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STATUTES AND THE CONTEMPORARY SEARCH FOR MEANING

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Thank you very much for the invitation to speak to you tonight. It is frequently remarked both here and in Australia that much, if not most, of the law which applies today is based on statutes. Furthermore, in Australia, the principles to be applied to statutory interpretation are largely covered by various Acts Interpretation Acts. My topic tonight is the contemporary search for meaning exemplified in current approaches to statutory interpretation as seen from an Australian viewpoint.

The contemporary search for meaning in the context of statutory interpretation occurs against a particular background. In recent decades there has been a good deal of reflection and writing by philosophers, linguists and literary theorists about text, meaning, context, certainty and uncertainty. Australian academic writers on statutory interpretation have noted these recent developments.

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They have remarked on the relevance of the works of Foucault and Derrida, the influence of deconstruction in literary theory[1] and the emergence of new interpretative theories including the dynamic theory of interpretation which holds that "the meaning of a statute is not fixed until it is applied to concrete circumstances, and it is neither uncommon nor illegitimate for the meaning of a provision to change over time".[2]

These broader intellectual developments have, I think, injected a certain vitality into recent debates over theories of statutory interpretation. However, whether that be so or not, it can be demonstrated that contemporary approaches to statutory interpretation preclude sacrificing meaning to inflexible theories or principles. I propose to organise this talk under three headings: (1) the will of parliament; (2) context and purpose; and (3) the principle of legality.

The will of Parliament

Let me go back in time. Blackstone said in his *Commentaries*:

> "The fairest and most rational method to interpret the will of the legislator, is by exploring his intentions at the time when the law was made ..."[3]

The task of interpreting a statute frequently commences with ascertaining the will or intention of Parliament. Two questions arise. The first is how does it fall to judges to interpret the will or intention of the legislators? Secondly, can the task of judges in interpreting legislation really be described as discerning the will or intention of Parliament?

Blackstone went on to describe the "signs" by which the will of the legislator could be determined. These signs were five in number: "the words, the context, the subject matter, the effects and consequence, or the spirit and reason of the law"[4]. What that explication makes clear is that when Blackstone spoke of interpreting "the will of the legislator" he was referring to the meaning of the language of a statute.

On the first question, that is the role of judges in interpreting statutes, Craies says of the early stages of the English system:

> "It would be no easy task to ascertain at what period and by what means the courts of law obtained the right of being the sole expositors of the statutes of the realm. In the early stages of the English system it appears that the line between the judiciary and the legislature was not distinctly marked."[5] (footnotes omitted)

In the Australian federal system, under the Constitution there has always been a clear demarcation of the powers of the legislature and those of the judiciary and the executive. It can be appreciated that in *Reg v Home Secretary; Ex parte Simms*[6], in a passage to which I will refer later, Lord Hoffman recognised that there was little difference in the system then operating in the United Kingdom of applying the existing constitutional principle of the rule of law, a principle which remains unaffected by the *Constitutional Reform Act* 2005 (UK)[7].

On the second question covering the judicial task of discovering the will or intention of Parliament, Viscount Dilhorne recognised in *Stock v Frank Jones (Tiplon) Ltd*[8] that:

> "it has been recognised since the 17th century that it is the task of the judiciary in interpreting an Act to seek to interpret it 'according to the intent of them that made it' (Coke 4 Inst. 330)."

In an Australian case, *Mills v Meeking*[9], after noting what Viscount Dilhorne had said, Dawson J observed:

> "The difficulty has been in ascertaining the intention of Parliament rather than in giving effect to it when it is known. Indeed, as everyone knows, the intention of Parliament is somewhat a fiction. Individual members of Parliament, or even the government, do not necessarily mean the same thing by voting on a Bill or, in some cases anything at all. The collective will of the legislature must therefore be taken to have been expressed in the language of the enactment itself, even though that language has been selected by the draftsman, who is not a member of Parliament."[10]

It has been remarked elsewhere in Australia that the court's interest in the legislator's intention is not an interest in subjective intention; as Gummow J has observed, extrajudicially, it is a quest for meaning which "is not assimilated to legislative intention".[11] The point was further explicated in a recent High Court judgment *Zheng v Cai*[12] in which a unanimous court ventured a deconstruction of "legislative intention" in the following terms:

> "It has been said that to attribute an intention to the legislature is to apply something of a fiction. However what is involved here is not the attribution of a collective mental state to legislators. That would be a misleading use of metaphor. Rather, judicial findings as to legislative intention are an expression of the constitutional relationship between the arms of government with respect to the making, interpretation and application of laws." (footnotes omitted)

The court went on to observe that the preferred construction by the court of a statute:

> "... is reached by the application of rules of interpretation accepted by all arms of government in

> the system of representative democracy."[13] (footnotes omitted)

That emphasises the need for approaches to interpretation which are well understood and applied consistently.

