SUPREME COURT OF QUEENSLAND

CITATION:	*Arnold v Racing Qld & Anor* [2015] QSC 293
PARTIES:	**DEBORAH ARNOLD** (applicant) **v** **QUEENSLAND ALL CODES RACING INDUSTRY BOARD TRADING AS RACING QUEENSLAND** (first respondent) and **BROCK MILLER** **CHAIRMAN OF RACING DISCIPLINARY BOARD** (second respondent)
FILE NO/S:	No 4592 of 2015
DIVISION:	Trial
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	30 October 2015
DELIVERED AT:	Brisbane
HEARING DATE:	2 October 2015
JUDGE:	Dalton J
ORDER:	**1. Declare that the first respondent's seizure of greyhounds belonging to the applicant on 17 February 2015 was unlawful, and that the retention of those animals by the first respondent since that seizure has been unlawful.** **2. Declare that the decision of first respondent made 2 March 2015 prohibiting the applicant's greyhounds competing in any event is void.** **3. Declare that the decision of the second respondent of 17 April 2015 rejecting the applicant's appeal of 5 March 2015 is void.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – POWERS OF COURTS UNDER JUDICIAL REVIEW LEGISLATION – DECLARATIONS – where the applicant is a greyhound trainer – where the ABC broadcast an episode of Four Corners concerning live baiting and animal cruelty in the greyhound industry – where the applicant was subsequently summonsed to appear before a Stewards Inquiry of the first respondent – where the first respondent took possession of

greyhounds owned by the applicant and retains possession of them – where the applicant applied for a declaration that the seizure and retention of the greyhounds was unlawful – whether on construction the statutory rules allowed the first respondent to seize and retain the greyhounds – whether if seizure was illegal retention could be justified

ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – ERROR OF LAW – where the applicant was informed at the Inquiry and by two subsequent letters that the first respondent was considering warning her off racecourses – where the applicant was invited to show cause – where conduct found to have breached statutory rules included the applicant witnessing live baiting by others – where the first respondent decided to warn the applicant off – whether the first respondent erred in its finding that the applicant breached rules by merely witnessing live baiting by others

ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – PROCEDURAL FAIRNESS – HEARING – NOTICE TO PERSONS AFFECTED – where the first respondent decided that all greyhounds owned by the applicant were prohibited from competing in any event – where the applicant was not given an opportunity to be heard – whether the applicant was denied natural justice

ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – ERROR OF LAW – where the applicant's solicitors emailed a notice of appeal to the second respondent without paying the requisite fee – where the applicant submits that the power under s 149V(3)(c) of the *Racing Act* 2002 (Qld) to reject the applicant's appeal had not been enlivened

ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW — PROCEDURAL FAIRNESS – GENERALLY – where the applicant submits that she was denied natural justice in the decision to reject her notice of appeal – where the applicant relied on the hearing rule and the bias rule – where the second respondent has a quasi-judicial function in hearing appeals from decisions of the first respondent – where the first respondent and the second respondent had communications regarding the decision to reject the notice which excluded the applicant – where the second respondent gave notice and reasons of the decision to reject the appeal to the first respondent only – whether the applicant was denied natural justice

Judicial Review Act 1991 (Qld)
Racing Act 2002 (Qld) (1 July 2014 reprint) s 91(1),
s 149V(3)

Greyhounds Australasia Rules 2015 r 14(1)(c), r 14(2)(i), r 86(q), r 99(2)(a), r 99(3)(a)
Racing Queensland Local Rules of Racing (Greyhound Racing) r 3(5)

Kioa v West (1985) 159 CLR 550
Minister for Aboriginal Affairs v Peko-Wallsend Ltd (1985-1986) 162 CLR 24
Plaintiff S10/2011 v Minister for Immigration and Citizenship (2012) 246 CLR 636
Puglisi & Anor v Australia Fisheries Management Authority & Ors (1997) 148 ALR 393
Wright & Anor v Queensland Police Service & Ors [2002] QSC 46

COUNSEL: A D Scott for the applicant
J M Horton QC for the first respondent
No appearance for the second respondent

SOLICITORS: Hannay Lawyers for the applicant
Clayton Utz for the first respondent
No appearance for the second respondent

[1] Ms Arnold is a greyhound trainer, and has been for 20 years. Until 17 February 2015 she was the President of the United Queensland Greyhounds Association. On 16 February 2015 the ABC broadcast an episode of Four Corners which was concerned with live baiting and other cruelty in the greyhound racing industry. The next day Ms Arnold was summonsed to appear before a Stewards Inquiry of the first respondent. On that day the first respondent took possession of (and still retains) 39 greyhounds owned by Ms Arnold. On 19 February 2015 Ms Arnold was given notice that the first respondent was considering warning her off racecourses for life. By a letter dated 2 March 2015 the first respondent notified her that it had decided to warn her off racecourses for life and that it had decided to prohibit all greyhounds which had ever been in her ownership, in whole or in part, from competing in any event in the future, whoever might own them in the future.[1] I will call this latter decision the prohibition decision.

[2] Ms Arnold applies under the *Judicial Review Act* 1991 (Qld) for a statutory order of review in respect of both the warning off decision and the prohibition decision. As well, Ms Arnold asks for a declaration that the seizure, and retention, of her greyhounds by the first respondent was, and is, unlawful.

[3] It was uncontroversial that, in respect of the decisions of 2 March 2015, Ms Arnold had a right of appeal from the first respondent to the second respondent. She encountered difficulties because although her solicitors lodged a notice of appeal on her behalf, and attempted to pay the prescribed fee, they did not succeed in the latter, and the second

[1] The wording of the prohibition was not clear. However, the parties understood it as meaning what I have set out. That is, there was no dispute between these parties that, whatever the terms of the 2 March 2015 letter, the prohibition was to have effect as I have stated it.

respondent rejected the appeal pursuant to s 149V(3)(c) of the *Racing Act* 2002 (Qld). Ms Arnold contends that that decision to reject the appeal was beyond power. Alternatively, it is challenged because she was not accorded natural justice in relation to the decision to reject the appeal.

[4] I shall deal with each of the complaints made by Ms Arnold in turn.

