

# interpretation NOW!

Episode 119 – 15 April 2025



Australian Government

Australian Taxation Office



An old nuclear test compensation case was mentioned at a recent conference<sup>1</sup>. Despite the remedial nature of the statute in question<sup>2</sup>, the High Court denied relief to a RAAF airman who had unloaded contaminated planes. As the statutory meaning was clear, the majority refused to read the extra words ‘of a kind’ into the provisions. Stephen J was quoted – ‘To read words into any statute is a strong thing and, in the absence of clear necessity, a wrong thing’<sup>3</sup>. Although the High Court has derived more particular criteria for adding words into legislation<sup>4</sup>, the statement of Stephen J remains an accurate compression of the law. In view of the red flag against judicial legislation, however, it is the rare case that passes the test in practice. More usually, ‘clear necessity’ cannot be made out, the words suggested are out-of-line with statutory purpose, or the adjustment is simply ‘too big’<sup>5</sup>.

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## Hitting the target

### [WC Nominal Insurer v Sako \[2025\] NSWCA 12](#)

‘Hitting the target’ is an old phrase heard more and more<sup>6</sup>. It signifies two things. First, that a solution be sought which coherently gives effect to statutory purpose. Second, that there is a constructive duty on all interpreters to try to hit the legislative target.

The issue in *Sako* was which statutory regime covered compensation for silicosis conditions<sup>7</sup>. McHugh JA (at [60]) pointed out that ‘no issue of missing a target can arise unless the target is first identified’ (which is obvious). It was held that the plaintiff, in seeking to expand coverage of the legislation, had mis-identified the target. Just because a statute is beneficial does not mean all of its provisions are to be read this way.

## Purpose and the sheriff

### [WCX v Homebuilding \[2025\] NSWCA 16](#)

A builder obtained judgment against C who held a line of credit from a funder. The Sheriff sought to execute on property of C which the funder then claimed. It was argued the Sheriff acted unlawfully, as ‘functions in relation to ... any legal proceedings to which the Sheriff is a party ... are to be exercised by the Sheriff’s alternate, and not by the Sheriff’<sup>8</sup>.

This was rejected. The office of Sheriff pre-dates the *Norman Conquest*<sup>9</sup> with functions largely concerning ‘physical conduct in the real world’. Purpose and legislative history confirmed that execution on assets did not make the Sheriff a ‘party’. A Sheriff seeking to execute has no personal interest in the property.

## Beneficial provisions

### [Strata Plan 87003 v Raysons \[2025\] NSWSC 66](#)

Owners sued a builder over major defects in common areas. The legal issue was how different limitation periods should apply<sup>10</sup>. Because the legislation was beneficial in nature, the owners said they should be read ‘so as to give the fullest relief which the fair meaning of [the] language will allow’.

Leeming JA (at [61]) rejected this, saying ‘it is not the case that every leeway of choice ... is to be resolved in favour of the person suing for breach of statutory warranty’<sup>11</sup>. This approach to beneficial legislation is ‘merely a particular case of the more general principle that all legislation is to be construed purposively’<sup>12</sup>. The same applies to tax provisions<sup>13</sup>.

## Power of context

### [NSW v Hamze \[2025\] NSWCA 22](#)

An ‘extended supervision order’ was sought on the basis of a ‘serious violence offence’ – discharging a firearm with intent to cause grievous bodily harm. The SVO definition in turn referred to ‘engaging in conduct that causes the death of another person or grievous bodily harm to another person ...’<sup>14</sup>

Kirk JA made the order sought despite no actual grievous bodily harm having resulted from H’s conduct. Something more than a review of offence elements was required, held the judge (at [47]), and an assessment of legal substance was called for. In this regard, the statute had to be read as a whole ‘as a combined statement of the will of the legislature’<sup>15</sup>.

■ **Thanks** – Oliver Hood, Eric Armstrong & Agnes Liu.

<sup>1</sup> *Bird v Commonwealth* (1988) 165 CLR 1, British Montebello tests 3/10/52.

<sup>2</sup> s 30 *Compensation (Commonwealth Government Employees) Act 1971* (Cth).

<sup>3</sup> *WA v Commonwealth* 134 CLR 201 (25/1), cf *Azimitabar* [2024] FCAFC 52 [38].

<sup>4</sup> *Taylor* [2014] HCA 9 [35-40], *HFM043* [2018] HCA 37 [24].

<sup>5</sup> cf *Coleman* [2021] QSC 125 [39], *AusNet* [2025] FCAFC 21 [138-141].

<sup>6</sup> *Forestry* [2025] HCA 15 [39], *Wass* [2023] NSWCA 71 [4] illustrate.

<sup>7</sup> s 170 of the *Workers Compensation Act 1987* (NSW).

<sup>8</sup> s 6(1)(a) of the *Sheriff Act 2005* (NSW).

<sup>9</sup> [65], Prest *Blackstone’s Commentaries* (266), *Bennett* (1976) 7 SLR 360.

<sup>10</sup> s 18E(1) of the *Home Building Act 1989* (NSW).

<sup>11</sup> *Herzfeld & Prince* [10-300], *NSWALC* [2016] HCA 50 [92].

<sup>12</sup> [66], *Sydney Seaplanes* [2021] NSWCA 204 [97], *Ryan* [2022] FCAFC 36 [110].

<sup>13</sup> Gleeson [2009] *Justice Hill Memorial Lecture* (12), *Carr* [2007] HCA 47 [5-7].

<sup>14</sup> s 5A(1) of the *Crimes (High Risk Offenders) Act 2006* (NSW).

<sup>15</sup> [36], *Plaintiff S297* [2014] HCA 24 [25], *Law Society* [2024] NSWCA 90 [41].

Episode 120 – statutory fictions; transitional provisions; inversion of process; tautologies

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