

## Introduction

Statutory interpretation has been defined as the acts of attributing meaning to the text of a statute.<sup>1</sup> It is an integral part of the process of identifying substantive and procedural law applicable to a situation by a court.<sup>2</sup> In cases where the source of the relevant law is an Act, resort to the rules of statutory interpretation becomes inevitable. The rules are devices that provide a systematic approach to seeking out the meaning of an Act. They are applied whenever the meaning and effect of an Act is in contention in relation to a particular situation. For instance, the specific scenario that this paper addresses calls for the interpretation of the Preservation of Significant Buildings Act 2015. The main issue for determination arising from the facts is whether Wallace is in violation of sections 3, 4 and 5 of the Act. To this end, these submissions shall interrogate whether the Act had come into force at the material time that Wallace is alleged to have committed the offences. The submissions shall also resort to the rules of statutory interpretation as means of determining whether Wallace is in breach of the stipulated provisions of the Act.

## Commencement of the Act

The day on which an Act of Parliament comes into effect depends on the following considerations. First, the commencement date can be stipulated in the particular Act. If not, the second consideration is the jurisdiction of the concerned statute. Establishing jurisdiction is important because the commencement date of a statute varies depending on whether it is a federal or state statute and also because commencement procedures are different in the constituent states and territories. The *Acts Interpretation Act 1901* (Cth) applies to federal

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<sup>1</sup> Stephen Gageler, 'Common Law Statutes and Judicial Legislation: Statutory Interpretation as a Common Law Process' (2011) 37 *Monash University Law Review*.

<sup>2</sup> *Ibid*

statutes. It provides for the commencement of an Act on the twenty-eighth day after the day on which it receives the Royal Assent.<sup>3</sup>

For the Northern Territory, the *Interpretation Act* (NT) applies. It provides that commencement of an Act is on the day on which the Administrator's assent is declared.<sup>4</sup> It further provides that commencement manifests at the beginning of the declared day.<sup>5</sup> Establishing the date that an Act comes into effect is necessary because it is determinative of whether an offender's alleged violations are within the ambit of the Act. Where the conduct that purportedly contravened the provisions of the Act manifested before the legislation came into effect, a person cannot be charged pursuant to its provisions. It is a trite law that legislation does not apply retrospectively unless there is a clear and indisputable intention expressed in that legislation.<sup>6</sup>

The Preservation of Significant Buildings Act 2015 is a federal Act. The *Acts Interpretation Act* (Cth) 1901 applies. Section 3A (2) of the *Acts Interpretation Act* (Cth) provides for commencement on the twenty-eighth day after the Act's receiving Royal assent. The Preservation of Significant Buildings Act gained Royal assent on 10<sup>th</sup> July 2015. Consequently, its commencement date is 7<sup>th</sup> August 2015. The failure to maintain the Outback Hotel as alleged is a continuing state of affairs that was apparent before and after the commencement of the Act. Therefore, the Act became applicable once it took effect. Although, Wallace commenced renovations on the homestead that resulted in the charge under section 4 commenced on 1<sup>st</sup> August 2015, these activities continue until 2<sup>nd</sup> September. They fall within the Act's scope upon its commencement. Further, renovations at the hotel start on 12<sup>th</sup> August 2015. Accordingly, the

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<sup>3</sup> *Acts Interpretation Act* 1901 (Cth) s 3A (2).

<sup>4</sup> *Interpretation Act* (NT) s 6(1).

<sup>5</sup> *Interpretation Act* (NT) s 5.

<sup>6</sup> *In re Athlumney* [1898] 2 QB 547.

Act was in force at all material times. However, in relation to the charge brought under section 5, the obligation to notify the Minister was not operative because the Act had not commenced at the time Wallace began renovations at the homestead. Section 5 is not applicable to Wallace in relation to the homestead.

### Rules of Statutory Interpretation

In *Commissioner of Taxation v Unit Trend Services Pty Ltd*<sup>7</sup> the High Court held that the starting point of all statutory construction is the consideration of the Act's text. Referred to as the textualist approach to statutory interpretation,<sup>8</sup> this fundamental rule, also known as the literal rule, is anchored in the common law. It was espoused by *Amalgamated Society of Engineers v Adelaide Steamship Company Ltd*.<sup>9</sup> The learned judge asserted that an Act should be explained according to the intention of Parliament. This intention can be discerned by examining the language of the statute in its totality.<sup>10</sup> The court further held that if after such an examination the ordinary and natural meaning of the statute can be understood, the court must follow that meaning even if it is inconvenient or improbable.

Branded as the 'literal in total context' approach,<sup>11</sup> the contemporary approach to statutory interpretation in Australia entails an analysis of the text, context and purpose of the Act in question.<sup>12</sup> It entails seeking out the meaning of an Act against the backdrop of the whole

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<sup>7</sup> (2013) 297 ALR 190.

<sup>8</sup> Stephen Rares, 'Legality, Rights and Statutory Interpretation' (Presentation, Administrative Law Conference Canberra, 2013).

<sup>9</sup> (1920) CLR 129.

<sup>10</sup> *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27 at 47 per French CJ.

