interpretation NOW!

Episode 22 – 29 March 2017

Australian Government
Australian Taxation Office

Justice John Middleton of the Federal Court makes important points in a coming article[1]: 'Undoubtedly, there is a need for readily understandable and consistent principles to guide the interpretation of legislation. These principles should basically be guided by common sense[2] and we should not be blinded by too many rules or over-analysis, or mechanical or scientific analysis … The starting point should always be to look at the words, their context, and the purpose of the legislation, then applying that to produce a result that is both fair and workable in the particular fact situation you have before you'. **iTip** – these are words for us all to live by!

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Counter-mischief

UNSW Global v CCSR [2016] NSWSC 1852

Sometimes the ordinary, literal meaning of a provision will not remedy the mischief it was meant to address, and you'll need to look for an alternative reading of the text[3]. However, White J (at [47-50]) reminds us to be careful not to adopt a position that addresses the mischief parliament had in mind only to create some 'disproportionate counter-mischief'[4].

This is another instance of considering the consequences of competing interpretations[5]. In this payroll tax case, a literal reading of the provisions addressed the basic mischief but produced 'far-reaching and unintended consequences'. **iTip** – be careful in reasoning from consequences generally.

Simplistic policy

Narrier v WA [2016] FCA 1519

Episode 6 warns us against simplistic generalisations about statutory policy. This case (at [1092-1095]) repeats what the High Court said in *Alcan*[6] about the dangers of fixing on the general revenue-raising purpose of tax laws as a basis for interpretation.

The question is *how far* legislation goes in pursuit of revenue raising, once the purpose of the provisions has been established. To start with the idea that all tax laws are to be viewed through some revenue-centric prism begins at the wrong end and is non-viable. **iTip** – there is no room for any inbuilt revenue bias in the proper interpretation of tax laws[7].

Importance of context

Grain Growers v CCSR [2016] NSWCA 359

Episode 19 makes the point that 'connection phrases' take their meaning from their context[8]. The issue in this case was what 'in connection with' means in an exemption requiring wages be paid 'for work of a kind ordinarily performed in connection with the … charitable … purposes of the institution'[9].

The court said (at [123]) little assistance is gained 'by relying upon the meaning that those words have been given in a different statutory context'. It was the terms of the provision itself, the statutory context and the charitable purposes in play which drove the answer that the institution itself did not have to do the work for which wages were paid.

'May' & 'must' (again)

CSR v ACN 005 057 349 Pty Ltd [2017] HCA 6

If an official discretion is subject to preconditions, there may be a duty to act once they are satisfied[10]. That was not what happened in this case, however. An Act said the revenue *may* amend errors in land tax assessments (such as overpayments). The problem was that another provision[11] placed a three year time limit on refunding overpaid tax (which had expired).

The High Court said (at [63-64]) the revenue had *no* obligation to amend assessments or refund tax overpaid because the taxpayer was statute barred by the three year limit[12]. **iTip** – look closely at the wider statutory framework before deciding that your discretionary 'may' becomes a mandatory 'must'.

- Writer – Gordon Brysland, Producer – Michelle Janczarski.
- Thanks to Jo Stewart & Robert Olding.

[1] *Mostly Common Sense?* (2016) 40(2) MULR (advance).
[2] See *Cooper Brookes* (1981) 147 CLR 297 (at 320).
[3] *Alcan* [2009] HCA 41 (at [47]), Episode 2 – Constructional choices.
[4] Bennion (5ed at 901-904).
[5] Episode 7 – Inconvenience.
[6] *Alcan* [2009] HCA 41 (at [51]).
[7] Episode 14 – Status of tax laws.
[8] *R v Kay* [2016] QCA 269 (at [26]).
[9] s 48(2) of the *Payroll Tax Act 2007* (NSW).
[10] Episode 12 – When 'may' means 'must'.
[11] s 90AA of the *Land Tax Act 1958* (Vic).
[12] cf *Royal Insurance* (1994) 182 CLR 51 (at [65, 87]).

Episode 23 – statutory definitions; headings; extension of time; surplus words