



interpretation NOW!

Episode 108 – 24 May 2024



Punctuation often provokes passion. *The Guardian* online [reports](#) that a council in England has decreed that street names will drop the possessive apostrophe – eg St Marys Walk. Residents and linguists are outraged. One said it was just more evidence of ‘everything going downhill’. The council defended itself on the basis of global website standards and avoidance of uncertainty. In our interpretation system, punctuation also raises passion but it is rarely decisive¹. It has a role, but its influence depends on how consciously and consistently it is applied². *The Guardian* said a university lecturer had made the point that ‘context allows people to understand’ where an apostrophe is omitted. And so it is with punctuation in statutes. It is context invariably which is determinative. Interestingly, in Australia, possessive apostrophes in geographical names are banned³ – eg Surfers Paradise.

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Statutory definitions (scope)

[Tigers Realm v Commonwealth \[2024\] FCA 340](#)

Was movement of coal within Russia a ‘sanctioned import’ under regulations⁴? That term included where a ‘person ... transports goods ... and ... the goods are import sanctioned goods for a country ...’ The coal was ‘import sanctioned goods’ by declaration.

Tigers said ‘transports’ only extended to coal imported into Australia or another country. Kennett J noted that the ordinary meaning of ‘transports’ extends beyond import situations⁵. However, the judge held it was ‘clearly illogical to use the ordinary meaning of a defined term to read down a definition that expressly widens the meaning of that term’⁶. The coal in question was held subject to sanctions.

Statutory definitions (power)

[Azimitabar v Commonwealth \[2024\] FCAFC 52](#)

This case dismissed an appeal from the decision discussed in Episode [99](#)⁷. It confirms that the idea definitions are not read as a source of substantive power is no more than a ‘general principle’⁸.

Many cases, in fact, have not observed this ‘principle of good drafting’. One of them states that, ‘if there is no other available source of power it can and must be found in the definition provision itself’⁹. The appeal decision in this case stands as a robust confirmation of Murphy J at first instance. **iTip** – the ‘general principle’ that statutory definitions are not to be the source of powers is modified in practice where there is ‘a clear contrary legislative intent’.

Impracticable outcomes

[Ex parte Northern Land Council \[2024\] NTSC 34](#)

Episode [1](#) drew attention to comments by Nettle J about statutory obligations which are ‘impossible or impracticable’ to comply with¹⁰. This case (at [26-27]) says that impracticable consequences should be avoided where the provisions ‘are susceptible to an alternative construction’¹¹. Further, it was not to be inferred that parliament intends ‘to require something that may prove to be impracticable’¹².

This issue arose in the context of it being all but impossible for the NLC to attribute unallocated trust funds as required by the legislation¹³. The wider point to make is that caution is to be exercised in all situations raising ‘impracticable consequences’¹⁴.

Legislative intention

[Liquorland v Director \[2024\] WASC 128](#)

This liquor licencing appeal is an important reminder about what ‘legislative intention’ is and what it isn’t. Lemonis J (at [35]) quoted High Court authority for the point that legislative intention is ‘something of a fiction’¹⁵, and that there is never the attribution of some collective mental state to any legislators.

Findings of ‘intention’ involve an expression of the constitutional relationship between arms of government as to the making, interpretation and application of laws reached on the basis of known and understood principles. As an output of the interpretation process, legislative intention is what parliament is taken to mean by the words it used.

■ **Thanks** – Oliver Hood, Dennis Pearce, Patrick Boyd & Janhavi Bhandari.
¹ It also part of the Act – s 13(1) [AIA 1901](#) (Cth), [Pearce](#) 10th ed [4.103-4.106].
² [Mainteck](#) [2014] NSWCA 184 [105], [GLP](#) [2024] VSC 182 [108], Episode [60](#).
³ NSW [Geographical Names Board](#) (2018) Guideline 5 & other jurisdictions.
⁴ reg 4A(1)(a) of the [Autonomous Sanctions Regulations 2011](#) (Cth).
⁵ [46], [Regional Express](#) [2017] HCA 55 [21], cf [HBSY](#) [2023] FCAFC 109 [39].
⁶ cf [Auctus](#) [2021] FCAFC 39 [59-69]), [Vietnam](#) [2000] NSWCA 65 [104].
⁷ [Azimitabar v Commonwealth](#) [2023] FCA 760, Murphy J.

⁸ [49], [Mekpine](#) [2016] HCA 7 [62], [Douglas](#) [2020] FCAFC 220 [93].
⁹ *Burns Philp* (1993) 29 NSWLR 723 (731), [Helme](#) (1948) 49 SR (NSW) 60 (62).
¹⁰ [Uelese](#) [2015] HCA 15 [100], cf [Lactalis](#) [2022] FCA 1087 [29].
¹¹ [Herzfeld & Prince](#) 2nd ed [9.30], [Pearce](#) 10th ed [2.61-2.65], [BDM](#) Ch 27.
¹² [Uelese](#) [2015] HCA 15 [100] applied, cf [SSC Plenty Road](#) [2015] VSC 631 [98].
¹³ s 35(11) of the [Aboriginal Land Rights \(Northern Territory\) Act 1976](#) (Cth).
¹⁴ [Australian Tea Tree](#) [2002] FCA 1127 [44], cf Episode [1](#) (lower left).
¹⁵ [Zheng](#) [2009] HCA 52 [41], [Congo](#) [2015] HCA 17 [36].