

FAI Insurances Ltd v Winneke (1982) 151 CLR 342

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Facts

- FAI Insurance Ltd had a licence to provide workers' compensation insurance, and had done for at least twenty years.
- The licence was issued by the Governor in Council under the *Worker's Compensation Regulations 1975* (Vic).
- In 1981, the Minister wrote to FAI stating it was their intention to deny the renewal of their licence and that they would put this to the Governor in Council.
- FAI wrote back, requesting an opportunity to provide a response to the concerns of the Minister, before the decision was made.
- The letter was forwarded to the Governor in Council but they sought no further information before denying the renewal of the approval.
- FAI Insurance appealed, stating this was a breach of natural justice.

Issues

1. Could the Courts review a decision of the Governor in Council, or was it *ultra vires*?
2. Was the decision not to renew the approval one that gave rise to the need for natural justice?

Held

- In regards to question (1), the Solicitor General argued that the Court could not review the decision as it was essentially an extension of the Minister's power and ministerial decisions are generally not reviewable. However, Mason J stated that neither a minister or a governor may exceed the scope of their statutory authority, and thus there was no reason the decision couldn't be reviewed.
- Mason J also held that although the statute did refer to 'discretion', it was not a completely unfettered discretion as the regulations laid out certain criteria and therefore "the discretion is not absolute".
- Finally, Mason J addressed whether the renewal of the approval was reviewable. He held that it was because it closely resembled the renewal of a licence and there was a legitimate expectation that the licence would be reviewed. FAI's financial interests were clearly affected by the decision not to renew approval.
- Therefore, the decision to withhold the approval was declared void.

Significance

- The decisions of Governor in Council's are reviewable under some circumstances

- A legitimate expectation that a licence/approval would be renewed usually gives rise to the right to natural justice.

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