

interpretation NOW!

Episode 105 – 29 February 2024



Australian Government

Australian Taxation Office



Statutory interpretation in Australia and New Zealand is very similar. In both places, the process is based on text, purpose, and context¹ – the systems differ little in substance². Both require evolving meanings³, prospectivity⁴, coherence and workability⁵, and consistency with international obligations⁶. Each permits limited remediation⁷. New Zealand requires consistency with the *Treaty of Waitangi*⁸, Australia with its Constitution. New Zealand may insist on more allegiance to fundamental values when reading statutes⁹. On both sides of the ditch, however, mapping the interpretation process confirms its integrity as an autonomous and predictable discipline¹⁰. While each system may differ at the margins (often by reason of differing constitutional arrangements), there is substantial agreement at the centre. Each system reflects rule-of-law values, and each may learn from the other.

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Appellate deference

[Pritchard v M 6:8 Legal \[2024\] WASCA 4](#)

The appeal court in this case makes an important point about the manner in which views of the court below on interpretation are to be approached. It was said (at [35]) – ‘This court applies the correctness standard in reaching its own view as to the proper construction of the provisions, without according any deference to the views adopted by the primary judge’.

Three things – first, the ‘correctness standard’ requires proper application of the principles. Second, while comity may prefer coherence with decisions of courts of equal standing, appeal courts must be neutral and independent. Third, administrators must apply the law as stated authoritatively at any level.

High Court mantra

[Munkara v Santos NA Barossa \(No 3\) \[2024\] FCA 9](#)

This gas pipeline case was fought over the meaning of ‘significant new environmental impact’ in federal regulations. Charlesworth J (at [135]) said the regulation was to be read in accordance with the [Acts Interpretation Act 1901](#) and ‘well established principles’, quoting [SZTAL \[2017\] HCA 34](#) (at [14]) –

“The starting point for the ascertainment of the meaning of a statutory provision is the text of the statute whilst, at the same time, regard is had to its context and purpose ...”

This mantra identifies the meta elements of the exercise – text, context and purpose. It tells us to consider them in an integrated way. Context and purpose are considered from the very beginning.

Extrinsic materials

[Harvey v Minister \[2024\] HCA 1](#)

As the first case decided by the High Court this year, *Harvey v Minister for Primary Industry & Resources* makes important points about extrinsic materials and our ‘modern approach’ more generally.

The issue was whether a mineral lease involved a right to mine for the sole purpose of constructing an ‘infrastructure facility ... associated with mining’¹¹. The crux point was whether ‘infrastructure facility’ as defined in the statute also took its ordinary meaning, as the EM suggested. All judges held that it did¹², but it is Edelman J who seeks to explain the contextual importance of extrinsic materials in our system¹³. This will be the focus of **Episode 106** next month¹⁴.

Professor Pearce

[Statutory Interpretation in Australia](#)

Dennis Pearce has published the 10th edition of his classic text, a monumental achievement¹⁵. For half a century, this book has guided courts, academics and practitioners with authority, style and perspective. As LexisNexis says, it is the ‘most cited text on Australian law’. The slim volume which appeared in 1974 has grown in line with the influence of statutes and evolution of the principles applied to them.

In his Foreword to ‘this historic edition’, Gageler CJ (at vi) praises the ‘clear and systematic identification and statement of those principles’. As a work of enduring significance, ‘The Tenth’ sits on the shelf of the chief justice for good reason. Chapeau Dennis!

■ **Thanks** – Ross Carter, Oliver Hood, Dennis Pearce & Jeremy Francis.

¹ [Fonterra \[2007\] NZSC 36 \[22\]](#), [Allied Concrete \[2015\] NZSC 7 \[55\]](#).

² As Carter *Burrows and Carter – Statute Law in New Zealand* illustrates.

³ [Norman \[2021\] NZCA 78 \[37\]](#), [TUV \[2022\] NZSC 69 \[94\]](#).

⁴ [D \[2021\] NZSC 2 \[77, 82, 159\]](#), [G \[2023\] NZCA 93 \[6, 112\]](#).

⁵ [Northern Milk \[1988\] 1 NZLR 530 \(537\)](#), cf [SAS Trustee \[2018\] HCA 55 \[20\]](#).

⁶ [Fitzgerald \[2021\] NZSC 131 \[116, 225\]](#), cf [Jacobs Group \[2023\] HCA 23 \[22\]](#).

⁷ [Frucor \[2001\] NZCA 109 \[28-31\]](#), [Mainzeal \[2023\] NZSC 113 \[158-164\]](#).

⁸ [Trans-Tasman \[2021\] NZSC 127 \[149-151\]](#), [Whakatōhea \[2023\] NZCA 504](#).

⁹ [Hudson \[2023\] NZCA 653 \[51-54\]](#), cf Rishworth [2012] NZLR 321 (346–351).

¹⁰ Keith ([OP No 19, NZCPL, 2009](#)) (2), Kirby (2003) 24(2) Statute LR 95 (110).

¹¹ s 24MD(6B) of the [Native Title Act 1993](#) (Cth).

¹² Gageler CJ, Gordon, Steward & Gleeson JJ [76-77].

¹³ [103-116] *The role of extrinsic materials in statutory interpretation*.

¹⁴ **iTip** – how exmats may impact meaning is fundamental to interpretation.

¹⁵ \$210 LexisNexis paperback, Editions 3 to 8 co-authored by Harry Geddes.

Episode 106 – extrinsic materials explained by Edelman J in *Harvey v Minister*

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