Seizure and Retention of Greyhounds

[5] The proceedings of the Stewards Inquiry on 17 February 2015 were recorded and I will outline what was said so far as it is relevant to the matters in issue in these proceedings:

> "THE CHAIRMAN: … The purpose of this hearing today is to consider whether your licence to train greyhounds should be suspended with immediate effect.
>
> …
>
> THE CHAIRMAN: … So you have been in attendance at [the property the subject of the Four Corners report]?
>
> MRS ARNOLD: I, like everybody, trial there all the time.
>
> …
>
> MRS ARNOLD: I couldn't tell you. I take 6 to 8 over every time I trial, and my husband and I use a sheepskin and a squeaker.
>
> …
>
> THE CHAIRMAN: Are you aware that live baiting was being – or was occurring at that property?
>
> MRS ARNOLD: I have seen it there and I have probably done the wrong thing and just turned a blind cheek and walked away because we are only worried about our own dogs, we don't worry what other people are doing. …
>
> …
>
> THE CHAIRMAN: … [of the Four Corners' footage] … despite the footage which shows you clearly looking over the fence at a person removing a live pig from the lure arm ---
>
> …
>
> MRS ARNOLD: --- I get my dogs out of the trailer, I give them a drink, I wash them down before I go. So if they put a pig on the arm and trialled on a pig, then they've done that. I mean, everybody does it. So---
>
> …
>
> MRS ARNOLD: Pigs, possums. I've seen pigs and possums there. But I have seen Tom with a pig on the arm once in about the last three months.
>
> …

THE CHAIRMAN: Why didn't you share this information with Racing Queensland officials?

MRS ARNOLD: Because if I got found out, they'd kill me. They would literally kill me. The trainers. Because everybody does it. …

…

THE CHAIRMAN: And you've never live baited any greyhounds at that property?

MRS ARNOLD: I have once.

THE CHAIRMAN: You have once?

MRS ARNOLD: And that was because we had tried everything to get the dog going.

…

THE CHAIRMAN: So is there some kind of pact within the industry that we don't find out about this track or what goes on there or people are just sworn to secrecy when they've attended?

MRS ARNOLD: Yep. Basically. …

…

MRS ARNOLD: The people that want things on the arm bring them themselves.

THE CHAIRMAN: Right.

MRS ARNOLD: They supply Tommy with it. But I don't do that, I use sheepskin. But sometimes if there's been something on there and it's had all the dogs going at it, that's when I've put one of my dogs on, but my dog has muzzles on. I don't let them go without a muzzle.

…

THE CHAIRMAN: All right. Is there anything further you want to say before we consider whether we suspend your trainer's licence?

MRS ARNOLD: No. Just if I get suspended, I can't put the dogs in [my ex-husband's] name?

THE CHAIRMAN: No.

MRS ARNOLD: So how do we feed the dogs or will they have to be put down?

THE CHAIRMAN: No, we'll be taking possession of the dogs today until such time as we determine what's appropriate for them.

…

THE CHAIRMAN: … the stewards will be out at your property in the next hour or so.

MRS ARNOLD: And where are you taking them?

THE CHAIRMAN: They'll be going to various places …

MRS ARNOLD: Until when?

THE CHAIRMAN: They'll be fed and cared for until such time as we determine what's appropriate for them going forward. Okay. Is there anything further?

…

THE CHAIRMAN: Thank you. Mrs Arnold, the committee has made the decision to suspend your licence with immediate effect.

…

MRS ARNOLD: So what about what happens with the dogs?

THE CHAIRMAN: The stewards will be at your property this afternoon.

MRS ARNOLD: No, but I want to know what happens with them if – like – because my husband and I, you're not just going to take the dogs. I mean, they are worth a lot of money. I've got about $60,000 invested in those dogs.

THE CHAIRMAN: Well, in accordance with the rules, we have the power to take possession of a greyhound for 14 days.

MRS ARNOLD: Yep.

THE CHAIRMAN: All right. We'll be exercising those powers today … They'll be properly looked after and we'll consider how we deal with those greyhounds going forward when we've had an opportunity to sit down and properly think about that.

…

MRS ARNOLD: And, what, in 14 days I'll find out what happens to the dogs?

…

MRS ARNOLD: By giving a dog a run at Tom's on a pig doesn't mean I don't look after my dogs.

THE CHAIRMAN: No, and we are not---

MRS ARNOLD: Well, you are. You are saying that they will be---

THE CHAIRMAN: We are not inferring that, but we want to ensure the wellbeing of all greyhounds whether they are under the care of a person who cares for greyhounds despite what their future holds or despite their racing prospects, so that's---

…" (my underlining).

[6] Section 91(1) of the *Racing Act* provides that the first respondent, "must make rules of racing for its code of racing, including matters that it believes necessary for the good

management of racing under the code." It was accepted that there were two sets of rules made under this power: one was the *Greyhounds Australasia Rules* 2015 (GAR) and the other was the *Racing Queensland Local Rules of Racing (Greyhound Racing)* 2013 (local rules).

[7] As at 17 February 2015 the GAR contained r 14, which was the first rule in a set of rules under the heading "Powers of Controlling Body and Official of Controlling Body".[2] Rule 14 provides:

> "(1) The Controlling Body may, …
>
> (a) appoint any number of persons as Stewards, officials and/or, authorised persons …
>
> (b) inquire into any matter concerning greyhound racing and may exercise any other function for which the Controlling Body is responsible pursuant to the Act;
>
> (c) prohibit any greyhound from competing in any Event if, in its opinion, that action is necessary for the proper control and regulation of greyhound racing;
>
> …
>
> (2) If a member of the Controlling Body, or an official or authorised person of the Controlling Body authorised in that behalf by the chairman or executive officer, has reasonable cause to suspect that any dishonest, corrupt, fraudulent, negligent or improper act in connection with greyhound racing is about to or may take place, or has taken place, at any meeting, or trials, the member or official may, <u>for the purpose of preventing, detecting or inquiring into that act</u> –
>
> (a) enter and inspect any land, track, building or other place in or about which the meeting is being or is about to be or has been conducted by any club;
>
> (b) make or vary all or any of the arrangements for the conduct of the meeting;
>
> (c) require and obtain from the secretary of the club … all books … and all documents …
>
> (d) order the examination of any greyhound for the purpose of ascertaining its age or identity or for any other purpose;
>
> (e) order the scratching or withdrawal of any greyhound from any Event;
>
> (f) order the removal of any gear;
>
> (g) remove the judge, Stewards or other officials at any time during the meeting and act in the place of the judge, Stewards or officials …

[2] The first respondent is the Controlling Body – see the definition at r 1 and s 9AB of the *Racing Act.*

> (h) appoint any official necessary for the proper conduct of the meeting …
>
> (i) take possession of and detain for purposes of inquiry for a period not exceeding 14 days, any greyhound in respect of which, in the opinion of the member or official, there are reasonable grounds for believing or suspecting the commission or intention or attempt to commit a dishonest, corrupt, fraudulent, negligent or improper act or any act for the purpose of having the effect of affecting the speed, stamina, courage or conduct of a greyhound or preventing or disabling or impeding the greyhound from running truly according to its ability;
>
> (j) inquire into or direct the Stewards to question if there has been committed, intended or attempted by a person, or persons, any dishonest, corrupt, fraudulent, negligent or improper act in connection with greyhound racing.
>
> …" (my underlining).

