

interpretation NOW!

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Australian Government

Australian Taxation Office



Andrew Maslaris Treasury

Statutory interpretation begins and ends with the text of the law¹, something the High Court tells us again and again. However, interpretation is never to be conducted in a vacuum. Words must be read with regard to their context and the statutory purpose². This involves far more than defaulting to some dictionary of choice. There are ‘many instances where it is misleading to construe a composite phrase simply by combining the dictionary meanings of its component parts’³. Courts strive to give each word in a statute meaning and effect⁴, and provisions are construed to give effect to harmonious goals⁵. Most importantly, interpretation is never an abstract or hypothetical thing. It is always conducted with reference to the facts of the case before us.



Legislative intention

[Duro Felguera v Samsung C&T \[2018\] WASCA 28](#)

Legislative intention is always slippery. This case (at [141-142]) repeats that it is no more than the meaning of the words parliament ‘is taken to have intended them to have’ after application of interpretive principles. It has nothing to do with any ‘collective psychoanalysis’⁶. The High Court tells us that it is a ‘fiction which serves no useful purpose’⁷.

Some still maintain that the notion of ‘real’ intention is useful and necessary⁸. The debate is complex⁹, but one thing is clear. In our system, legislative intention is merely a conclusion about what the law means. **iTip** – whatever may actually motivate legislators in Australia is a road leading nowhere.



Status of tax laws

[Eames and Commissioner \[2018\] WASAT 14](#)

The High Court said in 2009 that ‘tax statutes do not form a class of their own’¹⁰, even if their fiscal nature is part of the wider context. *Eames* (at [66]), however, states categorically that revenue statutes ‘are to be interpreted in a technical manner’.

As one judge suggested in 2004, tax statutes are ‘technical and frequently complex things’¹¹. To him, this justified a plain meaning starting-point, even if ‘by and large one is now to approach [them] in the same way as any other statute’¹². These overlapping ideas are difficult to reconcile smoothly. Perhaps they reflect no more than that tax often involves technical legislation enacted in a technical context.



Planning instruments

[Ku-ring-gai Council v Comanos \[2018\] NSWLEC 24](#)

Do special rules apply in the interpretation of planning instruments? This case (at [42]) gives a straight ‘no’ answer, with the result that the ordinary principles of statutory interpretation apply¹⁰.

C was charged with installing tiered stairs on his residential development without consent. Under the planning instrument, however, ‘pathways’ were exempt from this requirement. The court held that the regulatory context and purpose supported the stairs being simply part of a ‘pathway’¹¹. As a result, C was cleared of all wrongdoing. **iTip** – read planning instruments in the same general way as statutes – that is, by reference to their context and purpose.



Contractual definitions

[Apache Finance v Quad Energy \[2018\] WASC 68](#)

This case included a fight over the scope of tax indemnities in a share sale context, and the meaning of the defined term ‘Relevant Assessment’. There were many wrinkles in the complex drafting, and each party had numerous reasons for their position.

The important general point to absorb is that contractual definitions are *always* to be read in context and subject to contrary indications (whether this is stated or not)¹⁵. Chaney J (at [29]) quoted an earlier case that ‘even defined terms must yield to wider context or contrary intention’.
iTip – terms defined in contracts are not passed over lightly, but they are not applied slavishly either.

■ Writers – Andrew Maslaris & Gordon Brysland. Producer – Suna Rizalar.

¹ *Alcan* [2009] HCA 41 (at [47]), Episodes 2, 21 and 30.

² *Certain Lloyd's* [2012] HCA 56 (at [23-26]), s 15AA of the AIA 1901.

³ *XYZ v Commonwealth* [2006] HCA 25 (at [19]), Episode 5.

⁴ *Saeed* [2010] HCA 23 (at [39]), *Amos* [2018] QCA 11, Episodes 16 and 23.

⁵ *Channel* [2015] FCAFC 57 (at [4-5]), cf *DZXP* [2017] AATA 576 (at [87]).

⁶ Hayne & Gordon *Statutes in the 21st Century*, introduction (at 7).

⁷ *Lacey* [2011] HCA 10 (at [43]), cf *Cole* [2018] FCAFC 66 (at [42]).

⁸ *Ekins & Goldsworthy* (2014) 36 *Sydney Law Review* 39, for example.

⁹ *Duxbury Elements of Legislation* Ch 4, Blaker (2017) 43 *Monash ULR* 238.

¹⁰ *Cranbrook* [2006] NSWCA 155 (at [36]).

¹¹ cf *Sahade* [2012] NSWLEC 76 (at [33]).

¹² *Alcan* [2009] HCA 41 (at [57]), cf *De Marco* [2013] NSWCA 86 (at [19]).

¹³ *Charles Lloyd* [2011] VCAT 1461 (at [17]).

¹⁴ *Viewbank* [2004] VSC 127 (at [50]), *Lygon* [2007] VSCA 140 (at [48]).

¹⁵ *Perpetual Custodians* [2013] NSWCA 231 (at [86]).