

interpretation NOW!

Episode 118 – 27 March 2025



Australian Government

Australian Taxation Office



It is telling how often [Project Blue Sky](#) (PBS) guides the resolution of difficult issues, as the recent decision in *MZAPC* illustrates¹. An officer had the duty to remove an unlawful non-citizen 'as soon as reasonably practicable' after refusal of a visa². The officer declined to refer a request for a different visa to the minister, and the issue became whether the Federal Court could restrain removal by injunction. Answer – yes. Application of PBS principles meant the obligation to remove is read to accommodate the jurisdiction to prevent removal. The plurality (at [33]) said the statute was to be construed as being 'intended to give effect to harmonious goals'. Conflicts are to be alleviated 'by adjusting the meaning of the competing provisions' to give effect to their purpose as a whole. The aim is to produce harmony both inside the statute and with other federal legislation³.

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Meaning of 'services'

[EIX20 v WA \(No 2\) \[2025\] FCA 28](#)

A man was detained in a youth correction facility, often in isolation. He sought to amend discrimination claims against WA to cover denial of educational access because of his aboriginality. The issue became whether the man had been denied 'services'⁴.

Banks-Smith J allowed the amendment. The definition of 'services' was inclusive, the legislation was remedial, 'services' may arise under an obligation, prisoner programs may involve 'services'⁵, and the final answer may depend on facts yet to be found⁶. This case shows that 'services' takes its meaning from its context, including whether the statute is remedial, and that care is needed in the absence of facts.



Impact of purpose

[McTye v Chang \[2025\] NSWCA 3](#)

A young boy riding on a bike with his mother was hit by a public bus and had his foot amputated. Liability was admitted, and the issue became under which scheme damages arose. Was this a 'motor vehicle accident'⁷ (less damages) or a 'public transport accident'⁸ (more damages)? On the basis a 'bus' is a 'motor vehicle', it was argued the former applied.

Multiple statutes were relevant; Bell CJ regretted there was no simple answer; and Griffiths AJA called for reform⁹. The case turned on one 'critical provision'¹⁰. Various factors favoured this being a 'public transport accident'. Parliament also wanted a regime without the need to prove driver fault.



Labyrinthine process

[PD v DPP \(NSW\) \[2025\] NSWSC 16](#)

[E117](#) commented on the allegedly 'repellent' nature of statutory language. Another view is that, with codification, the law would 'become an object of pleasant and satisfactory study to lawyers and laymen alike'¹¹. This is not always the experience.

The issue here was whether the Children's Court had power to impose a particular order. Basten AJ said the statutory regime 'is distressingly complex and completely beyond the comprehension of children without lawyers... [the] consequences of this labyrinthine process... are deeply troubling'. Comments like this are increasing, and often come where there is a collision of provisions or statutes¹².



'contrary intention'

[Queensland v Mr Stradford \[2025\] HCA 3](#)

The High Court has held that immunity from civil suit 'is the same for judges of all courts'¹³. After Judge Vasta in the Federal Circuit Court (FCC) jailed Mr S for contempt, Mr S sued for false imprisonment.

One issue was whether the FCC was 'any court' for *Criminal Code* purposes¹⁴ – 'yes'. The [Interpretation Act](#) said that, subject to a contrary intention, reference to an 'entity' is to an entity 'in and for Queensland'. The plurality (at [126]) held that a contrary intention could appear in any Act, and that it was to be identified 'using both judge-made rules of construction and the rules of construction specified in statutes'¹⁵. It was just not made out in this case.

■ **Thanks** – Oliver Hood, Agnes Liu, Charlie Yu & Patrick Boyd.

¹ [Minister for Immigration and Multicultural Affairs v MZAPC](#) [2025] HCA 5.

² s 198(6) of the [Migration Act 1958](#) (Cth).

³ [Eaton](#) [2013] HCA 2 [98], cf plurality [43-44].

⁴ s 4 definition read with s 24 of the [Disability Discrimination Act 1992](#) (Cth).

⁵ [Rainsford](#) [2008] FCAFC 31 [9] meaning of service 'is not simple to resolve'.

⁶ [IW](#) 191 CLR 1 (11), [Rainsford](#) [2007] FCA 1059 [79], [Waters](#) 173 CLR 349 (404).

⁷ s 4 of the [Motor Accident Injuries Act 2017](#) (NSW).

⁸ Ch 5 of the [Motor Accidents Compensation Act 1999](#) (NSW).

⁹ Bell CJ [1], Griffiths AJA [71-72] 'naivety' that things would be 'clear ...'

¹⁰ s 121(1) of the [Transport Administration Act 1988](#) (NSW).

¹¹ HLA Hart [The Way to Justice](#) (35), quoted in [Bennett](#) 9 UWALR 211 (240).

¹² These collisions to be resolved by PBS principles – see editorial above.

¹³ Wiping away the ancient distinction between superior & inferior courts.

¹⁴ s 249 of the [Criminal Code](#) (Qld) 'execution of warrants'.

¹⁵ [DRJ](#) [2020] NSWCA 242 [115], cf [Pearce](#) [6.18], Mutton 79 ALR 509 (512).

Episode 119 – hitting the target; purpose and the sheriff; beneficial provisions; power of context

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ISSN 2651-9518