



HIGH COURT OF AUSTRALIA

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**IN THE HIGH COURT OF AUSTRALIA
BRISBANE REGISTRY**

BETWEEN:

RACHEL SMITH
Appellant

and

CHIEF EXECUTIVE, QUEENSLAND CORRECTIVE SERVICES
First Respondent

and

ATTORNEY-GENERAL FOR THE STATE OF QUEENSLAND
Second Respondent

and

QUEENSLAND HUMAN RIGHTS COMMISSION
Third Respondent

FIRST RESPONDENT'S SUBMISSIONS

PART I – FORM OF SUBMISSIONS

1. These submissions are in a form suitable for publication on the internet.

PART II – CONCISE STATEMENT OF ISSUES

2. The first ground of appeal concerns the proper construction of the legislative prohibition in s 22(2) of the *Corrective Services Act 2006* (Qld) (**CSA**). In particular, it requires determination of whether a prisoner in a corrective services facility who seeks to extract (and freeze) their gametes is seeking to participate in assisted reproductive technology.
3. The second ground of appeal does not arise because the Court of Appeal did not hold that s 48(1) of the *Human Rights Act 2019* (Qld) (**HRA**) has no role to play in interpreting a statutory provision unless, when the provision is construed without reference to human rights, its language admits of at least two constructional choices.

PART III – SECTION 78B NOTICES

4. No notice under s 78B of the *Judiciary Act 1903* (Cth) is required.

PART IV – FACTS

5. The first respondent accepts the statement of facts at paragraphs 7 to 11 of the appellant’s submissions and in the appellant’s chronology.

PART V – ARGUMENT

Section 48(1) of HRA has no role to play because appellant’s construction is inconsistent with the provision’s purpose

6. The primary judge, and the Court of Appeal, were correct to conclude that s 48(1) of the HRA has no role to play in construing whether participating in gamete extraction (and freezing) is participating in assisted reproductive technology. That is not because – and it was not held that – s 48(1) of the HRA only has a role to play in interpreting a statutory provision if, when the provision is construed without reference to human rights, its language admits of at least two constructional choices.¹ Rather, it is because s 48(1) of the HRA has no role to play in directing a constructional “choice” – even accepting that rights are engaged and disproportionately limited – if the alternative construction would be inconsistent with the provision’s purpose.
7. In this case, the appellant can only succeed if she can satisfy the Court that her construction of s 22(2) is consistent with the statutory purpose properly characterised. The appellant cannot do so – even on the appellant’s own characterisation of the provision’s purpose – and, on that basis alone, the appeal should be dismissed.

Accepted construction of s 22(2) of CSA by the primary judge and the Court of Appeal is the proper construction

8. This appeal raises a narrow issue about the proper statutory construction of s 22(2) of the CSA in respect of which there is no relevant dispute of principle.

¹ Cf AS at [4]. The appellant has not identified any passage in the Court of Appeal’s judgment that expresses this statement of principle.

9. Section 22(1) and (2) of the CSA – located within Ch 2 (Prisoners), Pt 2 (Management of Prisoners), Div 1 (Management of Prisoners Generally) – provides:

22 Private medical examination or treatment

- (1) Subject to subsection (2), a prisoner in a corrective services facility may apply in writing to the chief executive for approval to be examined or treated by a health practitioner nominated by the prisoner.
- (2) A prisoner in a corrective services facility can not—
 - (a) participate in assisted reproductive technology; or
 - (b) apply for the chief executive’s approval to participate in assisted reproductive technology.

...

10. The appellant submits that the proper construction of s 22(2) is that a prisoner in a corrective services facility cannot participate, or apply for the chief executive’s approval to participate, in procedures that are apt to achieve reproduction.² It is understood that procedures that are apt to achieve reproduction are only those procedures that are capable, by themselves, of resulting in a pregnancy.³ In this way, the appellant submits that gamete extraction (and freezing) – which is not capable, by itself, of resulting in a pregnancy – is not captured by the general prohibition in s 22(2).
11. The first respondent instead submits that the proper construction of s 22(2) is that a prisoner in a corrective services facility cannot participate, or apply for the chief executive’s approval to participate, in procedures for the purpose of assisting reproduction. Such procedures are not limited to the final procedure (involving implantation) which, by itself, is capable of achieving assisted reproduction. Gamete extraction (and freezing) is a procedure for the purpose of assisting reproduction and is, therefore, captured by the general prohibition.

