



interpretation NOW!

Episode 84 – 31 May 2022



This political yard sign case shows how big principles resolve little cases – here, the nitty-gritty of town planning laws¹. Before the election was called, supporters of Zoe Daniel put up yard signs (aka ‘corflutes’) in advance of her candidacy for Goldstein. The council threatened fines, saying (A) the signs were each a ‘development’ requiring a permit², and (B) they were not exempt for publicising a ‘political ... event ... not held for commercial purposes’ because the election was yet to be called. The judge quoted *Certain Lloyd’s*, stressing that the purpose of provisions may drive departure from grammatical meaning³. The purpose of the town planning laws in question showed two things. First, that ‘all conceivable types of signs’ needed a permit. And second that the exemption applied, even if the election was yet to be called. Zoe Daniel later won the seat from Tim Wilson.

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Clear statement

[Secretary v AEUNSW \[2022\] NSWSC 263](#)

Walton J in a industrial relations case surveys a range of interpretation principles then (at [38]) reduces the most fundamental of them to a single sentence – ‘... **the correct approach to the construction of a statutory provision must start and end with the statutory text, and by reference to the purpose of the provision whether stated expressly in the statute or by implication**’. Another case is even briefer in this regard⁴ – ‘It is well established that the task requires consideration of the text, context and purpose’.

These statements may oversimplify things. However, they do set the essential direction of enquiry within a settled method – an essential checklist, if you like.



Constructional choice

[Todorovska v Brydens Lawyers \[2022\] NSWCA 47](#)

From a \$100K damages award, lawyers deducted \$68K for their costs under a special agreement overriding the statutory cap of \$10K. The plaintiff complained that this eventuality had not been disclosed to her, as required⁵. The appeal court agreed and duly reduced the costs to the lawyers.

Basten JA said (at [15]), where a constructional choice is to be made⁶, the ‘reading which promotes purpose must be preferred to one that does not, or does so to a lesser extent’⁷. The identified purpose of the provisions here confirmed the obligation to properly disclose possible financial consequences of the costs agreement. Ticking a box was not enough.



Headings

[R v Rolfe \[2021\] HCA 38](#)

A police officer fatally shot an indigenous man during an arrest and was later acquitted of murder. A side issue went to the High Court on the scope of police powers⁸. On the impact of section headings on interpretation, the court said (at [18]) that ‘a modern approach to statutory construction often takes account of headings, much in the same way as use is made of extrinsic materials’⁹. As Prof Pearce says, ‘differing approaches’ have been taken to headings¹⁰.

Headings are usually part of the Act. Where they are not, s 15AB of the *Acts Interpretation Act 1901* will be relevant. Headings aid but do not control meaning. **iTip** – always treat headings with care and respect.



Meaning of ‘decision’

[Amir v Professional Standards \[2022\] FCAFC 44](#)

Ordinary meaning, the court said¹¹, ‘must necessarily yield to the relevant statutory context’¹². The ordinary meaning of ‘decision’ is a conclusion resulting from a mental process translated by an overt act giving finality to that conclusion¹³. What kind of overt act was required here and when?

The context meant this was when the decision went to the committee – not when the person made up their mind, not when a file note was made and not when staff were told. Leaving aside if legal decisions may yet be made by an AI program¹⁴, this case shows how ordinary words may take their colour from their context, whose investigation is indispensable¹⁵.

▪ Credits – Gordon Brysland, Oliver Hood, Charlie Yu & Patrick Boyd.

¹ [Badger v Bayside City Council](#) [2022] VSC 140, John Dixon J.

² s 3 [Planning and Environment Act 1987](#), cl 52.05 [Bayside Planning Scheme](#).

³ [Certain Lloyd’s](#) [2012] HCA 56 (at [23-32]), Episode [43](#) ‘preconception’.

⁴ [Amir](#) [2022] FCAFC 44 (at [53]), cf [Hurley](#) [2022] FCAFC 92 (at [66]).

⁵ s 338 of the [Legal Profession Act 2004](#) (NSW).

⁶ [SZTAL](#) [2017] HCA 34 (at [39]), Episodes [34](#), [41](#) & [56](#), (2018) 92 ALJ 81.

⁷ s 33 of the [Interpretation Act 1987](#) (NSW).

⁸ ss 124 & 148B of the [Police Administration Act 1978](#) (NT).

⁹ Bennon, Bailey & Norbury (at [16.7]), [R v A2](#) [2019] HCA 35 (at [40]).

¹⁰ Pearce *Interpretation Acts in Australia* (at [3.15]), cf Episodes [23](#) & [55](#).

¹¹ (at [66]) Lee, Stewart & Cheeseman JJ.

¹² In this case, ss 86(1) & 88A(1) of the [Health Insurance Act 1973](#).

¹³ [Semunigus](#) [2000] FCA 240 (at [11, 75, 101]).

¹⁴ [Pintarich](#) [2018] FCAFC 79 (at [41, 47-49]) Kerr J dissenting.

¹⁵ [Chevron](#) [2017] FCAFC 62 (at [3]) Allsop CJ.