

interpretation NOW!

Episode 67 – 18 December 2020



Australian Government

Australian Taxation Office



Two points made in Episode 66 – **Circle of Meaning** – were that the law ‘needs to work’, and that we are to finish with the text (at least to ensure that the meaning chosen is ‘open on the words’). A superannuation case just decided illustrates both points¹. One problem was that a particular ‘income stream’ was to be ‘specified in the regulations’ but none had been directly². The statutory purpose being clear, the court said there was a duty to ensure the legislative target is hit and not missed³. Reading the regulations in their wider statutory context against their clear purpose meant the income stream had been ‘specified’ and the law did work. To QA this, the court revisited the text to make sure that outcome remained ‘open on the words’, as Episode 66 describes it. This final act of reconnection with the text of the legislation, as this case shows, is an important reality check.

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Territoriality

[DRJ v Victims Rights \(No 2\) \[2020\] NSWCA 242](#)

Five Yazidi women who had never been to Australia were subjected to violence in Syria by an Australian man. Benefits under NSW law were denied as the violence did not occur in NSW⁴. This outcome depended on the scope of the law, interpretation provisions⁵, presumptions that statutes don’t have extra-territorial effect⁶, and that ‘all crime is local’⁷.

Three things stand out – (1) the issue is of statutory construction, not legislative competence; (2) within the process described in Episode 66, the external factors mentioned are part of wider context; (3) in the absence of a ‘coherent purpose’, the central focus of the statute is violence committed in NSW.



Composite expressions

[Cooper v Strata Plan No 58068 \[2020\] NSWCA 250](#)

The Coopers kept a little dog in their apartment contrary to a by-law saying occupiers ‘must not keep or permit any animal to be on a lot’. They argued that this was ‘harsh, unconscionable or oppressive’⁸.

Basten JA said that phrase was ‘fraught with difficulty’, that dictionaries were of limited value, and (at [26]) that it was best understood as a ‘triuine’ (3 words conveying a single criterion). This approach spoke to community values, rather than the ordinary meaning of the words viewed in isolation. The by-law was not made for a proper purpose and was invalid.

iTip – this case is about composite expressions and the dangers of dictionaries – it’s not about the dog.



Beneficial legislation

[Eichmann v FCT \[2020\] FCAFC 155](#)

Was a block of land next door to a builder and used by him for storage purposes an ‘active asset’ under CGT concessions?⁹ ‘Yes’ – the builder got relief on disposal of the land. The court (at [38-40]) read the provisions beneficially ‘to promote the purpose of the concessions’ to ‘give the most complete remedy consistent with the actual language employed’¹⁰.

That the land be used ‘in the course of carrying on a business’ did not mean it had to be used daily or in the *normal* course of that carrying on. The beneficial approach adopted is rarely applied in tax situations. It is more reflective of the ‘more general principle that all legislation is to be construed purposively’¹¹.



Purpose and s 15AA

[Vincentia MC Pharmacy v ACPA \[2020\] FCAFC 163](#)

Ordinary interpretation principles apply to legislative instruments – nothing new here¹². This case stresses the settled content of those principles¹³, the need always to consider statutory purpose from the get-go¹⁴, and the *mandatory* nature of s 15AA in choosing the meaning that best achieves that purpose¹⁵.

At issue was the meaning of ‘for at least 70 hours each week’ in the ‘large medical centre’ definition of a determination. Did it take account of weeks containing a public holiday? Applying a purpose-based approach, the court (at [65]) said ‘yes’. This pharmacy was a ‘large medical centre’ despite not opening for 70 hours in public holiday weeks.

■ Credits – Gordon Brysland, Oliver Hood, Philip Borrell & Sarah Locker.

¹ [FCT v Douglas](#) [2020] FCAFC 220 (at [90-91, 97-98] respectively).

² s 307-70(1) of [ITAA97](#) read with reg 995-1.01 of [ITAR97](#).

³ [Taylor](#) [2014] HCA 9 (at [60]), [Kingston](#) (1987) 11 NSWLR 404 (at 421).

⁴ ss 19 & 23 of the [Victims Rights and Support Act 2013](#) (NSW).

⁵ s 12(1) [Interpretation Act 1987](#), cf [Impiombato](#) [2020] FCA 1720 (at [95]).

⁶ [Chubb](#) [2013] NSWCA 212 (at [145]), [Solomons](#) [2002] HCA 47 (at [9]) cited.

⁷ [Thompson](#) (1989) 169 CLR 1 (at 33), [Lipohar](#) [1999] HCA 65 (at [25]) cited.

⁸ s 139(1) of the [Strata Schemes Management Act 2015](#) (NSW).

⁹ ss 152-35 & 152-40(1)(a) of [ITAA97](#) (Small business relief).

¹⁰ [Cliffs](#) (1985) 7 FCR 271 (at 274-275), [Houry](#) (1984) 165 CLR 622 (at 638).

¹¹ [NSWALC](#) [2016] HCA 50 (at [92]), [Tjungurrayi](#) [2019] HCA 12 (at [44]).

¹² [Cranbrook](#) [2006] NSWCA 155 (at [36]), [RMA](#) [2020] FCA 1761 (at [15]).

¹³ [A2](#) [2019] HCA 35 (at [32]), [Bay Street](#) [2020] FCAFC 192 (at [5]).

¹⁴ [Calidad](#) [2020] HCA 41 (at [91]), [Yeo](#) [2020] FCAFC 199 (at [27]), E66.

¹⁵ s 15AA [Acts Interpretation Act 1901](#), [SZTAL](#) [2017] HCA 34 (at [39]).