

interpretation NOW!

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Australian Government

Australian Taxation Office



The High Court has repeatedly said that interpretation begins with the text of the statute considered in light of its purpose and context. Importantly, context is ‘regarded at this first stage and not at some later stage and it should be regarded in its widest sense’. When ascertaining the context of a statutory provision, regard may be had to extrinsic materials. The recent *Lottoland* case reminds us of the limited role extrinsic materials play in practice in determining the meaning of provisions¹. While they can be useful in ascertaining the context and purpose of statutory provisions, they cannot ‘usurp the meaning of the legislation’. **iTip** – it is important to understand the limited role extrinsic materials play in ascertaining the meaning of statutory provisions.

Cameron Anderson-Smith Tax Counsel Network

+ Adding words

[Pell v The Queen \[2019\] VSCA 186](#)

The accused was convicted of child sex offences and jailed for 6 years. Appeal ground 3 was that he had not been arraigned ‘in the presence of’ the jury². With his consent, the jury had seen the process in full via video-link. All judges rejected the argument that ‘presence’ meant only physical presence.

Weinberg JA (at [1163-1164]) said the idea that presence had only one meaning was ‘unconvincing’, and against the requirement to read provisions purposively. Adding ‘physical’ to the composite expression ‘in the presence of’ was not permitted without ‘good reason’. Also, in the light of modern technology, a restrictive reading was not warranted³.

31 Meaning of ‘day’

[Mondelez v AMWU \[2019\] FCAFC 138](#)

For each year of service, an employee was ‘entitled to 10 days of paid personal/carer’s leave’⁶. X worked three 12 hour shifts a week, rather than standard hours for the same total. Was X entitled to 10 days at 7.2 hours per day under the ‘industrial’ meaning of ‘day’, or 10 days at 12 hours per day under the ordinary ‘calendar’ meaning (as the union said)?

Bromberg & Rangiah JJ chose the latter based on purpose/context⁷, ordinary meaning and decided cases⁸. Dissenting, O’Callaghan J (at [209-216]) cited anomalies, extrinsic materials and absence of any precedent. **iTip** – this case shows how the same principles can support different judicial viewpoints⁹.

= Deeming provisions

[Firefighters Benefit Fund v FCT \[2019\] AATA 2775](#)

ITAA36 s 121 says that an association of persons formed for the purpose of insuring them against loss, damage or risk ‘is taken ... to be a company carrying on the business of insurance’. The fund argued that, despite this, it was not an entity of this kind because insurance legislation definitions were not satisfied.

This was rejected (at [91]) because s 121 is a deeming provision and irrebuttable⁴. The wider point is that deeming provisions are confined to the purpose for they are created. Another case says it is not helpful to give special significance to deeming provisions as a class⁵. They are read the same way as other provisions – that is, by reference to purpose/context.

🗄️ Accrued rights

[Fitzpatrick v Lifetime Support \[2019\] SASCFC 97](#)

A scheme for future care¹⁰ sought to exclude rights to common law damages¹¹. Legislation is usually not read this way unless a contrary intention appears¹². In this case, however, there was an unmistakable policy to exclude those rights, manifested by the alternative compensation the scheme provided.

A narrow construction to preserve common law rights, therefore, was ‘out of place’. That an action in negligence had been started, but not resolved, before admission to the scheme did not matter - damages are a ‘mere expectation’ until final judgment. **iTip** – purpose and context are the keys to determining if there is a contrary intention¹³.

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¹ *Lottoland* [2019] NSWSC 1041 (at [108-110]), *Taylor* [2019] HCA 30 (at [87]).

² ss 210(1) and 217(a) of the *Criminal Procedure Act 2009* (VIC).

³ (at [1165, 1174] respectively), cf *Amagwula* [2019] NSWCCA 156.

⁴ Pearce & Geddes (at [4.45]), *Chamberlain* [2002] FCA 67 (at [24]) quoted.

⁵ *Optical* [2019] VSCA 197 (at [62]), cf *Garuda* [2019] FCA 786 (at [104]).

⁶ s 96(1) of the *Fair Work Act 2009* (Cth).

⁷ *Taylor* [2014] HCA 9 (at [65]), *SZTAL* [2017] HCA 34 (at [14]).

⁸ *RACV* (2015) 249 IR 150, *Glendell* (2017) 249 IR 495.

⁹ Special leave to appeal to the High Court has been sought.

¹⁰ *Motor Vehicle Accidents (Lifetime Support Scheme) Act 2013* (SA).

¹¹ s 58A of the *Civil Liability Act 1936* (SA).

¹² *Diakou* [2017] SASC 72 (at [35-41]), s 16 of the *Acts Interpretation Act 1915*.

¹³ *Pearce Interpretation Acts in Australia* (at [2.28-2.42]) generally.

Special Episode 53 – interpretation of Double Tax Agreements

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