entrusted. And that is something, for all of the reasons given by Brennan J in *Quin* , a judge must not do.

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26. The submission made by the Minister corresponded with the critique of the prosecutor's formulation of his case offered by Gummow J in *Eshetu* at [119] to [137] . In that critique, Gummow J highlighted that the statutory regime in relation to a Protection Visa, materially the same as that applicable in this case, did not entail the exercise of a discretionary power but rather a provision the operation of which depended upon a state of administrative satisfaction with respect to particular matters. His Honour drew this distinction so as to demonstrate why, in his view, reliance by the prosecutor upon what was said by Lord Greene MR in *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223 at 229-231 (*Wednesbury*) was misconceived, because those statements concerned unreasonableness in the exercise of a discretionary power. As Gummow J explained (*Eshetu* , at [136]), that did not mean that a decision with respect to such "satisfaction" could not be effectively challenged on judicial review but that such review occurred not on the basis of " *Wednesbury* unreasonableness" but rather on the basis explained by Gibbs J in *Buck v Bavone* (1976) 135 CLR 110 at 118-119 (*Buck v Bavone*):

> In all such cases the authority must act in good faith; it cannot act merely arbitrarily or capriciously. Moreover, a person affected will obtain relief from the courts if he can show that the authority has misdirected itself in law or that it has failed to consider matters that it was required to consider or has taken irrelevant matters into account. Even if none of these things can be established, the courts will interfere if the decision reached by the authority appears so unreasonable that no reasonable authority could properly have arrived at it. However, where the matter of which the authority is required to be satisfied is a matter of opinion or policy or taste it may be very difficult to show that it has erred in one of these ways, or that its decision could not reasonably have been reached.

SZTXL v Minister for Immigration [2015] FCCA 1210 (22 May 2015) (Judge Lloyd-Jones)

Buck v Bavone (1976) 135 CLR 110

Minister for Immigration and Citizenship v Li & Anor

SZTXL v Minister for Immigration [2015] FCCA 1210 (22 May 2015) (Judge Lloyd-Jones)

50. In the absence of particulars it is not possible to identify how the Tribunal's reasoning was "*in coherent, irrational or* unreasonable". In the Minister's submission, it cannot be said that the Tribunal's decision or finding that the "*applicant fabricated claims*" was so unreasonable that no reasonable decision-maker could have made it (See *Minister for Immigration and Multicultural Affairs v Eshetu* (1999) 197 CLR 611 at 626-629 per Gleeson CJ and McHugh J; *Buck v Bavone* (1976) 135 CLR 110 at 118-119 per Gibbs J and *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1947] 2 All ER 680 at 683 per Lord Greene MR), or that its findings lacked an "*evident and intelligible justification*" (*Minister for Immigration and Citizenship v Li* (supr a) at [75]). The Tribunal gave clear reasons why it made adverse credibility findings, namely, the numerous concerns and inconsistencies it identified in the applicant's evidence. Accordingly, the Minister submits that Ground 1 must fail.

Allen v TriCare (Hastings) Pty Ltd [2015] NSWSC 416 (17 April 2015) (Beech-Jones J)

- Buck v Bavone (1976) 135 CLR 110
- Craig v State of South Australia

Allen v TriCare (Hastings) Pty Ltd [2015] NSWSC 416 (17 April 2015) (Beech-Jones J)

49. Before NCAT could order termination of a residential site agreement under s 113(1) it had to be "satisfied" of one of ss 113(3A)(a) to (c) . Satisfaction of one of those matters was a jurisdictional fact upon which the making of NCAT's order depended (*Minister for Immigration and Multicultural Affairs v Eshetu* [1999] HCA 21; 197 CLR 611 at [131] per Gummow J). In this case it only (arguably) purported to be satisfied of one matter, namely s 113(3A)(a) . If satisfaction of s 113(3A)(a) was arrived at by NCAT taking into account irrelevant matters or misconstruing the provision then the "basis for the exercise of [its] power [was] absent" (*R v Connell; Ex parte Hetton Bellbird Collieries Ltd* [1944] HCA 42; 69 CLR 407 at 432 per Latham CJ; see also *Buck v Bavone* (1976) 135 CLR 110 at 118-119 per Gibbs J), and it fell into jurisdictional error (*Kirk* at [72]).

McCosker v Motor Accidents Authority of NSW [2015] NSWSC 434 -
Moorebank Recyclers Pty Ltd v Benedict Industries Pty Ltd [2015] NSWLEC 40 -
Moorebank Recyclers Pty Ltd v Benedict Industries Pty Ltd [2015] NSWLEC 40 -
XX v WW and Middle South Area Mental Health Service [2014] VSC 564 -
XX v WW and Middle South Area Mental Health Service [2014] VSC 564 -
XX v WW and Middle South Area Mental Health Service [2014] VSC 564 -
XX v WW and Middle South Area Mental Health Service [2014] VSC 564 -
A v Independent Commission Against Corruption [2014] NSWCA 414 -
A v Independent Commission Against Corruption [2014] NSWCA 414 -
A v Independent Commission Against Corruption [2014] NSWCA 414 -
Elliott v Insurance Australia t/as NRMA Insurance [2014] NSWSC 1848 (28 November 2014) (Campbell J)

19. His Honour cited *Buck v Bavone* (1976) 135 CLR 110 at 118-119 as authority for this proposition. It is worth considering the passage cited in full. Gibbs J, as his Honour then was, said this:

It is not uncommon for statutes to provide that a board or other authority shall or may take certain action if it is satisfied of the existence of certain matters specified in the statute. Whether the decision of the authority under such a statute can be effectively reviewed by the courts will often largely depend on the nature of the matters of which the authority is required to be satisfied. In all such cases the authority must act in good faith; it cannot act merely arbitrarily or capriciously. Moreover, a person affected will obtain relief from the courts if he can show that the authority has misdirected itself in law or that it has failed to consider matters that it was required to consider or has taken irrelevant matters into account. Even if none of these things can be established, the courts will interfere if the decision reached by the authority appears so unreasonable that no reasonable authority could properly have arrived at it. However, where the matter of which the authority is required to be satisfied is a matter of opinion or policy or taste it may be very difficult to show that it has erred in one of these ways, or that its decision could not reasonably have been reached. In such cases the authority will be left with a very wide discretion which cannot be effectively reviewed by the courts.

...

Where the authority is required to be satisfied of the existence of particular matters of objective fact, the position may be very different. It may then be possible to show clearly not only that the

material facts existed but that an authority acting in accordance

with its duty could have reached no other conclusion than that

they existed.

