

interpretation NOW!

Episode 42 – 29 November 2018



Australian Government

Australian Taxation Office



For over 3 years now, I have watched with interest the progress of *iNOW!* The 42 episodes serve an important purpose of expanding our awareness of the principles of statutory interpretation – a small but important step towards better tax administration and a stronger tax system. Our 2024 *Vision* focuses on ‘doing the basics brilliantly’, and being able to interpret tax law is one of those essential ‘basics’. I also like the way *iNOW!* advances our cultural change initiatives. These include creating a greater service ethic, fostering ongoing collaboration with the professions, and engaging the community in better, smarter and more contemporary ways. *iNOW!* is evolving as a valuable resource for ATO officers, professionals and the community.

Chris Jordan Commissioner of Taxation

Changes in style

[Pfizer Ireland v Samsung \[2017\] FCAFC 193](#)

Change the words and you change the meaning – that’s standard. Some jurisdictions¹, however, have provisions about ‘changes to style’². s 15AC says that where the later Act ‘appears to have expressed the same idea in a different form of words for the purpose of using a clearer style the ideas shall not be taken to be different merely because different forms of words were used’³. This usually works OK⁴.

Pfizer Ireland (at [107]), however, is an example where ‘words of plain meaning’ could not be ignored⁵. **iTips ...** (1) s 15AC has its own drafting problems, (2) the ‘same idea’ test begs the question⁶, (3) don’t assume s 15AC cures all ills.

Presumption of consistency

[Owners v Multiplex Hurstville \[2018\] NSWSC 1488](#)

The issue in this building dispute was whether the development manager was liable on warranties as an ‘owner’ under home building laws. ‘Owner’ was defined as the only person ‘entitled to the land for an estate of freehold in possession’ or ‘entitled to receive ... the rents and profits of the land ...’

Stevenson J (at [58-61]) drew attention to 2 things (A) technical legal terms take their technical legal meaning in statutes, and (B) judicially construed terms take that meaning when repeated in statutes⁷. Long consistent usage of ‘owner’ over a wide spectrum of situations here confirmed that the development manager was not liable on warranties.

General and specific

[BurrIDGE v Chief Magistrate \[2018\] ACTCA 43](#)

An issue in this speeding case was under what provision a delegation of infringement notice functions should be made. The driver said that, as it was done under a general power and not the specific one⁸, it was invalid – *generalia specialibus*⁹.

The majority agreed, noting (at [60]) that ‘specific powers are needed for the exercise of the functions ... going beyond the general power of delegation ...’ Issues like this one need always to be resolved via purposive principles; in particular, s 15AA¹⁰ and hierarchy comments in *Project Blue Sky*¹¹. *BurrIDGE* illustrates this wider frame of reference and that *generalia specialibus* is not applied mechanically.

Calculation of time

[Waterfront Place v Minister \[2018\] VSC 621](#)

This case is important for 2 reasons. First, it makes the point (at [16]) that legislation and Interpretation Acts must ‘work together’¹². Second, it illustrates that statutory timing questions are always tricky¹³.

The issue was whether a ‘call in notice’ terminating a proceeding for policy/planning reasons was given within time – that is, ‘no later than 7 days before the day fixed for the hearing ...’¹⁴ The hearing was for Monday 30 July and notice given Monday 23 July. [CLICK HERE](#) for the interpretation provision¹⁵. Garde J held the notice was within time and effective. Key points – first day not counted, last day is counted, holidays extend time, no contrary intention shown.

■ Writers – Chris Jordan & Gordon Brysland. Producer – Joseph Tranzillo.

¹ Commonwealth, ACT, NT, Queensland, cf s 1-3(2) of ITAA97.

² Pearce *Interpretation Acts in Australia* (at [3.83-3.93]).

³ s 15AC of the *Acts Interpretation Act 1901*.

⁴ *Kumar* [2017] HCA 11 (at [20]), *Wilkie* [2017] HCA 40 (at [107]) for example.

⁵ *Voxson* [2017] FCA 267 (at [12]), *Clipsal* [2017] FCA 436 (at [29]).

⁶ cf *Sherline* [2004] AATA 113 (at [31]), Pearce (at [3.90]).

⁷ *WorkPac* [2018] FCAFC 131 (at [107-108, 109-113]), Episode 40.

⁸ ss 18 & 54 of the *Road Transport (General) Act 1999* (ACT) respectively.

⁹ Pearce & Geddes (at [4.40]), Episode 14.

¹⁰ s 15AA of the *Acts Interpretation Act 1901*.

¹¹ *Project Blue Sky* [1998] HCA 28 (at [70]), Episode 1.

¹² *AIRC* [2002] HCA 42 (at [7-8]), Pearce (at [1.1]).

¹³ Pearce (at [4.23-4.41]) generally.

¹⁴ clause 58(3)(b) in S1 to the *VCAT Act 1998* (Vic).

¹⁵ cf s 36 of the *Acts Interpretation Act 1901*.