

interpretation NOW!

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Australian Government

Australian Taxation Office



Proportionality is a large and nuanced legal concept. While not often cited in interpretation, the core idea – the balance between the degree of departure from a baseline and the importance or clarity of the departure’s purpose – is useful in resolving interpretation questions. Under the ‘modern approach’, legal meaning usually corresponds with grammatical meaning, ‘but not always’. A strained or awkward interpretation is allowed (sometimes required) if it best achieves the purpose or object² and is ‘reasonably open’³. Proportionality is observed where the degree of textual strain is balanced against how well the interpretation achieves the purpose or object. As Mason & Wilson JJ observed 43 years ago, ‘questions of degree arise’⁴. Recent High Court cases show the increasingly practical role that proportionality plays in resolving difficult questions of degree⁵.

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Human rights

[Johnston v Carroll \[2024\] QSC 2](#)

Many jurisdictions require their statutes to be interpreted in a way that is compatible with human rights⁶. This case is about whether directions to police and ambulance workers in Queensland to be COVID vaccinated were invalid for breaching human rights. It was held that, while the directions were unlawful, they were not invalid⁷. Orders were made restraining disciplinary action against the workers.

This case discusses the human rights asserted and how s 48 of the [Human Rights Act 2019](#) operates. It only applies where more than one interpretation is available. It does not permit ‘judicial rewriting’ of other provisions – [Momcilovic](#) [2011] HCA 34 [50].

\$\$ Single purpose rarely 100%

[Christian Community v Minister \[2024\] NSWCA 1](#)

Private schools are funded where they are not ‘operated for profit’⁸. The school here was run for profit⁹ and the minister sought to recover funding. It was argued that the minister could only recover if a prior declaration had been made that the school ‘is’ being ‘operated for profit’¹⁰. This was rejected.

The school said the legislative purpose was to provide financial assistance, while the minister said it was to provide assistance to non-profit schools. The court noted that legislation ‘rarely pursues a single purpose at all costs’¹¹. The balance was reflected by the non-profit condition of funding. No prior declaration was needed and recovery was allowed.



Consumer protection

[Dyjecinska v Step-Up \[2024\] NSWSC 159](#)

Harrison AJ held that an unsigned and undated building contract remained enforceable by the builder¹². The Act, accepted as involving consumer protection, required a contract in writing which sufficiently described the work. But extrinsic materials and amendments confirmed the purpose of the provisions¹³ to be to ensure that contracts were not wholly unenforceable due to minor error.

Failure to sign and date were errors of this kind. In any event, the homeowner conceded that she had entered into the contract. The judge said (at [97]) that general law requirements on the signing of contracts were ‘entirely academic’ in this context.



Remedial legislation

[Secretary v Stewart \[2024\] NSWCA 59](#)

The issue was whether absence from work due to incapacity while receiving compensation is a ‘period of unpaid leave’ under the Act?¹⁴ The court said ‘no’ on the basis this was too strained an interpretation.

The court made several important points. One, adopting a ‘broad’ construction to remedial provisions from the outset may be unhelpful. Two, the essential task is to determine the legal meaning of the words. Three, where doubt exists about the extent to which a purpose is pursued, restating that purpose is unlikely to resolve the issue¹⁵. Four, whether or not a statute is remedial, the court must give effect to its purpose, objectively determined.

■ **Thanks** – Chloe Burnett, Phillip Borrell, Ben Lingard & Cheryl D’Amico.

¹ [Project Blue Sky](#) [1998] HCA 28 [78], [Az](#) [2019] HCA 35 [32].

² s 15AA of the [Acts Interpretation Act 1901](#) (Cth).

³ [Cooper Brookes](#) (1981) 147 CLR 297 (320), [Oreb](#) [2017] FCAFC 49 [25].

⁴ [Cooper Brookes](#) (1981) 147 CLR 297 (321).

⁵ eg [Harvey](#) [2024] HCA 1 [116, 110], [Taylor](#) [2014] HCA 9 [38, 66-71].

⁶ Pearce 10th ed [5.67-5.71], Herzfeld & Prince 2nd ed [10.300-10.350].

⁷ [Project Blue Sky](#) [1998] HCA 28 [100] applied.

⁸ s 83F of the [Education Act 1990](#) (NSW).

⁹ This was uncontested as a matter of fact.

¹⁰ s 83J of the [Education Act 1990](#) (NSW).

¹¹ [49], [Carr](#) [2007] HCA 47 [5] quoted, [Stewart](#) [2024] NSWCA 59 [70].

¹² cf [Hayward](#) [2009] NSWDC 54 [91], [Dyna](#) [2021] NSWDC 507 [141, 144].

¹³ s 10(1)(b) of the [Home Building Act 1989](#) (NSW).

¹⁴ cl 2(3)(a) of Schedule 3 to the [Workers Compensation Act 1987](#) (NSW).

¹⁵ [72], [Hunter Quarries](#) [2018] NSWCA 178 [66].

Episode 108 – statutory definitions (two angles); impracticable outcomes; legislative intention

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