Ivan Petch v Independent Commission Against Corruption [2014] NSWSC 1693 -
Cunneen v Independent Commission Against Corruption [2014] NSWSC 1571 -

New South Wales Aboriginal Land Council v Minister Administering the Crown Lands Act (the Nelson Bay Claim) [2014] NSWCA 377 -
New South Wales Aboriginal Land Council v Minister Administering the Crown Lands Act (the Nelson Bay Claim) [2014] NSWCA 377 -
Undag v Bupa Care Services Pty Ltd [2014] NSWWCCPD 67 -
AP and Minister for Immigration and Border Protection [2014] AATA 706 -
Boensch v Donovan Electrical Services Pty Ltd [2014] NSWSC 1297 -
Boensch v Donovan Electrical Services Pty Ltd [2014] NSWSC 1297 -
SPI Electricity Pty Ltd v Australian Energy Regulator [2014] FCA 1012 (17 September 2014) (Foster J)
Buck v Bavone (1976) 135 CLR 110
R v Hunt; Ex parte Sean Investments Pty Limited

SPI Electricity Pty Ltd v Australian Energy Regulator [2014] FCA 1012 -
Insurance Australia Limited T/as NRMA Insurance v Parisi [2014] NSWSC 1248 -
Insurance Australia Limited T/as NRMA Insurance v Parisi [2014] NSWSC 1248 -
Insurance Australia Limited T/as NRMA Insurance v Parisi [2014] NSWSC 1248 -
SZTGS v Minister for Immigration and Border Protection [2014] FCA 908 (22 August 2014) (Logan J)
Buck v Bavone (1976) 135 CLR 110 cited

SZTGS v Minister for Immigration and Border Protection [2014] FCA 908 -
Budby on behalf of the Barada Barna People v Native Title Registrar [2014] FCA 801 (31 July 2014) (Logan J)
Buck v Bavone (1976) 135 CLR 110 cited

Budby on behalf of the Barada Barna People v Native Title Registrar [2014] FCA 801 -
Australian Postal Corporation v D'Rozario [2014] FCAFC 89 (23 July 2014) (Besanko, Jessup and Bromberg JJ)
Buck v Bavone (1976) 135 CLR 110
Cabal v Attorney-General

Australian Postal Corporation v D'Rozario [2014] FCAFC 89 -
GM Holden Limited v Commissioner of the Anti-Dumping Commission [2014] FCA 708 -
McCarthy v NSW Racing Appeals Tribunal [2014] NSWSC 798 -
Isbester v Knox City Council [2014] VSC 286 -
Pierce v Rockhampton Regional Council [2014] QSC 104 -
Pierce v Rockhampton Regional Council [2014] QSC 104 -
Pierce v Rockhampton Regional Council [2014] QSC 104 -
Grant v Roads and Traffic Authority of NSW [2014] NSWSC 379 -
MZZKA v Minister for Immigration [2014] FCCA 151 -
MZZKA v Minister for Immigration [2014] FCCA 151 -
QBE Insurance (Australia) Ltd v Miller [2013] NSWCA 442 (18 December 2013) (Basten JA at [1]; Ward JA at [58]; Young AJA at [59])
Buck v Bavone [1976] HCA 24 ; 135 CLR 110

QBE Insurance (Australia) Ltd v Miller [2013] NSWCA 442 -
Rich v Attorney General of New South Wales [2013] NSWCA 419 -
Rich v Attorney General of New South Wales [2013] NSWCA 419 -
St George Leagues Club Ltd v Wretowska [2013] NSWWCCPD 64 (26 November 2013) (Deputy President Bill Roche)

148. Consistent with this statement, Spigelman CJ observed in *Vines v Australian Securities and Investment Commission* [2007] NSWCA 126 (at [8]):

> "8 Where, as here, the relevant statutory test turns on whether or not the Court is 'satisfied' of a matter involving a broad evaluative judgment, then the case law indicates that the degree of restraint which an appellate court should manifest is of the same order as that applicable to a discretion, in the strict sense of that word. (See *Norbis v Norbis* (1986) 161 CLR 513 esp at 517-518, 540 ; *Singer v Berghouse*

(1994) 181 CLR 201 esp at 210-212 ; *Coal and Allied Operations Pty Limited v Australian Industrial Relations Commission* (2000) 203 CLR 194 esp at [19], [27], [32] ; Russo v Aiello (2003) 215 CLR 643 at [27] ; *Director of Public Prosecutions v El Mawas* (2006) 66 NSWLR 93; (2006) NSWCA 154; at [3]-[4] and [64]-[70].) A statutory provision expressed in terms of whether a decision maker is 'satisfied' of a particular matter is accurately characterised as conferring 'a very wide discretion'. (See *Buck v Bavone* (1976) 135 CLR 110 at 119 .)"

Woolworths Ltd v Commissioner of Police [2013] WASC 413 (15 November 2013) (Edelman J)
Buck v Bavone [1976] HCA 24 ; (1976) 135 CLR 110
Civil Aviation Safety Authority v Ovens

Woolworths Ltd v Commissioner of Police [2013] WASC 413 (15 November 2013) (Edelman J)
Buck v Bavone [1976] HCA 24 ; (1976) 135 CLR 110
Civil Aviation Safety Authority v Ovens

Woolworths Ltd v Commissioner of Police [2013] WASC 413 -
Gant v Magistrate Kucks [2013] QSC 285 -
Gant v Magistrate Kucks [2013] QSC 285 -
Gant v Magistrate Kucks [2013] QSC 285 -
Gant v Magistrate Kucks [2013] QSC 285 -
Woolworths Ltd v Director of Liquor Licensing [2013] WASCA 227 -
Woolworths Ltd v Director of Liquor Licensing [2013] WASCA 227 -
MZZEH v Minister for Immigration [2013] FCCA 1282 -
Rucker v Stewart [2013] QSC 182 -
Rucker v Stewart [2013] QSC 182 -
D'Amore v Independent Commission Against Corruption [2013] NSWCA 187 (21 June 2013) (Bathurst CJ at [1]; Beazley P at [2]; Basten JA at [194])
Buck v Bavone [1976] HCA 24 ; 135 CLR 110

D'Amore v Independent Commission Against Corruption [2013] NSWCA 187 -
D'Amore v Independent Commission Against Corruption [2013] NSWCA 187 -
Commissioner of Taxation v Pham [2013] FCA 579 -
Miller v Minister for Immigration and Citizenship [2013] FCA 590 (07 June 2013) (Logan J)
Buck v Bavone (1976) 135 CLR 110 cited

Miller v Minister for Immigration and Citizenship [2013] FCA 590 (07 June 2013) (Logan J)

8. I respectfully agree with his Honour's observation as to the section providing for the making of a broad evaluative judgment. That judgment is of a kind which requires, materially, a state of satisfaction that cancellation is in the national interest. In respect of a provision providing for satisfaction as to a particular criterion by an administrative decision-maker, Gummow J in *Minister for Immigration and Multicultural Affairs v Eshetu* (1999) 197 CLR 611 (*Eshetu*) offered in his judgment at [130] and following a critical analysis of the ramifications of such a statutory construct for judicial review. In particular, his Honour drew attention [at 136] to an observation earlier made by Gibbs J in *Buck v Bavone* (1976) 135 CLR 110 at 118 - 119 (*Buck v Bavone*) where his Honour stated:

> In all such cases the authority must act in good faith; it cannot act merely arbitrarily or capriciously. Moreover, a person affected will obtain relief from the courts if he can show the authority has misdirected itself in law or that it has failed to consider matters that it was required to consider or has taken irrelevant matters into account. Even if none of these things can be established, the courts will interfere if the decision reached by the authority appears so unreasonable that no reasonable authority could properly have arrived at it. However, where the matter of which the authority is required to be satisfied is a matter of opinion or policy or taste it may be very difficult to show that it has erred in one of these ways, or that its decision could not reasonably have been reached.