[8] It is clear from the underlined part of the transcript of the Stewards Inquiry (above) that it was GAR 14(2)(i) which was relied upon by the first respondent to take Ms Arnold's greyhounds on 17 February 2015.

[9] That rule did not justify the seizure of the greyhounds on that day, or the possession of them thereafter. It is express in the final words of the introductory paragraph at r 14(2) that the powers are only for the stated purposes of preventing, detecting or inquiring into a particular act. Further limits are imposed at sub-rule (i): the possession must be for the purposes of an inquiry and there must be reasonable grounds for suspecting (relevantly here) an improper act with respect to the greyhound which is taken. There was no attempt made by the first respondent to justify a reasonable suspicion that any particular greyhound owned by Ms Arnold had been the subject of an improper act. It is possible that, had the Stewards continued to cross-examine her at the inquiry, Ms Arnold may have revealed the identity of the dog which she did admit was subject to an improper act. Even then, grounds for taking possession of that dog would not arise unless the possession was taken for the purpose of inquiring into that act. There was no type of inquiry suggested by the first respondent as being necessary in relation to any dog, and it is hard to imagine that taking possession of the dog could possibly be for purposes of inquiring into the one act of improper conduct admitted by Ms Arnold.

[10] The general words at the end of r 14(2) "for the purpose of preventing, detecting or inquiring" are wider than the words of sub-rule (i), which only speak of "purposes of inquiry". But even the wider words at r 14(2) would not, in my opinion, justify taking into possession all the greyhounds owned by Ms Arnold for the purpose of preventing live baiting in the future. The first respondent did not submit that Ms Arnold would engage in that practice in the future, or that there were any reasonable grounds to think she would engage in that practice in the future. The only evidence before me is that she admitted to having once done so in the past in relation to one dog. Ms Arnold was clearly repentant of her actions at the Stewards Inquiry and had resigned her positions from official greyhound bodies that very morning, in response to the program which had aired the night before. There could be no suggestion that she said or did anything at the inquiry

which could cause any person to have a reasonable suspicion that she might engage in live baiting in the future.

[11] Lastly, r 14(2)(i) allows the first respondent to keep dogs for only 14 days. It could not justify the current detention, which is continuing, despite demand by Ms Arnold for the return of her dogs.

[12] Further, it is clear from the underlined parts of the transcript of the Stewards Inquiry that the dogs were not being seized for investigation. It is also clear enough that they were not being seized because the first respondent thought they needed to be protected from Ms Arnold.

[13] At the hearing of this application, the first respondent relied upon r 3(5) of the local rules. Once Ms Arnold's lawyers made demand for the return of her dogs, it was that local rule which was relied upon by solicitors for the first respondent. The rule relied upon did not exist at the time of the seizure. The rule was made on 22 February 2015. It was added, together with a sub-rule (6), to a very general introductory part of the Queensland local rules, which since 22 February 2015 read as follows:

"**GENERAL**

LR2 Racing Queensland may make Rules

Subject to the Act Racing Queensland may make Rules governing and relating to the control of greyhound racing in Queensland.

LR3 Powers of Racing Queensland

(1) Racing Queensland shall have the exclusive control and general supervision of greyhound racing within Queensland.

(2) Where by these Rules any administrative act is authorised or required to be done by Racing Queensland, either generally or in a particular case, Racing Queensland may delegate its function to a suitably qualified person.

(3) Racing Queensland may publish an official journal containing such matters as in its opinion may concern or be beneficial to greyhound racing. Notification in the official journal by Racing Queensland shall be deemed to be full notice throughout the territory of Racing Queensland to any and every person concerned of all matters and things so notified.

(4) Racing Queensland may publish matters on a website and notwithstanding the provisions of sub-rule (3) may deem the publication to be full notice throughout the territory of Racing Queensland to any and every person concerned of all matters and things so notified.

(5) Racing Queensland may take and retain possession of and detain any greyhound <u>for so long as</u> Racing Queensland considers there is a reasonable suspicion that:

(a) The greyhound has been involved in any act of animal cruelty; or

(b) The owner, trainer or anyone else in possession of the greyhound has been involved in any act of animal cruelty.

(6) Racing Queensland, the Stewards and anyone so authorised by Racing Queensland or the Stewards, may at any time use technology (such as drones) to inspect and surveil (including by taking photographs and video footage) any land or premises owned, occupied or under the control of a licensed person or used in any manner in relation to any licence." (my underlining).

[14] As noted, at the time of the seizure r 3(5) did not exist. The situation is therefore that there was no power in the first respondent to seize Ms Arnold's dogs on 17 February 2015. The question then arises whether or not there was any power in the first respondent to retain possession of the dogs from the time local rule 3(5) came into effect.

[15] In my view, there is a real question as to whether or not local rule 3(5) authorises the retention of greyhounds seized illegally. The question has arisen in respect of police who seize property illegally and then seek to defend Court proceedings for the return of the property. It has been held that the Supreme Court has a discretion as to whether or not such property ought to be returned. Generally, it will not be returned when police seek to retain the property pursuant to another power, such as the common law power to preserve property for investigations, or for tendering in evidence at a trial.[3] In finding that there is such a discretion, the Court is astute to see that there is an alternative source of power which justifies retention. The Court is also greatly influenced by public policy considerations similar to those discussed in *Bunning v Cross*[4] to the effect that, if the discretion is not exercised in favour of police, prosecution of offenders will be hampered. I am not convinced that a similar approach would apply in relation to the situation with which I am concerned. I doubt that either r 14(2)(i) or r 3(5) can be construed to allow retention after an illegal seizure.

[16] However, I do not find it necessary to decide that point because, on the view I take of local rule 3(5), it never authorised the detention of Ms Arnold's greyhounds. Local rule 3(5) is a power to retain possession "for so long as" the first respondent considers that there is "a reasonable suspicion" that the owner has been involved in any act of animal cruelty. The phrase "a reasonable suspicion" is one which has been commonly used over time in relation to police powers of investigation, search and seizure. A reasonable suspicion is the pre-condition to the exercise of many such powers. Local rule 3(5) allows retention of a greyhound for a temporal period coincident with the first respondent considering there is a reasonable suspicion that the owner is involved in an act of animal cruelty. There could be no argument that, if having taken and retained a greyhound under local rule 3(5), the first respondent could retain the greyhound after its investigations showed that there was no act of animal cruelty.

