interpretation NOW!

Episode 23 – 27 April 2017

Australian Government
Australian Taxation Office

The FCAFC in *Chevron* upheld certain transfer pricing assessments[1]. Allsop CJ (at [3]) said it was 'paramount to recognise the fiscal and commercial context' of provisions – *'To begin and end with the words of the statute does not reflect a call to narrow textualism … it is the words used by Parliament which frame the question of meaning … Context, however, is indispensable … It gives the place, the wholeness and the relational reality to words; it helps prevent linear thinking and sometimes beguilingly simple and attractive logic with words driving meaning to unrealistic and impractical ends; and it helps ascribe meaning conformable with commonsense and convenient purpose gained from the relevant part of the statute as a whole'.* **iTip** – live by these words!

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Statutory definitions

Privacy Commissioner v Telstra [2017] FCAFC 4

Should you work out the meaning of a statutory definition in isolation before reading it into the text of the provision being looked at? The answer given by the courts is a firm 'no'. Statutory definitions are only aids to construction, not substantive law[2]. Divorcing a definition from its substantive context risks giving the definition a meaning at odds with the language and purpose of the provision[3].

In this case (at [58-60]), Dowsett J declined to interpret the definition in isolation. Instead, he first inserted the words of the definition into the provision in question, then construed the expanded text as a whole[4]. **iTip** – use this standard method.

Headings

Benjamin v FCT [2017] AATA 39

The use of headings for interpretational purposes has always been difficult[5]. Historically, Part and Division headings formed part of the Act and could not be ignored. They could constrain general provisions or help resolve ambiguity[6], but naturally gave way to clear language in provisions.

Section headings, however, were only part of some federal Acts[7] until 2011, when this became universal[8]. Do we now treat all headings in the same way? In this case, Forgie DP (at [44-48]) applied older principles for Part and Division headings to a section heading, concluding it was only 'giving a flavour of the provision'[9]. **iTip** – be careful with headings.

Extension of time

Minister v Kumar [2017] HCA 11

If an Act requires or allows a thing to be done and the deadline is a Saturday, Sunday or holiday, s 36(2) of the *Acts Interpretation Act 1901* allows the thing to be done on the next business day. Kumar was eligible to apply for a 572 visa if he held a 485 visa at the time of applying. His 485 visa expired on a Sunday, and his application was received on Monday.

The plurality held (at [25]) that s 36(2) did not extend the 'state of affairs' existing on Sunday. There has to be a legislative deadline (express or implied). Here, s 36(2) was not engaged as there was no time limit on applying for a 572 visa. **iTip** – the subtlety of time extension provisions can lie in wait for the unwary.

Surplus words

WAPC v Southregal Pty Ltd [2017] HCA 7

A key presumption is that all words in a statute are to be given meaning and effect[10]. Legislation isn't always perfect, however, and parliament is sometimes guilty of surplusage or tautology[11]. In these situations, the presumption doesn't permit strained readings at odds with statutory purpose.

In this case, consecutive provisions were almost identical – one referred to the person who owned land at 'date of reservation'; the other to 'date of application'. It was held (at [55]) that context and history made the second unnecessary, and no literal interpretation could be forced by the presumption[12]. **iTip** – the 'meaning and effect' rule has its limits.

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[1] *Chevron Australia Holdings v FCT* [2017] FCAFC 62.
[2] See Episodes 1 and 11.
[3] *Allianz Australia* [2005] HCA 26 (at [12]).
[4] *Kelly v R* [2004] HCA 12 (at [103]), *ASIC v AAT* [2011] FCAFC 114 (at [124]).
[5] Pearce & Geddes (at [4.52, 4.56]) generally.
[6] *R v Scarpantoni* [2013] SASCFC 120 (at [32]).
[7] s 182-1(1) of the GST law, s 950-100(1) of ITAA97, for example.
[8] s 13(1) of the *Acts Interpretation Act 1901* (from 2011), cf *Lynwood* [2017] NSWSC 424 (at [33]).
[9] s 42B of the *Administrative Appeals Tribunal Act 1975*.
[10] *Saeed* [2010] HCA 23 (at [39]), Episode 16.
[11] *Leon Fink Holdings* (1979) 141 CLR 672 (at 679).
[12] *Williams v Pisano* [2015] NSWCA 177 (at [72]).

Episode 24 – status of tax laws; judicial comity; use of regulations; practical consequences

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