

Materiality

Impact on Administrative Law

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OVERVIEW

01

HISTORY OF HIGH
COURT
JUDGMENTS

Outline of facts, and
key findings of the 5
High Court judgments

02

IMPACT OF
MATERIALITY

Summary of impact of
materiality on
jurisdictional error

03

APPLICATION
MORE WIDELY

To other admin law
cases, in NSW
Supreme Court and
Federal Court

04

NOT NECESSARY
FOR EVERY
ERROR

Materiality applied to
unreasonableness
(credit cases); and bias

Hossain v MIBP

(2018) 264 CLR 123

The plurality (Kiefel CJ, Gageler and Keane JJ) noted (at [30]):

“...The threshold would not ordinarily be met, for example, where a failure to afford procedural fairness did not deprive the person who was denied an opportunity to be heard of ‘the possibility of a successful outcome’,...”

MIBP v SZMTA (2019) 264 CLR 421

The majority judgment (Bell, Gageler and Keane JJ) observed at [45]:

“... A breach is material to a decision only if compliance could realistically have resulted in a different decision.”

MZAPC v MIBP

(2021) 273 CLR 506

The majority, Kiefel CJ, Gageler, Keane and Gleeson JJ, found the following at [38]-[39] (emphasis added footnotes omitted):

“... whether the decision that was in fact made could have been different had the condition been complied with falls to be determined as a matter of reasonable conjecture within the parameters set by the historical facts that have been determined on the balance of probabilities.”

“... proving on the balance of probabilities all the historical facts necessary to sustain the requisite reasonable conjecture. ...”

Nathanson v MHA (2022) 275 CLR 80

The plurality, Kiefel CJ, Keane and Gleeson JJ jointly, and Gaegler J separately, at [32]-[33] & [38]:

- *“as a matter of reasonable conjecture within the parameters set by the historical facts that have been determined”* there could have been a different outcome.
- The standard of reasonable conjecture was *“undemanding”*.
- It is necessary to consider how the Tribunal’s decision was in fact made.

Nathanson v MHA

(cont'd)

In the context of procedural fairness, *“reasonable conjecture does not require demonstration of how that party might have taken advantage of that lost opportunity.”*

There was no need for the appellant to establish the nature of any additional evidence or submissions that might have been presented at the Tribunal hearing, had the hearing been procedurally fair; rather the question is one of *“reasonable conjecture”*.

LPDT v MICMSMA

(2024) 98 ALJR 610

Gageler CJ, Gordon, Edelman, Steward and Gleeson JJ found at [14]-[16] (footnotes omitted, emphasis added):

The question is whether the decision that was in fact made *could*, not would, ‘realistically’ have been different had there been no error.

‘Realistic’ is used to distinguish from one where the possibility is fanciful or improbable.

LPDT v MICMSMA

(cont'd)

“... Importantly, a court called upon to determine whether the threshold has been met must be careful not to assume the function of the decision-maker: the point at which the line between judicial review and merits review is crossed may not always be clear, but the line must be maintained. ...”

“... Unless there is identified a basis on which it can be affirmatively concluded that the outcome would inevitably have been the same had the error not been made, ...”

IMPACT OF MATERIALITY ON JURISDICTIONAL ERROR

- In a denial of procedural fairness, conjecture as to whether there was a realistic possibility that the decision-making process could have resulted in a different outcome will usually recognise that possibility.
- Also, where the decision-making involved an evaluative process, then *LPDT* shows that in such instances the error is capable of effecting the decision-making process.
- The circumstances in which one can satisfy a Court that the applicant was deprived of a realistic possibility of a different outcome are generally available. It is most likely in circumstances of **inevitability** where it will not be available

Application of Materiality beyond Migration Cases

- *Star Training Academy Pty Ltd v Commissioner of Police (NSW)* [2023] NSWSC 153.
 - Denial of procedural fairness in a credit finding.
- *Pegasus Supply Solutions Pty Ltd v Collector of Customs* [2024] FCA 45.
 - Materiality applied to a refusal of an inspection of goods under the Customs Act

Materiality not for every jurisdictional error

- Actual or apprehended bias
- Legal unreasonableness
 - final outcome, no
 - process of reasoning, yes

CONCLUSION

Materiality

Qu: could realistically have been different?

LPDT

Unless outcome would inevitably have been the same



IMPACT

Procedural fairness, and credit findings.

JURISDICTIONAL ERROR

Legal Unreasonableness; Actual and apprehended bias