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3 *Puglisi & Anor v Australian Fisheries Management Authority & Ors* (1997) 148 ALR 393, and *Wright & Anor v Queensland Police Service & Ors* [2002] QSC 46.

4 (1978) 141 CLR 54.

[17] Similarly, in my view, once the first respondent passes beyond a state of reasonable suspicion and concludes, perhaps after investigation, that as a matter of fact, the owner has been involved in an act of animal cruelty, there is no power to retain possession of the greyhound. Counsel for the first respondent sought to argue that in the latter circumstance there was a continuing power to retain the greyhound because the first respondent's considering that there was a reasonable suspicion was a threshold point in time after which the power to retain possession endured. I reject that construction. First, I think it is contrary to the express language of the rule. In my view "for so long as" gave a power to retain until the first respondent either considered the reasonable suspicion had been dispelled, or considered that the act of animal cruelty had in fact occurred. Even apart from the language, the power is one to seize and retain property and thus ought to be construed strictly, for it interferes with proprietary rights and so should not be construed as an open-ended power to forfeit without compensation, unless that is very clear from the language.

[18] On 17 February 2015 the first respondent knew, by the end of the Stewards Inquiry, that Ms Arnold had committed an act of animal cruelty in that she had allowed one of her dogs to participate in a live baiting trial. There was no evidence before me that the first respondent ever received any further information founding a reasonable suspicion that she was involved in any other act of animal cruelty. At the subsequent March proceedings, the only act of animal cruelty relied upon was that admitted to by Ms Arnold at the Stewards Inquiry. Thus, by the time the dogs were seized on 17 February 2015, the first respondent had moved beyond a state of reasonable suspicion in relation to Ms Arnold's being involved in any act of animal cruelty. It had moved to a state where it was so certain of the matter that it had suspended her training licence and confiscated her dogs. In my view then, the first respondent had no power to seize and no power to retain possession of any of Ms Arnold's greyhounds.

[19] Counsel for Ms Arnold argued that local rule 3(5) was in any event beyond power because it exceeded the rule making power at s 91 of the *Racing Act.* This argument proceeded on the basis that express investigative powers were given to particular officers under the *Racing Act* and those powers were not so draconian as that found at local rule 3(5). They did not allow seizure of live animals, and did not allow forfeiture of property without compensation. I must say I thought there was some force in that argument. However, because of my conclusions above, I need not determine whether or not it is correct.

Decision to Warn Ms Arnold Off Racecourses for Life

[20] As can be seen from the transcripts of the Stewards Inquiry on 17 February 2015, Ms Arnold was told that the first respondent was considering warning her off racecourses. Ms Arnold was given a letter that day to the same effect, which informed her that she had the opportunity to show cause that afternoon – see Court Document 3, exhibit 2. That afternoon hearing did not take place, and on 19 February 2015 Ms Arnold was given another notice, which invited her to show cause "why you should not be warned off all racecourses in Queensland". Ms Arnold was asked to make written submissions by close of business on 26 February 2015, and allowed the opportunity to appear at a hearing to make oral submissions on 27 February 2015 – see Court Document 3, exhibit 3.

[21] There was no issue taken as to the particulars of the first respondent's concerns, as set out in that letter. They were:

> "1. You admitted you had participated in live baiting in an interview with Racing Queensland in Deagon, Brisbane on 17 February 2015 (In breach Greyhound Australasia Rules (GAR) R 86(af)).
>
> 2. You admitted you had witnessed live baiting by others at [the unlicensed training premises] in an interview with Racing Queensland in Deagon, Brisbane on 17 February 2015 (In breach Greyhound Australasia Rules (GAR) R 86(q)).
>
> 3. You used the live baiting of animals for a purpose connected with greyhound racing that was improper (In breach Greyhound Australasia Rules (GAR) R 86(af)).
>
> 4. You used the live baiting of animals for the purpose of affecting the performance or behaviour of a greyhound (In breach Greyhound Australasia Rules (GAR) R 86(aa)).
>
> 5. You participated at an unlicensed training establishment at [the unlicensed training premises] (Local Rule (LR) 52(3))."

[22] The rules relied upon by the first respondent are as follows:

> "R86 A person (including an official) shall be guilty of an offence if the person:
>
> …
>
> (q) commits or omits to do any act or engages in conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing;
>
> …
>
> (aa) tampers with any gear used on a greyhound, or uses any substance or item to affect the performance of a greyhound or greyhounds;
>
> …
>
> (af) uses an animal for any purpose connected with greyhound racing in a manner which is improper;
>
> …"

[23] Ms Arnold's solicitor wrote a five page letter (26 February 2015) to the first respondent, in response to the invitation to show cause. It was a plea in mitigation. It admitted the conduct to which Ms Arnold admitted in the Stewards Inquiry of 17 February 2015. It made submissions based on the limited factual nature of those admissions, and relied upon Ms Arnold's previous good character and long involvement in the greyhound racing industry over 20 years, including as president of the United Queensland Greyhounds Association. It relied upon her admissions of wrongdoing, as well as her co-operation and remorse. It relied upon the fact that Ms Arnold had already suffered the suspension of her trainer's licence and the confiscation of her dogs. It relied upon what it called her

vilification in the media and submitted that "the above shows good cause why Ms Arnold should not be warned off all greyhound racecourses in Queensland, particularly in the circumstances of the wide range of alternative penalties open under GAR Rule 95 such as fines and periods of suspension". References were tendered with the submissions, which went to Ms Arnold's character. Ms Arnold did not attend to orally show cause.

[24] On 2 March 2015 the first respondent notified Ms Arnold that the first respondent had determined to warn her off all Queensland greyhound racecourses for life.

