SUPREME COURT OF QUEENSLAND

CITATION:	*Mowburn Nominees & ors v Palfreyman & ors (No 2)* [2014] QSC 320
PARTIES:	**MOWBURN NOMINEES PTY LTD (ACN 008 522 030) and VANROOK STATION PTY LTD (ACN 128 492 679) and INKERMAN STATION PTY LTD (ACN 111 342 495)** (applicants) **v** **RACHEL JANE PALFREYMAN BEING AN INSPECTOR UNDER THE STOCK ACT 1915** (first respondent) and **CHIEF VETERINARY OFFICER, DEPARTMENT OF AGRICULTURE, FISHERIES AND FORESTRY** (second respondent) and **CHIEF EXECUTIVE, DEPARTMENT OF AGRICULTURE, FISHERIES AND FORESTRY** (third respondent)
FILE NO/S:	10331 of 2014
DIVISION:	Trial Division
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court of Queensland
DELIVERED ON:	12 December 2014
DELIVERED AT:	Brisbane
HEARING DATE:	10 December 2014 (Supreme Court at Mackay)
JUDGE:	Carmody CJ
ORDERS:	**1. The further amended application is dismissed;** **2. The applicants to pay the respondents' costs of and incidental to the application on the standard basis.**
CATCHWORDS:	ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – JURISDICTIONAL MATTERS – whether notice issued under s 14(1) of the *Stock Act 1915* (Qld) was validly issued – whether statement of reasons or prior notice are required by law – where issue of notice is mandatory once the requisite state of mind has been reached ADMINISTRATIVE LAW – JUDICIAL REVIEW – GROUNDS OF REVIEW – PROCEDURAL FAIRNESS – BIAS – APPREHENSION OF BIAS – whether issue of a prior quarantine notice meant that the decision-maker would reasonably have been considered to be prejudiced in relation

to the new notice – where there is no evidence that the decision-maker would be unable to bring a fresh mind to consideration of the issues in question

Stock Act 1915 (Qld) s 14

Johnson v Johnson (2000) 201 CLR 488, cited
Laws v The Australian Broadcasting Tribunal (1990) 170 CLR 70, cited
Minister for Immigration and Multi-Cultural Affairs v Eshetu (1999) 197 CLR 611, cited
Pacific Century Production Pty Ltd v Watson (2001) 113 FCR 466, cited
Public Service Board v Osmond (1986) 159 CLR 656, cited

COUNSEL: C Hughes QC with M Plunkett for the applicants.
PJ Davis QC with A Scott for the respondents.

SOLICITORS: Emanate Legal for the applicants.
Crown Law for the respondents.

THE CHIEF JUSTICE: The applicants seek leave to file a further amended application for a declaration that a quarantine notice issued by the second respondent on 28 November 2014 ("the new notice") has no practical effect for jurisdictional error.

The respondents' initial objection to the form of the application was resolved on the basis that leave to amend be granted on the clear understanding that it constituted a fresh proceeding solely about the new notice with nothing to do with the notice I set aside on 28 November 2014.

The context

The applicants run about 80,000 head beef cattle on two properties in far north Queensland. A valid quarantine notice stops the business they conduct from trading in live beef exports and has significant adverse economic consequences for them. There is a history dating back to at least 2012 of quarantine notices being issued to the applicants for suspected infection of a strand of Bovine Johne's Disease (BJD).

A notice issued on 4 December 2012 was released on 30 April 2014, despite positive testing for bison, not cattle, strain BJD in a screening on 13 February 2014. The release was served by the first respondent on the applicants on 6 May 2014 and replaced with a fresh notice later the same day. That notice was amended on 5 November 2014. Both of those notices were quashed on 28 November 2014 in *Mowburn Nominees & ors v Palfreyman & ors* [2014] QSC 289. The issuing of the notices was held to be in irregular exercise of statutory power and beyond jurisdiction because neither was supported by satisfactory evidence of the jurisdictional fact of suspected infection.

Within six and a half hours of the declaration, the second respondent issued the new notice in identical terms. The applicants concede that the new notice cannot be challenged on the same basis as the earlier notices. However, based on the haste with which it was issued, they complain that the new notice is "a blunt attempt to

trump" the previous declaration of invalidity. The detailed explanation for issuing the new notice at paragraphs [64] to [68] of the second respondent's affidavit sworn 9 December 2014 makes that proposition unsustainable.

The applicants also contend that the quarantine power was not regularly engaged for failure to meet minimum procedural fairness requirements of prior notice and fair hearing by an open-minded decision-maker for stated reasons.