² AS at [21].

³ AS at [8] (“Egg freezing cannot, by itself, result in a pregnancy”), [21] (“So read, the phrase is defined by its end – the achievement of reproduction with technological assistance”). See also J at [39] (CAB 14) (summarising the appellant’s position below); AJ at [19], [38], [56](b) (CAB 41-42, 46, 50) (summarising the appellant’s position below).

12. For the reasons that follow the appellant's construction should be rejected. The construction adopted by the primary judge and unanimously by the Court of Appeal should be affirmed.

No error of principle in the process of statutory construction undertaken by the primary judge and the Court of Appeal

13. The primary judge and the Court of Appeal engaged in an orthodox and unexceptional process of statutory construction. Their Honours considered the statutory text⁴ understood in context⁵ and in light of the statutory purpose⁶ and applied various rules of statutory construction including s 48 of the HRA.⁷ No literal construction was adopted,⁸ so a literal construction need not be rejected. The appellant disagrees with the outcome arrived at by the primary judge and the Court of Appeal as a result of the application of the orthodox principles of statutory construction. There is, however, no relevant dispute of principle.⁹

None of the textual features identified by the appellant support her construction

14. In seeking to establish that a "literal" construction is not available, the appellant raises six points. None assist the appellant, including because a literal construction was not adopted below and is not advanced now.
15. *First*, the various definitions referred to by the appellant are not inconsistent with the accepted construction.¹⁰ The definitions – while of limited assistance and not speaking with one voice on a precise form of words – speak with one voice in another respect. That is, "assisted reproductive technology" is not confined to "procedures apt to achieve reproduction" and can accommodate gamete extraction (and freezing). Indeed,

⁴ J at [56] ff (CAB 17); AJ at [30], [39] (CAB 44, 46).

⁵ J at [85]-[87] (CAB 21); AJ at [34]-[36] (CAB 45-46).

⁶ J at [88]-[95] (CAB 21-23); AJ at [40]-[47] (CAB 46-48).

⁷ J at [113]-[118] (CAB 26); AJ at [48]-[59] (CAB 48-50).

⁸ Cf AS at [13]-[14], [17]-[29].

⁹ The first respondent adopts the appellant's summary of the relevant principles at AS [17], [30], [41]-[42].

¹⁰ Cf AS at [18]-[19].

even the description relied upon by the appellant of “assisted reproduction technology” includes the “manipulation of gametes”.¹¹

16. *Secondly*, contrary to the appellant’s submissions, “assisted reproductive technology” is not best understood as being “defined by its end”. There is nothing in the text which supports the appellant’s submission that assisted reproductive technology means only the use of technology for the achievement of assisted reproduction (or, more specifically, assisted pregnancy).¹²
17. *Thirdly*, the fact that elective egg freezing might have only become a “phenomenon of the last decade” does not assist the appellant.¹³ The application of a statutory word or phrase – here “assisted reproductive technology” – may change over time, particularly in light of advances in science and technology.¹⁴ In any event, the appellant does not submit – nor could she – that procedures for collecting (and freezing) gametes, and creating (and freezing) embryos (without immediate implantation) were not available at the time the Act was passed.
18. *Fourthly*, the *Assisted Reproductive Technology Act 2024* (Qld) simply does not assist in the case.¹⁵ As the appellant accepts, it is not *pari materia* with the CSA. In any event, the later Act does not define “assisted reproductive technology”. It defines, for a particular and distinct statutory purpose, two different phrases: ART procedure and ART service. For those reasons, reference to the later Act cannot assist the appellant to make even the more modest point sought.¹⁶
19. *Fifthly*, the appellant distorts its “ordinary usage” test by distorting the statutory text. Section 22(2) does not prohibit prisoners in a corrective services facility from undergoing assisted reproduction.¹⁷ It prohibits prisoners in a corrective services

¹¹ See Australian Institute of Health and Welfare, National Perinatal Statistics Unit and Fertility Society of Australia, *Assisted Reproduction Technology Series No 12* (September 2008) at 1.