To this Gummow J added at [137] in *Eshetu* :

> This passage is consistent with the proposition that, where the criterion of which the authority is required to be satisfied turns upon factual matters upon which reasonable minds could reasonably differ, it will be very difficult to show that no reasonable decision-maker could have arrived at the decision in question. It may be otherwise if the evidence which establishes or denies, or, with other matters, goes to establish or to deny, that the necessary criterion has been met was all one way.

Miller v Minister for Immigration and Citizenship [2013] FCA 590 (07 June 2013) (Logan J)

9. Satisfaction as to what is or is not in the national interest is a paradigm by example of the kind of broad touchstone depending on matters of opinion or taste referred to by Gibbs J in *Buck v Bavone* and by Gummow J in *Eshetu* . Perhaps recognising this, the ground of review focused not upon whether it was open to the Minister reasonably to be satisfied as to whether or not cancellation of Mr Miller's visa was in the national interest. Instead, as I have indicated, the challenge made, and the related asserted jurisdictional error, was a denial of procedural fairness.

Miller v Minister for Immigration and Citizenship [2013] FCA 590 -
Minister for Immigration and Citizenship v Li [2013] HCA 18 -
Neilson v City of Swan [No 6] [2013] WASC 53 (05 March 2013) (Allanson J)
Buck v Bavone [1976] HCA 24 ; (1976) 135 CLR 110
Commissioner of Taxation v Futuris Corporation Limited

Neilson v City of Swan [No 6] [2013] WASC 53 (05 March 2013) (Allanson J)
Buck v Bavone [1976] HCA 24 ; (1976) 135 CLR 110
Commissioner of Taxation v Futuris Corporation Limited

Neilson v City of Swan [No 6] [2013] WASC 53 -
Leiataua v Minister for Immigration and Citizenship [2012] FCA 1427 -
Stevenson Group Investments Pty Ltd v Nunn [2012] QCA 351 -
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Gostevsky v The Honourable Jarrod Bleijie [2012] QSC 384 -
Gostevsky v The Honourable Jarrod Bleijie [2012] QSC 384 -
WZAPE v Minister for Immigration [2012] FMCA 1077 (21 November 2012) (Lindsay FM)
Buck v Bavone (1976) 135 CLR 110
Stead v State Government Insurance Commission

WZAPE v Minister for Immigration [2012] FMCA 1077 -
WZARF v Minister for Immigration [2012] FMCA 1023 -
WZARF v Minister for Immigration [2012] FMCA 1023 -
Pitty v Bega Valley Shire Council [2012] NSWLEC 242 -
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WZAPD v Minister for Immigration [2012] FMCA 626 (20 July 2012) (Lindsay FM)
Buck v Bavone (1976) 135 CLR 110
Wu Shan Liang

WZAPD v Minister for Immigration [2012] FMCA 626 -
SZQVA v Minister for Immigration [2012] FMCA 561 -
SZQVA v Minister for Immigration [2012] FMCA 561 -
Plaintiff M47/2012 v Director General of Security and Ors [2012] HCATrans 145 -
Shop, Distributive and Allied Employees Association v National Retail Association (No.2) [2012] FCA 480 (11 May 2012) (Tracey J)
Buck v Bavone (1976) 135 CLR 110 referred to

Shop, Distributive and Allied Employees Association v National Retail Association (No.2) [2012] FCA 480 -
Shop, Distributive and Allied Employees Association v National Retail Association (No.2) [2012] FCA 480 -
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    Buck v Bavone (1976) 135 CLR 110 cited

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Samootin v Hannigan [2012] FCA 462 -
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Wright and Bright v The Minister for Employment, Skills and Mining [2012] QSC 112 -
SZOOR v Minister for Immigration and Citizenship [2012] FCAFC 58 (27 April 2012) (Rares, McKerracher and Reeves JJ)
    Buck v Bavone (1976) 135 CLR 110 referred to

SZOOR v Minister for Immigration and Citizenship [2012] FCAFC 58 -
Dupois v State Coroner of Queensland Michael Barnes [2012] QDC 304 -
Christian Outreach Centre v Toowoomba Regional Council and HSBG P/L [2012] QPEC 29 -
Christian Outreach Centre v Toowoomba Regional Council and HSBG P/L [2012] QPEC 29 -
Christian Outreach Centre v Toowoomba Regional Council and HSBG P/L [2012] QPEC 29 -
1-800-Flowers.Com Inc v Registrar of Trade Marks [2012] FCA 209 -
Rahman v Hedge [2012] FCA 68 (07 February 2012) (Perram J)

    Buck v Bavone (1976) 135 CLR 110 cited

Rahman v Hedge [2012] FCA 68 -
Re Australian Paper Pty LTDApplicant and Renewable Energy REGULATORRespondent [2012] AATA 67 -
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Stevenson Group Investments P/L v Nunn [2011] QPEC 151 -
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Corporation of the City of Enfield v Development Assessment Commission

Zurich Australian Insurance Limited v Elizabeth Pellegrino; Elizabeth Pellegrino v NRMA Insurance Australia Ltd [2010] NSWSC 1114 -
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Buck v Bavone (1976) 135 CLR 110
Commissioner of Taxation v Futuris Corporation Limited

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Buck v Bavone [1976] HCA 24 ; 135 CLR 110

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Minister for Immigration and Citizenship v SZMDS [2010] HCA 16 -
Minister for Immigration and Citizenship v SZMDS [2010] HCA 16 -
Bukorovic v The Registrar of the WCC [2010] NSWSC 507 (25 May 2010) (Harrison AsJ)
Buck v Bavone (1976) 135 CLR 110
Campbelltown City Council v Vegan