<sup>11</sup> Jeffrey Barnes, 'Statutory Interpretation, Law Reform and Sampford's Theory of the Disorder of Law — Part One' (1994) 22 *Federal Law Review* 116, 134, cited in James Spigelman, 'Statutory Interpretation: Identifying the Linguistic Register' (1999) 4 *Newcastle Law Review* 1, 4 n 12.

<sup>12</sup> Michael Kirby, 'Statutory Interpretation: The Meaning of Meaning' (2011) 35 *Melbourne University Law Review*.

context in which the enactment of the statute to place.<sup>13</sup>In *Project Blue Sky Inc v Australian Broadcasting Authority*,<sup>14</sup> the court held that the starting point in the construction of any provision of an Act is its context. The relevant provision must be construed in a way that is consistent with the language and purpose of all the statute's provisions, taken as a whole and in its context. Further, the interpretation should be grounded on the premise that the legislature's intention was that the application of the statute results in a harmonious goal.<sup>15</sup> The ruling in *Project Sky* was in support of Justice Mason's findings in *K & S Lake City Freighters Pty Ltd v Gordon & Gotch Ltd*<sup>16</sup> that the contemporary approach to interpretation demands that the context is considered first rather than at a later stage where ambiguity is thought to arise.

#### Establishing Context

In *Scott v Federal Commissioner of Taxation*,<sup>17</sup> the court held that context is deciphered from a reading of the statute as a whole. Therefore, figuring out the context of an Act requires beginning with the words of the statute. However, other various devices are employed in the determination of the context within which a statute has been enacted. Accordingly, both contextual and common law presumptions are applied. Further, in *CIC Insurance Ltd v Bankstown Football Club Ltd*<sup>18</sup> the court concluded that the purpose of a statute is an important part of the context in which it is enacted. The *Acts Interpretation Acts 1901* (Cth) provides that the interpretation of a provision that best achieves the purpose and object of the statute should

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<sup>13</sup> Stephen Gageler, 'Common Law Statutes and Judicial Legislation: Statutory Interpretation as a Common Law Process' (2011) 37 *Monash University Law Review*.

<sup>14</sup> (1998) 194 CLR 355.

<sup>15</sup> Prue Vines, *Law and Justice in Australia: Foundations of the Legal System* (Oxford University Press, 2nd ed, 2009).

<sup>16</sup> (1985) 157 CLR 309.

<sup>17</sup> (1966) 117 CLR 514.

<sup>18</sup> (1997) 187 CLR 384.

always be preferred over any other.<sup>19</sup> The *Interpretation Act* (NT) contains a provision to the same effect.<sup>20</sup> In *Mills v Meeking*,<sup>21</sup> the court concluded that the statutory provisions that require a court to seek out the purpose or object of an Act are operative regardless of whether there is an ambiguity or inconsistency. They are meant to determine whether there are other possible constructions of the provision.

### Rules of Language

Rules of language construction are applied to determine context. These rules of language are the contextual presumptions expressed in the Latin maxims *noscitur a sociis* and *eiusdem generis*. The former translates to the meaning of a word is known by the company it keeps. In interpreting words in a statute, it is imperative to make reference to the words that accompany it.<sup>22</sup> The latter maxim means ‘of the same kind’ and as rule of language, it stipulates that where words of a specific meaning are followed by words of a general character, then the general words are limited to the same genus as that of the specific words.<sup>23</sup> A genus will only be established where there are at least two terms preceding the general words.<sup>24</sup> In *R v Harris*,<sup>25</sup> for example, the maxims were applied. The defendant had bitten off a woman’s nose. She was charged with an offence that read ‘...to stab, cut, or wound any person...’ The court’s direction to the jury was that the legislature’s intention as expressed in the words of the Act required the use of an instrument. The jury held that she was not guilty. Common law presumptions relevant to the discourse include the presumption that the legislature intends to conform to the country’s

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<sup>19</sup> *Acts Interpretation Acts 1901* (Cth) s 15AA.

<sup>20</sup> *Interpretation Act* (NT) s 62A.

<sup>21</sup> (1990) 169 CLR 214.

<sup>22</sup> Catriona Cook et al, *Laying down the Law* (LexisNexis Butterworths, 9th ed, 2015) p 348.

<sup>23</sup> *Ibid*

<sup>24</sup> *Allen v Emmerson* [1944] KB 362.

<sup>25</sup> (1836) 7 Car & P 446.

obligations under international law.<sup>26</sup> Another presumption is that Parliament does not intend to interfere with common law rights. A relevant example is *Commonwealth v Progress Advertising and Press Agency Co Pty Ltd*,<sup>27</sup> which concerned a person's common law right to carry on with their own business.