Statement of reasons

There is no general rule of natural justice requiring that reasons for, or an explanation of, an administrative decision be given to those with rights or interests that could be adversely affected by it.[1] Nor is there any circumstance in the context of this case that would make provision of preliminary or contemporaneous reasons a requirement of fairness. In any event, the decision has now been justified by the issuer's deposition and there is nothing to indicate any error of reasoning or forensic mistake.

Prior notice

Stating that the law does not require a reason for a decision to be given at the time it is made or acted upon is quite different from saying that, to be fair, a decision-maker should inform the affected party why the proposed action is being taken so that he or she can have a meaningful chance of making out a contrary argument. Section 14(1) of the Stock Act is in mandatory terms. The precondition for issuing the notice is a belief or suspicion based on findings or inferences of fact supported by some probative material or logical grounds.[2] Once the state of mind exists as a fact, as it did here, the stock inspector had no choice or discretion as to whether or not to issue the quarantine notice.

Prior to 28 November 2014 the applicants were well aware of the department's concerns about the nature and extent of the suspected infection of their stock. They did not provide any extra material to the department between 6 November 2014, when the last application was heard, and 28 November 2014, when it was decided. Presumably that is because none existed.

Having regard to the immediate duty to issue when satisfied infection is suspected, the law of procedural fairness did not require that the applicants be given further opportunity to be heard before issuing the challenge notice. In any case, the inspector had no discretion to allow time for a hearing once she formed the relevant suspicion. Notably, s 14(1C) of the Stock Act provides for a review process and release power exercisable by the third respondent as chief executive. As pointed out in *Pacific Century Production Pty Ltd v Watson*,[3] in most cases the protective purpose of quarantine procedures and the applicant's interest will "be reasonably well served by making an appropriate quarantine order promptly and then permitting [the aggrieved party] to demonstrate an alleged basis for revocation."

---

1 *Public Service Board v Osmond* (1986) 159 CLR 656.

2 *Minister for Immigration and Multi-Cultural Affairs v Eshetu* (1999) 197 CLR 611, 657 [145] per Gummow J.

3 (2001) 113 FCR 466 at 477.

Moreover, s 35B of the Stock Act gives the applicants a right to a merits review by the Queensland Civil and Administrative Tribunal ("QCAT"). I am informed that the applicants have actually applied to the third respondent for a release and will, in the course of that, have a full opportunity to put their show cause case. Accordingly, having regard to the protective purpose of the s 14(1) procedure and the mandatory duty imposed on inspectors satisfied that stock is or is suspected to be infected with a disease, procedural fairness, in this case, did not require a hearing with prior notice.

Apprehended bias

Decision-makers must neither be nor appear to be biased. A biased decision-maker is one who does not bring an open or impartial and unprejudiced mind to the decision.

The test applied in Australia to determine disqualification by pre-judgement or prejudice is an objective one, that is, "whether a fair-minded lay observer might reasonably apprehend that [the decision-maker] might not bring an impartial and unprejudiced mind to the resolution of the question [he or she] is required to decide".[4] Pre-judgment or prejudice must be firmly established before disqualification of a decision-maker is justified.

An expectation by a party that the decision-maker is likely to decide issues or facts adversely is an insufficient basis for inferring a reasonable apprehension of bias. The decision-maker's mind must be shown to be so prejudiced in favour of a conclusion already formed that he or she might no alter that conclusion irrespective of the evidence or arguments presented to him or her.[5]

There is a difference between impartiality and neutrality in the context of this case. Clearly the history between the parties created some predisposition in the second respondent to the applicant's stock prior to the date of issue. However, there is nothing to indicate that she was not able to suppress any preconceptions or preliminary opinions and thus decided to issue the notice solely on the merits of the case in accordance with the statutory power and duty. The relevant concept of impartiality does not demand that decision-makers close their eyes or have a completely blank mind. What they must have is the capacity to give fresh consideration in the light of all relevant facts.

There is no basis for believing that the fair-minded observer might reasonably apprehend that the second respondent might not have formed the state of mind for s 14(1) purposes perversely, prejudicially or partially. The apprehended bias ground is also rejected.

In these circumstances, the further amended application is dismissed with the applicants to pay the respondents' costs of and incidental to the application on the standard basis.

---

4 *Johnson v Johnson* (2000) 201 CLR 488 at 492 per Gleeson CJ, Gaudron, McHugh, Gummow and Hayne JJ.

5 *Laws v The Australian Broadcasting Tribunal* (1990) 170 CLR 70 at 100 per Gaudron and McHugh JJ.