Bukorovic v The Registrar of the WCC [2010] NSWSC 507 -
Ilic v The City of Adelaide [2010] SASC 139 -
Mastwyk v DPP [2010] VSCA 111 -
Re Callejo and Department of Immigration and Citizenship [2010] AATA 244 -
Fletcher International Exports Pty Ltd v Lott [2010] NSWCA 63 -
Fletcher International Exports Pty Ltd v Lott [2010] NSWCA 63 -
ALEXANDER v The City of Marion [2010] SASC 86 -
ALEXANDER v The City of Marion [2010] SASC 86 -
ALEXANDER v The City of Marion [2010] SASC 86 -
ALEXANDER v The City of Marion [2010] SASC 86 -
ALEXANDER v The City of Marion [2010] SASC 86 -
Waratah v Mitchell [2010] QSC 42 -
Anderson v Minister for Environment, Heritage and the Arts [2010] FCA 57 -
Anzbrook Pty Ltd v Minister for the Environment, Heritage and the Arts [2010] FMCA 34 (22 January 2010) (Wilson FM)
Buck v Bavone (1976) 135 CLR 110
Pilkington (Australia) Ltd v Minister for Justice and Customs

Anzbrook Pty Ltd v Minister for the Environment, Heritage and the Arts [2010] FMCA 34 -
Hu v Commonwealth Ombudsman [2009] FCA 1516 (17 December 2009) (Collier J)
Buck v Bavone (1976) 135 CLR 110 cited

Hu v Commonwealth Ombudsman [2009] FCA 1516 -
Probst and Commissioner of Police (No 2) [2009] NSWIRComm 201 -
Probst and Commissioner of Police (No 2) [2009] NSWIRComm 201 -
Probst and Commissioner of Police (No 2) [2009] NSWIRComm 201 -
Minister Administering the Crown Lands Act v New South Wales Aboriginal Land Council [2009] NSWCA 352 -
Repacholi Aviation Pty Ltd v Civil Aviation Safety Authority [2009] FCA 1487 -
Repacholi Aviation Pty Ltd v Civil Aviation Safety Authority [2009] FCA 1487 -
University of South Australia v National Tertiary Education Industry Union [2009] FWA 1535 -
AJ Lucas Operations Pty Ltd v Mac-Attack Equipment Hire Pty Ltd [2009] NTCA 4 -
AJ Lucas Operations Pty Ltd v Mac-Attack Equipment Hire Pty Ltd [2009] NTCA 4 -

Rickard v Allianz Australia Insurance Ltd [2009] NSWSC 1115 -
Gentner v Barnes [2009] QDC 307 -
Gentner v Barnes [2009] QDC 307 -
Caltabiano v Electoral Commission of Queensland (No 4) [2009] QSC 294 -
Caltabiano v Electoral Commission of Queensland (No 4) [2009] QSC 294 -
Dairy Farmers Milk Co-Operative v Co-operatives Council [2009] NSWSC 862 -
Dairy Farmers Milk Co-Operative v Co-operatives Council [2009] NSWSC 862 -
Siam Polyethylene Co Ltd v Minister of State for Home Affairs [2009] FCA 837 -
Siam Polyethylene Co Ltd v Minister of State for Home Affairs [2009] FCA 837 -
Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No 2) [2009] FCA 838 -
Siam Polyethylene Co Ltd v Minister of State for Home Affairs (No 2) [2009] FCA 838 -
Love v State of Victoria [2009] VSC 215 -
Millar v Bornholt [2009] FCA 637 (15 June 2009) (Logan J)

Buck v Bavone (1976) 135 CLR 110 considered

Millar v Bornholt [2009] FCA 637 -
Braemar Power Project P/L v The Chief Executive, Dept of Mines and Energy in his Capacity as the Regulator under the Electricity Act 1994 (Qld) [2009] QCA 162 -
Braemar Power Project P/L v The Chief Executive, Dept of Mines and Energy in his Capacity as the Regulator under the Electricity Act 1994 (Qld) [2009] QCA 162 -
Braemar Power Project P/L v The Chief Executive, Dept of Mines and Energy in his Capacity as the Regulator under the Electricity Act 1994 (Qld) [2009] QCA 162 -
Majzoub v Kepreotis [2009] NSWSC 1498 -
Majzoub v Kepreotis [2009] NSWSC 1498 -
Lawyers for Forests Inc v Minister for the Environment, Heritage and the Arts [2009] FCA 330 -
Khanam v Minister for Immigration [2009] FMCA 285 (03 April 2009) (Wilson FM)

Buck v Bavone (1976) 135 CLR 110

Khanam v Minister for Immigration [2009] FMCA 285 -
Tung-Liang Liang v Minister for Immigration and Citizenship [2009] FCA 189 -
Tung-Liang Liang v Minister for Immigration and Citizenship [2009] FCA 189 -
Moon v Gold Coast City Council; Littleford v GCCC [2009] QPEC 3 -
Moon v Gold Coast City Council; Littleford v GCCC [2009] QPEC 3 -
Moon v Gold Coast City Council; Littleford v GCCC [2009] QPEC 3 -
Eastman v Besanko [2009] ACTSC 10 (18 February 2009) (Edmonds J)

Buck v Bavone (1976) 135 CLR 110 referred to

Eastman v Besanko [2009] ACTSC 10 -
Accused A v Callanan [2009] QSC 12 -
Accused A v Callanan [2009] QSC 12 -
Accused A v Callanan [2009] QSC 12 -
Hinton v Lane [2009] NSWSC 37 -
Hinton v Lane [2009] NSWSC 37 -
Hinton v Lane [2009] NSWSC 37 -
Essof v Minister for Immigration [2009] FMCA 13 (27 January 2009) (Wilson FM)

Buck v Bavone (1976) 135 CLR 110
Minister for Immigration and Multicultural Affairs v Eshetu

Essof v Minister for Immigration [2009] FMCA 13 -
BRGAO of 2008 v Minister for Immigration [2008] FMCA 1574 (21 November 2008) (Wilson FM)

Buck v Bavone (1976) 135 CLR 110
Applicant S276/2002 v Minister for Immigration

BRGAO of 2008 v Minister for Immigration [2008] FMCA 1574 -
King v Liquor Administration Board [2008] NSWSC 1217 -
"AK" v Director-General, Det [2008] NSWSC 1202 -
SZLYK v Minister for Immigration and Citizenship [2008] FCA 1708 (12 November 2008) (Logan J)

Buck v Bavone (1976) 135 CLR 110 cited

SZLYK v Minister for Immigration and Citizenship [2008] FCA 1708 (12 November 2008) (Logan J)

12. Having referred to this particular passage from *Buck v Bavone* in *Eshetu's* case, Gummow J, at page 654 para 137, observed of it that it was:

> consistent with the proposition that, where the criterion of which the authority is required to be satisfied turns upon factual matters upon which reasonable minds could reasonably differ, it will be very difficult to show that no reasonable decision-maker could have arrived at the decision in question.

