

interpretation NOW!

Episode 44 – 31 January 2019



Australian Government

Australian Taxation Office



For many years, senior judges have asked that the ‘teaching of statutory interpretation is given the prominence and priority which its daily importance to modern legal practice warrants’¹. Few cases in any court these days do not involve the interpretation of some statutory framework or other². John Milburn is a QCAT member who also teaches Advanced Statutory Interpretation at *Central Queensland University*. He encourages students to read *iNOW!* and says the episodes are of ‘exceptional educational value for those learning the law’. Other universities do similarly. **iTip** – no one working with legislation and its meaning can afford not to keep up with the principles as they are applied day-to-day by the courts.

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Purpose and context

[Country Carbon v CER \[2018\] FCA 1636](#)

This case considers the relationship between purpose and context. Mortimer J (at [118-119]) said there was a ‘contradiction inherent’ in determining purpose, because (A) purpose is the ‘governing tool’ in fixing meaning, (B) purpose resides in the text and structure of the Act, and (C) the text ‘must be given meaning before purpose can be articulated’.

The judge said context plays a bigger role than text in determining purpose. While purpose resides in the Act, it can be (and often is) identified from external sources³. Text and context (in the widest sense) are also to be investigated ‘at the same time’⁴. There is no great conflict here to stress over.

Composite expressions

[Nature’s Care v AMCL \[2018\] FCA 1936](#)

Whether fish oil capsules could be described as ‘made in Australia’ depended on whether foreign processing made them fundamentally different in ‘identity, nature or essential character’ to their ingredients⁵. Was this expression a composite one to which the principles in *Sea Shepherd* applied?⁶

‘No’ said Perram J (at [32-34]). As the EM confirmed, they were separate requirements. It was not appropriate ‘to blur them together’ the judge said, even if there was considerable overlap. Composite expressions take a composite meaning different to the mere sum of their parts⁷. **iTip** – not every phrase in legislation is composite in nature⁸.

Status of notes

[Re ACN 063 346 708 \[2018\] NSWSC 1709](#)

Notes form part of the Act⁹ and cannot be ignored for interpretational purposes. If there is a conflict between a note and the text, however, the text always prevails¹⁰ – no surprise here. In this case, about reinstatement of a company under the *Corporations Act*, Rees J (at [34]) relied on a note to confirm his reading of the provision in question¹¹.

This is the most common way notes assist with interpretation – to confirm an answer reached on other grounds. The precise status of statutory notes remains elusive however and, sometimes, they are subject to special rules¹². **iTip** – consult all notes, but don’t overplay their textual importance.

Drafting style

[Meskovski v DPP \[2018\] VSCA 293](#)

When statutory language is re-enacted in a different form, it is generally taken to indicate a different meaning¹³. This is a natural and common-sense presumption of ordinary usage. Insertion of the word ‘undue’ before ‘hardship’ in the statute, the court said (at [94]), showed parliament’s determination to impose a ‘greater stringency’.

In some jurisdictions (but not Victoria), however, provisions aim to preserve existing meaning where a ‘clearer style’ is used¹⁴. A provision of this kind would not have changed the outcome in this case. **iTip** – always check for ‘clearer style’ provisions where laws are re-enacted in different language¹⁵.

■ Writers – Joseph Tranzillo & Gordon Brysland. Producer – Suna Rizalar.

¹ *Approaches to Interpretation* [2009] LCA discussion paper (at 1).

² cf French CJ *Bending Words* [2014] UWA guest lecture series (at 2).

³ *Lacey* [2011] HCA 10 (at [43-44]), *Lee* [2013] HCA 39 (at [45]).

⁴ *SZTAL* [2017] HCA 34 (at [14]), cf *Unions NSW* [2019] HCA 1 (at [169]).

⁵ s 255(2) of the *Australian Consumer Law*.

⁶ *Sea Shepherd* [2013] FCAFC 68 (at [35]), Episodes 5, 21 & 31.

⁷ *Zappia* [2018] HCA 54 (at [32]) for example.

⁸ *BHP Billiton* [2019] FCAFC 4 (at [85]) also illustrates this.

⁹ s 13 of the *Acts Interpretation Act 1901*, Episode 5.

¹⁰ Pearce (at [3.16]), *CFMEU* [2015] FCAFC 25 (at [118]).

¹¹ s 601AH(3) of the *Corporations Act*.

¹² Div 182 of the *GST Act*, Div 950 of *ITAA97*, for example.

¹³ *Baini* [2012] HCA 59 (at [42-43]), *Hunter* (1990) 31 SCR 7 (at 10).

¹⁴ s 15AC of the *Acts Interpretation Act 1901*, cfs 1–3(2) of *ITAA97*.

¹⁵ Pearce (at [3.83-3.93]), Episodes 4 & 42.