

CITATION: *Justin Anthony Firth v Gorey (2019) NTLC 014*

PARTIES: Justin Anthony FIRTH
v
Denise GOREY

TITLE OF COURT: Local Court

JURISDICTION: Criminal

FILE NO(s): 21846780

DELIVERED ON: 09 April 2019

DELIVERED AT: Darwin

HEARING DATE(s): 1 March 2019

JUDGMENT OF: Chief Judge Lowndes

CATCHWORDS:

CRIMINAL LAW – SECTION 97A SENTENCING ACT – PLACE
RESTRICTION ORDER – POWER TO MAKE SUCH AN ORDER – EXERCISE
OF THE DISCRETION TO MAKE SUCH AN ORDER

Sentencing Act S 97A

Interpretation Act ss 62A, 62b(1) and 6(B) (2)

Justice Legislation Amendment (Group Criminal Activites) Act

Clunies Ross v Cth (1984) 155 CLR 93 followed

CIC Insurance Ltd v Bankstown Football Club Ltd (1995) 187 CLR 384 followed

REPRESENTATION:

Counsel:

Prosecution: Mr Ian Rowbottam

Defendant: Mr J Murphy

Solicitors:

Plaintiff: DPP

Defendant: NAAJA

Judgment category classification: A
Judgment ID number: [2019] NTLC 014
Number of paragraphs: 46

IN THE LOCAL COURT
AT DARWIN IN THE NORTHERN
TERRITORY OF AUSTRALIA

No. 21846780

BETWEEN:

Justin Anthony Firth
Complainant

AND:

Denise Gorey
Defendant

REASONS FOR JUDGMENT

(Delivered 09 April 2019)

CHIEF JUDGE LOWNDES

BACKGROUND

1. The prosecution has made an application pursuant to s 97A of the *Sentencing Act* seeking an place restriction order prohibiting the defendant from visiting Darwin for a period of 12months.
2. Section 97A of the *Sentencing Act* empowers the Court when sentencing an offender for an offence (a significant offence) the maximum penalty for which is 12 months or more to make one or more of the following orders if the court considers doing so may prevent the offender from committing another significant offence:
 - (a) a non –association order prohibiting the offender from being in the company with one or more specified persons during a specified period

or communicating with one or more specified persons the specified period or both of those things;

(b) a place restriction order prohibiting the offender, except as provided in the order, from visiting one or more specified places (including a district or specific location) during a specified period.

3. The defence opposes the making of such an order on two grounds. The primary ground is that the court does not have the power to make such an order in the present case. The defence says that the power to make orders pursuant to s 97A is confined to group criminal activities; and as the offence committed by the defendant does not fall within those parameters the court has no power to make a place restriction order. The other ground relied upon by the defence is that even if the court had the power to make such an order it would not be appropriate in the particular circumstances of this case to make a place restriction order in the terms sought or otherwise.
4. The prosecution, on the other hand, contends that s 97A is of general application and not confined to group criminal activities: it applies to the commission of a significant offence which is defined as an offence which carries a maximum penalty of 12 months or more.

WHETHER THE COURT HAS THE POWER TO MAKE A SECTION 97A ORDER IS A MATTER OF STATUTORY INTERPRETATION

5. The diametrically opposed positions taken by the prosecution and the defence can only be resolved by the court through a proper construction of s 97A of the *Sentencing Act*. Whether the court has the power to make a place restriction order against the defendant is a matter of statutory interpretation; and a proper construction of the section can only be arrived at by applying contemporary principles of statutory interpretation.

6. Section 62A of the *Interpretation Act* (NT) provides that in interpreting a provision of an Act, a construction that promotes the purpose or object underlying the Act (whether the purpose or object is expressly stated in the Act or not) is to be preferred to a construction that does not promote the purpose or object. In interpreting s 97A of the *Sentencing Act* the court must have regard to the purpose or object of the Act.
7. Section 62B of the *Interpretation Act* also has application to the present case, particularly as the defence has sought to rely upon extrinsic material as an aid to the interpretation of s 97A.
8. Section 62B (1) provides that in interpreting a provision of an Act, if material not forming part of the Act is capable of assisting in ascertaining the meaning of the provision, the material may be considered:
 - (a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; or
 - (b) to determine the meaning of the provision when:
 - (i) the provision is ambiguous or obscure; or
 - (ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act leads to a result that is manifestly absurd or is unreasonable.
9. Section 62B(2) of the Act lists the extrinsic material that may be used in interpreting a provision of an Act. That material includes any relevant explanatory memoranda, second reading speeches or any relevant material in any official record of parliamentary debates.

