

interpretation NOW!

Episode 93 – 28 February 2023



Australian Government

Australian Taxation Office



We are told to start with the text while considering also context and purpose. In America, the focus is more on close textual analysis. A recent gun control case – [Cargill v Garland](#) – illustrates this¹. The court struck down a ban on ‘bump stocks’, an accessory increasing rate of fire. Bump stocks, however, do not turn rifles into machineguns, which are prohibited². Analysis was largely confined to dictionary meanings, strict grammatical rules and firearm mechanics³. In Australia, we would read the text in light of total context, including legislative history, extrinsic materials and statutory purpose. Were a choice to arise, we would select the meaning which best achieves that purpose⁴. In our system, ‘the context, the general purpose and policy of a provision and its consistency and fairness are surer guides to its meaning than the logic with which it is constructed’⁵.

Charlie Yu Tax Counsel Network, moving to Maddocks in Canberra

Delegations

[4 Boys \(NSW\) v ILGA \[2022\] NSWSC 1689](#)

Section 34(4) of the [Gaming Machines Act](#) allowed ILGA to increase a venue’s gaming machine threshold. There was no express power to revoke a decision to increase, but s 48(1) of the [Interpretation Act 1987](#) provided that statutory functions ‘may be exercised ... from time to time as occasion requires’.

Did this confer a revocation power? Yes, said Adamson J (at [79-80]) – it implicitly conferred a revocation power⁶ and was not displaced by contrary intention⁷. Although the [Gaming Machines Act](#) did provide for other revocation powers, those provisions dealt with different aspects of the regulatory regime and did not restrict revocation under s 34(4).

Extraterritoriality

[Wipro Ltd v NSW \[2022\] NSWCA 265](#)

Did employment in India under separate arrangements with the same entity count as part of ‘continuous service’ for long service leave purposes?⁸ This depended on territorial reach of the legislation and the presumption against extraterritoriality⁹, each of which depend on interpretation.

The task is to identify the ‘hinge’ or central conception of the legislation¹⁰, then to determine if there is a territorial connection in that respect. In this case, the so-called hinge was ‘continuous service’ in NSW so that employment in India was not to be counted. The court said earlier cases were ‘plainly wrong’ as they had applied the wrong legal test¹¹.

Statutory rights

[White \(pseudonym\) v The King \[2022\] VSCA 278](#)

Could W consent to joinder of unrelated incest charges in the same indictment? The statute said an indictment ‘must ... comply with Schedule 1’¹², which stated that only ‘related offences’ could be joined.

Two judges (at [65]) noted the old principle that a person can waive a statutory right enacted for their benefit – *quilibet potest renunciare juri pro se introducto*¹³. This, however, does not apply where the right is enacted also for public benefit, or the principle is otherwise excluded by the statute (as was the case here). It followed that the requirement of the statute could not be consented to be waived ‘no matter the attitude of the applicant’.

New textbook

[Modern Statutory Interpretation](#)

If a single word describes this textbook from Jeffrey Barnes, Jacinta Dharmananda and Eamonn Moran¹⁴, that word is ‘comprehensive’. Among its strengths are the practical guidance it provides, its concise and up-to-date explanations, and its worked examples.

There are 43 chapters, key ones being Ch 9 practical techniques, Ch 4 legislative intent, Ch 7 context and Ch 8 purpose – start with these to get across basic principles. Navigation from there to things you need is a cinch. As the title suggests, this is a modern workbook, not some dry codex for the shelves. It is a 21st century guide to a landscape increasingly dominated by complex statutes from every angle¹⁵.

■ **Thanks** – Charlie Yu, Oliver Hood & Michelle Janczarski.

¹ 57 F 4th 447 (5th Cir 2023), also [Alkazahg](#) 81 MJ 764 (2021) (at 780-781).

² [Gun Control Act](#) 18 USC § 922(o), [National Firearms Act](#) 26 USC § 5845(b).

³ cf [Bostock](#) 590 US __ (2020) (at 6), [Guedes](#) 45 F 4th 306 (2022) (at 314-315).

⁴ s 15AA of the [Acts Interpretation Act 1901](#).

⁵ [Agalianos](#) [1955] HCA 27 (at [5]), cf [Arellano](#) 598 US __ (2023) (at 11).

⁶ [Parkes](#) 7 NSWLR 332 (at 335), cf s 33 of the [Acts Interpretation Act 1901](#).

⁷ s 5(2) of the [Interpretation Act 1987](#) (NSW).

⁸ s 4 of the [Long Service Leave Act 1955](#) (NSW).

⁹ [Infosys](#) [2021] VSCA 219 (at [4-6]), [Impiombato](#) [2022] HCA 33 (at [61-62]).

¹⁰ [Impiombato](#) [2022] HCA 33 (at [59]), [DRJ](#) [2020] NSWCA 242 (at [157]).

¹¹ [Keenan](#) [2020] FCAFC 204 (at [191]), [Stone \(No 2\)](#) [1971] AR 246 (at 253-254).

¹² s 159(3)(c) of the [Criminal Procedure Act 2009](#) (VIC).

¹³ [Brown](#) (1986) 160 CLR 171 (at 178), [Wardman](#) [2023] FCAFC 13 (at [195-198]).

¹⁴ La Trobe Law School, UWA, Victorian Inspectorate, respectively.

¹⁵ Cambridge University Press \$160 online.

Episode 94 – expert evidence; statutory purpose; expressio unius; extrinsic materials

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