Canberra Tradesmen's Union Club Inc and Another v Minister for the Environment, Land and Planning and Another
Licensed Clubs' Association ACT Inc v Minister for the Environment, Land and Planning and Another
Federal Court of Australia, Full Court, 7 July, 18 September 1998
(2000) 168 ALR 201

'Decision' of Administrative Appeals Tribunal — Whether findings or rulings reviewable — Whether final, operative or determinative decision — Whether 'decision' provisional in substance and form — Administrative Appeals Tribunal Act 1989 (ACT), s 46(1)

The ACT Administrative Appeals Tribunal (the Tribunal) substantially dismissed an appeal from a decision of the Minister for the Environment, Land and Planning (the Minister) approving a development application. The application proposed that the existing purpose clause of a Crown Lease be varied to add to the authorised purposes 'a licensed club not exceeding 1100 m^2 of gross floor area'. The Minister's delegate approved the amendment. However, the Tradesmen's Union Club and the Licensed Clubs' Association ('the clubs') each objected to the decision.

The clubs had applied to the Tribunal to have the Minister's decision set aside. At the hearing, Rebenta Pty Ltd (the lessee of the Crown land) was joined as a respondent. The Tribunal 'provisionally' supported the approval, subject to two conditions. The further matters which the Tribunal required should be addressed before it would regard the approval of the application as other than "provisional" were twofold:

1. That an existing permitted purpose, ie use for a passenger coach terminal, be deleted.

2. That "appropriate action" be taken to ensure that Block 1 Section 8 Braddon and Blocks 21-23 Section 13 Braddon remain in common ownership with the Hotel site.

The grounds for the application were that the proposal had not been subjected to a preliminary assessment under section 113 of the *Land (Planning and Environment) Act 1991* (ACT) ('LPE Act'), and that such an assessment was mandatory (under section 114 of the LPE Act). The Minister had taken the view that the assessment was not mandatory because an amendment of the purpose clause did not fall within the kind of decision that required a preliminary assessment.

The Tribunal held that a preliminary assessment was mandatory, but excused the non-compliance, under section 284 of the LPE Act. Further, it concluded that there was no useful purpose to be served by undertaking a preliminary assessment.

On appeal to the Supreme Court, the relevant question was whether the appeal related to a 'decision' within the meaning of the *Administrative Appeals Tribunal Act 1989* (ACT) ('the AAT Act')?

The Minister and Rebenta Pty Ltd argued that the decision was provisional, and there was 'no final decision made which could properly have been made the subject of an appeal under s 46 of the AAT Act.' Crispin J upheld this submission.

On appeal to the Federal Court, the clubs argued that the tribunal had made a final decision, and that the only thing remaining to be settled was the form of the orders.

The Minister and Rebenta Pty Ltd continued to argue that the appeal was incompetent because the tribunal had made a decision that was provisional in form and substance.

Higgins J noted that that:

> … preliminary rulings or findings, even if they render the content of the consequent decision inevitable are not themselves 'decisions' within the meaning of provisions such as that to be found in s 46(1) of the AAT Act.

His Honour remarked that 'It has consistently been held that the term 'decision' in that context refers to a 'final decision': *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR 321; 94 ALR 11.

In reaching his decision (with which Heerey and Mansfield JJ agreed), Higgins J:

- compared LPE Act provisions that established 'final or operative' decisions with those provisions that established decisions that were simply 'steps along the way'. The judge held that the decision to conduct a preliminary assessment was a step along the way to the final decision of approving (or not approving) a development application; and

- referred to the conditional nature of the Tribunal's approval. The judge noted that it was not within the Tribunal's power to ensure or effect compliance with the conditions.

Accordingly, the Tribunal had not yet completed its task, and the Federal Court should not pre-empt the decision to be made by it. The appeal was incompetent and was dismissed. The matter was remitted to the Administrative Appeals Tribunal for final determination.

Hui Zhong Xu v Minister for Immigration and Multicultural Affairs Federal Court of Australia, Full Court, 11 November, 17 December 1999 [1999] FCA 1741

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