[25] In response to a request, the first respondent provided reasons for that decision, which are exhibit 9 to Court Document 3. The reasons are, with respect, both detailed and logical. They first state the nature of the proceeding. They then summarise the allegations made, and the response by Ms Arnold. They list the sources of information which the first respondent had; discuss the rule to warn off, and adopt a *Briginshaw* standard of proof. At paragraph 14, under the heading "Analysis of the Evidence", the first respondent finds that there was clear evidence based on Ms Arnold's admissions on 17 February 2015 that she had personally engaged, on at least one occasion, in the practice of live baiting and that she had witnessed others engage in the practice at the unlicensed training establishment. They refer to the footage shown on Four Corners of Ms Arnold at the unlicensed training establishment, and refer to the fact that Ms Arnold admitted she had attended that property. At paragraph 17 of the reasons, the first respondent comprehensively and fairly summarises Ms Arnold's submissions against being warned off and then, under the heading "Findings of Fact", the first respondent says at paragraph 19, "After considering and weighing up all of the evidence and the submissions made in response by Ms Arnold, the following is a summary of the Board's findings:

> (a) On the evening of 16 February 2015 an episode of the ABC Four Corners program broadcast the results of their investigation into Australia's greyhound racing industry. The program alleged, amongst other things, that numerous individuals in the Australian greyhound racing industry had either themselves engaged in the practice of live baiting or were aware that the practice of live baiting was occurring.
>
> …
>
> (e) During her interview with Racing Queensland officials on 17 February 2015, Ms Arnold admitted that:
>
> (i) She had witnessed the practice of live baiting at the [unlicensed training property]; and
>
> (ii) She had participated in the practice of live baiting at the [unlicensed training property] on one occasion.
>
> …
>
> (h) Ms Arnold is a well-known figure in the greyhound racing industry in Queensland. Ms Arnold has been an owner, trainer and breeder of greyhounds for many years and until recently, was the president of the United Queensland Greyhounds Association.
>
> (i) That Allegations 1-4 as set out in the Show Cause Notice had been proved to the required standard.

(j) The Board made no findings in respect of Allegation 5." (my underlining).

[26] The reasons continue with a heading "Reasons for Decision". It is stated that the findings of fact demonstrate infringement of rr 86(q), (aa) and (af) of the GAR. The reasons record that the Board considered these failures by Ms Arnold were very serious, firstly because of the deplorable nature of live baiting but also because –

> "23. … it was essential for the overall welfare, image, integrity and promotion of the greyhound racing industry as a sport in Australia that persons having the industry reputation and standing of Ms Arnold must, by their conduct, lead by example and not flagrantly breach the rules which govern the sport.
>
> 24. Ms Arnold's conduct in this matter was unbecoming of a person who was a respected industry leader within the Queensland greyhound racing industry. In short, industry leaders have a responsibility to lead and comply with the relevant rules and not be involved in practices which would be highly likely to bring the greyhound racing industry into serious public disrepute.
>
> 25. The Board considers that the Local Rules and the GAR have to be abided with by all greyhound racing industry participants and that deliberate non-compliance with the rules, as demonstrated by Ms Arnold's conduct, is the type of behaviour that can put the entire regulation of the greyhound racing industry at risk.
>
> 26. The Board formed the view that Ms Arnold's conduct as set out above, because of its seriousness, had brought the greyhound racing industry into disrepute and had an adverse and detrimental effect on the integrity and image of the greyhound racing industry in Queensland.
>
> 27. Further, the Board formed the view that as a result of her conduct, Ms Arnold was not a proper person to continue to be involved in the greyhound industry in Queensland and that Ms Arnold is a person whose presence on any greyhound [racecourse] in Queensland is not desirable.
>
> 28. The Board considered that the appropriate penalty in this case was to warn Ms Arnold off for life from all Queensland greyhound racecourses (as that term is defined in the GAR) in accordance with Rule 3A of the Local Rules." (my underlining).

[27] The challenge Ms Arnold makes to this decision is specific. It is only to one aspect of the decision: that the first respondent erred in finding that witnessing live baiting was a contravention of r 86(q). It was submitted by Ms Arnold that merely witnessing live baiting could not be a breach of GAR 86(q). This is contrary to the admission made on Ms Arnold's behalf by her solicitors in the letter showing cause, dated 26 February 2015, which read in part:

> "Ms Arnold has admitted to witnessing live baiting by others at [the unlicensed training premises] in contravention of GAR R 86(q) which states that a person commits an offence if the person 'commits or omits to do any

> act or engages in conduct which is in any way detrimental or prejudicial to the interest, welfare, image, control or promotion of greyhound racing'."

[28] In my opinion, that admission on behalf of Ms Arnold was properly made. Clearly enough, the case which was made against Ms Arnold on 17 February 2015 was not that she was some sort of incidental witness to live baiting, but that she had, on many occasions, seen, or been in a position to see, that live baiting was carried on at the unlicensed training establishment and did nothing to attempt to stop that practice, or to bring it to the attention of the first respondent. Furthermore, I think it was perfectly clear from 17 February 2015 that the first respondent relied upon Ms Arnold's acts and omissions in a context where she was the president of the greyhound association in Queensland as something that was particularly likely to bring the image or control of greyhound racing into disrepute. This was the substance of the charge made against her. That is clear, and was clear to Ms Arnold – see the extracts of the Stewards Inquiry (above). I think it is clear from the show cause submissions made on Ms Arnold's behalf on 26 February 2015 that she understood this. For example, at numbered paragraph 2, on page 2 of those show cause submissions, Ms Arnold's solicitors say, "There are additional allegations relating to her failure to report suspicions about others for live baiting, and trialling at [the unlicensed premises] however they appear to assume less significance, and for good reason. …" Further, the allegation of witnessing live baiting by others is specifically taken up at numbered paragraphs 9 and 10 of the show cause letter. Those submissions refer to Ms Arnold's admissions in relation to this conduct on 17 February 2015 – that she "turned a blind cheek", did not worry about what other people were doing, and was guilty of "going with the flow". The show cause submissions rely upon Ms Arnold's explanation of 17 February 2015 that, had she informed on other people, they would "literally kill" her. Of this her solicitors say, "Whilst that is not proffered as an excuse, it is a reason for her failure to disclose what she suspected that is hard to disregard. …" That paragraph continues with some submissions which I will not extract in my judgment, but which are relevant because they show Ms Arnold and her solicitors well understood that the gravamen of the charge against her was not that she incidentally saw some live baiting, but that she witnessed live baiting on numerous occasions, knew it was widespread, and did nothing to either stop or report it.

[29] There was no mistake of law. The first respondent was concerned with conduct by the office-holder of a greyhound racing association which impliedly condoned live baiting or, at the very least, did not consider it something so reprehensible that she should not take action to stop it.

The Prohibition Decision

[30] After recording the decision to warn Ms Arnold off, the letter of 2 March 2015 continued:

> "Pursuant to Rule 14(1)(c) of the Greyhounds Australasia Rules (GAR), Racing Queensland has also determined that all greyhounds owned by you (whether whole or in part) are prohibited from competing in any Event."