¹² Cf AS at [21].

¹³ Cf AS at [24].

¹⁴ See also *Aubrey v The Queen* (2017) 260 CLR 305 at 321-322 [29]-[30] (Kiefel CJ, Keane, Nettle and Edelman JJ); *R v A2* (2019) 269 CLR 507 at 552-3 [141]-[144] (Bell and Gageler JJ), 562-3 [169]-[170] (Edelman J).

¹⁵ Cf AS at [25]-[26].

¹⁶ Cf AS at [26].

¹⁷ Cf AS at [27].

facility from participating, or applying to participate, in assisted reproductive technology.

20. *Sixthly*, gamete collection (and freezing) – like the creation (and freezing) of an embryo, and other procedures that do not involve immediate implantation – are procedures for the purpose of assisting reproduction.¹⁸ That is not to deny that an individual’s reason for seeking such treatment might be only to preserve choice and reproductive autonomy.¹⁹ That does not change, however, that the ultimate purpose of the procedure is assisting reproduction (now or potentially in the future). Indeed, another individual’s reason for seeking the very same procedure may be to become a parent in the immediate or short-term future. An individual’s reason for seeking a procedure cannot control the purpose of a procedure, much less control whether a particular procedure is, or is not, “assisted reproductive technology” for the purpose of s 22(2) of the CSA.

Accepted construction is consistent with the general objects clause

21. There is no dispute that the purpose of the CSA, as stated in s 3, is relevant to the constructional task.²⁰ However, s 3 is a general objects clause – necessarily pitched at a high-level of abstraction – and so can assist, but is not determinative, in identifying the statutory purpose of s 22(2) of the CSA.²¹ In any event, the accepted construction is not inconsistent with that generally stated objects clause. That is because s 22(2) sits within, and is a carve-out of, a provision which otherwise seeks to ameliorate in a considered way the otherwise diminished entitlements of prisoners in custody to access private medical examination or treatment.

Purpose of s 22(2) is to prevent the Chief Executive being required to make difficult value judgments about whether individual prisoners should become parents

22. It is, of course, necessary to identify the provision’s purpose (and corresponding mischief) – “that which the law is designed to achieve in fact” – at the appropriate level

¹⁸ Cf AS at [28].

¹⁹ Cf AS [28]. See also, eg, AS at [7].

²⁰ See AS at [12], [31].

²¹ See *Unions NSW v New South Wales* (2019) 264 CLR 595 at 657 [172] (Edelman J); *Alexander v Minister for Home Affairs* (2022) 276 CLR 336 at 425 [242] (Edelman J); *Farm Transparency International Ltd v New South Wales* (2022) 277 CLR 537 at 592-3 [170] (Gleeson J).

of generality.²² In this respect, the appellant and first respondent substantially agree on all but emphasis, and therefore, outcome. The appellant characterises the provision's purpose as preventing procreation in prison.²³ The first respondent instead characterises the provision's purpose as preventing the Chief Executive being required to make difficult value judgments about whether individual prisoners should become parents. For the reasons that follow, the latter characterisation should be preferred.

