



interpretation NOW!

Episode 113 – 31 October 2024



A flier from *Maddocks* says – ‘It is a little known fact that the answers to life, the universe and everything related to statutory interpretation can be found in the magical text known as the [Acts Interpretation Act 1901](#)’. While this may overlay things a little, the AIA does provide many answers to statutory life and navigation of our interpretation universe. The AIA was the second statute passed after federation. With its constitutional overtones, it remains a key part of the system. It has been amended many times, most prominently in 1981 when s 15AA was inserted to formally require a purposive approach. As Gleeson CJ once noted, the AIA does ‘not compete for attention’ with other statutes, nor do they ‘rank in any order of priority. They work together’¹. The AIA indeed may provide the magic which resolves your interpretation puzzle. **iTip** – always check the AIA².

Gordon Brysland Tax Counsel Network gordon.bryslan@ato.gov.au



Rules of construction

[Forrest v WA \(No 2\) \[2024\] FCA 729](#)

Jackson J (at [139-140]) comments on how we are to apply ‘rules of construction’ under our system of interpretation³. We tend to assume parliament is some perfect machine and that the legislation it produces is also perfect. This is a false starting point, however, and not how things work out in practice.

Reality intrudes in the form of ‘cumbersome, labyrinthine and frequently amended’ statutes. Rules of construction which assume a ‘rigorous linguistic logic and consistency’ are always to be applied with caution⁴. The reality of modern statutes ‘often of byzantine complexity’ means that arguments based on rules of construction are ‘often perilous’.



Building codes

[Storty \[2024\] NSWLEC 1397](#), [Salisbury \[2024\] SASC 92](#)

In *Storty*, it was said that development consents, as statutory instruments, are interpreted the same way as statutes⁵. They are to be read in the standard ‘text>context>purpose’ way⁶, as a whole, and so as not to undermine the statutory scheme in question⁷. In *Salisbury*, it was said planning codes are not to be construed by ‘slavish adherence’ to interpretation principles⁸. This is because they adopt the language of planning objectives ‘not legal mandates’.

How are these statements to be reconciled? The **iNOW! answer** is that the ordinary interpretation principles always apply, but that the building code context influences how they are applied in practice.



Insurance contracts

[Capral Ltd v CGU Insurance \[2024\] FCA 775](#)

Jackman J (at [63-71]) provides a convenient guide on how insurance contracts are to be read.

(1) Meaning is determined objectively. (2) The perspective of the reasonable businessperson is to be adopted. (3) It is assumed parties intend to ‘produce a commercial result’⁹. (4) Clauses are to be read harmoniously. (5) Exclusion clauses are read by reference to ordinary meaning and against party interest when ambiguous¹⁰. (6) Attention must be given to the purpose of insurance contracts – ie, the sharing of risk arising from a contingency. (7) Courts try to follow settled positions in other jurisdictions where the same or similar language is used¹¹.



Human rights

[DPP v Smith \[2024\] HCA 32](#)

After Smith was charged with child sex offences, the judge convened a ‘ground rules hearing’ from which Smith was excluded¹². He argued that this infringed his right to a fair and public hearing. This was rejected. It was held there is no absolute rule that an accused must be present throughout their trial.

One issue was the effect of the human rights charter¹³ on the ‘ground rules hearing’ provisions. All Victorian laws are to be read in a way compatible with the charter. Where more than one view is open, the one compatible with the charter is preferred¹⁴. The charter, however, ‘does not authorise a court to do anything which it cannot already do’¹⁵.

■ **Thanks** – Oliver Hood, Agnes Liu, Jeremy Francis & Philip Borrell.

¹ [AIRC \[2002\] HCA 42 \[7-8\]](#), [Forrest \[2024\] FCA 729 \[83\]](#), Episodes [17](#) & [23](#).

² And consult the leading textbook – Pearce [Interpretation Acts in Australia](#).

³ Here, *expressio unius* – express mention of one thing excludes others.

⁴ [Dollison \[2020\] NSWCA 58 \[47-48\]](#), [O’Sullivan \(1989\) 168 CLR 210 \(215\)](#).

⁵ [Hitchcock \[2022\] NSWLEC 81 \[63\]](#), [Kovacevic \[2016\] NSWCA 346 \[83\]](#).

⁶ [Omaya \[2020\] NSWLEC 9 \[31\]](#), [SZTAL \[2017\] HCA 34 \[14\]](#).

⁷ [Taylor \[2014\] HCA 9 \[39\]](#), cf Episode [5](#).

⁸ [Lakshmanan \[2010\] SASFC 15 \[6\]](#) cited.

⁹ [Mount Bruce \[2015\] HCA 37 \[46-47\]](#) generally.

¹⁰ [Darlington \(1986\) 161 CLR 500 \(510\)](#), [Selected Seeds \[2010\] HCA 37 \[29\]](#).

¹¹ [McCann \[2000\] HCA 65 \[74\]](#), [Eather \(1986\) 6 NSWLR 390 \(394\)](#) cited.

¹² s 389E(1) of the [Criminal Procedure Act 2009](#) (Vic).

¹³ [Charter of Human Rights and Responsibilities](#) (Vic), cf Episode [107](#).

¹⁴ Plurality [57], [R v DA \(2016\) 263 A Crim R 429 \[44\]](#) cited.

¹⁵ Plurality [60], [Momcilovic \[2011\] HCA 34 \[18\]](#) quoted.