



Interpretation of Laws and Human Rights (s.30)

Section 30 of the *Human Rights Act 2004* says that:

So far as it is possible to do so consistently with its purpose, a Territory law must be interpreted in a way that is compatible with human rights.

This factsheet is not intended to be a substitute for legal advice.

Ordinary process of Statutory Interpretation

Section 30 of the *HR Act* requires a Court or Tribunal to adopt a “human rights consistent” interpretation within the “purpose” of the statute.

In *In the Matter of an Application for Bail by Isa Islam* [2010] ACTSC 147 (19 November 2010), the ACT Supreme Court held that the ordinary processes of statutory interpretation, including that under section 30 of the *HR Act*, should be applied when interpreting Territory legislation, with the aim of finding a provision that is both human rights-compatible and consistent with purpose, before any attempt is made under section 28 to justify a meaning for the provision that is incompatible with human rights.

This approach was affirmed by the High Court in *Momcilovic v The Queen* (2011) 245 CLR 1 in holding that section 32(1) of the Victorian *Charter of Human Rights and Responsibilities*—a provision substantially similar to section 30 of the *Human Rights Act*—is to be understood as simply an ordinary interpretive rule.

The Section 30 Test

In *Bail by Isa Islam*, Justice Penfold set out a four-step process by which the Courts or Tribunals are to follow section 30 of the *HR Act*, and interpret Territory laws, so far as it is possible, in a way that is compatible with human rights.

1. Identify all meanings of the provision that are available under ordinary principles of statutory interpretation and consistent with legislative purpose (the available meanings), including meanings generated by applying section 30 of the *Human Rights Act* but also meanings that would be available apart from section 30.
2. Set aside for the time being any available meaning that is not human rights-compatible under s 30.
3. Examine the remaining available meanings (that is, those that are human rights-compatible).
 - a. If there are one or more available meanings that are human rights-compatible, then that meaning, or the one of those meanings required by s 139 of the *Legislation Act* to be preferred, is adopted.
 - b. If there are no available meanings left (that is, there were no available meanings that were also human rights-compatible), re-instate the non-compatible available meanings set aside at Step 2.

4. Undertake an inquiry under section 28 of the *Human Rights Act* into whether any of those reinstated available meanings can be justified.
 - a. If only one meaning can be justified, it is adopted.
 - b. If two or more available meanings can be justified, then a choice must be made between them; in the ACT that choice would seem to be directed by section 139 in favour of the available meaning that best achieves the legislative purpose. In the absence of such a provision the choice would be less constrained and might, for instance, include a consideration of which meaning had the least impact on relevant human rights.
 - c. If none of the available meanings can be justified, then the available meaning or one of the multiple available meanings (in the ACT chosen as required by section 139) is adopted, and a declaration of incompatibility may be considered.

Examples

Freedom of information laws – Allat & ACT Government Health Directorate (Administrative Review) [2012] ACAT 67

In this case, the applicant sought documents held by a Mental Health Clinical Review Committee investigating the death of the applicant's wife while under the psychiatric care of the Woden Mental Health Team, under Freedom of Information laws. The Tribunal was required to consider the application of section 38 of the *FOI Act* and the interpretation of the secrecy provision in section 125 of the *Health Act*.

The Tribunal found that restrictions on the access to documents and information engage and potentially limit the right to freedom of expression under section 16(2) of the *HR Act*, as this includes a right to seek, receive and impart information. In discerning the possible meanings of section 125, the Tribunal found an ambiguity in the definition of "health service provider", which was relevant to the scope of "sensitive information" for the purposes of section 125. The Tribunal identified an interpretation of this term which was consistent with the objects of the *Health Act* and would have a less restrictive effect on the right to freedom of expression. As the Tribunal was able to identify an interpretation of the relevant provision which was consistent with the *Legislation Act 2001* (ACT) and the *HR Act*, it adopted this interpretation and did not proceed beyond step 3A of the *Islam* methodology.

The Tribunal went on to find that the secrecy provision in section 125 of the *Health Act* was not enlivened in these circumstances, since the information was not "sensitive information" and disclosure would not be "reckless" as it is authorised by the *FOI Act*. Accordingly, it concluded that the exemption in section 38 of the *FOI Act* did not apply to the information sought.

The Tribunal rejected the application of the exemption in the *FOI Act* for certain agency documents, although it did uphold some claims of legal professional privilege in relation to other documents.

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