

interpretation NOW!

Episode 136 – 30 October 2026



Australian Government

Australian Taxation Office



Leeming JA states in a recent case¹ – ‘The task is to construe the difficult language enacted, rather than better language that was not enacted’. This arose in the context of the meaning of ‘custody’ under *high risk offenders* legislation, where relevance of the presumption against surplusage became an issue. Leeming JA emphasised that the presumption is just that (a presumption) which ‘does not itself dictate the outcome’. Neither was it the ‘right starting point’ here. The correct analysis involved determining the leading and subordinate provisions to resolve any conflict between them². Asking whether parliament could have used ‘better language’ to achieve its purposes was not of assistance. **Comment** – Edelman J in the High Court has also stressed the fact that presumptions of this kind are ‘only loose aids’, and that this one in particular ‘seldom ... carries much weight’³.

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Statutory definitions

[AK Ippolito v Family Farm \[2026\] FCA 780](#)

This case turns on the meaning of ‘benefit’ for certain Corporations Act purposes, defined as follows – **benefit** ‘(a) means any benefit, whether by way of payment of cash or otherwise ...’. Wheatley J noted that statutory definitions are given their ordinary meaning, and that limitations are not read into them ‘unless clearly required’ by terms or context.

Noting that ‘benefit’ is defined by reference to that same term, the judge said there was no rule against construing the words of a definition ‘by reference to the terms that those words define’. This simply forms part of the context within which the definition must be construed, and there is no inflexible rule against it⁴.

Bastard conjunction

[Harris v Planning Authority \[2026\] ACAT 35](#)

Arthur SM (at [113-115]) commented on the use of ‘and/or’ in documents. What is called the ‘bastard conjunction’⁵, the senior member noted, is the product of lazy drafting and is inherently ambiguous. Two earlier cases collect the various criticisms⁶.

It has been called an ‘embarrassing expression which endangers accuracy’⁷. One US judge described it as a ‘Janus-faced verbal monstrosity’⁸. While it has been tacitly accepted at times⁹, the tide of disapproval only rises. You may rarely see ‘and/or’ in legislation, but contracts and other legal instruments are less discriminating. **iTip** – first, don’t use ‘and/or’ yourself; second, if you come across it, beware!

‘in accordance with’

[Co-Operative Bulk v Martinus \[2026\] WASCA 82](#)

The phrase ‘in accordance with’ is common and takes its colour from its context¹⁰. Regulations said that a document is given by email when it is taken to be received by the person ‘in accordance with’ relevant electronic transactions laws – that is, when it is capable of being retrieved by the addressee¹¹.

The court noted (at [77]) that the phrase has a range of meanings including being in harmony with or consistent with, as well as requiring ‘complete identity between one thing and another’¹². It was held that the phrase meant ‘in accordance with the legal effect’ of the electronic transactions laws. It did not matter what the parties agreed themselves.

Lebanese law

[Hani v Bank Audi SAL \[2026\] SASC 107](#)

When Hani sought recovery of funds from a Beirut bank, interpretation of Lebanese statutes became an issue. As our courts know not foreign law¹³, its meaning is a question of fact to be proved by expert evidence¹⁴. Stein CJ (at [710]) noted that the expert gave unchallenged evidence that Lebanese principles of interpretation ‘bear some resemblance’ to ours.

The starting point is the text which, if ambiguous, takes the meaning that ‘best reflects the intention of the legislature’. Meaning is derived ‘in the light of the whole text’ to ensure effectiveness, and to achieve the intended purpose ‘taking into account evolving social and economic conditions’¹⁵.

■ **Thanks** – Oliver Hood, Ross Carter, Jeffrey Barnes & Jeremy Francis.

¹ *NSW v Benshabir* [2026] NSWCA 174 [23], Ward P agreeing [8].

² *Project Blue Sky* [1998] HCA 28 [70], *Plaintiff S297* [2014] HCA 24 [25].

³ *Palmanova* [2025] HCA 35 [72], *Farmer* [2025] HCA 38 [105] resp.

⁴ *SkyCity* [2024] HCA 37 [32], cf *Campbell* [2026] NSWSC 1319 [104].

⁵ Term coined first by Viscount Simon in *Bonitto* [1944] AC 75 (82).

⁶ *Canberra Data* [2010] ACTSC 20 [85], *St Clair* [2010] QSC 480 [11-12].

⁷ *Fadden* (1943) 68 CLR 76 (82), cf *Millen* [1945] VLR 259 (260).

⁸ *Tollefsen* (1935) 263 NW 376 (377), cf Boyle (2013) 87 ALJ 349.

⁹ *Jasper* [2003] NSWCCA 186 [37], *Herzfeld & Prince* [5.270].

¹⁰ *Pearce* 10th ed [12.16], *Herzfeld & Prince* [4.360] generally.

¹¹ s 14(1)(a) *Electronic Transactions Act 2011* (WA).

¹² *Dawson* [2019] WASCA 102 [154], cf *ABCC* [2018] FCAFC 88 [74-81].

¹³ *Neilson* [2005] HCA 54 [115], *Shi* [2021] HCA 22 [31], Episode 114.

¹⁴ *Waung* [1968] 3 NSW 499 (503), cf *McComish* (2007) 31 MULR 400.

¹⁵ This last point may approximate to our ‘always speaking’ principle.

Episode 137 – cognate statutes; court orders; community values; interpretation decisions

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