10. The starting point is the enactment that introduced s 97A of the *Sentencing Act* - namely the *Justice Legislation Amendment (Group Criminal Activities) Act 2006*.
11. That Act introduced a number of amendments to various Acts of the Northern Territory: the *Sentencing Act*, *Bail Act*, *Criminal Code and Summary Offences Act*. Relevantly, Part 2 of the amending Act introduced New Part 5, Division 1A of the *Sentencing Act* dealing with Non- Association and Place Restriction Orders. Part 5 Division 1A included ss 97A – 97H which were subsequently incorporated in the body of the *Sentencing Act*.
12. The long title of an Act, including an amending Act such as the *Justice Legislation Amendment (Group Criminal Activities) Act 2006*, is part of the Act and is “intended to describe in a general way the purpose or object of the Act”.¹ The long title sets out the subject, scope and purpose of the Act.²
13. The long title of an Act is commonly called on as an aid to interpretation of particular provisions in a statute: *Clunies – Ross v Commonwealth* (1984) 155 CLR 93 at 199; *Re Bolton: Ex parte Beane* (1987) 162 CLR 514 at 530; *Amatek Ltd v Googorewon Pty Ltd* (1993) 176 CLR 471 at 477; *Northern Suburbs General Cemetery Reserve Trust v Commonwealth* (1993) 176 CLR 555 at 563.³
14. This line of authority appears to recognise that as the long title is part of an Act “it is to be taken into account in considering the context in which other provisions appear”.⁴ As pointed out by Pearce and Geddes:⁵

¹ DC Pearce and RS Geddes “Statutory Interpretation in Australia 8th edition at [1.33]

² “Understanding an Act of Parliament”: <https://www.parliament.nsw.gov.au/about/Pages/Understanding-an-Act.aspx>

³ See Pearce and Geddes n 1 at [4.48].

⁴ Pearce and Geddes n 1 at [4.48].

⁵ Pearce and Geddes n 1 at [4.48].

As an Act is to be read as a whole, the title can give colour to the meaning of other provisions. Indeed, in the *Amatek* case the court talked in terms of “defining” the purpose of the Act by reference to the long title.

15. The modern approach to statutory construction has been stated on many occasions by the High Court.⁶ That approach is reflected in the following observations made by McHugh ACJ, Gummow J and Hayne J in *Network Ten Pty Ltd v TCN Nine Pty Ltd* (2004) 205 ALR 1 at [11]:

In *Newcastle City Council v GIO General Ltd* McHugh J observed:

A court is permitted to have regard to the words used by the legislature in their legal and historical context and, in appropriate cases, to give them a meaning that will give effect to any purpose of the legislation that can be deduced from that context.

His Honour went on to refer to what has been said in the joint judgment in *CIC Insurance Ltd v Bankstown Football Club Ltd*. There Brennan CJ, Dawson, Toohey and Gummow JJ said:

The modern approach to statutory interpretation (a) insists that the context be considered in the first instance, not merely at some later stage where ambiguity might be thought to arise, and (b) uses “context” in its widest sense to include such things as the existing state of the law and the mischief which, by legitimate means such as those just mentioned, one may discern the statute was intended to remedy...Instances of general words in a statute being so constrained by their context are numerous. In particular, as McHugh JA pointed out in *Isherwood v Butler Pollnow Pty Ltd*...if the apparently plain words of a provision are read in light of the mischief which the statute was designed to overcome and of the objects of the legislation, they may wear a very different appearance.

