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statutory words will not be read as authorising a much more drastic power (e.g., prohibition) absent clear language.

6. Unauthorised Decisions II: Required State of Mind

Many statutes make the exercise of power conditional on the decision-maker attaining a particular state of mind first – e.g., "reasonably believes", "forms the opinion that", "is reasonably satisfied". Until that state of mind is genuinely and properly attained, exercise of the power is unauthorised. (Note: such state-of-mind provisions can also be characterised as "jurisdictional facts" – see section 7.)

6.1 Reasonable Suspicion Must Be Objectively Justified

Goldie v Commonwealth (2002) 117 FCR 566

Facts: An immigration officer detained Goldie under s 189 Migration Act 1958, purportedly because the officer "reasonably suspected" Goldie was an unlawful non-citizen. The officer relied on an incorrect, outdated computer record and ignored contrary file information available to them.

Held: Gray and Lee JJ held the officer's suspicion was not reasonably held – the officer failed to make sufficient inquiries to justify the suspicion, so the arrest and detention were unauthorised and unlawful (false imprisonment).

Principle / Rule: "Reasonably suspects" requires a suspicion that is justifiable upon objective examination of relevant material – including material discoverable via reasonable search/inquiry, especially given deprivation of liberty is at stake (also connects to Art 9 ICCPR 1966 – freedom from arbitrary arrest). Reasonable suspicion sits on a spectrum between certainty and irrationality, but not too close to irrationality. Where an officer is aware of conflicting facts, it is not reasonable to simply disregard them; the officer must detain a person they reasonably suspect IS (not merely MAY BE) an unlawful non-citizen.

6.2 Aboriginal Australians and the "Aliens" Power

Love v Commonwealth; Thoms v Commonwealth (2020) 270 CLR 152

Held: By majority, the High Court held Aboriginal Australians (satisfying the tripartite test of Aboriginality from *Mabo v Queensland [No 2]* (1992) – biological descent, self-identification, and recognition by an Aboriginal community) are not within reach of the "aliens" power (s 51(xix) Constitution) and therefore are not subject to the Migration Act 1958's deportation/detention powers, even if born overseas and not Australian citizens.

Principle / Rule: Given Aboriginal peoples' 40,000+ year connection to Australian land and waters, they cannot meet the ordinary meaning of "alien" ("not belonging") – described as "non-alien non-citizens". Consequence: immigration officials must be vigilant where there is information suggesting a person may be of Aboriginal descent/community membership before forming a reasonable suspicion of unlawful non-citizen status.

Montgomery v Minister for Immigration [2021] FCA 1423

Facts: Montgomery was born in New Zealand and was not an Australian citizen, but had been adopted by, and was accepted as a member of, the Mununjali People.

Held: SC Derrington J: since the Minister accepted Montgomery both identifies as Aboriginal and is accepted by a traditional Aboriginal group as a member, the officer's suspicion that Montgomery was not Aboriginal (and hence an alien) was not reasonable. The Minister failed to discharge the onus of proving the officer held a reasonable suspicion. Montgomery was entitled to a writ of habeas corpus and immediate release from detention.

Principle / Rule: Applies Love: onus is on the Minister to show the detaining officer's suspicion of alienage was reasonably formed, factoring in known evidence of Aboriginal identification/community acceptance.