interpretation NOW!

Episode 135 – 28 August 2026

Australian Government
Australian Taxation Office

In a ceremonial sitting of the High Court for Sir Anthony Mason, Gageler CJ called out the late chief justice's 'assimilation of taxation legislation into the mainstream of statutory interpretation together with Wilson J in *Cooper Brookes* …'[1] It was said in that case that the fact 'that an Act is a taxing statute does not make it immune to the general principles governing the interpretation of statutes'. It is proper to depart from literal meaning when, measured against legislative intent, the result produced is capricious and irrational. So began the revolt against literalism. The next week, parliament legislated for purposivism via s 15AA of the *Acts Interpretation Act 1901*. In 1985, it was Mason J dissenting in *K & S Lake* who first mapped out the detail of our 'modern approach'[2]. These Mason Principles have lost none of their bright vitality in the years since – quite the opposite.

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Revenue statutes

Commissioner v Special Situations [2026] QCA 98

This case illustrates the point made in *Cooper Brookes* above. The issue was whether certain shares were 'group property' under State land-rich provisions[3]. Gotterson AJA quoted the High Court in *Alcan*, saying that 'tax statutes do not form a class of their own to which different rules of construction apply'[4].

The fact that a statute is a taxing Act 'is part of the context and is therefore relevant to the task of construing the Act in accordance with … settled principles'[5]. The judge added, however, that 'if, after applying the ordinary rules of interpretation, ambiguity remains, it should be resolved in favour of the taxpayer'[6]. **Comment** – this will be very rare.

Meaning of 'may'

Diab v Secretary [2026] NSWSC 693

The Secretary sought to cancel Diab's contractor licence to do residential work. A licence 'must' be cancelled if the Secretary 'would be required to refuse' a licence, but 'may' be issued if the Secretary is satisfied there is 'no evident risk to the public'[7]. Diab argued that the Secretary was not 'required' to cancel here because 'may' conferred a discretion.

Sirtes J rejected this – 'may' in this context was mandatory, meaning the power was coupled with a duty to exercise it[8]. The alternative construction would 'create dissonance within the statute' and 'undermine the purpose of the provisions'. **iTip** – calls on this issue are invariably contextual.

Planning permits

Maple Media v Monash CC [2026] VSC 330

Many cases deal with how development consents and planning permits are to be read[9]. The common theme is that, while there are nuances, the ordinary principles of statutory interpretation apply generally to these instruments[10]. This case provides a twist.

Gray J (at [61]) noted that some of those principles apply but queried others, 'particularly those relating to the need to adopt a purposive and contextual construction of permits'[11]. They 'could come into tension with the principle of being able to give a non-technical, practical and essentially freestanding interpretation to a permit'. **Comment** – these comments may signal a change in approach[12].

High Court mantra

Moore v Martin [2026] NSWSC 493

This case on the meaning of 'serious harm' for defamation purposes makes 2 important points.

The first (at [24]) is High Court mantra – **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 context in its widest sense – including its historical context – and purpose**[13]. This reminds us of the meta elements of the process to be followed in all cases involving the meaning of statutes. The second point (at [25]) is that legislation as part of a national uniform framework 'should be interpreted consistently throughout the Commonwealth'[14]. This encourages enhanced comity in national situations[15].

- **Thanks – Oliver Hood, Jeffrey Barnes & Jeremy Francis.**

1 *Ceremonial Sitting* 15 June 2026 (7-8), *Cooper Brookes* 147 CLR 297 (323).
2 *K & S Lake* (1985) 157 CLR 309 (315), then *CIC Insurance* 187 CLR 384 (408).
3 s 407(1)(a) *Duties Act 2001* (Qld).
4 cf *Smeaton* [2017] NSWCA 184 [104], *Carter* [2020] FCAFC 150 [104].
5 *Alcan* [2009] HCA 41 [57], cf *Sunlite* [2023] FCAFC 43 [6].
6 Herzfeld & Prince [10.150], *Redland* [2024] HCA 7 [177], cf BDM [17.5(b)].
7 ss 22(1)(h) & 33C(3) *Home Building Act 1989* (NSW) resp.
8 *Finance Facilities* 127 CLR 106 (134), cf BDM [36.5], Pearce 10th ed [11.5].
9 Episodes 88, 91, 113, 123 & 132; cf Herzfeld & Prince [16.190-16.220].
10 Most recently, *Aesthete* [2026] QCA 136 [59] 'the same principles'.
11 [56-58] on *Pegasus* [2018] VSC 484 [45], cf *Salisbury* [2024] SASC 92 [67].
12 cf *Kovacevic* [2016] NSWCA 346 [83], *Matic* [2008] NSWLEC 113 [9].
13 *Rohan* [2024] HCA 3 [25], cf *Edmunds* [2025] VSCA 31 [152].
14 *Marlborough* (1993) 177 CLR 485 (492), *Farah* [2007] HCA 22 [135] cited.
15 cf *Lendlease* [2025] HCA 19 [109-120], Glover 43 *UNSW Law Journal* 850.

Episode 136 – statutory definitions; bastard conjunction; 'in accordance with'; Lebanese law

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