

Kioa and Others v Minister for Immigration and Ethnic Affairs and Anor (1985) 159 CLR 550

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Facts

- Mr and Mrs Kioa, who were born in Tonga, entered Australia on temporary entry permits in 1981.
- The Kioas changed their addresses when the visas expired.
- Mr Kioa was arrested as a prohibited immigrant in 1983.
- During this period, the Kioas had a daughter - she was an Australian citizen by virtue of birth.
- In October 1983, a delegate of the Minister for Immigration and Ethnic Affairs made a decision that the Kioas should be deported.
- When arriving at this decision, consideration was given to a submission which suggested that Mr Kioa was actively involved with people who were trying to circumvent Australia's immigration laws.
- The Kioas appealed this decision - they submitted that procedural fairness had not been afforded to them as the department's decision had not been disclosed to them and they had no opportunity to respond.
- The Kioas also argued that no consideration had been given to the effect of the decision on their daughter, an Australian citizen, and the international child protection law.

Issue

- Were the Kioas denied procedural fairness and, if so, to what extent was the Government required to go to in order to satisfy this requirement?

Held

- The High Court effectively held that there was a common law right to procedural fairness to those affected by Government decisions.
- This included a right to respond.
- The failure to disclose the adverse allegations against Mr Kioa and allow him the opportunity to respond to these allegations amounted to a failure to afford the Kioas procedural fairness.
- Gibbs CJ, Wilson & Brennan JJ held that there was no legal obligation to consider the specific provisions of the international child protection laws, but there was an obligation to consider general humanitarian principles.

Quote

"The law has now developed to a point where it may be accepted that there is a common law duty to act

fairly, in the sense of according procedural fairness, in the making of administrative decisions which affect rights, interests and legitimate expectations, subject only to the clear manifestation of a contrary statutory intention. It seems that as early as 1911 Lord Loreburn L.C. understood that this was the law when he spoke of the obligation to "fairly listen to both sides" being "a duty lying upon every one who decides anything" (*Board of Education v. Rice* (1911) AC 179, at p 182)."

(Mason J at 584)

"When the doctrine of natural justice or the duty to act fairly in its application to administrative decision-making is so understood, the need for a strong manifestation of contrary statutory intention in order for it to be excluded becomes apparent. The critical question in most cases is not whether the principles of natural justice apply. It is: what does the duty to act fairly require in the circumstances of the particular case?"

(Mason J at 585)

Full Text

The full text is available here:

[http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/1985/81.html?stem=0&synonyms=0&query=title\(Kioa%20and%20West%20\)](http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/HCA/1985/81.html?stem=0&synonyms=0&query=title(Kioa%20and%20West%20))

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