

interpretation NOW!

Episode 126 – 28 November 2025



Australian Government

Australian Taxation Office



An unfortunate feature of legislative drafting is that most legislation is expressed to apply to the world at large ... so said Ball JA in a recent gambling case¹. TexBet was convicted of ‘providing’ gambling ads via SMS to a gambler in Victoria whose account had been closed on request². It appealed on the basis that statutes are presumed only to operate locally both at common law and under statute³. Other laws, however, modified the presumption here by extending the reach of the gambling offences ‘beyond the territorial limits’ of NSW⁴. Ball JA (at [29-32]) ordered acquittal, as the ‘central focus’ and ‘physical element’ of the offence involved ‘providing’ gambling ads to a relevant person in NSW. The focus is on where the ads were received, not from where they were sent. A betting service anywhere would be liable where ads are provided to a relevant person in NSW.

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Always speaking

[Petersen v Argentine Republic \[2025\] NSWSC 1071](#)

After Argentina’s nationalisation of energy assets in 2012, a New York judge awarded US\$16b in damages to P as a dispossessed party. When P sought to enforce judgment, Argentina said relevant process had not been validly served on it, something it said could only happen under convention procedures⁵.

Argentina argued that, as these procedures were ‘always speaking’, they excluded service by diplomatic channels⁶. Bell CJ said it would be ‘perverse’ if this was correct. The 2 avenues are genuine alternatives to which no hierarchy applies⁷. **iTip** – ‘always speaking’ is about expansion of statutes to cover new situations, not about their internal restriction.

Re-enactment presumption

[RPPL \[2025\] FCA 1126; Stretton \[2025\] VSC 589](#)

Two cases show how the re-enactment presumption works in practice. In RPPL, the issue was whether jurisdiction provisions in new ART legislation are to be read the same way as in the old AAT legislation⁸. Given the new provisions took into account the ‘existing well-settled position’, Cheeseman J (at [70]) held that the presumption ‘applies with force’.

In Stretton, a tiler fell off the roof and sought common law damages from a third party. The issue was whether ‘compensation’ in one section of an Act⁹ meant only ‘compensation under [that] Act’. Text, context and purpose in re-enacting the section made it clear damages had to be pursued separately.

Co-interpretation

[Crossley v English \[2025\] WASCA 141](#)

This water access case (at [101-106]) considers the ‘principle of co-interpretation’ – that being, when one Act amends another, the two are read together ‘as one connected and combined statement of the will of parliament’¹⁰. The principle applies at both common law and under statute¹¹, though the latter ‘has added nothing of substance’ to the former¹².

The term ‘co-interpretation’ was coined in Victoria¹³. It reflects our ‘modern approach’, and may assist in determining the hierarchy of conflicting provisions. Nothing in the ‘combined statement’ of the law here denied to a downstream landowner a cause of action against an upstream one damming the river.

Personal liberty

[Meredith v NSW \(No 5\) \[2025\] NSWSC 1133](#)

M headed a class action for assault [etc] after she was strip searched by police for drugs at a music festival. Were the searches ‘necessary’ in terms of the ‘seriousness and urgency of the circumstances’¹⁴?

Necessary means ‘absolutely necessary’, and urgency indicates a situation ‘requiring immediate action or attention’. The main interpretation point was that powers restricting personal liberty ‘must be strictly construed’¹⁵ – cf Episode [123](#). Yehia J noted that M was 27 at the time, had no criminal record and ‘was subjected to particularly humiliating treatment while at a total loss of liberty’. The searches were unlawful and damages set at \$93K. An appeal is pending.

■ **Thanks** – Charlie Yu, Jeremy Francis, Patrick Boyd & Matt Snibson.

¹ *O’Shea Bookmaking Pty Ltd t/a TexBet v Argeres* [2025] NSWSC 1137 [17].

² s 33HA(1) *Betting and Racing Act 1998* (NSW) – TexBet was fined \$33,000.

³ *DRJ* [2020] NSWCA 242 [4], s 12(1)(b) *Interpretation Act 1987* (NSW) resp. [22-24], Part 1A *Crimes Act 1900* (NSW), in particular s 10A(1).

⁵ s 24 & s 23 *Foreign States Immunities Act 1985* (Cth) resp.

⁶ *Herzfeld & Prince* [2.30, 2.80] cited, cf *HBSY* [2024] HCA 35 [53], Episode [95](#).

⁷ [84], *Firebird* [2015] HCA 43 [138] Gageler J. Either method is available.

⁸ s 172(1) *ART Act 2024* (Cth), s 44(1) *AAT Act 1975* (Cth) resp.

⁹ s 326 *Workplace Injury Rehabilitation and Compensation Act 2013* (Vic).

¹⁰ *Sportsbet* [2011] FCA 961 [51] quoted, cf *Pearce* 10th ed [7.29].

¹¹ *Sweeney* 4 CLR 716 (735), s 11B *Acts Interpretation Act 1901* (Cth) resp.

¹² *Pearce* IAIA [2.27] citing *WMC Resources* [1998] HCA 8 [200-201].

¹³ *Shields v Chief Commissioner of Police* [2008] VSC 2 [102] Kevin Bell J.

¹⁴ s 31 *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW).

¹⁵ [184-193], *Zavarinos* [2004] NSWCA 320 [23], *Williams* 161 CLR 278 (292).

Episode 127 – extrinsic materials; surplusage; de minimis principle; variation of instruments

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ISSN 2651-9518