

Chapter 4

Satisfaction as a Jurisdictional Fact – A Consideration of the Implications of SZMDS

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Introduction

A series of cases over the past 20 years has brought together two well-known administrative law topics: the construction of state of satisfaction provisions and the jurisdictional fact doctrine.¹ The relationship was confirmed by the High Court's decision in *Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 611.

The new orthodoxy would seem to be that, when determining the legal validity of the exercise of a legislative power or function that is conditioned on a person being satisfied or not satisfied of a particular matter, the court should treat the person's state of satisfaction as a "jurisdictional fact", being a fact the existence of which is to be determined *de novo* by the court. It is therefore for the court to decide whether, as a matter of fact, the person was satisfied of the matter.

This essay considers the implications of treating states of satisfaction as jurisdictional facts. It concludes that while there would not seem to be anything objectionable about the new approach, it does not assist in resolving some of the thornier issues relating to the construction of state of satisfaction provisions. In particular, it does not assist in resolving the difficult question of whether an administrative decision will be legally invalid where it is conditioned on a state of satisfaction that is not itself unreasonable (in the sense that the state of satisfaction, on the primary facts, could have been reached by a logical reasoning process) but which was reached by an illogical reasoning process. The last point is developed by reference to the classical definition of knowledge in analytic philosophy as a belief that is both true and justified.

State of satisfaction provisions

A state of satisfaction provision may be understood as a legislative power or duty that is conditioned (either negatively or positively) on a person (not necessarily the decision-maker) being satisfied or not satisfied of a specified matter or matters.

¹ Both of the topics covered by this essay were the subject of a detailed paper delivered to the Bar Association on 19 November 2008 by Dr Christos Mantziaris titled "Challenging Decisions Based on Opinion, Satisfaction, or Belief (or Sumo wrestling with jurisdictional fact)".

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