

interpretation NOW!

Episode 110 – 19 July 2024



Australian Government

Australian Taxation Office



The US Supreme Court has struck down a ban on bump stocks on the basis they do not convert assault rifles into machineguns¹. Bump stocks use the recoil energy of these rifles, enabling them to fire up to 800 rounds a minute². Legislation defines ‘machinegun’ by an ability to shoot more than one shot ‘by a single function of the trigger’³. Thomas J applied older dictionary definitions of ‘function’ and ‘trigger’ to reason that bump stocks merely enable multiple functioning of the trigger despite the shooter’s finger remaining stationary. The dissenters said this was inconsistent with ordinary meaning, context and purpose. CNN called out a ‘crusading literalism’⁴. Dictionaries are interpretation gospel in America⁵. In our system, they merely provide context-free evidence of contemporary usage. Unlike in the US, we also apply an ‘always speaking’ approach to statutes.

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Axiomatic approach

[Arrotex Pharmaceuticals v Minister \[2024\] FCA 522](#)

This case is interesting for Rofe J’s description (at [46]) of the central passage in *SZTAL* as the ‘axiomatic approach’ to interpretation⁶. There, the High Court said that, if the ordinary meaning ‘is not consistent with the statutory purpose, [it] must be rejected’.

This principle has its roots in s 15AA. It is self-evidently correct, and therefore ‘axiomatic’, for 3 reasons. First, s 15AA is a command of parliament. Second, it is given explanation and emphasis by the High Court. Third, it is actively applied in all courts, as this case shows⁷. **iTip** – our system axiomatically rejects literalism (as well as what Edelman J calls ‘textual fundamentalism’⁸) as the focus of its investigation⁹.

Comity of nations

[eSafety Commissioner v X Corp \[2024\] FCA 499](#)

The eSC gave a notice seeking to force X (Twitter) to block globally a violent video¹⁰. If not blocked, Australians might access the video via VPNs. This raised how far domestic law may reach into the global sphere consistent with the ‘comity of nations’.

Kennett J (at [49-51]) explained that local laws are not interpreted to deal with things where jurisdiction properly belongs to another sovereign state¹¹. The notice here would affect X’s activities in all places it has servers. Effectively, the eSC ‘would be deciding what users of social media services throughout the world were allowed to see on those services’. The eSC, therefore, could not enforce global blocking.

Across the Tasman

[Whai Rawa Railway v BC 201036 \[2024\] NZCA 207](#)

Episode [92](#) noted that the frequent instruction of our High Court to have regard to text, context and purpose¹² is hardwired into NZ legislation. Section 10(1) of their [Legislation Act 2019](#) says – ‘The meaning of legislation must be ascertained from its text and in the light of its purpose and its context’.

As *Whai Rawa* explains (at [54-55]), this is the starting point of analysis¹³. Even where the text may appear plain in isolation, its meaning ‘should always be cross-checked against purpose’. Social, commercial or other objectives may also be relevant. As the leading textbook in the area says, the purposive approach ‘is more in line with democratic theory’¹⁴.

Legislative Codes

[Dayney v The King \[2024\] HCA 22](#)

A legislative code is to be construed ‘without any presumption that it was intended to do no more than restate the existing law’¹⁵. D was a meth addict. He killed V with a baseball bat after V produced a gun during a planned burglary at V’s place. D said that everything he did after the gun came out was to preserve his own life. D was convicted of murder.

The issue was how exceptions to self-defence in the [Criminal Code](#) (Q) are to be read. The court analysed the text in detail. It concluded (at [29]) that, if D engages in force that provokes V to retaliate with equal force, D should not get the benefit of self-defence without first retreating – appeal dismissed.

■ **Thanks** – Oliver Hood, Ross Carter, Matt Freestone & Jeremy Francis.

¹ [Garland v Cargill](#) 602 US 406 (2024), cf Episode [93](#) (earlier proceedings).

² Bump stocks were used in the 2017 Las Vegas massacre (58 killed).

³ [National Firearms Act 1934](#), 26 USC §5845(b), with [\(2018\) 83 Fed Reg 66514](#).

⁴ [Erdozain](#) (15 June 2024) CNN online, others applauded.

⁵ eg [Bostock](#) 590 US 644 (2020), Episode [61](#), cf Basten & Terrell 94 ALJ 825.

⁶ [SZTAL v Minister](#) [2017] HCA 34 [14] plurality, cf Gageler J [35-40].

⁷ [McLennan](#) [2023] FCAFC 191 [18], [Sydney Seaplanes](#) [2021] NSWCA 204 [29].

⁸ [Grevlag](#) [2024] HCA 21 [107, 114-117], to be discussed in Episode 111.

⁹ [Az](#) [2019] HCA 35 [32], Basten & Gvozdenovic (2022) 96 ALJ 392 (394).

¹⁰ s 109 of the [Online Safety Act 2021](#) (Cth) – church stabbing incident.

¹¹ [Impiombato](#) [2022] HCA 33 [27-31], [Barcelo](#) (1932) 48 CLR 391 (424).

¹² [Moorcroft](#) [2021] HCA 19 [15], [Westpac](#) [2021] HCA 3 [54].

¹³ [Fonterra](#) [2007] NZSC 36 [22], [TN](#) [2023] NZCA 664 [60] for example.

¹⁴ Carter Burrows & Carter *Statute Law in New Zealand* (308).

¹⁵ [Namao](#) [2021] HCA 13 [11], [Pickett](#) [2020] HCA 20 [23-23], Episode [73](#).

Episode 111 – same word, same meaning; *expressio unius*; environmental plans; deeds of company arrangement

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