### Extrinsic Materials

The interpretation statutes further make provision for the use of extrinsic materials in the determination of the purpose of the statutory text.<sup>28</sup> These extrinsic materials are used to either confirm the ordinary meaning of words as used in a provision<sup>29</sup> or to determine its meaning when it is obscure or ambiguous<sup>30</sup> or where the ordinary meaning of the text leads to a manifestly absurd or unreasonable outcome.<sup>31</sup> The extrinsic materials allowed include treaties or international agreements.<sup>32</sup> Where domestic legislation is enacted in fulfilment of obligations under an international agreement, the terms of the agreement become part of the domestic law. Even where the agreement is not mentioned in the Act, reference can still be made to it.<sup>33</sup> However, for it to be relied on to change the obvious interpretation of a provision, the court must first conclude that the provision is ambiguous in light of its context and purpose.<sup>34</sup> Another extrinsic aid is the Minister's speech made during the relevant Bill's second reading.<sup>35</sup> However, the words of the Minister must not replace the text of the law.<sup>36</sup>

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<sup>26</sup> *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273.

<sup>27</sup> (1909) 10 CLR 457.

<sup>28</sup> *Acts Interpretation Act 1901* (Cth) s 15AB; *Interpretation Act* (NT) s 62B.

<sup>29</sup> *Acts Interpretation Act 1901* (Cth) s 15AB (1) (a); *Interpretation Act* (NT) s 62B (1) (a).

<sup>30</sup> *Acts Interpretation Act 1901* (Cth) s 15AB (1) (b) (i); *Interpretation Act* (NT) s 62B (1) (b) (i).

<sup>31</sup> *Acts Interpretation Act 1901* (Cth) s 15AB (1) (b) (ii); *Interpretation Act* (NT) s 62B (1) (b) (ii).

<sup>32</sup> *Acts Interpretation Act 1901* (Cth) s 15AB (2) (d)

<sup>33</sup> Catriona Cook et al, *Laying down the Law* (LexisNexis Butterworths, 9th ed, 2015) p 343.

<sup>34</sup> *Minister for Foreign Affairs and Trade v Magno* (1992) 37 FCR 298.

<sup>35</sup> *Acts Interpretation Act 1901* (Cth) s 15AB (2) (f)

<sup>36</sup> *Re Bolton, ex parte Bean* (1987) 162 CLR 514.

## Application

Wallace is charged with failing to maintain the hotel contrary to section 3 of the relevant Act. He is the hotel's owner and it qualifies as a building of historical or cultural significance as defined in the interpretation section of the Act. He has also failed to maintain the hotel in a long time hence it has fallen into a state of disrepair. A literal reading of section 3 would result in Wallace being found guilty. However, the contemporary approach to interpretation requires that a provision's text be considered in its context as a whole. To establish context, resort to extrinsic materials as aids to interpretation is allowed. Accordingly, the international agreement that the Act domesticates can be considered. Article 19 of the agreement provides '...to protect and preserve **unique** (author's emphasis) buildings...' The ordinary and natural meaning of 'unique' is something unusual and remarkable. The purpose of the international agreement and the resulting municipal legislation is to protect buildings of historical significance that have special or distinctive features. On the facts, Wallace's hotel is 'unremarkable brick construction.' Interpreting the provision to include the hotel is not an interpretation that fulfils the purpose and object of the Act.

Resort to the Minister's speech as an extrinsic aid to establish context further assists in establishing the relevant context. The Minister says that the government has become aware of unscrupulous owners who intentionally allow the buildings to deteriorate so that they can be demolished. Although the Minister's words cannot replace the text of the statute, it is important to adopt an interpretation that advances the purpose and objects of the Act over one that does not. On the facts, Wallace is not an unscrupulous owner because he does not have such an intention that the hotel be demolished. In fact, the recent renovations that he carried out prove that he does not have the intention to have the hotel demolished. Charging him under a provision that targets

unscrupulous building owners leads to a manifest absurdity that defeats the purpose of the Act. Consequently, the approach that advances the Act's purpose should be adopted and the provision read down so that to exclude Wallace under the circumstances.

The offences under section 4 relate to the renovations that Wallace made at both the hotel and the homestead. The provision prohibits the damaging, destruction or otherwise interference with a building of historical significance. A literal reading of the provision with reference to the definition of damage under the Act means that Wallace is guilty because the renovations are 'permanent and significant alterations' to the buildings. However, establishing the context is the first step in considering the text of a statute. In this case, the rules of language *noscitur a sociis* and *eiusdem generis* apply. The words 'damage and 'destroy' in section 4 precede the general phrase 'otherwise interfere.' These words denote conduct that diminishes the value of a building. Resort to the Minister's speech as an extrinsic aid fortifies the contention that the Act was directed to those who diminish the value of historical buildings. He says that the Act penalises those who 'deface and degrade' historical buildings. Wallace's actions of renovation do not diminish the value of these properties in any way. On the contrary, renovations serve to increase the value of buildings. An interpretation that advances the purpose of the Act would exclude Wallace from liability because he does not act contrary to the purpose and object of the Act.

## Conclusion

In conclusion, it is evident that a literal interpretation of a statute is not adequate to find out what it means. It is also important to establish the context within which it is enacted and also the purpose that it seeks to fulfil. At all times, the interpretation that advances its purpose and objectives should always be adopted. In this case, charging Wallace with offences under the Act does not advance its purpose because his conduct does not qualify as that which the statute was intended to curtail. Therefore, Wallace is not criminally liable for any offence under the Act because charging him would be contrary to the object and purpose of the Act.

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