16. The observations made by Brennan CJ, Dawson Toohey and Gummow JJ in *CIC Insurance Ltd v Bankstown Football Club Ltd* in effect reflect the purposive

⁶ See *CIC Insurance Ltd v Bankstown Football Club Ltd* (1995) 187 CLR 384, 408; *Newcastle City Council v GIO General Ltd* (1997) 191 CLR 85, 112; *Network Ten Pty Ltd v TCN Channel Nine Pty Ltd* (2004) 205 ALR 1. See also the Hon Justice James Allsop “Statutes: Context, Meaning and Pre-Enactment History” Bar News Winter 2005.

approach to statutory interpretation which is applied “by determining the purpose of the Act, or the particular provision in question (or the “mischief” with which it was intended to deal), and by adopting an interpretation of the words that [is] consistent with that purpose”⁷ or conforms to the legislative intent.

17. Adopting that contextual approach to statutory interpretation, it is permissible to have regard to the long title of the *Justice Legislation Amendment (Group Criminal Activities)* Act in order to discern the context in which s97A appears and in turn to deduce the purpose or object of the provision from that context.
18. According to its long title the purpose or object of the *Justice Legislation Amendment (Group Criminal Activities)* Act was to amend legislation to deal with group criminal activities. It is in that context that s 97A of the *Sentencing Act* falls to be considered. It can be deduced from that context that the purpose or object of s 97A was to deal with group criminal activities. There is nothing in the long title to indicate that the amendments had a broader purpose or object, and were intended to apply to criminal activities other than group criminal activities.⁸
19. The long title of the amending Act gives colour to the meaning of s 97A and makes it clear that the power to make non –association or place restriction orders under that section was intended to apply only to significant offences which involved group criminal activities.

⁷ Pearce and Geddes n 1 at [2.5].

⁸ By way of contrast the long title to the NSW *Justice Legislation (Non –Association and Place Restriction) Act* stated that the Act was “ an Act to amend various acts relating to sentencing and bail to reduce certain kinds of criminal activity and for other purposes”. The NSW Act had much broader application.

20. This narrow purpose or object of the amending Act is supported by the short title of the Act – namely *Justice Legislation Amendment **(Group Criminal Activities)** Act* (emphasis added).⁹
21. As part of an Act, there is no reason why the short title of an Act should not be considered as an aid to interpretation.¹⁰ However, the short title is not by any means as helpful as the long title or a preamble¹¹ and its utility as an aid might be very limited.¹² But, despite its brevity and its limitations as a guide to interpretation, the short title of the amending Act covers everything in the Act and captures the essence, scope and purpose of the various amendments to the different statutes, including s 97A of the *Sentencing Act*.
22. The amendments to the *Bail Act* – in particular those relating to bail conditions regarding non –association and place restriction- focused on the imposition of bail conditions relevant to group criminal activities. Prior to the introduction of s 27A of the *Bail Act* the Court already had extensive powers to impose bail conditions preventing contact with victims, co –defendants or witnesses or entering a particular place or locality. However, the purpose of s 27A was to significantly expand the power to impose bail conditions concerning non –association and place restriction to deal with offenders charged with offences involving group criminal activities. The short title of the amending Act accurately captures the subject matter, scope and purpose of the amendments to the *Bail Act*, as does also its long title.

⁹ See s 1 of the *Justice Legislation Amendment (Group Criminal Activities) Act*. In contrast the short title to the NSW *Justice Legislation (Non –Association and Place Restriction) Act* indicated that the operation of the Act extended beyond group criminal activities.

¹⁰ Pearce and Geddes n 1 at [4;49].

¹¹ J Bell and G Engle “Cross Statutory Interpretation” 3rd ed pp 130-131.

¹² Pearce and Geddes n 1 at [4.49].

23. Similarly, the amendments to ss 28(d) and 66 -68 of the *Criminal Code* were all directed at group criminal activities;¹³ and again their essence, scope and purpose is reflected in both the short and long title of the amending Act.
24. The amendments to the *Summary Offences Act* had a similar focus, creating offences of violent disorder, loitering and consorting between known offenders. All of these new offences were designed to tackle group criminal activities. The essence, scope and purpose of these provisions are captured by both the short and long title of the amending Act.
25. Finally, new s6A of the amending Act introduced “aggravating factors” for the purposes of sentencing under the *Sentencing Act* .These factors included factors that are commonly associated with group criminal activities. Again the short and long title of the amending Act reflect the subject matter, scope and purpose of s 6A.
26. As an Act should be read as a whole, s 97A needs to be read in the context of all the other amendments made by the *Justice Legislation Amendment (Group Criminal Activities)*. It is clear from that context that s 97A was also intended to tackle group criminal activities and that its subject matter, scope and purpose is reflected in both the short and long title of the amending statute.¹⁴
27. The bill for the amending Act was not intended to be an omnibus bill. It was not intended to be a bill for a proposed law covering a number of diverse or unrelated topics. As both its long and short title and substantive content indicate, the

¹³ Section 28(d) related to the suppression of riots (a prime example of group criminal activities). The new s66 (replacing old sections 66-68) created offences relating to riots – again a group criminal activity.

