

interpretation NOW!

Episode 133 – 30 June 2026



Australian Government

Australian Taxation Office



In *Hopper v Victoria*, the High Court held legislated caps on political donations in Victoria to be invalid¹. One issue was the effect of a severance clause in the State interpretation statute² aimed at saving a challenged provision 'to the extent to which it is not in excess of ... power'³. The plurality noted (at [53]) that the severance clause applied 'unless a contrary intention appears'. Its effect was to 'reverse the presumption that a statute is to operate as a whole'⁴. Severance clauses, however, must be 'applied strictly within the limits of judicial power'⁵, and statutes are not to be rescued via 'major surgery'. In the present case, however, nothing could be saved – a course the court did not take lightly. The structure and content of the provisions compelled total invalidity, especially given the choice involved lay 'in the borderland between legislative and judicial power'⁶.

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Ordinary meaning

[Giggle for Girls v Tickle \[2026\] FCAFC 64](#)

Giggle created an app as a safe online space for women. Born male, Tickle had gender change surgery and was recorded as female. When her access was blocked, Tickle sued Giggle for sexual discrimination⁷.

The ordinary meanings of 'woman' and 'female' became relevant in this context. It was noted that gender 'is not merely a matter of chromosomes' and is 'partly a psychological question'⁸. The meaning of ordinary words is a question of fact, cannot generally be proved by evidence, and is 'not something to which the principles of *stare decisis* apply'. **iTip** – previous cases may be of assistance, but much will depend on the statutory context – see *Karam* below.



International treaties

[CCDM Holdings v Republic of India \[2026\] HCA 9](#)

It was held that ratification of a New York convention did not involve waiver of foreign state immunity from jurisdiction over an arbitral award. India had not waived immunity to enforcement in Australia of an award made in the Netherlands in favour of CCDM.

The text of the convention was silent on immunity. But its history and general State practice were both against denial by ratification⁹. To the extent a general State practice was discernible, the court said (at [42]), it was against ratification by India being a sufficient act of waiver in this case. An amicus brief by the US executive in a recent SCOTUS appeal was evidence of the current position on the issue¹⁰.



Not the common law

[Karam v Close the Loop \[2026\] VSC 270](#)

An issue in this case was whether High Court cases on the meaning of an expression in fair work provisions were binding in a retail leases context.

Croft J noted that statutory construction 'differs from that in distilling the common law from past decisions'. The starting point with legislation is always the text of the statute, 'not the common law'¹¹. The meaning of statutory text only binds a later court on 'the same text in the same provision in the same statute', the judge said¹². Given the differences in the two regimes, Croft J (at [254]) held that the High Court cases were not relevant. **iTip** – treat legal dictionaries with proper caution.



Deeming provisions

[Shell Energy Holdings v FCT \[2026\] FCA 577](#)

What is of note in this CGT case is the summary from Jackman J (at [62]) on the legal effect of deeming provisions. The judge observed that they do not always create a statutory fiction¹³. But, where they do, we are to 'proceed on the deemed basis when applying the law, notwithstanding the true facts'¹⁴.

In these cases, added the judge, 'the hypothesis must be made to work'¹⁵. The deeming is to be applied 'irrespective of how realistic or fanciful such a hypothesis may be'. Accordingly, the interpreter is to suspend any disbelief they may hold about the hypothesis required by parliament. The true facts are to be cast aside in favour of the legislated deeming.

■ Thanks – Matt Freestone, Suzanne McMahon, Charlie Yu, Jeremy Francis.

¹ *Hopper v Victoria* [2026] HCA 11, Part 12 [Electoral Act 2002](#) (Vic).

² s 6(1) *Interpretation of Legislation Act 1984* (Vic).

³ Pearce *Interpretation Acts in Australia* [9.2] generally.

⁴ *Tajjour* [2014] HCA 35 [169], *Clubb* [2019] HCA 11 [141] cited.

⁵ *Spence* [2019] HCA 15 [87] cited.

⁶ [68]; *Clubb* [2019] HCA 11 [148], cf *Deripaska* [2026] HCA 14 [171].

⁷ s 22 *Sex Discrimination Act 1984* (Cth).

⁸ [279]; *SRA* (1993) 43 FCR 299 (325) quoted.

⁹ Bjorklund (2010) 21 ARIA 211 (219), *CC/Devas* [2025] 1 WLR 4287 [55, 81].

¹⁰ *NextEra* (2024) Brief (19, 22), cf Gardiner *Treaty Interpretation* (257).

¹¹ *Calidad* [2020] HCA 41 [204], *BDM* [30.3] cited.

¹² *BDM* [30.3], Carter [1975] 1 WLR 1204 (1206) cited.

¹³ *Hunter Douglas* (1970) 122 CLR 49 (65-67), *Pearce* 10th ed [4.82].

¹⁴ *Bain* (1965) 112 CLR 246 (273), *Maroney* [2003] HCA 63 [11] cited.

¹⁵ *Chevron* [2017] FCAFC 62 [48], cf *Singapore Telecom* [2024] FCAFC 29 [134].

Episode 134 – beneficial provisions; extrinsic materials; context and purpose; interpretation provisions

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