Supreme Court of New Zealand

20 December 2013

**MEDIA RELEASE – FOR IMMEDIATE PUBLICATION**

**THE NEW ZEALAND PORK INDUSTRY BOARD v THE DIRECTOR-GENERAL OF THE MINSITRY FOR PRIMARY INDUSTRIES**
**(SC 36/2013)**
**[2013] NZSC 154**

**PRESS SUMMARY**

**This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.**

The appellant, the New Zealand Pork Industry Board, brought judicial review proceedings challenging the decision of the Director-General of the Ministry of Primary Industries' (formerly the Ministry of Agriculture and Forestry) to issue import health standards for pork, which permitted the importation of raw pork from certain countries in consumer-ready cuts. The appellant alleged that the Director-General had acted unlawfully and challenged the consultation process under the former ss 22 and 22A of the Biosecurity Act 1993. The appellant was unsuccessful in the High Court and on appeal to the Court of Appeal, although that Court was divided.

The import health standards were issued in response to the presence in certain countries, including Canada and the United States, of a viral disease affecting pigs called the Porcine Reproductive and Respiratory Syndrome (PRRS). Although

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PRRS can have a significant effect on pig herds, it is not harmful to humans: it is destroyed by cooking or curing, so that infected meat can safely be eaten. Because of the effect of PRRS on pigs, there were concerns that New Zealand pigs could become infected through eating raw meat scraps from infected pig carcasses imported from PRRS-infected countries. After consulting with the appellant and others, the Director-General issued provisional import health standards as a precautionary measure in August 2001. These provisional import health standards prohibited the importation of raw pork from PRRS-infected countries, requiring any pork meat imported from those countries to be cooked or treated. Following the introduction of the provisional import health standards, the Ministry began to develop an import risk analysis, as required by New Zealand's international obligations. The purpose of the risk analysis was to estimate the likelihood of PRRS being introduced to pigs in New Zealand if the importation of raw pork from PRRS-infected countries were to be permitted.

A lengthy period of investigation and consultation followed before the final import health standards were issued in April 2011. This included a review by an independent review panel. The appellant formally requested that the Director-General set up this review panel under s 22A of the Act in May 2009. The review panel's task was to consider whether the Ministry had had sufficient regard to the scientific concerns that the appellant had raised in the earlier consultations. The terms of reference for the review panel identified nine particular issues for consideration. In March 2010, the review panel released its report. The review panel concluded that the Ministry had fully considered the available science in most but not all areas and recommended that further work be undertaken to take into account current science and relevant data. After consulting with stakeholders, including the appellant, on how to proceed in light of the review panel's report in April 2010, the Director-General decided in September 2010 that the Ministry should carry out further work on the management of biosecurity risks in relation to the import health standards. This resulted in the establishment of an expert working group, to which the appellant and others nominated representatives. The expert working group reported to the Director-General in November 2010.

In April 2011, the Director-General, having taken into account the work undertaken by the review panel and the expert working group, issued the final import health standards. These allowed the importation into New Zealand from PRRS-infected countries of pre-packaged consumer-ready cuts of raw pork of three kilograms or less with specified tissues removed.

The appellant challenged the Director-General's decision to issue the import health standards on two grounds in the Supreme Court. The first ground was that the Director-General had responded unlawfully to the report of the review panel. The second ground was that the statutory consultation requirements were not met: in particular, the Ministry was obliged to consult further on the risk analysis ultimately relied on by the Director-General.

On the first ground of appeal, the Supreme Court has held that the Director-General complied with the requirements of s 22A. McGrath, William Young, Glazebrook and Arnold JJ have held that it was appropriate for the Director-General, as his initial response under s 22A to the review panel's report in September 2010, to accept its recommendation that further modelling work be undertaken to assess the biosecurity risks of importing raw pork from PRRS-infected countries. After this further modelling work was completed, the Director-General made his decision to issue the final import health standards in April 2011 based on a decision-paper prepared by the Ministry. This decision paper identified the nine issues considered by the review panel, noted the review panel's recommendations on them, recorded the Ministry's decision and provided a decision on the point together with a "rationale" explaining the basis of the decision. The Director-General dealt with the scientific concerns raised by the appellant in a reasoned and transparent way, and appropriately dealt with all of the nine issues in the review panel's terms of reference. They also rejected the argument that there was unreasonable delay in the Director-General's response to the review panel's report. The Chief Justice considered that the September response adequately discharged the Director-General's obligations under s 22A(3).

On the second ground of appeal, the Supreme Court has held by majority (comprising McGrath, William Young, Glazebrook and Arnold JJ) that the statutory

consultation requirements under s 22(6) and (7) of the Act were met in relation to the further work carried out after the review panel's report and the development of the risk assessment model ultimately relied on by the Director-General. Whether an obligation to consult again is triggered will depend on the nature, extent and impact of the further work, the focus being on whether the work had led to a substantial change in the scientific basis for the proposed import health standards. In the present case, the Ministry did undertake further consultation following the review panel's report. Most importantly, the Ministry established the expert working group (which included stakeholder nominees), to consider the Ministry's revised risk assessment model, which emerged from its work following the review panel's recommendations. The appellant had the opportunity to, and did, rework the Ministry's revised risk assessment model in the context of the expert working group process. The changes made to the risk assessment following that did not constitute a new or fresh import risk assessment.

The Chief Justice, dissenting, considered that the requirements of s 22 were not met because the chief technical officer had failed to consult before recommending the issue of the import health standards, as required by s 22(6) and (7) of the Act. She would have held that the import health standards made in April 2011 are invalid.

In accordance with the views of the majority, the appeal is dismissed.

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