

interpretation NOW!



Australian Government
Australian Taxation Office

Episode 100 – A few things good to know ...



iNOW! first published in 2015 and now turns 100. What has happened over that period and what does it mean for the interpretation of statutes? Two things stand out. The first is the stability of the system. The principles and the methods by which they are to be applied are well-established, known and flexible. The second is the place and power of purpose in our system. Section 15AA of the Acts Interpretation Act is a mandatory rudder not an optional sail. The next chief justice of the High Court, Stephen Gageler, called s 15AA an ‘unqualified statutory instruction’¹. The days of literalism, acontextual readings and the idea that interpretation is a judicial pendulum are gone. The past 100 episodes detect no radical shift in how we are to read statutes. What we see is the progressive affirmation of purpose and context as the drivers of everyday answers to everyday questions.

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1 **process** Interpretation involves a method or process, as [E66](#) illustrates – **text > context > purpose > text**². Consider each in order as well as together. Look for objective evidence of meaning and purpose – [A2 \[2019\] HCA 35 \[32\]](#).

2 **text first** Interpretation is a text-based activity. Always start with the text. Only the text may carry statutory meaning. Get a preliminary understanding of the text before reading other materials – [Alcan \[2009\] HCA 41 \[47\]](#).

3 **context** Consider context in the ‘widest sense’. Context is everything relevant beyond the text (including common law rules). No ambiguity is necessary. Look for evidence of alternative meanings – [CIC \(1997\) 187 CLR 384 \(408\)](#).

4 **purpose** Search objectively within and outside the statute for evidence of the purpose of your provisions³. Select between properly available meanings the one which best achieves that purpose (s 15AA) – [Jacobs \[2023\] HCA 23 \[24\]](#).

5 **text last** On selecting the meaning which best achieves the purpose, return to the text to make sure that meaning is reasonably open on the words of the provision. This is a final but necessary reality check – [CMH \[2012\] HCA 55 \[39\]](#).

6 **coherence** Statutes are rarely perfect but are to be read wherever possible to make them work⁴. Inconsistency is resolved by reading the provisions as a whole in harmony and by seeking coherence⁵ – [PBS \[1998\] HCA 28 \[70\]](#).

7 **always speaking** Statutes as a rule take into account evolving meanings of words via changes in science, technology, medicine etc⁶. Purpose is key in fixing the scope of this principle in practice – [A2 \[2019\] HCA 35 \[169\]](#).

8 **preconception** Don’t think you just know the answer. Don’t angle for any particular outcome. Don’t assume what the purpose was or should be. Apply the process and see what comes out – [Certain Lloyds \[2012\] HCA 56 \[24-26\]](#).

9 **compromise** Legislation usually involves compromise. It rarely pursues one purpose 100%⁷. Sometimes purpose is obscure or unexpressed. Frame purpose at the correct level. Beware of general objects – [Carr \[2007\] HCA 47 \[5-7\]](#).

10 **extrinsic materials** Always consider these materials as part of wider context. Look for hard evidence of meaning and purpose. Be vigilant not to read whatever the EM may say into the words of the Act – [Mondeluz \[2020\] HCA 29 \[70\]](#).

11 **consequences** Absurd, irrational, capricious or obscure outcomes may signal that your reading does not conform with purpose > reconsider! Mere inconvenience of result is not sufficient⁸ – [Cooper Brookes 147 CLR 297 \(319-321\)](#).

12 **Interpretation Acts** These Acts are a treasure-trove of aids, rules and conventions affecting interpretation. They are part of wider context and all jurisdictions have one. Always check their relevance – [Pearce Interpretation Acts \(book\)](#).

13 **rules of construction** Also part of wider context⁹, these common law principles are soft help not hard rules. They provide guidance where relevant and appropriate. Consult textbooks on their uses¹⁰ – [AMMAI \[2018\] FCAFC 223 \[79\]](#).

14 **statutory definitions** These aids operate to shorten the text, not to enact substantive law. Read them into the provision and construe the whole¹¹. Smoothing out minor wrinkles in expression is OK¹² – [Qantas \[2023\] HCA 27 \[80\]](#).

15 **kinds of Acts** All Acts are now subject to the same general principles of interpretation. Old rules on penal, fiscal and beneficial provisions are overtaken by the need to align meaning to statutory purpose – [Alcan \[2009\] HCA 41 \[57\]](#).

16 **kinds of meaning** Ordinary meaning is the default. Trade meaning must be proved by evidence. Other meanings may emerge from context. Choose between them, where possible, by purpose (s 15AA) – [A2 \[2019\] HCA 35 \[32-33\]](#).

17 **dictionaries** These are no substitute for interpretation as they tell us nothing about context¹³. Consult with care – [Macquarie](#) first. Don’t shop them, make them a fortress¹⁴ or apply them robotically – [Will \[2020\] NSWCA 355 \[53-57\]](#).

18 **remediation** Adding or subtracting words from statutes is OK for minor glitches only. Tread cautiously – strict criteria apply¹⁵. Repairing statutes is verboten in our system, as it crosses the legislative line – [Minogue \[2018\] HCA 27 \[43\]](#).

• Thanks – Oliver Hood, Patrick Boyd & Jacinta Dharmananda.

¹ [SZTAL \[2017\] HCA 34 \[39\]](#), cf [Calidad \[2020\] HCA 41 \[91\]](#).

² [Qantas \[2023\] HCA 27 \[47-57\]](#) provides an example of the process.

³ [Thiess \[2014\] HCA 12 \[23\]](#), [SZTAL \[2017\] HCA 34 \[39\]](#).

⁴ [Taylor \[2014\] HCA 9 \[60\]](#), [Douglas \[2020\] FCAFC 220 \[90-91\]](#).

⁵ [SAS Trustee \[2018\] HCA 55 \[20\]](#), [Jacobs \[2023\] HCA 23 \[45\]](#).

⁶ [Aubrey \[2017\] HCA 18 \[29-30\]](#), [Eaton \[2013\] HCA 2 \[97\]](#).

⁷ [Rodriguez \(1987\) 480 US 522 \(525-526\)](#), [Woodside \[2009\] FCAFC 12 \[51\]](#).

⁸ [De Paolo \[2015\] VSCA 230 \[48\]](#), [ConnectEast \[2009\] FCAFC 22 \[41\]](#).

⁹ [Fairfax \[2019\] NSWCA 172 \[258-259\]](#), cf [Lacey \[2011\] HCA 10 \[46\]](#).

¹⁰ top 3 – Pearce; Barnes, Dharmananda & Moran; Herzfeld & Prince.

¹¹ [Kelly \[2004\] HCA 12 \[103\]](#), [Piastrino \[2022\] VSC 202 \[68\]](#).

¹² [Carr \[2022\] NSWSC 166 \[94\]](#), [Kennedy \[2007\] NSWCA 328 \[44-45\]](#).

¹³ [Hunter’s \[2017\] NSWCA 188 \[78-83\]](#), [Will \[2020\] NSWCA 355 \[56\]](#).

¹⁴ [Thiess \[2014\] HCA 12 \[23\]](#), [Cabell \(1945\) 148 F \(2d\) 737 \(739\)](#).

¹⁵ [Taylor \[2014\] HCA 9 \[35-40\]](#), [Disorganized \[2023\] HCA 22 \[14-15\]](#).