

interpretation NOW!

Episode 12 – 25 May 2016



Australian Government

Australian Taxation Office



To get the culture we want means changing things, including how we communicate. Better communication starts with better understanding and involves simpler, smarter messaging delivered in more efficient, modern ways. **iNOW!** is a small part of this process at the ATO. We aim to boost awareness of interpretation issues generally via short simple messages – tweets almost. Reducing technical ideas to simple language is not easy, but neither is it optional. The benchmark is whether, within 2 minutes, the target reader can say – ‘hey, I get that’. That reader is *anyone* working with legislation in one way or another. Each episode also gets road-tested by reviewers (internal and external) before publication. It’s the audience who call the shots at **iNOW!**

John Gleeson Tax Counsel Network

Same word, same meaning?

[Tabcorp Holdings v Victoria \[2016\] HCA 4](#)

In this case (at [65]), the High Court said that a ‘consistent meaning should ordinarily be given to a particular term wherever it appears in a suite of statutory provisions’. This principle is a routine starting point when reading legislation. However, as the quote above indicates, it is not an inflexible rule. Episode 3 explains how it all depends on context.

Another recent High Court case says this principle applies ‘in the absence of contrary intention’. The point to understand is that the same word in an Act may not always have the same meaning, even if different meanings are rare in practice. **iTip** – read Episode 3 again to understand the basic idea.

Terms in another Act

[Metricon v CCSR \(No 2\) \[2016\] NSWSC 332](#)

When a court decides the meaning of a word in one statutory context, it is not precedent for what the same word may mean in a different context². This case (at [47]) mentioned the ‘inherent flexibility’ of language, and said that decisions of this kind are of ‘persuasive influence’ only³.

This does not mean words in different Acts cannot bear the same meaning. They can and often do; for example, where the laws form a legislative scheme, or where they are otherwise truly analogous⁴. **iTip 1** – treat cases you find in legal dictionaries about the meaning of statutory words with caution. **iTip 2** – always examine the context.

Objects and long-title

[Lynn v NSW \[2016\] NSWCA 57](#)

This case makes the point (at [54]) that the objects clause and long title of an Act can be taken into account as aids to construction – you knew that! The first rule, however, is that these things cannot be used ‘to contradict any clear and unambiguous language’, although they may assist in resolving uncertainty⁵. Pearce & Geddes (at [4.47-4.58]) explains this in detail under *Framework of the Act*.

Also, avoid using policy objects expressed at very high levels of generality to dictate the meaning of provisions – be careful⁶. **iTip** – look to see if objects clauses or long titles may affect interpretation, but remember the limits of their influence.

When ‘may’ means ‘must’

[Stanizzo v Secretary \[2016\] NSWSC 348](#)

Books could be written about this. In federal laws, subject to contrary intention, ‘may’ signifies discretion⁷. But, where a statute says an official ‘may’ confer some benefit subject to preconditions, their satisfaction can create a legal duty to act⁸.

In this case, the legislation said the official ‘may’ determine costs which should be paid if the official was of the opinion that payment was ‘justified’⁹. Once that opinion was formed, it followed that the official *had* to determine costs and pay them. There was *no* discretion¹⁰. **iTip** – have a look at Pearce & Geddes (at [11.3-11.17]) to see how the courts approach these delicate issues.

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¹ *JMM v The Queen* [2016] HCA 14 (at [143]).

² *Perilya Broken Hill* [2015] NSWCA 400 (at [58]) also.

³ *Carter v Bradbeer* [1975] 3 All ER 158 (at 161).

⁴ ‘in pari materia’ – Pearce & Geddes (at [3.36-3.37]).

⁵ *Van Heerden v Hawkins* [2016] WASCA 42 (at [97]).

⁶ Revisit Episode 6 (the policy episode) on this point.

⁷ s 33(2A) of the *Acts Interpretation Act 1901*.

⁸ *Finance Facilities* (1971) 127 CLR 106 (at 134).

⁹ s 4(2) of the *Costs in Criminal Cases Act 1967* (NSW).

¹⁰ *Tillman* [2007] NSWCA 119 (at [30-37]) explains further.