¹⁴ Relevantly, orders made pursuant to s 97A of the *Sentencing Act* are in addition to sentence and prior to the introduction of the section the Court already had ample powers to include non –association and place restriction conditions in sentencing orders made under ss 11, 13 and 40 of the *Sentencing Act* . This is an indication that the purpose of s 97A was to target group criminal activities.

amending Act was intended to introduce a suite of reforms across a variety of statutes directed at regulating group criminal activities.

28. It follows that s 97A of the *Sentencing Act* only empowers the Court to make a non – association order or a place restriction order in relation to a significant offence which involves group criminal activities. That, in my opinion, is the ordinary meaning of the provision conveyed by the text of the section, taking into account its context in the Act and the purpose or object underlying the Act.
29. Having reached this conclusion, it is permissible to have regard to extrinsic material of the kind referred to in s 62B(1) of the *Interpretation Act* in order to confirm that the meaning of s 97A of the *Sentencing Act* is the ordinary meaning as described above.
30. According to the Second Reading Speech:

The purpose of this Bill is to improve the capacity of the Northern Territory’s legal system, from the police force through to the judiciary, to formally deal with gang –related activities before they have a chance to take hold in the community.

The provisions in this Bill specifically target low-, Mid- and high –level gang activity. The government has worked closely with the Northern Territory police force in developing the laws. The bill is what police say they need to combat gangs in the Territory, whether these gangs comprise suburban youth engaging in low - level offences, right through to highly organised and well – funded criminal groups.

This Bill also recognises that low-level offending can escalate into more serious criminal behaviour – behaviour that can be stopped if preventative interventions are undertaken early in the offending cycle. The provisions contained in this Bill represent a measured and evidence-based response to the issues that face our communities in connection with emerging gang behaviour.

The government prides itself on dealing with matters in a considered fashion. This package of reform is a further example of our commitment to this principle. These reforms will give police powerful tools to deal with low level offending elements on our streets. It also gives the courts the ability to impose restrictions and orders that will break the cycle of criminal group activity by dismantling the power base of group leaders,

requiring physical separation of gang members and restricting their ability to congregate in certain areas.

I will now set out in more detail the new offences contained in this Bill and how it will also amend or clarify existing provisions. First, this Bill amends the *Sentencing Act* and *Bail Act* to provide for non-association and place restriction orders. These may be imposed as conditions of bail or sentence where the court thinks such an order may prevent further offences. Whilst courts can already impose similar restrictions in connection with bonds and suspended sentences, their separate inclusion in the *Sentencing Act* allows the court to impose these conditions independent of other orders. Contravention of such an order will constitute an offence. Inclusion in the *Bail Act* again allows the courts and police to impose the restrictions in addition to any other conditions, and clarifies the way in which this may be done.

The *Sentencing Act* will also be amended to provide for a non-exhaustive list of aggravating circumstances relating to gang activity that may be considered in sentencing. These aggravating factors will include, but are not limited to, whether the offender committed the offence while accompanied by others, whether the offender was armed, and whether the offence involved violence or the threat of violence. Importantly, this Bill will also amend the *Sentencing Act* to require the court to take into account any harm done to the community as a result of the offending behaviour.

Amendments to the *Summary Offences Act* include the addition of three new offences. The offence of “loitering – offence following offence”, new section 74B, will deal with low-level activity. The new offence of violent disorder, section 47AA, will deal with low- and mid-level, intimidating and aggressive gang activity. The new offence of consorting between known offenders, section 55A, is aimed at serious criminals with a track record of highly-organised gang-related activities.

