

# interpretation NOW!

Episode 17 – 28 October 2016



Australian Government

Australian Taxation Office



## The Acts Interpretation Act – a statutory Cabinet of Curiosities

It is not uncommon for a statute to be silent on something that appears to leave a hole in its operation, such as undefined words that obviously should be, unaddressed mechanical matters, and other esoteric issues. Before cursing the drafters and throwing the statute across the room in frustration, look in the [Acts Interpretation Act 1901](#) (AIA). It is the home of the esoteric and mechanical, of plugs and definitions, and of other useful things. We could write a series of episodes on the AIA; here's just four things from our statutory Cabinet of Curiosities to give you a taste of what is there.

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### Definitions

Many common words like 'business day', 'document', 'individual', 'land', 'person' or 'writing' are defined in AIA s 2B. This dictionary should always be your starting point, though it is just a drafting convenience and, like the rest of the AIA, it is displaced by contrary intention in the Act it is applied to (s 2(2)).

AIA s 18A contains another definition rule. If an Act defines a word or phrase, grammatical variations or derivatives normally take the same definition<sup>2</sup>. For example, 'supplies' and 'supplied' in the GST Act are the same as the defined term 'supply'. However, the word must actually be a part of speech of the defined word. 'Employment' has been held to be a separate noun, not a derivative of 'employer' or 'employee'<sup>3</sup>.

### Examples

Like notes, examples are part of the Act but their interpretive status is unclear<sup>4</sup>. Under AIA s 15AD(a), they are 'not exhaustive' and can't limit a provision's scope. AIA s 15AD(b) used to say that a provision overrides its example if the two are inconsistent. It was rewritten in 2011 and now says 'the example **may** extend the operation of the provision'<sup>5</sup>.

The policy reason for this was that parliament, by enacting the example, must have intended to cover it 'whether or not it strictly falls within the scope of the provision'<sup>6</sup>. The word 'may' also requires consideration of 'whether [the extension] is appropriate'. However, the precise limits of what is 'appropriate' remain to be seen.

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<sup>1</sup> *Pfeiffer v Stevens* [2001] HCA 71 (at [56-58]).

<sup>2</sup> *Graovac* [1999] FCA 537 (at [10-11]); Pearce & Geddes (at [6.66]).

<sup>3</sup> *Australasian Meat* [1988] FCA 429 (at [22]).

<sup>4</sup> *SZGME* [2008] FCAFC 91 (at [79]); *Bal* [2002] FCAFC 189 (at [37-40]).

<sup>5</sup> *MZaic v Minister* [2016] FCAFC 25 (at [48-50]).

<sup>6</sup> *Lambert* [2013] AATA 442 (at [126]);

### Approved forms

Prescribed forms of documents are common in tax laws. Under AIA s 25C, strict compliance with these forms isn't necessary and substantial compliance is sufficient. This is determined by considering the purpose of the form and its contents as a whole, not by analysing its individual parts separately<sup>4</sup>. Failure to use the correct form isn't necessarily fatal<sup>5</sup>.

However, as always, s 25C is subject to contrary intention compelling strict compliance<sup>6</sup>. For example, a form may have specific requirements that can only be satisfied strictly<sup>7</sup>. A provision that says a document is valid 'if and only if' it is in the approved form may also demand strict compliance (though the word 'must' isn't as decisive)<sup>8</sup>.

### Amendments & repeals

These are governed by rules in AIA ss 7-11B. **iNOW!** has previously discussed the presumption against retrospectivity in s 7(2) and the cross-reference rules in s 10<sup>9</sup>. Section 7(1) also says that if a repealing Act or an Act altering the common law is itself repealed, the original law isn't automatically revived.

Section 11B says that amending Acts cannot be read in isolation, and the amendments must be interpreted as part of the existing Act unless there is clear evidence of contrary intention<sup>12</sup>. The two Acts together produce a single revised text which must be construed as a whole<sup>13</sup>. Repealed provisions must be disregarded (though they are still part of the Act's contextual legislative history).

<sup>7</sup> *Adams v Lambert* [2006] HCA 10 (at [22]).

<sup>8</sup> *QUYD* [2008] QCA 257 (at [24]); Pearce & Geddes (at [2.27]). Cf *Taxation Administration Act 1953* Sch 1 s 388-50. See Episodes 12 and 15 re 'must'.

<sup>9</sup> AIA s 13(1). See Episode 5 'status of notes'.

<sup>10</sup> *EM to the Acts Interpretation Amendment Bill 2001* (at 19).

<sup>11</sup> See Episodes 7 & 14 and Episode 10 respectively.

<sup>12</sup> *Plaintiff B9/2014* [2014] FCAFC 178 (at [60]); Pearce & Geddes (at [7.23]).

<sup>13</sup> *Commissioner of Stamps* [1995] HCA 44 (at [44]); Bennion (sed at 290).