23. It can be accepted, at the outset, that any decision about whether an individual should become a parent is an intimately private matter and involves a private reproductive choice. However, a prisoner in a corrective services facility – subject to very limited exceptions²⁴ – can only exercise that otherwise private choice if the Chief Executive facilitates, approves, and sanctions it. The Chief Executive is, in this way, drawn into the otherwise private decision – involving difficult value judgments – about whether an individual should become a parent.
24. Advances in assisted reproductive technology, and prisoners' requests to participate in such technology, meant that the Chief Executive was faced with more and different instances which require such value judgments to be made.²⁵
25. Parliament responded to this development by introducing a blanket prohibition on all prisoners in corrective services facilities participating, or applying to participate, in assisted reproductive technology.²⁶
26. Parliament did so because a “clear prohibition ensures equity in decision making between prisoners and does not require correctional authorities to make value judgments as to whether individual prisoners should be allowed to procreate while in prison and are suitable to parent and provide for a child”.²⁷

²² See AS at [30], citing *Palmanova Pty Ltd v Commonwealth* (2025) 99 ALJR 1362 at 1364-5 [4] (Gageler CJ, Gordon, Jagot and Beech-Jones JJ); *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 280 CLR 137 at 157 [40] (Gageler CJ, Gordon, Edelman, Steward, Gleeson, Jagot and Beech-Jones JJ).

²³ See AS at [34]-[40], especially [38]. See also AS at [65].

²⁴ See, for example, the scenario contemplated at paragraphs 43 to 50 below.

²⁵ **Explanatory Notes**, *Correctives Services Bill 2006* (Qld) at 15.

²⁶ Explanatory Notes at 24.

²⁷ Explanatory Notes at 24.

27. Parliament was not concerned with prisoners procreating in prison per se,²⁸ but with the Chief Executive being required to make value judgments about whether individual prisoners should become parents.
28. To the extent that there is a symmetry between the general prohibition on conjugal visits and the general prohibition on assisted reproductive technology,²⁹ it lies in Parliament's reluctance for the Chief Executive to become involved in, and facilitate, the exercise of those intimately private choices. The rejection of conjugal visits was a rejection of the Chief Executive providing special facilities to allow prisoners to engage in sexual relations within the corrective services facility.³⁰ That conclusion is strengthened by the acknowledgment of other solutions to that issue – which do not involve the Chief Executive becoming involved in the exercise of those private choices – including home detention and leaves of absence.³¹
29. It is significant that the appellant and the first respondent both rely upon the same sentence in the explanatory notes as recording the provision's purpose – that which it is designed to achieve in fact:³²

A clear prohibition ensures equity in decision making between prisoners and does not require correctional authorities to make value judgments as to whether individual prisoners should be allowed to procreate while in prison and are suitable to parent and provide for a child.

30. The appellant emphasises only four words of that sentence: "procreate while in prison".³³ The sentence, however, must be read as a whole. Read in that way, the sentence discloses a different mischief and statutory purpose – not prisoners procreating in prison per se, but correctional authorities *making decisions* and *value judgments* about whether individual prisoners should be *allowed*, and are suitable, to become a parent.

²⁸ Cf AS at [37]-[38].

²⁹ Cf AS at [38].

³⁰ See Commission of Review into Corrective Services in Queensland 1988 (Final Report) (**Kennedy Report**) at 178 (Section 35.5 Conjugal Visits).

³¹ See Kennedy Report at 178 (Section 35.5 Conjugal Visits).

³² See AS at [37], quoting Explanatory Notes at 24.

³³ See AS at [37].

Temporal (and spatial) dimension of the statutory text and purpose does not assist the appellant

31. The appellant submits that the operative language of the explanatory notes is consistently temporal: “whilst in custody”; “whilst they are in prison”; “while in custody”.³⁴ That is accepted. Indeed, the text of the provision’s chapeau itself imposes that temporal (and spatial) limitation: “a prisoner *in a corrective services facility* can not ...”.³⁵
32. The issue, however, is whether that temporal (and spatial) dimension attaches to: (i) the fact of participation only or also (ii) the achievement of a particular outcome of the participation.
33. The appellant submits that the temporal dimension imports that additional requirement: prisoners *in a corrective services facility* can not participate, or apply to participate, in procedures for the purpose of assisting them to become parents *while in a corrective services facility*.
34. The first respondent, instead, submits that the temporal (and spatial) dimension means what it says: prisoners *in a corrective services facility* can not participate, or apply to participate, in procedures for the purpose of assisting them to become parents.
35. It is only the latter, not the former, that is consistent with the text and purpose of the provision properly characterised. In any event, accepting the additional temporal dimension does not lead to a different result.