The new loitering provisions are intended to complement existing provisions, but will now give police the power to restrict a person’s access to a particular area for up to 72 hours when they suspect that that person has or is about to commit an offence, or is part of a gang that he behaving in that manner. Being in the area and being issued with a notice will not in itself constitute an offence. An offence will only be committed if the individual breaches the terms of the notice. This provision is designed to assist police to break up gangs without criminalising behaviour at the outset. ...

The new violent disorder offence will effectively target mid-level, intimidating gang behaviour, as recently seen in the Wadeye fighting and the family feud-related violence in Yuendumu. This offence targets individuals who are part of a group that engages in a violent act, as a result of which other people would reasonably fear for their safety...

The consorting offence is designed to stop organised, high-level criminal group behaviour. Under this new section, police may issue a notice requiring that a person not consort with another specified person. This can only apply, however, in circumstances in which both are known criminals,

having been previously convicted of an offence named in regulations and carrying a maximum of 19 years imprisonment. ..

Finally, the amendment to the *Criminal Code* is designed to simplify the operation of the riot provisions that already exist in the Code.

31. The Second Reading Speech makes it abundantly clear that the suite of amendments introduced by the *Justice Amendment (Group Criminal Activities) Act* were intended to address group criminal activities.
32. Comments and observations made by Dr Burns, Minister for Police, Fire and Emergency Services, during the course of parliamentary debate¹⁵ also illuminate the purpose or object of the various reforms contained in the amending Act and make absolutely clear the scope and purpose of s 97A of the *Sentencing Act* :

The non-association and place-restriction orders, when imposed on bail or at sentence, and will mean the isolation of criminal group or gang leaders from other persons or key locations. The restriction orders will have the effect of preventing identified gang or criminal group leaders from exerting power or influence over co-offenders or people who might be vulnerable to their influence.

The restriction orders will also remove criminal group or gang leaders from particular area, allowing the local community to regain control. This is seen as a particularly effective policing tool in remote areas where certain gang leaders can gain control over communities or exercise harmful influence through their presence alone.

33. The explanatory Statement further confirms the scope and purpose of s 97A of the *Sentencing Act* :

The main purpose of the Bill is to improve the capacity of the legal system, from Northern Territory Police, Fire and Emergency Services (police) through to the courts, to deal with group and gang related criminal activities and potential group based criminal activities.

More specifically, the Bill:

- amends the *Sentencing Act* so that the courts in imposing sentences:

¹⁵ See the Second Reading Speech.

- (1) have further guidance as to the various matters that are commonly part of group crime that may be considered as aggravating factors and to add a new guideline of harm done to the broader community; and
- (2) may impose orders designed to ensure that members of criminal groups stay away from one another and from named places and do not communicate with one another;
 - amends the *Bail Act* so that a Court or Police Officer, in setting bail conditions, may impose conditions designed to ensure that members of criminal groups stay away from one another and from named places and do not communicate with one another;
 - amends the *Criminal Code* by reforming and simplifying the law relating to riotous assemblies;
 - amends the *Summary Offences Act* by –
- (3) reforming the law relating to affray by providing for a new offence of violent disorder;
- (4) reforming the law relating to loitering by giving police powers to issue notices that prohibit loitering in specified places for up to 72 hours; and
- (5) creating a new offence of dealing with consorting between known criminals.

34. The extrinsic material referred to above confirms that the ordinary meaning of s 97A of the *Sentencing Act* conveyed by the text of the provision – taking into account its context in the amending Act and the purpose or object underlying that Act – is that non –association and place –restriction orders can only be made in relation to significant offences that are related to group criminal activities.

35. For the sake of completeness, in the event that the provisions of s97A might be considered to be ambiguous or obscure, s 62B(1)(d) of the *Interpretation Act* would permit the Court to consider the above extrinsic material to determine the subject matter, scope or purpose of the provisions. Recourse to those materials would readily resolve any ambiguity or obscurity with the result that the provisions would

be read narrowly to only empower the court to make non-association or place-restriction orders in relation to significant offences involving group criminal activities of the type described in the extrinsic material.

