

interpretation NOW!

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Australian Government

Australian Taxation Office



A recent migration case rejects the idea that translation mistakes in visa interview situations give rise to jurisdictional error¹. Putting this context to one side, two comments in the case illustrate key things about ‘interpretation’ more generally. First, from Edelman J (at [51]) – **The art of interpreting is the art of explaining meaning**. Statutory interpretation involves saying what parliament objectively meant by the words it used. It is an ‘art’ in the sense of being neither mechanistic nor scientific. But interpretation is a disciplined ‘art’ – it is subject to process and principle. Second, from the plurality (at [6]) – **Perfect interpretations simply do not exist**². One way this plays out is that, at the difficult end of things, there are rarely 100% right or 100% wrong answers. Interpretation typically involves weighing relative merits, rather than the discovery or assertion of absolutes.

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Importance of certainty

[Minister v Parata \[2021\] FCAFC 46](#)

Notification of the decision to cancel Parata’s visa failed to say the decision was reviewable. The AAT held his later review application invalid. He appealed, arguing the time for lodging the application³ had not yet commenced because the notification was invalid.

The court agreed, saying (at [80-81]) that calculation of the time should be ‘based on objective facts that are immediately ascertainable at critical times’. A construction which advances legal certainty should be favoured, especially given the consequences if time expires⁴. Certainty supports a purposive outcome ensuring the legislative target is hit and not missed⁵. Certainty is otherwise an aspect of the rule of law⁶.



Meaning of ‘used’

[University of Melbourne v CSR \[2021\] VSC 156](#)

This case shows the importance of context and purpose⁷. The university leased land to a ‘student village’ operator for 38 years at nominal rent. It said the land, ‘used by a charitable institution exclusively for charitable purposes’, was exempt from land tax⁸.

The exemption depended on use rather than occupation, but still required use by the university itself. Context and legislative history pointed to a wider meaning of ‘use’ than an active physical use. An occupier necessarily uses the land, the judge said (at [96]), ‘but a user of land need not occupy the land’⁹. It was enough that the operator applied the land for a charitable purpose of the university.



Moral duty

[Re Christu \[2021\] VSC 162](#)

The law usually steers away from moral judgments, but not always. Did the testator here have a ‘moral duty’ to provide for the ‘proper maintenance and support’ of his adult son¹⁰? The father had left everything to his 2 daughters, nothing to the son.

McMillan J (at [10]) said existence of a moral duty requires the court to place itself in the position of a wise and just testator measuring their obligation to provide proper maintenance and support to the applicant against ‘current community standards’¹¹. Moral duty concerns an expectation the testator should materially support another given the relationship, circumstances and competing claims¹².



Prison decisions

[McKane v Commissioner \[2021\] NSWSC 324](#)

A serious sex offender at Junee sought review of an official refusal to downgrade his prison security classification. Courts traditionally exercise restraint in reviewing managerial decisions in prison contexts.

Walton J (at [49-55]) first noted cases saying that administrative decisions by prison authorities are not reviewable¹³. Prison legislation ‘should ordinarily be interpreted to give full scope to the power of correctional authorities to carry out tasks of prison administration and management without undue influence of courts’¹⁴. Disciplinary provisions, it was noted, should also not be construed ‘as if they were intended to confer fixed legal rights on prisoners’¹⁵.

■ Credits – Gordon Brysland, Oliver Hood, Jeffrey Barnes & Chris Sievers.

¹ [DVO16 v Minister for Immigration and Border Protection](#) [2021] HCA 12.

² punctuation omitted from original, [Perera](#) (1999) 92 FCR 6 (at 18) quoted.

³ s 347(1)(b) of the [Migration Act 1958](#), reg 4.10 [Migration Regulations 1994](#).

⁴ [Brown](#) [2020] FCAFC 21 (at [60]), [VQAR](#) [2003] FCA 900 (at [10]) cited.

⁵ cf [Taylor](#) [2014] HCA 9 (at [60]), [Douglas](#) [2020] FCAFC 220 (at [90-91]).

⁶ cf Maxwell in Barnes (ed) *Coherence of Statutory Interpretation* (at 114-115).

⁷ [Thiess](#) [2014] HCA 12 (at [22]), s 35(a) [Interpretation of Legislation Act 1984](#).

⁸ s 74(1)(a) of the [Land Tax Act 2005](#) (Vic).

⁹ cf [Ryde Municipal Council v Macquarie University](#) (1978) 139 CLR 633 (at 638).

¹⁰ s 91(2)(c) of the [Administration and Probate Act 1958](#) (Vic).

¹¹ Bosch [1938] AC 463 (at 478-479), [Brandon](#) [2014] VSC 103 (at [16]) cited.

¹² [Kronemann](#) [2020] VSCA 275 (at [42]), cf [Collicot](#) [1999] 3 VR 803 (at [43]).

¹³ [Clark](#) [2016] NSWCA 186 (at [77]), [Kelleher](#) [1999] NSWSC 86 (at [11]).

¹⁴ cf [Hamzy](#) [2020] NSWSC 414 (at [73-77]), [Bernard-Ross](#) [2018] NSWSC 182.

¹⁵ [Clark](#) (at [85]), cf [Kheir](#) [2019] VSC 76 (at [21]), Episodes [37](#), [46](#) & [61](#).