Appellant’s construction is consistent with neither identified purpose and accepted construction is consistent with both

36. The appellant submits that, reading the CSA in light of its context and purpose, the legal meaning of s 22(2) is not a close call: it does not prohibit prisoners in a corrective services facility seeking to extract (and freeze) their gametes.³⁶ The appellant has not

³⁴ AS at [39].

³⁵ CSA, s 22(2) (emphasis added).

³⁶ See AS at [40].

yet, however, explained how her alternative construction is capable of achieving the statutory purpose (even in respect of her own characterisation of the purpose).

37. If the purpose of s 22(2) is to prevent prisoners procreating while in prison,³⁷ a prohibition that is limited to only those procedures that are, by themselves, capable of resulting in a pregnancy would not be fit for purpose.
38. It is accepted that the collection (and freezing) of egg cells cannot, by itself, result in a pregnancy.³⁸ The same is true of the collection (and freezing) of semen, and even the creation (and freezing) of an embryo. It is, however, those procedures that will often make procreation in prison possible. The only procedures that are capable, by themselves, of resulting in a pregnancy – at least on the current state of science and technology – involve implantation of gametes or embryos.
39. On the appellant's construction, therefore, prisoners in a corrective services facility would only be prohibited from participating, or applying to participate, in procedures involving implantation of gametes or embryos. That would mean that there is no prohibition in respect of the very procedures that make it *possible* for male prisoners (and female prisoners who do not wish to become pregnant themselves³⁹) to procreate artificially while they are in custody without any further facilitation by corrective services. The provision would, therefore, be capable of achieving its purpose only in respect of female prisoners who wish to procreate by becoming pregnant themselves.
40. That conclusion can only be avoided if s 22(2)(a) is given an expansive construction to positively impose a prohibition on prisoners in a corrective services facility from providing consent to the transfer or implantation of their gamete (or an embryo created with their gamete) stored outside of a corrective services facility into a person in the community. For the reasons outlined in paragraph 43 to 50 below, such an expansive construction should be rejected.
41. The accepted construction, however, is entirely consistent with the statutory purpose identified by the appellant. It prohibits prisoners in corrective services facility from

³⁷ See AS at [38], [65].

³⁸ See AS at [8].

³⁹ For example, a female prisoner's female partner in the community may wish to become pregnant using the prisoner's extracted gamete.

participating, or applying to participate, in procedures for the purpose of assisting reproduction (including those procedures that make procreation in custody possible).

42. If the purpose of s 22(2) is to prevent the Chief Executive being required to make difficult value judgments about whether individual prisoners should be parents, a prohibition limited to the implantation of gametes or embryos would also not be fit for purpose. Correctional authorities would be required to make the difficult value judgments about whether individual prisoners should become parents that were sought to be avoided (except to the limited extent that the requests specifically involve – at least on the current state of science and technology – implantation of gametes or embryos). The accepted construction, however, is entirely consistent with that statutory purpose.

Section 22(2)(a) does not impose a positive additional restriction on prisoners providing consent

43. For the avoidance of doubt, the first respondent does not accept a construction of s 22(2)(a) advanced by the appellant below – resisted by the first respondent, accepted in obiter only by the primary judge,⁴⁰ and not addressed in the Court of Appeal – that would prohibit a prisoner in a corrective services facility from providing consent to the transfer or implantation of their gamete (or an embryo created with their gamete) stored outside of a corrective services facility into a person in the community.
44. The liberty of a prisoner to provide consent is not an entitlement that is curtailed merely by the fact of imprisonment. The enjoyment of that entitlement does not require any specific facilitation, approval, or sanction by the Chief Executive. A prisoner can provide consent – and exercise that private choice – without the Chief Executive facilitating, approving, or sanctioning it.
45. To adopt an expansive construction of s 22(2)(a) that would prohibit a prisoner from merely providing consent would go beyond the Chief Executive refusing to ameliorate the diminishment of an entitlement. It would be to positively impose an additional restriction on a prisoner beyond that which flows from the fact of their imprisonment.