36. It follows that there is no power to make a non –association or place –restriction where the offence, as in the present case, does not involve a group criminal activity. Accordingly, the court declines to make the place –restriction order sought by the prosecution.
37. It is not strictly necessary to consider the secondary submission made by the defence – namely even if s 97A empowers the Court to make a place –restriction order in relation to offences that do not involve an element of group criminal activity, it would not be appropriate, in the particular circumstances of this case, to make such an order. However, in the event I have imposed a too narrow construction on s97A I propose to deal with that submission.
38. The power to make a non –association order or a place –restriction order is entirely discretionary. That discretion must be exercised judicially: in the exercising that discretion the Court must only take into account relevant considerations and ignore irrelevant considerations. The ultimate matter for the Court to determine is whether the making of a place restriction order may prevent the defendant from committing another significant offence.
39. As pointed out by the defence, the material relied upon the prosecution comprises the following:¹⁶

- (a) the facts of the present matter (file number 21846780);
- (b) those facts discernible from the defendant’s Information for Courts;

¹⁶ See [51] and [52] of the defendant’s written submissions on s 97A dated 1 March 2019.

- (c) the events of 23 August 2017, when the defendant assaulted Daniel Wood at One Mile Dam;
- (d) the events of 2 February 2018, when the defendant assaulted Daniel Wood at Stuart Park; and
- (e) the events of 3 May 2018, when the defendant boarded a bus from Alice Springs to Darwin in breach of the conditions of a suspended sentence.

40. The issue is whether on the facts of this case the making of place-restriction would prevent the defendant from committing another significant offence.
41. In my opinion, on the facts of this case, the prosecution has not satisfied the Court that the making of a place restriction in the terms sought by it or in other terms would prevent the defendant from committing another significant offence.
42. As the Information for Courts discloses the defendant has a history of violent offending which is not confined to the Darwin region. Prior to moving to Darwin just under three years ago the defendant resided in the Alice Springs region where she was convicted of numerous offences (including relevant offences of violence). The preponderance of her violent offending has occurred in the Alice Springs region and outside of Darwin. There is nothing to indicate that the likelihood of re-offending will be reduced by making an order that the defendant be prohibited from visiting Darwin. There is nothing to indicate that the making of such an order may prevent the defendant from committing another significant offence.
43. The fact that on 5th February 2019 the defendant was assessed as being suitable for supervision by a probation and parole officer and has been on bail since 7 February 2019 subject to recommended conditions (including participation in the Stringybark residential program) are, in my opinion, relevant considerations which weigh against the making of a place –restriction order.

44. The defendant's suitability for supervision in the Darwin region and "her embeddedness with support services in the Darwin area, specifically Stringybark"¹⁷ are likely to be more effective than a place restriction order prohibiting the defendant from visiting Darwin in terms of preventing the commission of another significant offence. This also weighs against the making of a place restriction order in the present case.
45. The sentence that the defendant has received has been structured to achieve the multiple aims of sentencing, including the promotion of the rehabilitation of the defendant. This has long been recognised as an important consideration in sentencing offenders, even in cases where the seriousness of the objective circumstances call for a custodial sanction. The concept of rehabilitation includes ensuring that an offender will not re-offend by addressing underlying issues that bear upon the risk of recidivism.
46. The sentence imposed by the Court contains a rehabilitative component designed to address the issues underlying the defendant's offending with a view to reducing the risk of recidivism. The making of a place –restriction prohibiting the defendant from visiting Darwin would not only be totally inconsistent with that component of the sentence, but considerably less effective in preventing the commission of a significant offence. In my opinion, the sentence imposed on the defendant is better

¹⁷ See [57] of the defendant's written submissions on s 97A. See also the letter from Mission Australia dated 26 March 2019 in relation to the defendant's participation in Mission Australia's "Personal Helpers and Mentors Program. As stated in the letter the program provides offenders such as the defendant with individual support and assistance from a case manager in relation to a number of aspects :

- (a) reducing the risk of homelessness;
- (b) managing daily activities and reconnecting with the community;
- (c) providing direct and personalised assistance through outreach services;
- (d) providing links and referrals to appropriate services such as alcohol and other drug services and accommodation services (such as Mission Australia);
- (e) developing and maintaining Recovery Plans which focus on the person's goals and recovery journey.

tailored to addressing the risk of recidivism that underpins s 97A of the *Sentencing Act*.

Dated 9 April 2019

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Dr John Lowndes

Chief Judge of the Local Court of the Northern Territory