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Articles

[Should judges bite back? Judicial responses to public criticisms of courts and cases](#)

— *Matthew Groves*

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Public and media criticism are regularly made of decisions by the courts and often made about an entire court. When and why judges should respond to such criticisms is governed by rules and conventions that do not yield a single correct approach. In many instances, a public response would be futile or even risk providing more fuel that would continue an unproductive event. In the rare cases where a reply of some sort may be appropriate, the best response is not necessarily one directed to the source of the criticism. This article examines the principles that guide judges on whether and why they should speak with the media, to correct incorrect or unfair criticisms. The article uses six examples. Two are about judicial comments to the media about domestic violence in indigenous communities. Two are about climate change cases. The final two comprise attacks on entire courts or tribunals. The article also recounts a neglected example involving Lord Denning that provides a cautionary tale for all judges.

[A gloss on secret ministerial appointments](#)

— *Ben Gussen*

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A few months after the May 2022 federal election brought in a new government, Australian media exposed ministerial appointments from 2020 and 2021 that were never communicated to the Commonwealth Parliament or to the Australian public. While the Solicitor-General flagged this secrecy as problematic, he stopped short of designating the appointments as unconstitutional. The Solicitor-General reasoned that implying a notification requirement into the relevant section of the Commonwealth Constitution, s 64, is unnecessary. The purpose of this article is to clarify the jurisprudence on constitutional implication generally, and specifically in relation to s 64. To this end, I elucidate the scope of s 64 by expounding its meaning. The difference between the semantic meaning implicit in s 64 and the pragmatic meaning implied into this section by the framers of the Constitution suggests that secret ministerial appointments do not fall within its core. I conclude with brief remarks on the role of proportionality in ascertaining the genuineness of constitutional implications.

[Realism, speech acts and interpretation: Towards an illocutionary theory of statutory purpose](#)

— *Angus Mackenzie*

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Statutory purpose, as understood by the High Court, is determined by what philosopher R L Austin called 'speech acts', as those acts are performed by Parliament. That position is both defensible and consistent with the High Court's modern purposivist approach to statutory interpretation. Not only

that, by identifying speech acts as determining the content of statutory purpose, we can defend the Court's approach to statutory interpretation from a key challenge levelled at it: that by rejecting statutory intention, the Court has done away with its justification for purposivism. Indeed, there may be something fundamentally wrong with interpretations that fail to appreciate the speech acts behind legislative acts.

Deadly sins and handy hints of statutory interpretation in the South Pacific

— *Manuel (Mal) Varitimos CBE KC and Samuel Walpole*

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On 30 May 2022, the Bar Association of Queensland South Pacific Regional Legal Education Committee held a workshop on statutory interpretation that was attended by lawyers from Papua New Guinea, Solomon Islands, Tonga, Nauru, Vanuatu, Australia and New Zealand. This article is an edited version of the paper presented on that occasion. It discusses selected principles of statutory interpretation by reference to legislation and authorities from these South Pacific jurisdictions. It focuses on key principles that are generally common to all of the jurisdiction, whilst using examples from different jurisdictions to illustrate particular points where appropriate. The aim is to provide some guidance for applying such principles in practice.

Commentary

Deadly sins and handy hints of statutory interpretation in the South Pacific

— *The Honourable Justice Logan RFD*

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