

interpretation NOW!

Episode 97 – 30 June 2023



Australian Government

Australian Taxation Office



‘Get the picture?’ Someone asking this is not probing if you have picked up that new artwork from the framers. They are asking if you understand the whole situation around whatever is being discussed. If you have not understood the context of that situation and the purpose of those discussions, you will not ‘get the picture’ – outcomes may suffer. It’s the same with interpretation. We resolve meaning by considering context in the ‘widest sense’, against the language as a whole², and by reference to legislative purpose. We look at the whole canvas parliament has painted and resist obsession with corner detail (literalism). The point at which the prosaic becomes graphic in the human mind is a metaphor for deeper understanding³ – ‘a picture paints a thousand words’ etc. We achieve that understanding of statutory text via context and purpose – ‘get the picture’?

Gordon Brysland Tax Counsel Network



Coherence and fairness

[Commissioner of Police v TM \[2023\] NSWCA 75](#)

A minor had child abuse material on 3 devices. He was convicted for each⁴ and his name entered on the *Child Protection Register*⁵. He argued that a minor who commits a ‘single offence’ (extended to cover ‘more than one offence of the same kind arising from the same incident’) is exempted from being named⁶.

But, was this subject to the further requirement that offences arising from the ‘same incident’ must be committed ‘within a single period of 24 hours’ and against the ‘same person’?⁷ Yes, it was held, even if this may ‘produce some incongruous and even unfair results’, it was not incoherent. ‘It is not the role of the court to arbitrate on the fairness of legislation’⁸.



Approved forms

[DWD Project v NTEPA \[2023\] NTCA 3](#)

DWD dumped polluted fill on Crown land. It said (A) that pollution notices were invalid as they omitted the words ‘on reasonable grounds’ after ‘I believe’¹¹, and (B) that the notices therefore could not sustain convictions for non-compliance – both rejected.

Substantial rather than strict compliance with forms is permitted at common law and under statute¹². Invalidity depends on circumstances, degree of deviation, and whether the recipient would be misled. Deviation from the form here was ‘purely procedural’, did not alter the substance of the notice, and was not deliberate¹³. **iTip** – this case sets out all the learning needed on approved forms.

▪ **Thanks** – Oliver Hood, Matt Snibson, Janhavi Bhandari & Philip Borrell.

¹ [ENT9](#) [2023] HCA 18 (at [86]), [Thornton](#) [2023] HCA 17 (at [54]).

² [Cooper Brookes](#) (1981) 147 CLR 297 (at 320), [Cumneen](#) [2015] HCA 14 (at [31]).

³ cf Bence ‘Mental Imagery’ (at [3.3]) in [Stanford Encyclopedia of Philosophy](#).

⁴ s 91H of the [Crimes Act 1900](#) (NSW).

⁵ s 19 of the [Child Protection \(Offenders Registration\) Act 2000](#) (NSW).

⁶ s 3A(2)(c)(ii) [Child Protection \(Offenders Registration\) Act 2000](#) (NSW).

⁷ s 3(3) of the [Child Protection \(Offenders Registration\) Act 2000](#) (NSW).



Ejusdem generis

[Reid v City of Gosnells \[2023\] WASC 48](#)

The council and a resident disputed the meaning of ‘or other purposes’ in a planning scheme covering a new council facility⁹. The facility was to be used for activities including waste management. The resident said this was unlawful under the *ejusdem generis* rule applied to read down general words within a list¹⁰.

Archer J (at [41-45]) disagreed, saying this ‘artificial rule’ cannot be the starting point of the exercise. Whether general words are to be read down is determined by the context, purpose and scope of the statute. It is not to be approached in an abstract or mechanical way. **iTip** – only apply this old rule when it is supported by the wider context and purpose.



Repeal and re-enactment

[Rusiecki v Western Australia \[2023\] WASCA 81](#)

A drug conviction was appealed on the basis methylamphetamine was not a ‘prohibited drug’ at the relevant time. Regulations referred to the list of drugs in Schedule 1 of the [Poisons Standard](#)¹⁴. Shortly before the offence took place, however, Schedule 1 was repealed and the list relocated to Schedule 2.

The court held that the regulations had adopted the *Poisons Standard* as a ‘code’. It was inconsistent with the legislative scheme not to adopt the clearly identified listing provision of the *Poisons Standard* merely because it was not in Schedule 1. The court rejected a literal and mechanistic outcome in favour of one conforming to the legislative purpose¹⁵.

⁸ (at [103]), [Cooper Brookes](#) (1981) 147 CLR 297 (at 304-305) Gibbs CJ quoted.

⁹ The definition referred to ‘administrative, recreational or other purposes’.

¹⁰ ‘of the same kind’, Episodes [25](#), [56](#) & [89](#), [Kelly](#) [2022] FCAFC 130 (at [83]).

¹¹ The approved form had said – ‘I believe on reasonable grounds ...’

¹² Episodes [17](#) & [55](#), s 68 of the [Interpretation Act 1978](#) (NT) in this case.

¹³ cf [Haynes](#) [1916] NZLR 407, [Swann](#) [1999] WASCA 106 (at [16-17]).

¹⁴ reg 3(1) of the [Medicines and Poisons Regulations 2016](#) (WA).

¹⁵ [CIC Insurance](#) 187 CLR 384 (at 408), [Cooper Brookes](#) 147 CLR 297 (at 320-321).

Episode 98 – frequent amendment; constructional choice; singular & plural; specific powers

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