⁴⁰ J at [92]-[94] (CAB 22-23).

46. The text of s 22(2)(a) is consistent with the narrower, not expansive, construction. Other provisions within Ch 2 (Prisoners), Pt 2 (Management of Prisoners) of the CSA that positively impose an additional restriction or obligation – beyond what a prisoner cannot do without the facilitation of correctional authorities – more clearly do so through:⁴¹
- (a) the use of different language: “must not” rather than “can not”; and
 - (b) a regime for responding to the breach of that additional restriction or obligation, including penalty units.
47. The structure of s 22 is also consistent with the narrower construction. Section 22(2) sits within a provision that is otherwise directed to ameliorating the otherwise diminished entitlements that would flow from imprisonment. Section 22(2) limits the scope of that amelioration. It does not go further.
48. The narrower construction is also consistent with the provision’s purpose of preventing correctional officers being required to make difficult value judgments about whether individual prisoners should become parents. If s 22(2)(a) were construed in the expansive way advanced by the appellant below, correctional authorities would be required to step in – not being otherwise drawn in – to difficult value judgements that also concern the rights and interests of persons not in the Chief Executive’s custody and outside corrective services facilities, without any express internal check on arbitrary or punitive decision-making.
49. Even accepting the appellant’s purpose – preventing procreation in prison – the expansive construction has a further difficulty, related to the absence of a penalty provision, of attempting to conceive of an administrative regime by which a positively imposed additional restriction (beyond a refusal to facilitate) could be monitored and enforced.
50. The text, context, and purpose of the prohibition all support s 22(2)(a) of the CSA having the narrower meaning – not imposing an additional diminishment of an

⁴¹ See, eg, CSA, ss 28 (Carrying on a business), 28A (Restriction on prisoner dealing with prisoner’s artwork).

entitlement otherwise unaffected by the fact of imprisonment. That construction would also be supported by the principle of legality and ss 48(1) and (2) of the HRA.

Principle of legality does not lead to a different result

51. The principle of legality is well-established and uncontroversial.⁴² It does not, however, assist the appellant in this case. Even if the appellant’s submissions about the scope of the engagement of the principle of legality are accepted (and it is not),⁴³ the principle of construction is fulfilled in this case, in accordance with its rationale, in circumstances where “the objects or terms or context of legislation make plain that the legislature has directed its attention to the question of the abrogation or curtailment of the right, freedom or immunity in question and has made a legislative determination that the right, freedom or immunity is to be abrogated or curtailed.”⁴⁴
52. The explanatory notes to the introducing bill – in a section titled “Consistency with Fundamental Legislative Principles” – record that there are “a number of new clauses in the Bill that may be considered to be in breach of fundamental legislative principles”.⁴⁵ Section 22(2) is then identified as one such provision. The explanatory notes, therefore, record that the Bill provides “a clear statement of intent” and “a clear legislative prohibition on prisoners in custody accessing assisted reproductive technology”.⁴⁶ Parliament was cognisant that the blanket ban amounted to a “possible breach of fundamental legislative principle” (possible because it was “not yet settled that persons in the general community have a right to access assisted reproductive technology”).⁴⁷ Indeed, it was acknowledged that assisted reproductive technology is used for the treatment of medical infertility (although prisoner requests for access are

⁴² AS at [41]–[42] and the cases cited therein.

⁴³ Cf AS at [44], the cases cited by the appellant are consistent with bodily integrity being concerned with personal inviolability existing in the common law, a right which underscores the principles of assault, both criminal and civil. It is not accepted that the accepted construction interferes with bodily integrity. Cf also AS at [45], it is also not accepted that the accepted construction curtails the enjoyment of entitlements *for* punishment.