[31] I have remarked about the agreed effect of this decision at [1] above. It will be seen that the first respondent's reasons for decision (extracted above) do not deal with this

prohibition decision. After requests from solicitors acting for Ms Arnold, the solicitor acting for the first respondent gave additional reasons as follows:

> "…
>
> **Reasons for Decision**
>
> 11. The Board decided that it would make a final decision relying on its power under Rule 14(1)(c) of the GAR to prohibit any greyhound owned by Ms Arnold (whether in whole or in part) from competing in any Event (as that term is defined in GAR R1) within Queensland.
>
> 12. The evidence and the findings of fact, as set out in the Statement of Reasons dated 30 March 2015, demonstrated beyond a reasonable doubt that Ms Arnold, by her conduct had acted in a manner that amounted to an infringement of paragraphs (q), (aa) and (af) of Rule 86 of the GAR as was particularised in the Show Cause Notice.
>
> 13. Having regard to the Board's decision to warn Ms Arnold off for life from all Queensland greyhound racecourses (as that term is defined in the GAR) in accordance with Rule 3A of the Local Rules, the Board also determined, pursuant to GAR R 14(1)(c), that it was necessary for the proper control and regulation of greyhound racing that any greyhound owned wholly or in part by Ms Arnold should be prohibited from competing in any Event (as that term is defined in the GAR R1) within Queensland."

[32] In these short reasons, solicitors for the first respondent rely upon r 14(1)(c) of GAR, ie., that the Controlling Body may "prohibit any greyhound from competing in any Event if, in its opinion, that action is necessary for the proper control and regulation of greyhound racing;".

[33] At the hearing of this application, the first respondent also relied upon GAR 99(2)(a) and (3)(a) which provide:

> "99 Effect of disqualification, suspension, warning off or being declared a defaulter
>
> …
>
> (2) A person who is disqualified, warned off, suspended or declared to be a defaulter shall not, during the period of the penalty –
>
> (a) nominate a greyhound for any Event;
>
> (b) permit a greyhound of which that person is the owner or the trainer to compete in any Event;
>
> …
>
> (3) Unless the Controlling Body in special circumstances otherwise directs, a person who has been disqualified, warned off or declared as a defaulter is not –

> (a) entitled to retain any registration certificates or greyhound identification cards … and the person shall immediately deliver to the Controlling Body all registration certificates or greyhound identification cards issued to the person; …
>
> (b) permitted to transact any business affecting the registration of persons or greyhounds with the Controlling Body;
>
> …
>
> (f) eligible to otherwise participate in or associate with greyhound racing and any greyhound which has been nominated by the person or in the person's name, or of which the person is wholly or partly the owner or which is proved to the satisfaction of the Controlling Body to be pursuant to [sic] the person's care, custody or training, is prohibited from competing in any Event".

[34] The first respondent's argument at the hearing was that the prohibition decision was not in truth a separate decision, but just a statement of the consequences which flowed automatically from Ms Arnold being warned off. Therefore it was argued, the first respondent need not have alerted Ms Arnold to the fact that it was considering making such a decision, or, afforded her natural justice in respect of it.

[35] It is plain that the prohibition decision was far more draconian in its effect than any automatic consequence of warning off pursuant to rr 99(2) or (3). It was in truth a separate decision under r 14(1)(c) of GAR. The financial consequences for Ms Arnold were very significant. The type of submissions which she may wish to have made about her financial circumstances, livelihood, etc., are of a different type from the type of submissions she might have wished to make (and did in fact make) about whether or not she should be warned off racecourses for life (even with the attendant consequential effects of warning off brought about by rr 99(2) and (3)).

[36] As well as submissions as to financial consequences, it occurs to me that Ms Arnold may have wished to make another type of submission to the first respondent had she been aware that it was considering making the prohibition decision. To prohibit a dog ever racing again, no matter who owns it, is quite a draconian decision. It may be that such a decision is justified because the view is taken that, once a dog has been illegally trained with live bait, it is advantaged in a way which can never be undone. If that is indeed the basis for the decision, it occurs to me that Ms Arnold may wish to submit that reasoning is not able to be substantiated. Second, given the dramatic nature of such a decision on the value of a greyhound, Ms Arnold may well have wished to make separate submissions about which, if any, of the 39 dogs she owned had been trained with live bait. The evidence before me falls well short of establishing that any more than one dog had been so trained.

[37] In my view, the prohibition decision is void for want of procedural fairness. Ms Arnold was never given an opportunity to be heard on whether or not such a decision should be

made. It was a decision made by a quasi-judicial body and the decision has an obvious ability to affect Ms Arnold's financial interests in a direct and immediate way.[5]

Decision of the Second Respondent

[38] The second respondent did not appear at the hearing of this matter. It took the attitude that it would abide the decision of the Court. The second respondent did, however, file an affidavit – Court Document number 5 and, through the Crown Solicitor, made short written submissions – Court Document number 4. Essentially those written submissions gave authority for the proposition that, even where a charge of misconduct against a magistrate is made out, an order for costs is not appropriate unless the case is one of serious misconduct. That is, the submissions did not go to the substantive matters which Ms Arnold says make the decision of the second respondent void.

[39] On 5 March 2015 solicitors acting for Ms Arnold emailed a notice of appeal on her behalf to the second respondent. The notice of appeal was in a standard form prescribed by statute. Against the description on the form "Penalty imposed – suspension or disqualification (if any)" was written, "life suspension/disqualification". Immediately under that on the statutory form, against the writing "Penalty imposed – other (if any)", there was a dash to indicate that that section of the form was not relevant to Ms Arnold's appeal. The grounds for appeal were stated as "penalty was excessive". This must be interpreted in the light of the earlier information in the form that the date she was informed of the decision was 2 March 2015. Despite my initial reluctance, I am persuaded that this form should properly be interpreted as an appeal against the whole of the decision of 2 March 2015, ie., the warning off and the prohibition decision. I cannot see that the appeal notice could be construed as relating to the seizure of the dogs; that was on a different date, could not be comprehended by the words "suspension/disqualification", and may not be a penalty within the meaning of s 149S(1)(d) – the power to seize is investigative or preventative, not penal.

[40] The form was signed and immediately above the signature was the following:

> "I have paid the prescribed fee for the appeal.
>
> I am ready to proceed with this appeal.
>
> I declare that the information in this notice of appeal is true to the best of my knowledge."

