



# interpretation NOW!

Episode 83 – 29 April 2022



In a recent election case, a plurality of the High Court made the following comments<sup>1</sup> – ‘The identification of legislative purpose involves ‘ordinary processes of interpretation, including considering the meanings of statutory words in the provision, meanings of other provisions in the statute, the historical background to the provision, and any apparent social objective’. A number of points can be made. First, identification of purpose is central to our system of interpretation. Second, this is an evidence-based exercise. Third, that exercise is both contextual and objective. Fourth, as the High Court comments above show, we start from the immediate internal context and work outwards, passing into the land of extrinsic materials. Fifth, once purpose is identified, the task is to select the textual meaning which best achieves that purpose<sup>2</sup>. Sixth, always return to the text to make sure that meaning remains open on the words<sup>3</sup>.

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## 🕒 Overlapping statutes

### [NSW Commissioner of Police v Cottle \[2022\] HCA 7](#)

On being compulsorily retired under police laws, Cottle sued for unfair dismissal<sup>4</sup>. One issue was whether those laws blocked this action. Answer – ‘no’. Overlapping statutes ‘should be construed in a way that best achieves a harmonious result’<sup>5</sup>, even if sometimes they cannot ‘stand or live together’<sup>6</sup>.

The first obligation, however, is to seek a coherent operation of both together. The presumption that statutes do not contradict one another will be excluded only where the evidence from all sources shows that harmonious co-operation is not possible. **iTip** – start with a ‘live and let live’ approach where statutes overlap then assess all the evidence.

## 📄 Linguistic analysis

### [Carr v Carr \[2022\] NSWSC 166](#)

This case involved an application to exhume a body for reburial at a different location – refused. Leeming JA dealt with two related points of interpretation.

The first (at [82]) is that, while changes to words normally imply changes to meaning, ‘syntactical analysis has its limits’ where the change is minor<sup>7</sup>. The second (at [94]) is that, when a statutory definition is read into the provision itself in the normal way<sup>8</sup>, there may well be some ‘logical or grammatical infelicities’ in what results<sup>9</sup>. But this should not derail interpretation. **iTip** – these points remind us that, while legislation is never perfect, intense linguistic analysis is rarely the way forward<sup>10</sup>.

## ? Differing views

### [FCT v Shell Energy Holdings \[2022\] FCAFC 2](#)

To depreciate the cost of an additional interest in statutory titles, Shell had to show the activities undertaken were for ‘exploration’<sup>11</sup>. That term was informed by the way it was used in petroleum laws<sup>12</sup>. In this context, ‘exploration’ took no narrow meaning and a deduction was available.

Allsop CJ said (at [3]) that, just because judges had taken different views on words (like ‘exploration’), did not necessarily mean that ‘different judicial methods’ had been applied. Differences in this regard, taking account of context and purpose, may ‘strike ... the minds and judgments of different people differently’. All words have some elasticity.

## 📄 Meaning of ‘includes’

### [Sri Guru Gobind Singh v Minister \[2022\] FCA 118](#)

Was the phrase ‘and includes’ to be read exhaustively as ‘means and includes’ in this migration case? An analysis of the regulation (at [126-128]) revealed no aim to limit the meaning of ‘adverse information’ to the items listed in the relevant definition. It followed that ‘and includes’ should take its natural sense.

Where ‘means and includes’ has a limiting force, ‘includes’ is generally used to extend, specify or expand<sup>13</sup>. But ‘means and includes’ itself may not always be exhaustive<sup>14</sup>. Nor may ‘includes’ have that effect when followed by things within the ordinary meaning<sup>15</sup>. **iTip** – consult context and purpose when determining the scope of expressions like these.

▪ **Credits** – Gordon Brysland, Oliver Hood, Charlie Yu & Patrick Boyd.  
<sup>1</sup> [Ruddick](#) [2022] HCA 9 (at [133]), cf [Unions NSW](#) [2019] HCA 1 (at [171]).  
<sup>2</sup> s 15AA of the [Acts Interpretation Act 1901](#), [SZTAL](#) [2017] HCA 34 (at [39]).  
<sup>3</sup> [CMH](#) [2012] HCA 55 (at [39]), [ERY19](#) [2021] FCAFC 133 (at [77, 87]).  
<sup>4</sup> s 72A [Police Act 1990](#) (NSW), s 84(1) [Industrial Relations Act 1996](#) (NSW).  
<sup>5</sup> [Eaton](#) [2013] HCA 2 at [78]), [Project Blue Sky](#) [1998] HCA 28 (at [70]).  
<sup>6</sup> [Eaton](#) [2013] HCA 2 at [48]), [Ferdinands](#) [2006] HCA 5 (at [18]).  
<sup>7</sup> [Tolley](#) [1979] 1 WLR 592 (at 603) cited, cf [Agfa Gevaert](#) [1996] HCA 36.

<sup>8</sup> [Kelly](#) [2004] HCA 12 (at [103]), [Telstra](#) [2017] FCAFC 4 (at [58]).  
<sup>9</sup> [Kennedy](#) [2007] NSWCA 328 (at [44]), [Tovir](#) [2014] NSWCA 379 (at [13]).  
<sup>10</sup> cf [Agalianos](#) (1955) 92 CLR 390 (at 397), [Unit Trend](#) [2013] HCA 16 (at [47]).  
<sup>11</sup> s 40-80(1) of [ITAA97](#).  
<sup>12</sup> [Petroleum \(Submerged Lands\) Act 1982](#) (WA) & its federal counterpart.  
<sup>13</sup> Pearce 9th ed (at [6.9]), Episode [10](#), [International](#) [2012] HCA 45 (at [26]).  
<sup>14</sup> [Hogan](#) (2013) 41 VR 112 (at [47]), Episode [69](#), cf [Dilworth](#) [1899] AC 99.  
<sup>15</sup> [Ryan](#) [2022] FCAFC 36 (at [103]), [Zickar](#) (1996) 140 ALR 156 (at 170).