

interpretation NOW!

Episode 50 – 31 July 2019



Australian Government

Australian Taxation Office



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Suna Rizalar iNOW! website creator (now at Treasury)



Objects clauses

[GHJ v Dept of Justice \(No 2\) \[2019\] VSC 411](#)

Where a statute contains what was called a 'defined decision making structure', this should be followed even if the primary value expressed in a general objects clause may favour a different outcome.

In this child-worker vetting case, the power to give a negative notice was limited to 3 defined situations¹. Ginnane J said (at [39]) this categorical structure must be followed, even where it was against the primary object of protecting children from harm. Giving a negative notice outside the 3 situations was beyond power. **iTip** – although an objects clause is available as an aid to construction, it cannot be used to subvert clear statutory language or structure.



Penal Provisions

[R v Cumberland \[2019\] NTCCA 13](#)

What non-parole period applies where a sentence includes offences for which minimum non-parole periods of both 70% or 50% are specified?² Courts normally favour leniency in penal situations, but this is now a rule of last 'last resort'³. Accordingly, the court applied the ordinary rules of interpretation.

This led to a proportional approach being taken under which some offences attracted 50% and others 70%. A less lenient approach may have led to injustice, and could always have been specified by parliament. **iTip** – penal provisions, including sentencing laws, are construed in the same way as other statutory provisions⁴, as the court did here.



Statutory purpose

[TRG v Brisbane Grammar School \[2019\] QSC 157](#)

TRG sought, under limitation provisions⁵, an order setting aside a settlement agreement so that fresh proceedings could be taken against the school. Davis J refused to do so and (at [148]) commented on the proper way to identify statutory purpose.

The search is never for any subjectively held purpose of any legislator⁶. It is a wholly objective exercise. Given the provisions in question contained no express objects, Davis J (at [156]) relied on the text of the particular provisions and the wider context to derive the purpose. He also cautioned against blind acceptance of objects expressed at too high a level or in terms too abstract to be of practical use⁷.



Context & adding words

[CCA19 v Dept of Home Affairs \[2019\] FCA 946](#)

Project Blue Sky accepts that context may require statutory words to bear an ungrammatical meaning⁸. Our 'modern approach' also includes the limited ability to add or subtract words from legislation in correction of minor drafting errors⁹. This case sets out how these 2 themes interact.

Bromberg J (at [148]) observed that adopting an ungrammatical meaning may involve adding words by way of 'explanation, not speculation or repair' consistent with the 3-step test in *Taylor*¹⁰. This is how a court avoids crossing into the forbidden land of judicial legislation. *CCA19* importantly shows how 'adding words' fits in with wider principles¹¹.

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¹ *Working with Children Act 2005* (VIC).

² ss 55 & 130 of the *Sentencing Act* (NT).

³ *Beckwith* (1976) 135 CLR 569 (at 576), Episodes 25 & 35.

⁴ *Aubrey* [2017] HCA 18 (at [39]), Pearce & Geddes (at [9.8]).

⁵ s 48(5A) of the *Limitation of Actions Act 1974* (Q).

⁶ *Unions NSW* [2019] HCA 1 (at [169]), Episodes 44 & 45.

⁷ *Carr* [2007] HCA 47 (at [5-7]), Episodes 6, 33, 38, 41 & 43.

⁸ *Project Blue Sky* [1998] HCA 28 (at [70]), Episodes 1 & 43.

⁹ *Taylor* [2014] HCA 9 (at [35-40]), Episodes 5, 33 & 41.

¹⁰ cf *HFM043* [2018] HCA 37 (at [24]), *Australian* [2019] VSCA 69 (at [46]).

¹¹ cf *Lumb & Christensen* (2014) 88 ALJ 661, Episode 33.