[41] It appears that the person who signed immediately below these statements was Mr Hannay, solicitor for Ms Arnold. It also appears that the first attempt to pay was made on 31 March 2015. On that date Mr Hannay swears that he made payment to the second respondent. That is inaccurate. He, or someone on his behalf, attempted to pay on that date: he exhibits a notification from his bank of an electronic transfer to a particular BSB and account number. Mr Hannay continues that on 22 April 2015 Ms Arnold contacted him to say that the second respondent had advised her that her appeal was defective because payment for the appeal had not been made. He then made investigations and found that the deposit on 31 March 2015 had been made to the incorrect account number.

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5 *Kioa v West* (1985) 159 CLR 550, 584 per Mason J and 619 per Brennan J.

He blames that error on "our office". He then swears that, "I immediately reissued payment". Again this appears to have been by direct deposit, having regard to the exhibit, but cannot accurately be described as a "reissue".

[42] On that day, 22 April, Mr Hannay wrote to the second respondent explaining what had occurred and adding the additional detail that, when the incorrect direct deposit was made, his bank had refunded him the money and marked the refund "incorrect account details". It appears from the material before me that this notification was on 1 April 2015, but that nobody brought it to Mr Hannay's attention. Mr Hannay asked for the co-operation and understanding of the second respondent which, as these proceedings demonstrate, was not forthcoming.

[43] It appears from the affidavit filed on behalf of the second respondent, that a Ms Moffat was employed by the first respondent, but undertook some sort of liaison role with the second respondent. This is described by the second respondent as, "Ms Moffat is responsible for setting up any appeals to the Board and acting as a liaison person between the Board and external parties". It appears that what the second respondent means by "external parties" are persons who might want to appeal to the second respondent from decisions of the first respondent. I attribute no fault to any particular person regarding this, however, it appears that relationship is problematic (to say the least) given that the second respondent is established to hear appeals from decisions of the first respondent in a quasi-judicial way, in circumstances where one of the parties before the second respondent will be the first respondent.

[44] On 15 April 2015 an officer of the first respondent emailed Ms Moffat saying, of a group of appeals including Ms Arnold's:

> "We understand that the notices of appeals submitted for each of the above applicants did not comply with s 149U(1)(a) of the Racing Act 2002, in that the notices of appeal were not accompanied by the prescribed fee. In addition, we understand that, to date, the prescribed fees have not been paid.
>
> Given the amount of time that has lapsed since the making of the original decisions, Racing Queensland is seeking confirmation of the Chairperson's decision under s 149V of the Racing Act in relation to each of the above purported appeals. In particular, Racing Queensland is seeking confirmation as to whether:
>
> - the appeals have been accepted (with or without conditions) under ss 149V(2)(a) or (b); or
> - rejected under s 149V(2)(c) on the ground set out in s 149(3)(c) on the basis of the non-compliance by each of the applicants with the requirement in s 149U(1)(a) of the Racing Act for the notice of appeal to be accompanied by the prescribed fee.
>
> If the appeals are to be accepted, Racing Queensland would request that the appeals be set down for hearing by the Racing Disciplinary Board."

[45] Ms Moffat sent this email on to the second respondent adding, "I have attached a copy of the notices of appeal for your information and I did notify Mr Hannay on 5 March that each appellant had to pay $250 before their appeal could be treated as valid."

[46] Two days later the chairperson sent a letter to the first respondent:

> "Dear Ms Moffat
>
> **Notice of Appeal – Appellant – Deborah Arnold**
>
> I have reviewed the Notice of Appeal that has been lodged by the appellant and a copy of which has been supplied to me. I note that the Notice of Appeal is dated 5 March 2015 and was lodged on that date with the Racing Disciplinary Board. The Notice of Appeal was within the relevant timeframe as identified in Section 149U (subsection (2)) in that it was given to the relevant body within five business days after the aggrieved person was notified of the appealable decision being appealed against. Subsection (1) of Section 149U provides that the agreed [presumably aggrieved] person must give a notice in the approved form accompanied by the prescribed fee.
>
> Section 149V(3) identifies that I as the chairperson may reject a Notice of Appeal on any of the following grounds:
>
> *(c) The Notice, or the giving of the Notice, does not otherwise comply with this Act.*
>
> The prescribed fee was not paid either on the day of lodgement of the Notice of Appeal or subsequently and remains outstanding. In the circumstances, I have determined that pursuant to Section 149V, the Notice or the giving of that Notice does not otherwise comply with the Racing Act and I hereby reject the Notice of Appeal on that ground."

[47] It appears from pp 70 and 71 of the exhibit bundle to Court Document 3 that the above email was sent by the second respondent only to the first respondent. The first respondent, in turn, passed it on to Mr Hannay acting for Ms Arnold saying:

> "Please find contact details in the attached decision letters regarding Arnold … we received from RDB.
>
> Would you please copy … myself into any correspondence you send to RDB."

[48] The relevant parts of the *Racing Act* are as follows:

> "**149U Aggrieved person must give notice of appeal**
>
> (1) For an appeal under this part, an aggrieved person must give a notice in the approved form (a *notice of appeal*) to—
>
> (a) the registrar, accompanied by the prescribed fee; and
>
> (b) the control body whose appellable decision is being appealed against.

(2) The notice of appeal must be given to the registrar and the control body—

(a) within 5 business days after the aggrieved person is notified of the appellable decision being appealed against; or

(b) if the chairperson is satisfied the person has a reasonable excuse for not giving the notice within the period mentioned in paragraph (a)—within the longer period as the chairperson allows.

(3) The notice of appeal must state the grounds for the appeal.

149V Acceptance, rejection or referral of appeal

(1) If the aggrieved person gives the registrar a notice of appeal, the registrar must give the chairperson a copy of the notice of appeal.

(2) After receiving a notice of appeal from the registrar, the chairperson must—

(a) accept the notice without imposing any conditions; or

(b) accept the notice on conditions; or

(c) reject the notice on a ground mentioned in subsection (3); or

(d) refer the appeal for which the notice was given to the tribunal if the chairperson believes it is in the public interest to do so.

…

(3) The chairperson may reject a notice of appeal on any of the following grounds—

(a) the notice was given by a person who is not authorised to give it;

(b) the notice was given to the registrar of the disciplinary board or the control body whose appellable decision is being appealed against after the expiry of the period mentioned in section 149U(2);

(c) the notice, or the giving of the notice, does not otherwise comply with this Act.

149W When accepted appeal starts

(1) An appeal starts when the chairperson accepts a notice of appeal, whether or not on conditions, under section 149V(2)(a) or (b).

(2) An appeal started under subsection (1) is an *accepted appeal*." (my underlining).

