

interpretation NOW!

Episode 30 – 30 November 2017



Australian Government

Australian Taxation Office



Many tax provisions confer power on the Commissioner to make decisions on being personally ‘satisfied’ that some factual precondition or other has been met¹. In the same-sex marriage case, the High Court re-stated some basic principles regarding ‘official satisfaction’². They said (at [109]) that the ‘satisfaction must be formed reasonably and on a correct understanding of the law’ and ‘must not take into account a consideration which a court can determine in retrospect “to be definitely extraneous to any objects the legislature could have had in view”’³. But, while the Minister here was not required to act in an apolitical way⁴, the Commissioner and his delegates must always do so⁵. Long tradition, as well as legislation, requires no less⁶.

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Extrinsic materials

[Dinov v Allianz Australia \[2017\] NSWCA 270](#)

This case (at [65-67]) tells us to construe the text of the law, not language ‘used in the second reading speech or in some explanatory memorandum.’ Statements in explanatory materials about intention ‘cannot overcome the need to carefully consider the words of the statute to ascertain its meaning.’⁷

In this case, proceedings taken to enforce an indemnity were not a ‘building action’ as defined in the legislation. This meant that they were not affected by the statutory limitation period. **iTip** – correct use of extrinsic materials is a key thing to understand when interpreting legislation.



Alpha and omega

[NW Melbourne Recycling v CSR \[2017\] VSC 647](#)

In this land tax refund case, it was said (at 41) that the provisions in question were the ‘alpha and omega of the judicial task of statutory construction’⁸. The phrase ‘alpha and omega’ has biblical overtones⁹, but in this context means no more than ‘the beginning and the end’.

Consistent with this general theme, the High Court has repeatedly stated that interpretation must start and finish with the text of the law¹⁰ – see Episodes 2, 5, 21, 23, and 25. As was pointed out in SZTAL recently¹¹, the statutory text ‘from beginning to end’ is construed in context, insofar as that context may assist in fixing the meaning of that text.



Legislative examples

[Keris Pty Ltd v DFCT \[2017\] FCAFC 164](#)

This security deposit case illustrates how examples in legislation can impact on interpretation. An example said the Commissioner could require additional security in certain cases. The court observed (at [28]) that the example was consistent with the forward-looking aspect of the power.

Section 15AD¹² says that an example is not exhaustive and ‘may extend the operation of the provision’ – Episode 17 discusses some of the issues in this regard. One important point is that legislative examples are now not to restrict operation of a provision¹³. **iTip** – since 2011, legislative examples have potentially more impact on interpretation¹⁴.



Industrial awards

[Tomvald v Toll Transport \[2017\] FCA 1208](#)

Although industrial agreements are generally to be construed with a degree of latitude or generosity, a court is not free to read into them preconceived notions of fairness. Nor, said Flick J (at [37-38]), are awards to be read ‘in a vacuum divorced from industrial realities’¹⁵. Context is important.

The issue was whether a worker was entitled to convert from casual to full-time employment on a ‘like-for-like’ basis under the enterprise agreement. The employer having breached the agreement in this regard was liable to pay compensation.

iTip – this case illustrates the function and limits of context when dealing with industrial instruments.

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¹ See for example [Avon Downs](#) [1949] HCA 26.

² [Wilkie v Commonwealth](#) [2017] HCA 40.

³ [Graham](#) [2017] HCA 33 (at [57]), [Browning](#) [1947] HCA 21, cited.

⁴ [Jia Legeng](#) [2001] HCA 17 (at [102]), [Bochenski](#) [2017] FCAFC 68 (at [72]).

⁵ [Euturis](#) [2008] HCA 32 (at [55]), [Donoghue](#) [2015] FCAFC 183 (at [9]).

⁶ s 10(5) of the [Public Service Act 1999](#), [AMA16](#) [2017] FCAFC 136 (at [70-71]).

⁷ [Saeed v Minister](#) [2010] HCA 23 (at [31]), quoted.

⁸ [Kyren Nominees](#) [2013] SASC 58 (at [11]), quoted.

⁹ [Book of Revelation](#) 1:8.

¹⁰ [Consolidated Media Holdings](#) [2012] HCA 55 (at [39]), for example.

¹¹ [SZTAL](#) [2017] HCA 34 (at [37]).

¹² s 15AD of the Acts [Interpretation Act 1901](#).

¹³ [Lifestyle](#) [2016] FCA 1538 (at [37]), [Clinica](#) [2016] FCA 62 (at [293]).

¹⁴ [Lehane & Orr AIAL Forum No 73](#) (at 43).

¹⁵ [City of Wanneroo](#) [2006] FCA 813 (at [57]), quoted.