

STATUTORY INTERPRETATION

A PRIMER

Statutory interpretation is a skill that every lawyer needs to be well versed in. Australian and Victorian law is overwhelmingly driven by laws by or under Parliament.

The law of statutory interpretation has become the most important single aspect of legal practice. No area of the law has escaped statutory modification.ⁱ

This fact sheet contains relevant extracts from the Victorian and Commonwealth interpretation acts, as well as selected maxims and principles that can aid practitioners in interpreting both primary and subordinate legislation.

COMMON LAW APPROACH

In Australia there is a three-stage process for interpreting the words of a statute. Statutory construction begins with a consideration of the text itself.ⁱⁱ

1. Look to see what the text of the legislation says;ⁱⁱⁱ
2. The overall objective is to give effect to the purpose of Parliament as expressed in the text;^{iv} and
3. In finding the meaning of the text, do not consider the words in isolation but consider the broader context in which the text appears.^v

This is what is commonly known as the 'text, context, purpose' approach.

INTERPRETATION STATUTES

All jurisdictions in Australia have legislation which contain principles and rules for interpreting legislation. The two Acts that are covered in this fact

sheet are the *Acts Interpretation Act 1901* (Cth) (**Cth Act**) and the *Interpretation of Legislation Act 1984* (Vic) (**Vic Act**).

Numbers in the table below refer to the relevant provision of the Commonwealth and Victoria interpretation Acts. These provisions apply unless a contrary intention appears.

Provision	Cth	Vic
References to other legislation include subsequent amendments of that legislation.	10	17
Where an Act confers a power to make subordinate instruments, expressions used in that instrument have the same meaning as the Act conferring the power.	46	23
When interpreting a provision of an Act or subordinate instrument, a construction that would promote the purpose of the Act or instrument is preferred to a construction that would not.	15AA	35
Consideration may be given to extrinsic materials such as Explanatory Memoranda, Second Reading Speeches and reports of Royal Commissions and Parliamentary Committees.	15AB	35
If an Act or subordinate instrument confers power to make, issue or grant an instrument, this power will be construed as including a power to revoke, rescind or vary that instrument.	33	41
Where a period is to be calculated from a particular day or event, the time is to be reckoned exclusive of that day or the day of that event.	36	44
Where an Act or subordinate instrument prescribes a form, any form in or to the like effect of that form is sufficient in law, unless the contrary intention appears.	25C	53

MAXIMS AND PRINCIPLES

Below are some useful maxims and principles that can aid practitioners in statutory interpretation. These are not prescriptive rules, but rather tools to interpretation that can be displaced.

- The principle of legality; the legislature will not abrogate or curtail certain human rights or freedoms unless clearly manifested by unambiguous language.^{vi}
- Words to be interpreted in accordance with their customary usage.^{vii}
- Do not ignore words and sentences; all words must have, and be given, some meaning and effect.^{viii}
 - This is particularly so where the word or sentence has been added by amendment.
- Where more than one interpretation is open, adopt the interpretation that will be consistent with the purpose of the Act: s 15AA and s 35 of the Cth and Vic Acts respectively.
- *Ejusdem generis* – general matters are constrained by reference to specific matters.^{ix}
- *Generalia specialibus non derogant* – where there is a conflict between general and specific provisions, the specific provisions prevail. This should only be relied upon where there are inconsistent provisions that cannot be reconciled according to ordinary interpretation.^x
- *Reddendo signula singulis* – where two or more subjects are qualified by two or more matters, the qualifications attach the subjects in the order in which they appear.^{xi}
- Affirmative words prima facie impose a duty; permissive words prima facie grant a discretion.^{xii}
 - While s 45(3) of the Vic Act (and s 33 of the Cth Act) has elevated this maxim to a binding rule, the Victorian Full Supreme Court held this section only

negates any suggestion that ‘shall means may’^{xiii}

- Legislation is deemed to be ‘always speaking’, that is words in an Act are to be interpreted in accordance with their current meaning’.^{xiv}
- *Leges posteriors contrarias abrogant* – later Acts repeal earlier inconsistent Acts, but only if they both cannot stand and a repeal must be express or be a necessary implication.^{xv}

CHARTER OF HUMAN RIGHTS

It is also important to note s 32 of the *Charter of Human Rights and Responsibility Act 2006* (Vic) says:

(1) So far as it possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights.

This provision was considered in December 2017 by the Victorian Supreme Court which identified the following principles in applying s 32 to statutory interpretation^{xvi}:

- *First, s 32(1) neither requires nor authorises a departure from the standard techniques of statutory construction;*
- *Secondly, where a provision interpreted in accordance with ordinary techniques is capable of only one meaning, s 32(1) of the Charter will have no work to do. Section 32(1) has been found to operate similarly to the principle of legality, in that it is relevant only when a constructional choice is open to a court and not when the language of the relevant provision is clear and unequivocal; and*
- *Thirdly, where a provision interpreted in accordance with ordinary techniques is capable of more than one meaning, s 32(1) requires the meaning that best accords with Charter rights to be adopted.*

REFERENCES

The following references were used in preparing this fact sheet, in addition to the references listed in the end notes.

- Jacinta Dharmananda and Leon Firios, ‘Interpreting statutes and contracts: A distinction without a difference?’ (2015) 89 *Australian Law Journal* 580

- Stephen Gageler, 'Common law statutes and judicial interpretation' (2011) 37(2) *Monash University Law Review* 1
- Murray Gleeson, 'The meaning of legislation: Context, purpose and respect for fundamental rights' Victoria Law Foundation Oration, 31 July 2008
- Michael Kirby, 'Statutory Interpretation: The Meaning of Meaning' (2011) 35 *Melbourne University Law Review* 113
- DC Pearce and RS Geddes, *Statutory Interpretation in Australia* (Butterworths, 8th Edition 2014)
- James Spigelman, 'The intolerable wrestle: Developments in statutory interpretation' (2010) 84 *Australian Law Journal* 822

ⁱ [Statutory Interpretation and Human Rights](#), the Hon J Spigelman AC Chief Justice of New South Wales, University of Queensland 11 March 2008.

ⁱⁱ *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (NT)* [2009] HCA 41.

ⁱⁱⁱ *Australian Finance Direct Ltd v Director of Consumer Affairs (Vic)* [2007] HCA 57.

^{iv} *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355.

^v *SGH Ltd v Federal Commissioner of Taxation* [2002] HCA 18.

^{vi} *Al-Kateb v Godwin* [2004] HCA 37.

^{vii} *Fabre v Ley* [1972] ALR 885.

^{viii} *Sterling Nicholas Duty Free v Commonwealth* [1971] 1 NSWLR 353.

^{ix} *Attorney-General v Brown* [1920] 1 KB 773.

^x *Purcell v Electricity Commn of New South Wales* (1985) 60 ALR 652.

^{xi} *Bishop v Deakin* [1936] Ch 409.

^{xii} *Grunwick Processing Laboratories Ltd v Advisory, Conciliation and Arbitration Service* [1978] AC 655.

^{xiii} *Accident Compensation Commn v Murphy* [1988] VR 444.

^{xiv} *Deputy Commr of Taxation v Clark* (2003) 57 NSWLR 113.

^{xv} *Saraswati v R* (1991) 172 CLR 1.

^{xvi} *ZD v Secretary to the Department of Health and Human Services* [2017] VSC 806.