

BETWEEN:

FRIENDS OF THE NORTH WEST INC

Applicant

and

MINISTER FOR THE ENVIRONMENT, HERITAGE AND WATER

Respondent

RESPONDENT'S OUTLINE OF SUBMISSIONS
(Junior Counsel)

Statement of facts

1. On 30 July 2013, the Minister approved the proposal (**Decision**). The Minister's reasons for the Decision (**Reasons**) stated that:
 - 1.1 in deciding to approve the taking of the action, the Minister had given strong consideration to a recent Commonwealth government policy announcement that it would 'streamline' environmental approval of offshore gas projects and 'cut environmental green tape' in order to ensure that the Australia off-shore gas industry remained competitive and attractive to international investment;
 - 1.2 he had not delayed the decision in response to FNW's letter, as he considered that adequate time had been given for public comment in compliance with the provisions of the EPBC Act.

Submission 1: The Minister did not make the Decision according to a rule or policy without regard to the merits of the particular case.

1. A lawful policy is normally a relevant consideration which a decision-maker is bound to take into account.
[?, passim]
2. In *Drake*, the Court said:

[420] The propriety of paying regard to general policy considerations is most evident in a case such as the present where there are no specified statutory criteria for the exercise of the discretionary power and where the power is entrusted to a Minister of the Crown responsible to Parliament.

The power is exercised by a Minister responsible to Parliament.

3. NEAT Domestic Trading:

[17] These considerations do not preclude the person on whom the power is conferred from developing and applying a policy as to the approach which he will adopt in the generality of cases ... But the position is different if the policy adopted is such as to preclude the person on whom the power is conferred from departing from the policy or from taking into account circumstances which are relevant to the particular case in relation to which the discretion is being exercised. If such an inflexible and invariable policy is adopted, both the policy and the decisions taken pursuant to it will be unlawful.

4. Section 136(1)(b) provides that the Minister “must consider ...economic and social matters,” so far as they are “are not inconsistent with any other requirement of this Subdivision.”
5. The Minister had appropriate regard to the merit of the case before making the Decision.

Submission 2: The Minister’s refusal to delay the decision was reasonable in the circumstances.

6. Wednesbury unreasonableness.