

interpretation NOW!

Episode 78 – **How best to use iNOW!** 30 November 2021



Australian Government

Australian Taxation Office



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Statutory interpretation was once seen as a ‘non-subject’¹ and judges told people not to read books on it². We now live in ‘the age of statutes’, however, and things could not be more different. Working out what statutes mean is the singular most important legal skill to have in the 21st century. Textbooks are crucial to that task – the preeminent one is by Professor Dennis Pearce³. But rarely are there instant answers to these problems. Three reasons – (A) interpretation involves a ‘method’ or process, (B) that method requires application of principles driven by the particular circumstances, and (C) the process is inherently evaluative⁴. iNOW! seeks to provide basic intel about the method required by the High Court, as well as commentary on new cases touching the principles. iNOW! gives you the ability to do basic up-to-the-minute research anywhere, anytime, on your phone.



Subscribe and engage

Website > subscribe > blastoff!

Regular engagement with iNOW! boosts awareness of both principle and the method to be applied in solving interpretation problems ... ■ **one** – go to the website interpretationnow.com, ■ **two** – scroll to the bottom and subscribe (it’s free) then hit the button, ■ **three** – make the website an icon on your home screen – it’s that easy⁵. Each time a new episode publishes, you will get an email alert. Open the episode and read it, either in website format or as a PDF. This takes only 5-10 mins a month. Doing this will allow you to engage with what the courts are saying now about various interpretation issues and principles. Reading iNOW! each month will help build an understanding of how interpretation works and how problems are resolved.



Use the search function

Keywords > search results > digging deeper

iNOW! has intel on over 400 cases with links to 3000 odd more⁶, and searching for what you want is easy. The hardest bit is getting the right keyword (reading iNOW! helps). **Example** – you need to know when ‘adding words’ to a section is OK ... ■ **one** – scroll to the ‘Search here’ box, enter ‘adding words’ and hit the button, ■ **two** – open and read the first hit¹⁰ (2 mins max), ■ **three** – if you need to dig deeper, click the hyperlink to the High Court cases¹¹ and read the passages direct in *Austlii* – it’s that easy! **iTip** – this is where the gold is buried – that is, in the ability to get to the best and most up-to-date authorities in barely seconds. No other known interpretation resource provides this. Be surprised, give it a go, now!



Understand the system

Method > principles > mantra

Interpretation involves a ‘method’ described as ‘well settled’⁶ and of ‘some clarity’⁷. As one senior judge says – ‘it’s not rocket science’. Start and finish with the text while also considering context in the ‘widest sense’ and objective purpose – see the simplified *Circle of Meaning* diagram in Episode 66. The central principles are summarised from 10 High court cases in Episode 43. Understanding this is key – 15 mins reading time. ■ **one** – navigate to E66 and visualise the method involved, ■ **two** – go to E43 for basic principles, ■ **three** – close your eyes, recite the mantra **text > context > purpose > text** then say what *Project Blue Sky* stands for⁸. **iTip** – ‘getting’ the basic method and principles will take you a long way.



Apply risk management

Basic checklist > right things > right order

Rarely will iNOW! or a textbook provide an instant answer to your puzzle. It depends on the circumstances and what particular issues arise. Compliance with our ‘well settled’ method, however, is a must-do towards achieving sustainable answers and avoiding unforced errors. This means ... ■ **one** – always start and finish with the text of the law¹², ■ **two** – consider context in the ‘widest sense’ and purpose at the correct level¹³, ■ **three** – if there is a choice, select the meaning which best achieves the statutory purpose¹⁴ making sure it is reasonably open on the words of the law¹⁵. For more detail on the principles to be applied and how to select which may apply in your situation, ‘consult Professor Pearce’.

■ **Credits** – Gordon Brysland, Oliver Hood, Patrick Boyd & Andrew Maslaris.

¹ *Lord Wilberforce* (16 November 1966) 277 HL Deb series 5, column 1294.

² Lord Reid quoted in Carter (2020) 41 *Statute Law Review* 240 (at 263).

³ Pearce *Statutory Interpretation in Australia* 9th edition, LexisNexis.

⁴ *ERY19* [2021] FCAFC 133 (at [87, 97]), cf *Allsop CJ* [2017] Byers Lecture.

⁵ iNOW! now has over 700 subscribers, from both within & outside the ATO.

⁶ *R v A2* [2019] HCA 35 (at [32]), cf *Sydney* [2021] NSWCA 204 (at [31]).

⁷ *Bay Street Appeal* [2020] FCAFC 192 (at [5]) Allsop CJ, Episode 69.

⁸ *Project Blue Sky* [1998] HCA 28 (at [70]), Episode 43 case 3 (harmony).

⁹ iNOW! commenced in mid-2015 & has published monthly ever since.

¹⁰ *Coleman v Caesarstone Australia* [2021] QSC 125.

¹¹ *Taylor* [2014] HCA 9 (at [39]), *HFM043* [2018] HCA 37 (at [24]).

¹² *Consolidated Media* [2012] HCA 55 (at [39]), *Thiess* [2014] HCA 12 (at [22]).

¹³ *CIC Insurance* (1997) 187 CLR 384 (at 408), *Carr* [2007] HCA 47 (at [5-7]).

¹⁴ s 15AA of the *Acts Interpretation Act 1901*, cf *SZTAL* [2017] HCA 34 (at [39]).

¹⁵ *Gageler* (2011) 37/2 Monash ULR 1 (at 6), Mason (2016) 90 ALJ 324 (at 328).

Episode 79 – uncertainty; closely structured statutes; international treaties; beneficial purpose

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All episodes are online, fully searchable & linked to primary sources – interpretationnow.com

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