

interpretation NOW!

Episode 54 – 29 November 2019



Australian Government

Australian Taxation Office



Judicial decisions on the meaning of a statutory word can sometimes be useful when looking at the same word in another Act. The degree of usefulness varies, however, depending on factors like context and purpose. More weight might be given where the so-called ‘re-enactment presumption’¹, recently considered by the High Court, can be engaged². Where a statutory word is given a meaning by a court, and afterwards is re-enacted by parliament, we can presume the word takes its judicial meaning³. Of course, this presumption will be rebutted if ‘an intention to exclude that interpretation is evident’⁴. **iTip** – the legislative history of the later statute, including parliamentary debates or a commissioned report, may rebut or strengthen the presumption.

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Unsatisfactory consequences

[Richmond Football Club v Verraty \[2019\] VSC 597](#)

The consequences of an interpretation are considered more now than in the past. They remain difficult arguments to make in practice, however. This case (at [58]) shows courts are rarely ‘swayed’ by arguments of this kind alone, and that the merits of competing views are to be looked at carefully⁵.

The approach argued in this case would produce not only an ‘unsatisfactory state of affairs’, but an outcome at odds with the main purpose of the statute. It would also promote uncertainty, as well as potential unfairness. For these reasons, it was rejected. **iTip** – be careful not to focus on consequences to the exclusion of other factors.

Purpose and objects (again)

[Cappello v Roads \[2019\] NSWCA 227](#)

This appeal, from a case discussed in Episode 48, was dismissed unanimously. The main point (at [39]) is that the purposes of a statute are not limited only to what an objects clause may state. Payne JA said that purposes are ‘not to be conflated with the objects of the Act’⁶, and are to be determined by reference to the provisions of the Act ‘read as a whole’⁷.

Cappello opposed compulsory acquisition of his land by RMS⁸ for construction of a tunnel on the basis it could only acquire land to carry out work on an existing public road – this was rejected. **iTip** – objects clauses are aids to construction, but their function and influence must be kept in perspective⁹.

Status of notes

[Dentown Pty Ltd v PWI Group \[2019\] NSWSC 1032](#)

Rees J in this case considered whether a company director had improperly used information to gain an advantage contrary to the *Corporations Act*¹⁰. In interpreting the provisions, the judge (at [248]) relied on a note to the Act. Here, notes were part of the Act and had ‘the same status as the provisions of the Act’ under s 13 of the *Acts Interpretation Act 1901*.

However, different jurisdictions may treat notes differently¹¹, they cannot dominate the text of an Act¹², and they may also be subject to special rules¹³. **iTip** – notes are generally an aid to interpretation. Be careful not to over-extend their reach or authority.

Teleological approach

[Taylor v Attorney-General \[2019\] HCA 30](#)

Edelman J in this case (at [148]) said reliance on ambiguous statements in an EM ‘would invite a teleological approach to interpretation’¹⁴. What was he getting at? The context was the meaning of ‘private prosecution’ in the *War Crimes Act 1945*, where the EM had said that it was ‘desirable to exclude the possibility of private prosecutions’.

The judge uses ‘teleological’ in a negative sense. In the dictionary, it means something like ‘purposive’, but it also has a vague science-fictional feel to it. Edelman J uses the term in suggesting an approach under which judges fill legal gaps in statutes with policy content¹⁵. In our system, this is not allowed.

■ Writers – Jacinta, Gordon, Philip, Sarah, Joseph. Producer – Cameron.

¹ Pearce & Geddes (at [3.43]), [Fortress](#) [2015] HCA 10 (at [15]), Episode 8.

² [Brisbane](#) [2019] HCA 27 (at [45]), [Vella](#) [2019] HCA 38 (at [19]).

³ cf s 18 of the *Acts Interpretation Act 1915* (SA).

⁴ [Vella](#) [2019] HCA 38 (at [19]).

⁵ Pearce & Geddes (at [2.40]) cited, cf Episodes 1, 2 and 24.

⁶ Roach (2001) 47 McGill LJ 129, Winckel (1999) 23 MULR 184 cited.

⁷ Pearce & Geddes (at [4.51]) quoted.

⁸ s 177 of the *Roads Act 1993* (NSW).

⁹ Episodes 12 & 50, [Lynn](#) [2016] NSWCA 57 (at [54]).

¹⁰ s 183(1) of the *Corporations Act 2001* (Cth).

¹¹ s 19 of the *Acts Interpretation Act 1915* (SA), for example.

¹² Pearce & Geddes (at [4.57]), [CFMEU](#) [2015] FCAFC 25 (at [115, 118]).

¹³ Episodes 5 & 44.

¹⁴ [Taylor](#) [2014] HCA 9 (at [55, 65]) cited.

¹⁵ [Bennion on Statutory Interpretation](#) (at 465), Episode 47.

Episode 55 – legislative schemes, meaning & effect, approved forms, headings

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