

interpretation NOW!

Episode 124 – 30 September 2025



Australian Government

Australian Taxation Office



Forty years ago in the *K&S Lake* case, Mason J set down what he called the ‘modern approach’ to statutory interpretation¹. The crucial breakthrough which the judge sought to engineer was that context in the ‘widest sense’ is to be considered ‘in the first instance’ rather than at some later stage ‘when ambiguity might be thought to arise’². This formulation of principle was adopted almost word-for-word some years later in *CIC Insurance*³. Mason J did not sit on the latter case, nor is he mentioned by name. The court did reference *K&S Lake*, however, together with the English case *Mason J* had quoted at the time⁴. This principle has never since been doubted and is repeatedly endorsed in the High Court⁵. As more recently explained⁶, s 15AB of the Acts Interpretation Act 1901 also does not operate to undermine the position staked out last century by Mason J.

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⇒ In pari materia

[Grapple Pay v Conroy \[2025\] NSWCA 171](#)

The Latin term *in pari materia* means ‘analogous’. Parliament is presumed to intend the same words used in a later statute ‘in a similar connection’ take the same meaning⁷. The practical application of this depends on the strength of the analogy in question.

In the present case, a suggested analogy between ‘intent to defraud’ provisions in NSW⁸ and voidable preference provisions in federal bankruptcy laws was rejected. The court said (at [92]) that the different legislative aims and contexts meant that the respective provisions ‘cannot be said to be *in pari materia*’⁹. This case illustrates the burden faced in meeting the ‘analogous’ threshold in litigation.

👤 Enterprise agreements

[Police Federation v CCP \(Victoria\) \[2025\] FCA 865](#)

This case repeats principles applying to enterprise agreements¹⁰ but makes extra points. One, context extends to the ‘historical antecedents’ by reference to what they may show. Two, when an expression is transplanted from history, ‘it may have brought with it some of the soil in which it once grew, retaining a special strength and colour in its new environment’¹¹.

There is no need for ambiguity before history is to be consulted. But history cannot displace the meaning of the text, nor is its examination an ‘end in itself’. In the present case, history showed little and the ‘intensive focus’ on it by one party ‘at times distracted attention from the structure and text ...’

🔗 Purpose ‘at any price’

[Laming v Electoral Commissioner \[2025\] HCA 31](#)

Statutes rarely pursue one purpose 100%. Did certain Facebook posts not giving sender particulars attract civil penalties at the maximum possible level?¹²

Although an object was to deter non-compliance, it did not follow that penalties calculated on a multiple recipient basis were intended. Section 15AA was of little assistance. The deterrence object did ‘not exist in a vacuum’ and the assumption that the provision sought to achieve that object ‘at any price [was] particularly inapt’. Other objects supporting democratic functioning and freedom of political communication signalled that people were not to be subjected to ‘crippling penalties’ in this regard.

🔍 Examples in legislation

[Queensland v Johnston \[2025\] QCA 142](#)

J was suspended from teaching pending unrelated criminal charges. On acquittal, he sought lost pay on the basis he was ‘available to work’ at all times consistent with a statutory directive¹³. J argued that an example in the directive of detention in a correctional facility operated to confine the directive to physical availability. This was rejected.

Dictionary definitions extended to legal availability, & an example ‘is just an example’. They have a role, but the Act prevails to the extent of any inconsistency¹⁴. Examples also must not overwhelm provisions, and they are not read as exhaustive¹⁵. J was not entitled to lost pay as he was legally not ‘available to work’.

■ **Thanks** – Oliver, Agnes, Mannat, Jeremy, Michael, Charlie & 2 Matthews.

¹ *K&S Lake City Freighters v Gordon & Gotch* (1985) 157 CLR 309 (315).

² cf *Sydney Seaplanes* [2021] NSWCA 204 [27], *EXV* [2024] NSWSC 490 [149].

³ *CIC Insurance* (1997) 187 CLR 384 plurality (408), Gaudron J agreeing (412).

⁴ *Attorney-General v Prince Earnest Augustus of Hanover* [1957] AC 436 (461).

⁵ *SZTAL* [2017] HCA 34 [35-37], *A2* [2019] HCA 35 [32-33] for example.

⁶ *Harvey* [2024] HCA 1 [113-114], *Palmanova* [2025] HCA 35 [77-79].

⁷ *Pearce* 10th ed [3.49-3.50], *BDM* (323), *SZTAL* [2017] HCA 34 [24].

⁸ s 37A of the *Conveyancing Act 1919* (NSW).

⁹ *Pearce* 10th ed [3.49] cited, cf *Herzfeld & Prince* [8.290], Episode 18.

¹⁰ [47], cf Episode 109, *Barwon Health* [2024] FedCFamC2G 376 [22].

¹¹ [49], *Short* (1993) 40 FCR 511 (518), cf *Toms* [2015] FCAFC 35 [40].

¹² s 321D(5) of the *Commonwealth Electoral Act 1918* (Cth).

¹³ Directive 06/23 under s 102 of the *Public Sector Act 2022* (Qld).

¹⁴ *Herzfeld & Prince* [5.90] citing *McLaughlin* [2011] NSWSC 717 [22].

¹⁵ *Brooks* [2000] FCA 721 [66] cited, cf Episode 95, *Pearce* *IAIA* [3.17].

Episode 125 – *Palmanova Pty Ltd v Commonwealth* [2025] HCA 35 (whole episode)

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