interpretation NOW!

Episode 123 – 28 August 2025

Australian Government
Australian Taxation Office

Spigelman CJ once noted that 'lawyers are traffickers in words'[1]. Trafficked words, however, often require safe passage across international borders and the high seas, most commonly within treaties. Fortunately, the principles for treaty interpretation hold steady in an often tumultuous global climate. This is illustrated by the High Court decision in *Evans v Air Canada*, where the importance of the *Vienna Convention* to the interpretation of all treaties is made clear[2]. Article 31(1) of the convention requires each treaty to be interpreted in accordance with 'context and in the light of its object and purpose'. Treaty words are intended to take consistent meanings irrespective of the places to which they are trafficked[3]. Individual states are generally not entitled to their own private versions of what a treaty means divorced from *Vienna Convention* protocols.

Mannat Mandhan Tax Counsel Network

Regulations as exmats

Alliance Australia v Abawi [2025] NSWCA 85

An issue in this case was whether regulations made under a statute were extrinsic materials for the purposes of assisting determination of what 'soft tissue injury' means in the statute. The court said 'no'.

Regulations made after enactment cannot be taken into account. But those made at the same time as the statute can be where the statute and the regulations form a statutory scheme[4]. Doing otherwise may risk the 'tail wagging the dog', French CJ said[5]. Extrinsic materials must have been available to parliament at the time of legislating for them to be relevant and hence taken into account[6]. **iTip** – Episodes 24, 55 and 74 also deal with regulations as aids to interpretation.

Development consents

Monaltrie Area CAI v Santin [2025] NSWLEC 38

Subject to minor nuances, development consents are to be read in the same way as statutes[7]. In *Monaltrie*, Robson J (at [37-40]) makes 2 valuable points.

First, a development consent is to be interpreted 'having regard to its enduring nature which encourages a fair but liberal reading of the rights it confers'[8]. Although a consent confers no property rights[9], it endures for the benefit of later owners and may be relied on by various other parties dealing with them. Second, the interpretive exercise is exclusively an objective one conducted by reference to what a reasonable reader would understand the words to mean in light of their context and purpose[10].

International obligations

Rainforest [2025] FCA 532, *Panesar* [2025] FCA 477

Two recent cases comment on treaty interpretation.

In ***Rainforest*** (at [121]), Shariff J noted – 'it is difficult to see a material difference between the principles governing the interpretation of international treaties and those ordinarily adopted in respect of domestic legislation'[11]. In ***Panesar*** (at [97]), Feutrill J said – 'While the principles of treaty interpretation are similar to the principles of statutory construction, there are differences'. Do these comments expose a difference of view? Answer – no. Each accepts that there are differences between the international and domestic rules. But the differences are not of great moment, nor are they based on conflicting theories.

Personal liberty

Archer v Minister [2025] FCA 471

Archer migrated in 1965 and held a permanent visa. After conviction as an accessory to murder, her visa was cancelled on character and other grounds[12]. The judge intimated that the cancelling provision was 'to be construed by reference to the established principle … requiring strict construction of an Act which affects the personal liberty of the subject'.

The right to personal liberty goes back to *Magna Carta*[13]. It is the 'most basic' of human freedoms, with the law being 'very jealous' of its infringement[14]. Various formulae are used to describe the threshold to be met before a statute will impact on personal rights. A common one is 'irresistible clearness'[15].

▪ **Thanks** – Mannat Mandhan, Michael Mirtsis, Patrick Boyd, Jeremy Francis.

[1] Spigelman [2007] *Education Monograph* 4.
[2] *Evans v Air Canada* [2025] HCA 22 [6].
[3] *Kingdom of Spain* [2023] HCA 11 [38], *DH122* [2025] FCAFC 91 [38].
[4] *White* [2024] NSWSC 219 [101-104], *PIPE Networks* [2013] FCA 444 [93] cited.
[5] [48] quoting *M47* [2012] HCA 46 [56], cf *EHL Burgess* [2015] VSC 295 [67].
[6] cf *Ravbar* [2025] HCA 25 [120] citing *CIC Insurance* (1997) 187 CLR 384 (408).
[7] Episodes 91 & 113, cf Herzfeld & Prince *Interpretation* 2nd ed [16.190-16.230].
[8] *House of Peace* [2000] NSWCA 44 [41], *Bunderra* [2017] NSWCA 263 [158].
[9] *Hillpalm* [2004] HCA 59 [51-55] 'no rights *in rem*', cf *Ritchie* [2025] VCAT 292.
[10] *Trump* [2015] UKSC 74 [34], cf *Storty* [2024] NSWLEC 1397 [65].
[11] *NBGM* [2006] FCAFC 60 [122] quoted, cf *NBGM* [2006] HCA 54 [55].
[12] s 501BA(2) of the *Migration Act 1958* – '… Minister may … cancel a visa … '
[13] *Muboyayi* [1992] 2 QB 244 (254), cf *Blundell* [2010] ACTSC 151 [146].
[14] *Al-Kateb* [2004] HCA 37 [19-20], *Bolton* (1987) 70 ALR 225 (231) resp.
[15] *X7* [2013] HCA 29 [158], *Hurt* [2024] HCA 8 [49], *Shade* [2016] NSWCA 379.

ISSN 2651-9518