Collard v Australian Securities and Investments Commission (No. 3) [2008] FCA 1681 (12 November 2008) (Perram J)
Buck v Bavone (1976) 135 CLR 110 cited

SZLWF v Minister for Immigration and Citizenship [2008] FCA 1734 (12 November 2008) (Logan J)
Buck v Bavone (1976) 135 CLR 110 cited

SZLWF v Minister for Immigration and Citizenship [2008] FCA 1734 (12 November 2008) (Logan J)

18. As was observed in *Wu Shan Liang* at page 275, it is no longer the case that a decision as to satisfaction is unreviewable. In that case, at 275 to 276, as in subsequent cases at ultimate appellate level, attention was drawn in relation to the reviewing of satisfaction-based decisions, to observations made by Gibbs J, as his Honour then was, in *Buck v Bavone* (1976) 135 CLR 110 at pages 118-119 . In the course of those observations Gibbs J had stated that the courts will interfere if the decision reached by the authority appears so unreasonable that no reasonable authority could properly have arrived at it. In *Eshetu's* case, at page 654 para 137, having referred to the observations of Gibbs J in *Buck v Bavone* , Gummow J added:

> This passage is consistent with the proposition that, where the criterion of which the authority is required to be satisfied turns upon factual matters upon which reasonable minds could reasonably differ, it will be very difficult to show that no reasonable decision-maker could have arrived at the decision in question. It may be otherwise if the evidence which establishes or denies, or, with other matters, goes to establish or to deny, that the necessary criterion has been met was all one way.

SZLWF v Minister for Immigration and Citizenship [2008] FCA 1734 -
SZLYK v Minister for Immigration and Citizenship [2008] FCA 1708 -
Collard v Australian Securities and Investments Commission (No. 3) [2008] FCA 1681 -
East Melbourne Group Inc v Minister for Planning [2008] VSCA 217 -
East Melbourne Group Inc v Minister for Planning [2008] VSCA 217 -
East Melbourne Group Inc v Minister for Planning [2008] VSCA 217 -
Precision Products (NSW) Pty Ltd v Hawkesbury City Council [2008] NSWCA 278 -
Precision Products (NSW) Pty Ltd v Hawkesbury City Council [2008] NSWCA 278 -
Peters v Asplund and Her Honour, Magistrate O'Shane [2008] NSWSC 1061 -
Peters v Asplund and Her Honour, Magistrate O'Shane [2008] NSWSC 1061 -
Cox v Corruption and Crime Commission [2008] WASCA 199 -
Cox v Corruption and Crime Commission [2008] WASCA 199 -
Fesl v Delegate of the Native Title Registrar [2008] FCA 1469 (01 October 2008) (Logan J)
Buck v Bavone (1976) 135 CLR 110 considered

Fesl v Delegate of the Native Title Registrar [2008] FCA 1469 -
Gough v Southern Queensland Regional Parole Board [2008] QSC 222 -
Gough v Southern Queensland Regional Parole Board [2008] QSC 222 -
Jusmell Pty Limited v Gregory Alan Baggot [2008] NSWSC 878 (10 September 2008) (Simpson J)
Buck v Bavone [1976] HCA 24 ; 135 CLR 110
Wonall Pty Ltd v Clarence Property Corporation Ltd

Jusmell Pty Limited v Gregory Alan Baggot [2008] NSWSC 878 -
SZLMZ v Minister for Immigration and Citizenship [2008] FCA 1203 (06 August 2008) (Logan J)
Buck v Bavone (1976) 135 CLR 110 cited

SZLMZ v Minister for Immigration and Citizenship [2008] FCA 1203 -
SZKLK v Minister for Immigration and Citizenship [2008] FCA 1125 (04 August 2008) (Logan J)
Buck v Bavone (1976) 135 CLR 110 considered

SZKLK v Minister for Immigration and Citizenship [2008] FCA 1125 -
Chahal v Director of Public Prosecutions [2008] NSWCA 152 (03 July 2008) (Giles JA ; Ipp JA; Basten JA)
Buck v Bavone [1976] HCA 24 ; (1976) 135 CLR 110
Craig v South Australia

Chahal v Director of Public Prosecutions [2008] NSWCA 152 -
Mitchell v Bailey (No 2) [2008] FCA 692 (02 July 2008) (Tracey J)
Buck v Bavone (1976) 135 CLR 110 cited

Mitchell v Bailey (No 2) [2008] FCA 692 -
Martin v Kelly [2008] NSWSC 577 (12 June 2008) (Johnson J)
Buck v Bavone (1976) 135 CLR 110
Bruce v Cole

Martin v Kelly [2008] NSWSC 577 -
Martin v Kelly [2008] NSWSC 577 -
Dunstan v von Doussa (No 2) [2008] FCA 827 (05 June 2008) (Flick J)
Buck v Bavone (1976) 135 CLR 110 followed

Dunstan v von Doussa (No 2) [2008] FCA 827 -
SZHBP v Minister for Immigration [2008] FMCA 699 -
MAR Mina (SA) Pty Ltd v City of Marion [2008] SASC 120 (02 May 2008) (Judgment of The Honourable Justice Debelle)
Alexandrina Council v Strath Hub Pty Ltd (2003) 129 LGERA 389; *Buck v Bavone* (1976) 135 CLR 110 ; *Courtney Hill Pty Ltd v Planning Commission (SA)* (1990) 59 SASR 259 at 261-262 ; *Hassen v Murray Bridge District Council* (1984) 35 SASR 448; *Morton v Union Steamship Co of New Zealand Ltd* (1951) 83 CLR 402 ; *Redland Shire Council v Stradbroke Rutile Pty Ltd* (1974) 133 CLR 641; *Twenty Seven Properties Pty Ltd v District Council of Noarlunga* (1975) 11 SASR 188; *R v Connell; ex parte Hetton Bellbird Collieries Ltd (No 2)* (1994) 69 CLR 407; *Upham v The Grand Hotel (SA) Pty Ltd* (1999) 74 SASR 557, applied.

