

## STEP 1: Interpret the offence provision

Begin with words to the effect of: “Construction begins with the words of the section. It requires reference to their ordinary meaning, their context, the purpose of the Act and the purpose of the section”. (*Hogan v Hinch* [2011] HCA 4, [5] per French CJ, see also: *Project Blue Sky*)

Applying *Project Blue Sky*, no words should be displaced from the statute and every word should be given some meaning, where possible (*Project Blue Sky v ABA* [1998] HCA 28, [7].)

Basic outline of the steps to follow for interpreting the provision:

1. Language
2. Context
3. Purpose
4. Strict construction
5. Human Rights Approach

Go through all 5 and mention the aspects of each when you think they are relevant, the Human Rights approach may not come up in all scenarios but consider it.

### 1. Language:

- Check if the words are defined somewhere in the Act
  - Make sure to look at the main Act if what you are interpreting are Regulations
  - Rule → if defined in the main Act → that meaning carries into the Regulations
- Read words according to their ordinary meaning
  - If not defined – Statutory words are to be read according to their ordinary meaning – allows ordinary people to understand.  
*Coleman v Power*: key Australian precedent on that you should use the natural and ordinary meaning.
  - Issues with ordinary meaning:
    - Ordinary meaning may still be very complex since the dictionary likely has an array of meanings
    - “Do no substitute other words for the words of the statute” (*Brutus v Cozens* [1972] UKHL 6; [1972] 2 All ER 1297, 1299–300 (Lord Reid).)
    - Few words have exact synonyms (*Brutus v Cozens* [1972] UKHL 6; [1972] 2 All ER 1297, 1299–300 (Lord Reid).)
    - Method to avoid some of the flaws of relying on dictionaries: *corpus linguistics*: draws on databases of examples of actual prose to explore the prevalence of particular usage of a word.
- Dictionaries
  - If helpful – look into dictionaries for guidance on meaning → Note: need to look into more than one if using this technique. (Often this is not very helpful, issues also with that statutes are not dependant on what dictionary writers think words mean).

## 2. Context

- Importance of context:
  - The statutory definition of words is given content by its context. Words should not be “construed by taking the language of the section and divorcing individual elements... from the context in which they appear.” (*Coleman v Power* [2004] HCA 39, [174] (Hayne and Gummow JJ).
- Consider the surroundings of the word in the statute:
  - The meaning of a word may be affected by other words:
    - Words next to the word being interpreted
    - Other words in the same provision
    - The words of adjacent or related provisions in the statute, or in related provisions in any statute.
- Look to other jurisdictions for guidance and context:
  - Look for these on Austlii, Jade and Google (often this works best).
- Look for the legislation’s context:
  - Look at the original statute → find it through Legify.com.au.
  - Click on ‘view series’ → will take you to the history
  - Check amendments of the offence provision you are analysing.
  - Look at the second reading speech (Google it as name of the statute but with ‘Bill’)
- Consider if there are technical assumptions in play:
  - Some traditional forms of contextual interpretation go beyond the nuances of ordinary language and instead reflect technical assumptions peculiar to statutes
  - *Ejusdem generis* rule – later general words are read as limited to the same class as earlier more specific words
    - In *Coleman*, the court considered ‘threatening and abusive’ from the provision in aid of interpretation of ‘insulting’ (*Coleman v Power* [2004] HCA 39, [192]–[193] (Hayne and Gummow JJ).)  
→ Does the word threatening, on its own, establish a class of words? Are abusive or insulting generalisations of threatening, or words in classes of their own? Why not read the phrase as ‘threatening, abusive or similarly insulting words’? Or ‘threatening, abusive or otherwise insulting words’?
  - Some words can be decontextualized
    - Gleeson CJ’s approach in *Coleman* assumes that that drafters strive to use the same words repeatedly to say the same things (*Coleman v Power* [2004] HCA 39, [5] (Gleeson CJ).)

## 3. Purpose

- Victoria: Oblige readers to prefer a construction that would promote the purpose or object underlying the Act to a construction that would not → *Interpretation of Legislation Act 1984 (Vic) s35(a)*
- Commonwealth: ‘prefer the interpretation that would best achieve the purpose to any other interpretation’ → *Acts Interpretation Act 1901 (Cth) s15AA*
- If in conflict with ordinary meaning of the word:

- Strained construction: statutes require or permit all readers to strain the legislatures' words to ensure its purpose is achieved.
- Permits a strained construction of words in the statute, (*Newcastle City Council v GIO General Ltd* [1997] HCA 53; (1997) 191 CLR 85, 113.) at the cost of side-lining the statute's actual words
- But use this carefully! The words of the statute are always the main point!
- Use of extrinsic materials is permitted:
  - There are often purpose sections in Acts, but rarely at a level of specificity that casts light on meaning. Nearly all Australian statutes now allow courts to consult myriad public documents, including Hansard, explanatory memoranda, committee reports and law reform publications to discern a statute's purpose.
    - Commonwealth: *Acts Interpretation Act 1901 (Cth) s15AB*
    - Victoria: *Interpretation of Legislation Act 1984 (Vic) s35(b)*
  - This is where you will mention the second reading speeches etc. that you located for context.
  - Limit to using extrinsic sources:
    - "The purpose of a statute is not something which exists outside the statute. It resides in its text and structure, albeit it may be identified by reference to common law and statutory rules of construction." (*Lacey v Attorney-General of Queensland* [2011] HCA 10, [44].)
    - Statute's purpose is not the subjective intention of Ministers or Parliamentarians but rather an objective intention that readers of statutes attribute to their writers (or just to the text itself). *Harrison v Melhelm* [2008] NSWCA 67, [14].
- The difficulties with purpose:
  - i) Incoherence
  - ii) Technicality
  - iii) Complexity