[49] It was contended on behalf of Ms Arnold that the power to reject a notice of appeal pursuant to s 149V(3)(c) had not been enlivened because failing to pay the prescribed fee was not a matter comprehended by the phrase "or the giving of the notice" in sub-section (c). In my opinion, as a matter of the clear import of the language of the section, that argument must be rejected. Section 149U(1)(a) provides that a notice of appeal must be

given to the registrar accompanied by the prescribed fee. The requirement for the accompanying fee is, in plain terms, part of the giving of the notice.

[50] The second ground raised by Ms Arnold is that she was denied natural justice in relation to the decision made by the chairperson to reject the notice of appeal. Both the hearing rule and the bias rule are relied upon.

[51] It was said, and I think correctly, that the word "may" in s 149V(3) gave the chairperson a discretion to reject the notice of appeal. And in this context it may be noted that pursuant to s 149V(2)(b) the chairperson might, rather than reject a notice of appeal, accept a notice on conditions. One possible condition is the payment of the fee within a certain timeframe ie., allow the appellant to pay late.

[52] One question is whether or not the chairperson owed a duty of procedural fairness to hear Ms Arnold before making a decision to reject her notice of appeal pursuant to s 149V(3) of the Act. It seems to me that the requirements of procedural fairness are less likely to attach to the making of that decision because it is more administrative and less adjudicative in its nature. On the other hand, there can be no doubt that rejecting a notice of appeal is the exercise of a statutory power which directly and immediately affects the rights of the appellant. Unless the notice was rejected, the appellant had the right to make an appeal and, as the facts of the current matter show, that appeal might involve questions of considerable magnitude, so that the chairperson's statutory power to reject an appeal may have effect to deprive that person of a valuable right.

[53] If the appeal had been accepted, s 149X provides that Ms Arnold and the first respondent would have been parties to the appeal and a Board would have been constituted to hear the appeal. That Board would be chosen by the chairperson – see s 149M. Presumably the chairperson might sit as part of the Board. The hearing before the Board is quasi-judicial. It can involve representation by a lawyer – s 149ZJ – and may involve a calling of witnesses on oath, including expert witnesses – see ss 149ZL-149ZP. That is, once the Appeal Board is constituted, proceedings are adversarial, with at least two parties and an independent decision-maker. It is expressly provided by s 149ZE(2)(a) that in the appeal hearing itself the Board must observe natural justice.

[54] Certainly after the Appeal Board was constituted, its actions could be challenged on the grounds that it did not hear a party, or that it was biased or acted in a way that would cause a reasonable observer to apprehend bias. I can see that this might weigh in arguments for, and against, the idea that the second respondent owed a duty to afford procedural fairness in deciding whether or not to reject an appeal. Here my view is that it is an indication that procedural fairness was owed, because the discretionary decision to either accept or reject an appeal was so closely tied to the process of the appeal itself. Thus, not without some hesitation, I conclude that the second respondent ought at least have given notice to the would-be appellant of an intention to reject a notice of appeal, so that person had the opportunity to be heard on the question.[6] That hearing process would not need to be complex – a limited time for written submissions to be made would not be unduly burdensome.

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[6] *Kioa v West* (above); *Plaintiff S10/ 2011 v Minister for Immigration* (2012) 246 CLR 636, [66].

[55] Further, I think that from the time something purporting to be a notice of appeal is given to the registrar pursuant to s 149V(1), the second respondent owes duties of procedural fairness not to be biased, and not to appear to be biased, in dealing with the fate of that notice. It is a breach of those duties to be corresponding or conferring with the first respondent in relation to the fate of the notice, when the first respondent obviously has an interest in the outcome of the s 149V process as a potential party to the appeal if the notice is accepted. That is, the second respondent cannot communicate with the first respondent about the fate of a notice of appeal if that communication is not provided to any other potential parties to the appeal and if they are not given an opportunity to respond.[7]

[56] In this case there are further relevant facts. A representative of the first respondent, who would become one of the parties to the appeal, made an inquiry of the second respondent without alerting Ms Arnold's lawyers to that communication. By the time the inquiry reached the second respondent, it was no longer just an inquiry, but contained an additional sentence, effectively by way of submission against Ms Arnold. Further, when the second respondent rejected the appeal, he did not do so just as an administrative act – ie., it was not simply by way of entry noted on paperwork in the registry. The chairperson wrote giving notice of a decision, and giving reasons for that decision by reference to the facts and the law which he thought applied to it. This decision and the reasons were given only to the first respondent. Thus, by 17 April 2015, in effect the chairperson had entertained correspondence from the first respondent, heard what was effectively a submission by the first respondent as to why Ms Arnold's appeal should be rejected, and then rejected the appeal, giving notice of that, and reasons for it, to the first respondent only.

[57] Even if the matters to which I refer at [52] – [54] above did not by themselves compel the chairperson to hear Ms Arnold before rejecting her appeal, I think that once the matters at [56] are considered, the chairperson did owe duties of procedural fairness to Ms Arnold as to whether or not he should reject the appeal. Whatever the content of his duties at law otherwise, the second respondent conducted himself as if he were determining the matter of whether he should reject the appeal in a quasi-judicial manner. Although he may not have sought it, he received a submission for the first respondent on the matter. Far from disregarding that submission and dealing with the matter in a purely administrative way, he in effect adopted the submission and gave notice of a decision, supported by reasons, to the first respondent. In effect, the second respondent chose not to proceed in a purely administrative way, but to hear a submission from one party and then give reasons to that one party. That course of conduct was not open to him pursuant to the statute. His decision to reject the notice of appeal is void.

[58] I will record that a submission was made by the first respondent that, rather than declare the prohibition decision void, I could, if I declared the second respondent's decision void, allow the second respondent to deal with the prohibition decision on appeal – see s 12(b) of the *Judicial Review Act.* I am not inclined to do so. First, there is no certainty that the second respondent will now accept the appeal. Further, the first respondent should consider whether it wishes to pursue a new prohibition decision against Ms Arnold. If it does, it should frame the decision it wishes to make clearly and there should be a proper decision by it about the matter. Where the wording of the decision itself is unclear; where

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[7] *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1985-1986) 162 CLR 24, 58 per Brennan J.

no initial submissions have been made by either party, and where the reasons for decision are not proper reasons in that they do not expose the decision-maker's reasoning process,[8] I cannot think the appeal proceeding is a satisfactory way to proceed.

[59] I will hear the parties on costs.

[8] *Attorney-General (Qld) v Fardon* [2013] QCA 64, [86].