MAR Mina (SA) Pty Ltd v City of Marion [2008] SASC 120 -
Linke v Development Assessment Commission and South Australian Housing Trust [2008] SASC 121 -
Linke v Development Assessment Commission and South Australian Housing Trust [2008] SASC 121 -
Linke v Development Assessment Commission and South Australian Housing Trust [2008] SASC 121 -
Linke v Development Assessment Commission and South Australian Housing Trust [2008] SASC 121 -
Nguyen v Migration Review Tribunal [2008] FCA 524 (18 April 2008) (Logan J)

Buck v Bavone (1976) 135 CLR 110 considered
Tolibao Cortes v Minister for Immigration and Multicultural Affairs [2001] FCA 1183 cited
Re Minister for Immigration and Multicultural Affairs; ex parte Durairajasingham (2000) 74 ALJR 405 applied

Nguyen v Migration Review Tribunal [2008] FCA 524 -
Nguyen v Migration Review Tribunal [2008] FCA 524 -
Lillywhite v Chief Executive Liquor Licensing Division, Department of Tourism, Fair Trading and Wine Industry Development [2008] QCA 88 -
Lillywhite v Chief Executive Liquor Licensing Division, Department of Tourism, Fair Trading and Wine Industry Development [2008] QCA 88 -
Lillywhite v Chief Executive Liquor Licensing Division, Department of Tourism, Fair Trading and Wine Industry Development [2008] QCA 88 -

Lillywhite v Chief Executive Liquor Licensing Division, Department of Tourism, Fair Trading and Wine Industry Development [2008] QCA 88 -
Lillywhite v Chief Executive Liquor Licensing Division, Department of Tourism, Fair Trading and Wine Industry Development [2008] QCA 88 -
Karsten v Federal Republic of Germany [2008] FCA 331 (14 March 2008) (Flick J)

Buck v Bavone (1976) 135 CLR 110 followed

Karsten v Federal Republic of Germany [2008] FCA 331 -
Karsten v Federal Republic of Germany [2008] FCA 331 -
Karsten v Federal Republic of Germany [2008] FCA 331 -
Secretary, Department of Education, Employment and Workplace Relations v Holmes [2008] FCA 105 (20 February 2008) (Logan J)

Buck v Bavone (1976) 135 CLR 110 - cited

Secretary, Department of Education, Employment and Workplace Relations v Holmes [2008] FCA 105 -
Secretary, Department of Education, Employment and Workplace Relations v Holmes [2008] FCA 105 -
Lindsay v NSW Medical Board [2008] NSWSC 40 (07 February 2008) (Hall J)

Buck v Bavonne (1976) 135 CLR 110
Dainford v Independent Commission Against Corruption

Lindsay v NSW Medical Board [2008] NSWSC 40 -
Lindsay v NSW Medical Board [2008] NSWSC 40 -
Blue Wedges Inc v Minister for the Environment, Heritage and the Arts [2008] FCA 8 -
Blue Wedges Inc v Minister for the Environment, Heritage and the Arts [2008] FCA 8 -
Telstra Corporation Limited and Department of Broadband, Communications and the Digital Economy [2007] AATA 2100 -
Rivera v Human Rights and Equal Opportunity Commission [2007] FCA 1913 -
Rivera v Human Rights and Equal Opportunity Commission [2007] FCA 1913 -
Adultshop.Com Ltd v Members of the Classification Review Board [2007] FCA 1871 (29 November 2007) (Jacobson J)

Buck v Bavone (1976) 135 CLR 110 referred to

Adultshop.Com Ltd v Members of the Classification Review Board [2007] FCA 1871 -
SZDTZ v Minister for Immigration and Citizenship [2007] FCA 1824 (23 November 2007) (Greenwood J)

Buck v Bavone (1976) 135 CLR 110
Minister for Immigration and Multicultural and Indigenous Affairs v SGLB

SZDTZ v Minister for Immigration and Citizenship [2007] FCA 1824 -
Prasad v Minister for Immigration and Citizenship [2007] FCA 1739 -
Tervonen v Minister for Justice and Customs (No 2) [2007] FCA 1684 (06 November 2007) (Rares J)

Buck v Bavone (1976) 135 CLR 110 considered

Tervonen v Minister for Justice and Customs (No 2) [2007] FCA 1684 -
Tervonen v Minister for Justice and Customs (No 2) [2007] FCA 1684 -
Jerrinja Local Aboriginal Land Council v Minister Administering the Crown Lands Act [2007] NSWLEC 577 -
Jerrinja Local Aboriginal Land Council v Minister Administering the Crown Lands Act [2007] NSWLEC 577 -
Lillywhite v Chief Executive, Liquor Licensing Division, Dept of Tourism Fair Trading and Wine Industry Development [2007] QDC 240 -
Re Minister for Resources; Ex parte Cazaly Iron Pty Ltd [2007] WASCA 175 -
Re Minister for Resources; Ex parte Cazaly Iron Pty Ltd [2007] WASCA 175 -
Commissioner of Police v Ryan [2007] NSWCA 196 -
Commissioner of Police v Ryan [2007] NSWCA 196 -
Commissioner of Police v Ryan [2007] NSWCA 196 -
Re Minister for the Environment; Ex Parte Elwood [2007] WASCA 137 -
Re Minister for the Environment; Ex Parte Elwood [2007] WASCA 137 -
Vines v Australian Securities and Investments Commission [2007] NSWCA 126 -

Vines v Australian Securities and Investments Commission [2007] NSWCA 126 -
Pateman v Peninsula Village Limited trading as Peninsula Village Retirement Centre [2007] NSWSC 586 (08 June 2007) (Johnson J)

Buck v Bavone (1976) 135 CLR 110

Bruce v Cole

Pateman v Peninsula Village Limited trading as Peninsula Village Retirement Centre [2007] NSWSC 586 -
SZILP v Minister for Immigration [2007] FMCA 592 -
Tattersall v Registrar of the Workers Compensation Commission of NSW [2007] NSWSC 453 -
Warringah Council v Moy [2005] NSWLEC 416 -
Warringah Council v Moy [2005] NSWLEC 416 -
Clark v Cook Shire Council [2007] QCA 139 -
Clark v Cook Shire Council [2007] QCA 139 -
Clark v Cook Shire Council [2007] QCA 139 -
Clark v Cook Shire Council [2007] QCA 139 -
Dar v State Transit Authority of NSW [2007] NSWSC 260 -
Clarence City Council v South Hobart Investment Pty Ltd [2007] TASSC 16 -
Williams v Minister for Justice and Customs [2007] FCAFC 33 -
Williams v Minister for Justice and Customs [2007] FCAFC 33 -
Swan v Queensland Community Corrections Board [2007] QCA 80 -
Swan v Queensland Community Corrections Board [2007] QCA 80 -
Swan v Queensland Community Corrections Board [2007] QCA 80 -
Swan v Queensland Community Corrections Board [2007] QCA 80 -
Tervonen v Minister for Justice and Customs [2007] FCA 464 -
SZGPJ v Minister for Immigration [2007] FMCA 19 -
Garland v Chief Executive, Department of Corrective Services [2006] QCA 568 (22 December 2006) (McMurdo P, Holmes JA and Chesterman J,)

