interpretation NOW!

Episode 134 – 30 July 2026

Australian Government
Australian Taxation Office

Countless are the cases where a court or tribunal sets out the basics of our 'modern approach' to statutory interpretation by reference to High Court authority. One recent case is novel in this regard[1]. For guidance on interpretation, Lindsay J quotes French CJ from his foreword to the 2014 edition of Pearce & Geddes[2]. The main point made by the judge is that context extends beyond the text into extrinsic materials, as statutes 'are not enacted in a legal and normative vacuum'. French CJ in turn quotes a 1994 case – 'The true meaning of a legal text almost always depends on a background of concepts, principles, practices, facts, rights and duties which the authors of the text took for granted or understood, without conscious advertence, by reason of their common language and culture'[3]. History and practice increasingly confirm the importance of context in our system.

Gordon Brysland Tax Counsel Network gordon.brysland@ato.gov.au 0417 605 338

Beneficial provisions

[*Strata Plan v 3A Composites [2026] FCA 351*]

Strata headed a class action against 3A under consumer guarantee provisions in the *Australian Consumer Law* concerning aluminium composite panels implicated in high-profile residential fires[4].

Although the consumer guarantees are beneficial legislation, limitations on them need not be given a liberal interpretation. Those limitations reflect a practical balance between competing public interests. They 'should be interpreted carefully in order not to destroy that balance'[5]. Anderson J (at [841]) rejected 3A's attempt to characterise substantive parts of the consumer guarantees as 'limiting provisions' in argument to narrow the scope of those guarantees.

Extrinsic materials

Two recent NSWCA cases

In *Glencore*, a submission that the procedural history of a determination[6] could not be considered given no ambiguity had been shown was rejected[7]. McHugh JA observed (at [86]) that 'language is unavoidably contextual' and that context is to be considered 'in the first instance'. But this is not to deny there are limits to the material that can be taken into account.

In *JS*, Bell CJ used the EM of one legislature as extrinsic material for the cognate Act of another legislature[8]. At issue was the meaning of 'adduced' in NSW provisions all but identical to those in the Commonwealth Act. The desirability of consistency[9] logically made the Commonwealth EM relevant.

Context and purpose

FW Aviation v Vietjet Aviation [2026] QSC 63

Vietjet argued that registration of an English judgment against it be set aside, as it was for an amount greater than the amount 'payable' at the date of registration[10]. McCafferty J held that it was the total amount payable, not the amount 'presently payable', to which the statute was directed.

The judge emphasised the importance of purpose, noting 2 things – (A) purpose resides in the text and structure of a statute even where it is 'identified by reference to common law and statutory rules of construction'[11], and (B) where literal meaning does not conform to the evident purpose, it is 'entirely appropriate' to depart from that meaning[12].

Interpretation provisions

Property Exchange v R-G [2026] NSWSC 344

Modern statutes may have their own interpretation provisions. The Act implementing the national e-conveyancing scheme[13] is one of them. Schedule 1 of the National Law deals with things like legislative purpose, extrinsic materials and ordinary meaning. PEXA challenged denial of a request to pass through new charges to consumers on the basis denial 'may not be unreasonably withheld'[14]. This was rejected. Wright J said the general principles reflected in Palmanova applied to the current issue 'either directly or, at least, by analogy, and to the extent they are not inconsistent with Schedule 1'. **Comment** – the relationship between legislated interpretation provisions & common law principles is often murky[15].

▪ **Thanks – Jeremy Francis, Jacinta Dharmananda & Matt Freestone.**

[1] *KLH v Northern NSW Local Health District* [2026] NSWSC 590 [28].
[2] 8th edition (2014), the latest edition is the 10th (2024) by Pearce alone.
[3] *Theophanous* (1994) 182 CLR 104 (196), cf *Zentai* [2012] HCA 28 [31].
[4] Lacrosse fire Melbourne (2014); Grenfell fire London (2017).
[5] *Adelaide* [2004] FCAFC 183 [17], *Aliraja* [2025] WASCA 103 [36].
[6] s 44V *Competition and Consumer Act 2010* (Cth).
[7] *Glencore Coal Assets v Port of Newcastle Operations* [2026] NSWCA 64.
[8] *JS v DPP* [2026] NSWCA 58 [28], cf *Talacko* [2017] HCA 15 [68].
[9] *Farah* [2007] HCA 22 [135], *Falzon* [2018] HCA 29 [49], *Hill* [2022] HCA 21.
[10] Payment was by instalments some of which were not yet due.
[11] *Lacey* [2011] HCA 10 [44] quoted, cf *Lilley* [2013] FCAFC 121 [67-69].
[12] *A2* [2019] HCA 35 [37], cf *Conroy's Smallgoods* [2023] FCAFC 59 [24-28].
[13] *Electronic Conveyancing National Law (ACT) Act 2020* (ACT).
[14] clause 5.4.4 *Model Operating Requirements* of the National Law.
[15] *Gayle* [2019] NSWCA 172 [258-259], cf *Harvey* [2024] HCA 1 [106-116].

Episode 135 – revenue statutes; meaning of 'may'; planning permits; High Court mantra

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