⁴⁴ *Lee v New South Wales Crime Commission* (2013) 251 CLR 196 at 310–311 [314] (Gageler and Keane JJ). See also at 308 [308] (Gageler and Keane JJ), quoting *Maxwell on the Interpretation of Statutes*, 4th ed (1905), p 122 (“General words and phrases, therefore, however wide and comprehensive in their literal sense, must be construed as strictly limited to the actual objects of the Act, and as not altering the law beyond.”).

⁴⁵ Explanatory Notes at 20.

⁴⁶ Explanatory Notes at 23–24.

⁴⁷ Explanatory Notes at 24.

not usually made on that basis).⁴⁸ Parliament, however, chose not to implement a discretionary statutory scheme sensitive to those factors, but to impose a general prohibition on all prisoners accessing all forms of assisted reproductive technology. That blanket ban is a blunt tool that has the unavoidable – not inadvertent or collateral – effect of preventing all prisoners in corrective services facilities from participating in any procedure for the purpose of assisting reproduction even if it is necessary to address concerns about medical infertility.⁴⁹

53. The appellant also raises a concern that the effect of the accepted construction is to deprive prisoners of their entitlements long after their term of imprisonment is complete.⁵⁰ That can be accepted in some circumstances. However, again, that effect was contemplated and accepted by Parliament in deciding to impose a general prohibition on all prisoners in custody participating, or applying to participate, in assisted reproductive technology irrespective of whether the reason for doing so related to medical infertility or otherwise.⁵¹ This is not a case where the “full implications” of the words used in s 22(2) may have “passed unnoticed in the democratic process”.⁵²

Section 48(1) of the HRA does not require a different construction

54. As outlined at paragraphs 6 to 7 above, s 48(1) of the HRA has no role to play in directing a constructional “choice” – even accepting the appellant’s submissions about the operation of s 48(1) and the rights said to be engaged and unjustifiably limited – if the alternative construction would be inconsistent with the provision’s purpose.⁵³
55. For the reasons given at paragraphs 36 to 42 above, the alternative construction is *not* consistent with either identified purpose. There is no constructional “choice” available. Section 48(1) of the HRA, therefore, cannot assist the appellant in this case.

⁴⁸ Explanatory Notes at 15.

⁴⁹ See Explanatory Notes at 49. See also AS at [9] and [19].

⁵⁰ AS at [33].

⁵¹ Explanatory Notes at 15.

⁵² See *Lee* at 309 [311] (Gageler and Keane JJ), quoting *R v Secretary for Home Department; Ex parte Simms* [2000] 2 AC 115 at 131, quoted, eg, in *K-Generation Pty Ltd v Liquor Licensing Court* (2009) 237 CLR 501 at 520 [47] and cited in *Plaintiff S157/2002 v The Commonwealth* (2003) 211 CLR 476 at 492 [30].

⁵³ As accepted in AS at [53].

Disposition

56. For the reasons outlined above, the appeal should be dismissed with costs.

PART VI – ESTIMATE

57. The first respondent estimates that presentation of its oral argument will require up to 1.5 hours.

Dated: 31 August 2026



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ANNEXURE TO FIRST RESPONDENT'S SUBMISSIONS

No	Description	Version	Provision(s)	Reason for providing version	Applicable date(s)
1	<i>Corrective Services Act 2006</i> (Qld)	1 Nov 2023 Reprint	Ch 1 Preliminary Ch 2 Prisoner, Pt 2 Management of Prisoners	Version in force at date of delegate's decision	28 Feb 2024
2	<i>Human Rights Act 2019</i> (Qld)	Current	Pt 1 Preliminary Pt 2 Human rights in Queensland Pt 3 Application of human rights in Queensland	Version in force at date of delegate's decision	28 Feb 2024
3	<i>Assisted Reproductive Technology Act 2024</i> (Qld)	Current	Pt 1 Preliminary	Illustrative purposes	n/a