Buck v Bavone (1976) 135 CLR 110 , applied

Garland v Chief Executive, Department of Corrective Services [2006] QCA 568 -
Garland v Chief Executive, Department of Corrective Services [2006] QCA 568 -
Rivera v Minister for Justice and Customs [2006] FCA 1784 -
Wyong-Gosford Progressive Community Radio Incorporated v Australian Communications Media Authority and Gosford Christian Broadcasters Limited [2006] FCA 1691 -
Wyong-Gosford Progressive Community Radio Incorporated v Australian Communications Media Authority and Gosford Christian Broadcasters Limited [2006] FCA 1691 -
Dresna Pty Ltd v Linknarf Management Services Pty Ltd (in liq) [2006] FCAFC 193 -
Dresna Pty Ltd v Linknarf Management Services Pty Ltd (in liq) [2006] FCAFC 193 -
Schaefer Waste Technology Sdn Bhd v Chief Executive Officer, Australian Customs Service [2006] FCA 1644 -
Gray v Minister for Planning [2006] NSWLEC 720 -
Gray v Minister for Planning [2006] NSWLEC 720 -
Gray v Minister for Planning [2006] NSWLEC 720 -
SZIGI v Minister for Immigration [2006] FMCA 1800 (20 November 2006) (Smith FM)

Buck v Bavone (1976) 135 CLR 110

Dranichnikov v Minister for Immigration & Multicultural Affairs

SZIGI v Minister for Immigration [2006] FMCA 1800 -
SZIGI v Minister for Immigration [2006] FMCA 1800 -
New South Wales v Commonwealth [2006] HCA 52 -
Notaras, Irene v Waverly Council and Levitt, Erroll Wilfred [2006] NSWLEC 669 -
Garland v Chief Executive, Department of Corrective Services [2006] QSC 245 -
Garland v Chief Executive, Department of Corrective Services [2006] QSC 245 -
King v Bathurst Regional Council [2006] NSWLEC 505 -
King v Bathurst Regional Council [2006] NSWLEC 505 -

South Hobart Investment Pty Ltd v The Clarence City Council [2006] TASSC 63 -
Zurich Australian Insurance Ltd v MAA [2006] NSWSC 845 -
Zurich Australian Insurance Ltd v MAA [2006] NSWSC 845 -
Yallingup Residents Association (Inc) v State Administrative Tribunal [2006] WASC 162 -
Yallingup Residents Association (Inc) v State Administrative Tribunal [2006] WASC 162 -
Yallingup Residents Association (Inc) v State Administrative Tribunal [2006] WASC 162 -
Yallingup Residents Association (Inc) v State Administrative Tribunal [2006] WASC 162 -
Zuanic v Gypro-Tech (Australia) Pty Limited (in liquidation) [2006] NSWSC 739 -
Zuanic v Gypro-Tech (Australia) Pty Limited (in liquidation) [2006] NSWSC 739 -
Director of Public Prosecutions v El Mawas [2006] NSWCA 154 -
Director of Public Prosecutions v El Mawas [2006] NSWCA 154 -
Baulkham Hills Shire Council v Dix [2004] NSWLEC 404 -
Baulkham Hills Shire Council v Dix [2004] NSWLEC 404 -
Nyangatjatjara Aboriginal Corporation v Registrar of Aboriginal Corporations (No 2) [2006] FCA 675 -
Nyangatjatjara Aboriginal Corporation v Registrar of Aboriginal Corporations (No 2) [2006] FCA 675 -
Summerfield v Registrar of the Workers Compensation Commission of NSW [2006] NSWSC 515 (31 May 2006) (Johnson J at 1)

Buck v Bavone (1976) 135 CLR 110

Bruce v Cole

Summerfield v Registrar of the Workers Compensation Commission of NSW [2006] NSWSC 515 -
Spencer v Knox CC [2006] VCAT 868 -
Spencer v Knox CC [2006] VCAT 868 -
Cox v Maroochy Shire Council [2006] QPEC 51 -
Perpetual Trustee Co Ltd v Khoshaba [2006] NSWCA 41 -
Perpetual Trustee Co Ltd v Khoshaba [2006] NSWCA 41 -
Perpetual Trustee Co Ltd v Khoshaba [2006] NSWCA 41 -
Perpetual Trustee Co Ltd v Khoshaba [2006] NSWCA 41 -
Perpetual Trustee Co Ltd v Khoshaba [2006] NSWCA 41 -
Lark v Nolan [2006] TASSC 12 -
Australian Retailers Association v Reserve Bank of Australia [2005] FCA 1707 -
Australian Retailers Association v Reserve Bank of Australia [2005] FCA 1707 -
Holmwood Holdings Pty Ltd v Halkat Electrical Contractors Pty Ltd [2005] NSWSC 1129 -
Holmwood Holdings Pty Ltd v Halkat Electrical Contractors Pty Ltd [2005] NSWSC 1129 -
Holmwood Holdings Pty Ltd v Halkat Electrical Contractors Pty Ltd [2005] NSWSC 1129 -
Holmwood Holdings Pty Ltd v Halkat Electrical Contractors Pty Ltd [2005] NSWSC 1129 -
Tomasevic v State of Victoria [2005] VSC 402 -
Tomasevic v State of Victoria [2005] VSC 402 -
APLA Ltd v Legal Services Commissioner (NSW) [2005] HCA 44 -
APLA Ltd v Legal Services Commissioner (NSW) [2005] HCA 44 -
Cummins v Chief Executive, Department of Corrective Services [2005] QSC 202 -
Cummins v Chief Executive, Department of Corrective Services [2005] QSC 202 -
von Arnim v Federal Republic of Germany (No 2) [2005] FCA 662 (03 June 2005) (Finkelstein J)

Buck v Bavone (1976) 135 CLR 110 cited

von Arnim v Federal Republic of Germany (No 2) [2005] FCA 662 -
Nation v Minister for Immigration [2005] FMCA 620 -
SZBAL v Minister for Immigration and Multicultural; and Indigenous Affairs [2005] FCA 263 -
SZBAL v Minister for Immigration and Multicultural; and Indigenous Affairs [2005] FCA 263 -
SZBAL v Minister for Immigration and Multicultural; and Indigenous Affairs [2005] FCA 263 -
McMahons Road Pty Ltd v Frankston City Council [2005] VSC 522 -
McMahons Road Pty Ltd v Frankston City Council [2005] VSC 522 -
S635 of 2003 v Minister for Immigration & Multicultural & Indigenous Affairs [2005] FCAFC 65 (22 April 2005) (Tamberlin, Kiefel, Emmett JJ)

Bryant v Commonwealth Bank of Australia (1995) 130 ALR 129 ConsBuck v Bavone (1976) 135 CLR 110 Fo
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S635 of 2003 v Minister for Immigration & Multicultural & Indigenous Affairs [2005] FCAFC 65 -
Murdesk Investments Pty Ltd v Roads Corporation [2005] VSC 39 -
Murdesk Investments Pty Ltd v Roads Corporation [2005] VSC 39 -
Lewenberg v Victoria Legal Aid; White v Victoria Legal Aid [2005] VSC 28 -
Lewenberg v Victoria Legal Aid; White v Victoria Legal Aid [2005] VSC 28 -
de Bruyn v Minister for Justice and Customs [2004] FCAFC 334 (22 December 2004) (Spender, Kiefel and Emmett JJ)

