

interpretation NOW!

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Australian Government

Australian Taxation Office



Looking back over the span of iNOW! operations, one theme dominates – stability of our interpretation system. Courts regularly proclaim that the basics are now well-established - a ‘settled approach of some clarity’¹. No longer is it right to talk about interpretation as a ‘fashion industry’, if indeed it ever really was. The idea we are merely awaiting some High Court or legislative U-turn back to the badlands of literalism is a nostalgia². Reasons for this include the obligation to follow a purposive path³, the sticky coherence of our modern approach, the emphasis on context, and the pressure of precedent. Stability, of course, does not mean application of the principles has become mechanistic or simple, or that they may not yield different outcomes⁴. Stability, however, provides some assurance that an understanding of principle applied in the correct way will reduce rookie errors.

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Meaning of ‘includes’

[Gamble v Kingborough Council \[2020\] TASFC 7](#)

A coffee cart parked at a motel needed a permit if it involved a ‘use’ in relation to land. Here ‘use ... includes the manner of utilising land’, with ‘land’ defined to include buildings, structures and ‘any estate, interest, easement, servitude, privilege or right in or over land’⁵. On being charged and fined, both the coffee guy and the motelier appealed.

It was accepted that ‘includes’ may be read in an exhaustive way, but this is rare⁶. Even if the cart was not a building, fixture or development, the court held (at [28]) that this use of land was regulated. It was clear that, by operating the cart, the motel land was being utilised for a purpose and a permit was needed.



Interpretation code

[Elliot v ACT Revenue \[2020\] ACAT 72](#)

Keeping up with interpretation intel is not easy. One thing is that judges are driven to restate settled principles, picking and choosing what suits, often with quotes, but just as often in their own words – judicial wheel reinvention, perhaps. Might there be a better way, perhaps some kind of legislated code?

There are a few key federal rules, like ss 15AA and 15AB⁷. The ACT has been a bit bolder with Ch 14 of the *Legislation Act 2001*. This little case (at [17-21]) discusses how that chapter ‘governs the approach that must be taken to working out the meaning of an Act’⁸. Ch 14 is no fix-all, but it may help people to figure out more efficiently what ACT statutes mean.



Effect of repeal

[Voicu v Strata Plan No 1624 \[2020\] NSWCA 52](#)

An apartment dispute commenced in the local court, but the appeal was to the district court. Laws regulating district court costs were replaced by new legislation, but the old provisions continued to apply to proceedings commenced before 1 July 2015⁹. Which provisions applied to costs in the appeal?

Basten JA (at [29]) observed that laws having substantive effect continue to apply despite repeal, while those having procedural effect operate from commencement¹⁰. Given the appeal was a new proceeding commenced after 1 July 2015, appeal costs were to be assessed under the new legislation despite the original action being in the local court.



Dictionaries (again)

[Will v Brighton \[2020\] NSWCA 355](#)

This case on the meaning of ‘pest animals’¹¹ exposes a difference of view about use of dictionaries¹². Bell JA (at [52]) said ‘care must be taken not to place too heavy reliance’ on them. Dictionaries provide no guidance on context and are ‘rarely determinative’. She would not fully ignore them, however, as they may help to identify the ‘range of possible meanings’.

Basten JA stressed their general unhelpfulness¹³, saying that sentences (not words) are the building blocks of communication¹⁴. Dictionaries don’t define words with precision; they reflect common usage. **iTip** – while refusal to look at dictionaries can invite risk¹⁵, mechanical reliance on them is a clear no-no.

■ Credits – Gordon, Oliver, Amy, Veronica, Marcus P, Jacinta & Brett.
¹ [Bay Street](#) [2020] FCAFC 192 (at [5]), [Bob Brown](#) [2021] FCAFC 5 (at [33]).
² [Australian](#) [2007] HCA 57 (at [40]) ‘perceived simplicities of literalism’.
³ s 15AA, [Lawson](#) [2021] NSWCA 6 (at [25]), cf [Uber](#) [2021] UKSC 5 (at [70]).
⁴ [Koka](#) [2019] AATA 5289 (at [38]), [Sharpcan](#) [2018] FCAFC 163 illustrate.
⁵ s 51 [Land Use Planning and Approvals Act 1993](#) (TAS) read with definitions.
⁶ Pearce 9th ed (at [6.5-6.9]), [Blacktown](#) [2011] NSWCA 265 (at [20]).
⁷ [Acts Interpretation Act 1901](#), Pearce *Interpretation Acts in Australia*.

⁸ s 138 of the [Legislation Act 2001](#), cf [KN](#) [2019] ACTCA 37 (at [23]).
⁹ clause 59 [Legal Profession Uniform Law Application Regulation 2015](#) (NSW).
¹⁰ [Maxwell](#) (1957) 96 CLR 261 (at 267), Pearce 9th ed (at [10.1-10.4]) cited.
¹¹ s 530(2) [Crimes Act 1900](#) (NSW) ‘extermination of pest animals’ defence.
¹² [Provincial](#) (1991) 25 NSWLR 541, [House](#) [2000] NSWCA 44 (at [25-29]).
¹³ cf [Basten & Terrell](#) (2020) 94 ALJ 825 on US practice & ‘Webster CJ’.
¹⁴ [Elizabeth](#) [2014] NSWCA 409 (at [82]), [El-Haddad](#) [2015] NSWCCA 10.
¹⁵ Bell JA (at [55]), Herzfeld & Prince (at [2.140]), cf Pearce 9th ed (at [3.33]).