

Reasons, Reasoning and Jurisdictional Error

*Stephen McLeish SC**

When may a decision-maker's failure to provide adequate reasons for a decision lead to the conclusion that the decision itself is infected by jurisdictional error? Is the answer different if the conclusion is, instead, that the inadequacy of the reasons constituted an error of law on the face of the record?

We can distinguish two situations. In the first, there is no obligation to provide reasons. It is well known from the judgment of Dixon J in *Avon Downs Pty Ltd v Federal Commissioner of Taxation*,¹ sitting alone on an appeal from the Commissioner of Taxation's disallowance of an objection, that an absence of reasons does not prevent review of the decision. The conclusion itself may only be capable of explanation on the ground of legal error. As Dixon J said:

If the result appears to be unreasonable on the supposition that he addressed himself to the right question, correctly applied the rules of law and took into account all the relevant considerations and no irrelevant considerations, then it may be a proper inference that it is a false supposition. It is not necessary that you should be sure of the precise particular in which he has gone wrong. It is enough that you can see that in some way he must have failed in the discharge of his exact function according to law.²

Hayne, Kiefel and Bell JJ observed in *Minister for Immigration and Citizenship v Li*³ that *Avon Downs* was decided less than two years after *Associated Provincial Picture Houses Ltd v Wednesbury Corporation*.⁴ It is noteworthy that Dixon J used 'unreasonable' as the word to describe

* Now the Hon Justice McLeish of the Victorian Court of Appeal. Thanks are due to Juan Muñoz and Olaf Ciolek for the very great assistance they provided in the preparation of this essay.

1 (1949) 78 CLR 353.

2 (1949) 78 CLR 353 at 360.

3 (2013) 249 CLR 332 at 364 [68].

4 [1948] 1 KB 223.

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