Buck v Bavone (1975-1976) 135 CLR 110 *Cons*

de Bruyn v Minister for Justice and Customs [2004] FCAFC 334 -
NADH of 2001 v Minister for Immigration and Multicultural and Indigenous Affairs [2004] FCAFC 328 -
NADH of 2001 v Minister for Immigration and Multicultural and Indigenous Affairs [2004] FCAFC 328 -
Personnel Contracting Pty Ltd T/As Tricord Personnel v The Construction Forestry Mining and Energy Union of Workers [2004] WASCA 312 -
Personnel Contracting Pty Ltd T/As Tricord Personnel v The Construction Forestry Mining and Energy Union of Workers [2004] WASCA 312 -
Personnel Contracting Pty Ltd T/As Tricord Personnel v The Construction Forestry Mining and Energy Union of Workers [2004] WASCA 312 -
Garland v Chief Executive, Department of Corrective Services [2004] QSC 450 -
Garland v Chief Executive, Department of Corrective Services [2004] QSC 450 -
Mustercliffe Pty Ltd v Mackenroth; Harburg Investments Pty Ltd v Mackenroth [2004] QSC 446 -
Campbelltown City Council v Vegan [2004] NSWSC 1129 -
Campbelltown City Council v Vegan [2004] NSWSC 1129 -
Graham v Deputy Chief of Air Force [2004] FCA 1377 -
Griffin v Repatriation Commission [2004] FMCA 486 -
Tientjes v Chief Executive, Department of Corrective Services [2004] QSC 208 -
Tientjes v Chief Executive, Department of Corrective Services [2004] QSC 208 -
Tientjes v Chief Executive, Department of Corrective Services [2004] QSC 208 -
Applicants S276 of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs [2004] FCA 330 -
Applicants S276 of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs [2004] FCA 330 -
Applicants S276 of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs [2004] FCA 330 -
Whitworth v Repatriation Commission [2003] FCA 1530 -
Saunders v Queensland Community Corrections [2003] QSC 397 (21 November 2003) (White J)

Buck v Bavone (1975-1976) 135 CLR 110 , considered

Saunders v Queensland Community Corrections [2003] QSC 397 -
Saunders v Queensland Community Corrections [2003] QSC 397 -
Cameron v Repatriation Commission [2003] FCA 1323 -
Martin Francis Flynn v Dianne Ryan [2003] QSC 392 -
Kawicki v The Legal Services Commissioner [2003] NSWCA 333 -
Kawicki v The Legal Services Commissioner [2003] NSWCA 333 -
Re City of Subiaco; Ex Parte Gardiner [2003] WASC 208 -
Re City of Subiaco; Ex Parte Gardiner [2003] WASC 208 -
Re City of Subiaco; Ex Parte Gardiner [2003] WASC 208 -
Visa International Service Association v Reserve Bank of Australia [2003] FCA 977 (19 September 2003) (Tamberlin J)

Buck v Bavone (1976) 135 CLR 110 referred to

Visa International Service Association v Reserve Bank of Australia [2003] FCA 977 -
Visa International Service Association v Reserve Bank of Australia [2003] FCA 977 -
Rose Consulting Group v Baulkham Hills Shire Council [2003] NSWCA 266 -

NAKF v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCA 730 -
NAKF v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCA 730 -

Re Dr Judy M Edwards; Ex Parte Pearls Pty Ltd [2003] WASCA 148 (27 June 2003) (Scott J, Wheeler J, Hasluck J)

Buck v Bavone (1976) 135 CLR 110

Craig v State of South Australia

Re Dr Judy M Edwards; Ex Parte Pearls Pty Ltd [2003] WASCA 148 (27 June 2003) (Scott J, Wheeler J, Hasluck J)

Buck v Bavone (1976) 135 CLR 110

Craig v State of South Australia

Adrenalin Sports Brisbane Pty Ltd v Deputy Premier Treasurer and Minister for Sport, the Honourable T M Mackenroth MLA [2003] QSC 184 -

Newcastle City Council v Shortland Management Services [2003] NSWCA 156 -
Newcastle City Council v Shortland Management Services [2003] NSWCA 156 -

Towns and Repatriation Commission [2003] AATA 457 -
Towns and Repatriation Commission [2003] AATA 457 -

Minister for Immigration and Multicultural and Indigenous Affairs v Nass [2003] FCA 477 -

Westfield Management Ltd v Brisbane City Council & Anor [2003] QPEC 10 -

The Roosters Club Inc v the Northern Tavern Pty Ltd and Anor No. Scciv-02-675 [2003] SASC 103 -
The Roosters Club Inc v the Northern Tavern Pty Ltd and Anor No. Scciv-02-675 [2003] SASC 103 -

Schwart v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCA 169 (07 March 2003) (Selway J)

Buck v Bavone (1976) 135 CLR 110

DCT v Woodhams

Schwart v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCA 169 -

NACB v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCA 165 -

The Northern Tavern P/L v Liquor and Gambling Commissioner and Anor No. Scciv-02-675 [2003] SASC 11 -
The Northern Tavern P/L v Liquor and Gambling Commissioner and Anor No. Scciv-02-675 [2003] SASC 11 -

WAGH v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCA 8 -
WAGH v Minister for Immigration and Multicultural and Indigenous Affairs [2003] FCA 8 -

Cameron and Repatriation Commission [2003] AATA 9 -
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26. Thus it is necessary to examine what Mr Killalea puts as amounting to the error committed by the Tribunal, not to assess whether there was probative material to found the conclusions, not to engage in a task of the kind referred to Gummow J in *Minister for Immigration and Ethnic Affairs v Eshetu* (1999) 197 CLR 611, not to engage in a task of a kind described in *R v Connell; Ex parte The Hetton Bellbird Collieries Ltd (No 2)* (1944) 69 CLR 407 or *Buck v Bavone* (1976) 135 CLR 110 , but to see whether this Tribunal member failed to bring to the task at hand a level of honest *bona fide* approach which would be expected of him or her in such a task under the Act.

NAAV v Minister for Immigration & Multicultural Affairs [2002] FCAFC 228 (15 August 2002) (Black CJ, Beaumont, Wilcox, French and, von Doussa JJ)
Buck v Bavone (1976) 135 CLR 110 , cited

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NAAG of 2002 v Minister for Immigration & Multicultural & Indigenous Affairs [2002] FCA 713 (05 June 2002) (Allsop J)

Buck v Bavone (1976) 135 CLR 110 referred to

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