

# interpretation NOW!

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Australian Government

Australian Taxation Office



Developments in statutory interpretation case law are often seen to be of greatest relevance to those whose job it is to advise on or argue about the operation of existing statutes. In my opinion, they are just as relevant for those who design statutes, as they need to ensure that government policy can be achieved when the law is interpreted and administered. This is not a terribly dramatic insight. After all, these jobs are bound together by a common theme – statutes and the words contained within them. With this in mind, there is plenty to take out of this episode of **iNOW!** – for law designers and interpreters alike!

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## Ordinary & trade meaning

### [The Queen v A L \[2016\] VSCA 156](#)

How do you interpret everyday words in a statute when they also have a specialised trade or technical meaning? Normally words take their ordinary meaning – particularly since parliament can define a word if it is meant to have a special meaning<sup>1</sup>. However, context, phrasing or subject matter may show that another meaning is intended<sup>2</sup>.

In this case, a provision described modification of a drug ‘by the addition of’ a chemical. The Court (at [9-21]) read ‘addition’ normally and rejected a narrower scientific meaning (‘addition reaction’). Although the section used scientific terms, that didn’t mean every other word had a technical meaning.

## Words of judgments

### [Military Rehabilitation v May \[2016\] HCA 19](#)

This case (at [52]) reminds us that when a judge explains what statutory words mean, their reformulation cannot be substituted for those words and construed as if it were the statutory text<sup>3</sup>. Unlike statutes, the meaning of judgments isn’t found by analysing the specific words used by the judge. Instead, read the rest of the judge’s reasoning to find the underlying concept or principle and use this to interpret the statute<sup>4</sup>.

Similarly, judgments are based on a particular set of facts and a certain statutory scheme, and they may be less relevant in other contexts. **iTip** – never treat a judge’s words like a statutory definition.

## Express references

### [Duffy v Authority \[2016\] NSWSC 1062](#)

If a provision refers to a specific thing, it may implicitly exclude other things of that type, especially if similar parts of the Act do mention those other things<sup>5</sup>. Here (at [41-42]), notice had to be given to ‘the licensee’. This meant no-one else needed to be notified, since different provisions did require notice to others and this result fitted the Act’s scheme.

But be careful<sup>6</sup> – inconsistency between provisions may be unintended if the Act is complex, imprecisely drafted<sup>7</sup> or often amended<sup>8</sup>. Parliament may even have thought it went without saying that the omitted items were included. **iTip** – use this principle when you have other grounds for your construction<sup>9</sup>.

## Giving all words meaning

### [H v Commissioner of Police \[2016\] SADC 64](#)

Always search for an interpretation that gives all the words of a provision some meaning and effect and doesn’t make any of them redundant<sup>10</sup>. This doesn’t mean every word has to change the provision’s scope or operation – some could have a limited effect, and Parliament may have intended others to be purely explanatory or to help avoid doubt<sup>11</sup>.

This case shows how courts approach this balancing exercise. A drafting omission meant words in an Act referred to a power which hadn’t actually been granted. The judge (at [121]) found a construction that meant those words weren’t redundant without going so far as to rewrite the Act.

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<sup>1</sup> [Australian Leisure](#) [2012] WASC 463 (at [22]); [Collector of Customs v Agfa-Gevaert](#) (1996) 186 CLR 389 (at 402).

<sup>2</sup> [Marine Power Australia](#) [1989] FCA 210 (at [52]).

<sup>3</sup> [Baini](#) [2012] HCA 59 (at [14]); [Cooper Bros](#) [2013] AATA 99 (at [58-60]).

<sup>4</sup> [Brennan v Comcare](#) (1994) 50 FCR 555 (at 572).

<sup>5</sup> [Bass v Trustee](#) [1999] HCA 9 (at [20-22]); Pearce & Geddes (at [4.33-4.35]).

<sup>6</sup> [Houssein v Under Secretary](#) [1982] HCA 2 (at [10]).

<sup>7</sup> [Lyford v Commonwealth Bank](#) [1995] FCA 1261 (at [12]).

<sup>8</sup> [CEMEU v Hadgkiss](#) [2007] FCAFC 197 (at [15]), illustrates.

<sup>9</sup> [Carr v Finance Corporation](#) (1982) 150 CLR 139 (at 150), illustrates.

<sup>10</sup> [Project Blue Sky](#) [1998] HCA 28 (at [71]). Conflicting provisions are to be reconciled in the same way: see Episode 1 ‘Hierarchy & Harmony’.

<sup>11</sup> [Truman & Truman](#) [2008] FamCAFC 4 (at [81-82]).