The passage also draws attention to a point made, extrajudicially, by former Chief Justice Gleeson of the Australian High Court who said:[14]

> "Judicial exposition of the meaning of a statutory text is legitimate so long as it is an exercise, undertaken consistently with principles of law and logic, in discovering the will of Parliament; it is illegitimate when it is an exercise in imposing the will of the judge. The difference is sometimes expressed by referring to a conclusion as judicial legislation; a contradiction in terms reflecting the repugnancy to constitutional principle of judicial departure from the field of interpreting the law and trespass into the field of making the law."

Under the strict separation of powers in Australia, it is Parliament which has the power to make laws and judges who have the power to interpret those laws. However, in discovering the will of Parliament, it is accepted by all arms of government that the judiciary is not expected to ask or answer the question: "What did Parliament mean?" Rather, the question judges are expected to ask and answer is: "What does this statute or provision mean?"

Further, judges are not required to amend statutes to overcome their shortcomings.[15] The maintenance of judicial authority, which rests on judicial independence, depends in part on the constitutional boundaries mentioned and shared understandings of what it means for a judge or court to speak of the will or intention of Parliament.

Context and Purpose

It was recognised in the past that a search for meaning based only on a literal approach to statutory interpretation could be flawed although it should be interpolated that frequently there is no difficulty in ascertaining what used to be called the "plain meaning" of a statute.

The purposive approach to statutory interpretation, originating in *Heydon's Case*[16], requires an answer to a more contingent question than what does the language of a statute mean; the purposive approach requires an answer to the question: "What does the language of the statute mean having regard to the purpose or 'mischief' to which the statute was directed?" Too great and inflexible an emphasis on a strictly literal approach to statutory interpretation, particularly in the context of tax evasion, led to the eventual favouring of the purposive approach over and above the literal approach.

Now, in Australia, it is mandated in both Commonwealth and State legislation that a construction of a statute which promotes the purpose or object of an Act is to be preferred to a construction which does not. If I may take as an example, s 15AA(1) of the *Acts Interpretation Act* 1901 (Cth) provides:

> "In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object."

There are cognate provisions in all the States and Territories.[17]

Just days before s 15AA of the *Acts Interpretation Act* (Cth) commenced operation, the High Court gave its decision in *Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation*[18]. It is an enduring authority, much relied on since, for the proposition that a literal reading of a statute may be displaced by another construction where a literal meaning will lead to absurd or inconvenient results.

The Court said of this dilemma:[19]

> "Quite obviously questions of degree arise. If the choice is between two strongly competing interpretations ... the advantage may lie with that which produces the fairer and more convenient operation so long as it conforms to the legislative intention. If however, one interpretation has a powerful advantage in ordinary meaning and grammatical sense, it will only be displaced if its operation is perceived to be unintended."

It is now common for Australian statutes to state their purpose or object at the beginning of the Act and on occasions such statements make specific reference to policy considerations. As an example, *Newcastle City Council v GIO General Ltd*[20] concerned remedial insurance legislation which obliged the insurer to disclose certain information to the insured. As pointed out by Brennan CJ[21], the question of what a particular section meant was answered not by the Explanatory Memorandum but by the preamble to the Act which stated:

> "An Act to reform and modernise the law relating to certain contracts of insurance so that a fair balance is struck between the interests of insurers, insureds and other members of the public and so that the provisions

> included in such contracts, and the practices of insurers in relation to such contracts, operate fairly, and for related purposes."

A clear example of the limitations of a purely literal or grammatical approach to the meaning of a statute occurred in *Project Blue Sky Inc v Australian Broadcasting Authority*[22]. As Francis Bennion remarks[23]:

> "The grammatical meaning of an enactment is its linguistic meaning taken in isolation from legal considerations ..."

The *Project Blue Sky* case concerned the question of whether a program standard known as the Australian Content Standard made by the Australian Broadcasting Commission was invalid. The invalidity alleged was that the Australian Broadcasting Commission gave preference to Australian television programmes contrary to Australia's obligations under certain trade agreements.

The relevant Act contained an objects clause which specified the purpose of the Act, however, within the body of the Act there were two conflicting provisions. There was no doubt the Australian Content Standard was authorised by the literal reading of the words of the relevant provision. However, another provision which was inconsistent with that section made the literal meaning very doubtful.

The court observed that the "legal meaning", i.e. the meaning the legislature is taken to have intended, may not correspond to the literal or grammatical meaning. As four justices put it[24]:

> ".. the duty of a court is to give the words of a statutory provision the meaning that the legislature is

> taken to have intended them to have. Ordinarily that meaning (the legal meaning) will correspond with the grammatical meaning of the provision. But not always. The context of the words, the consequences of a literal or grammatical construction, the purpose the statute or the canons of construction may require the words of a legislative provision to be read in a way that does not correspond with the literal or grammatical meaning." (footnotes omitted)

The impact of principles of statutory interpretation, which privilege object and purpose over other considerations has now been felt to the extent that context is not something to which reference will only be made after other approaches have failed to reveal the meaning of a statute or provision. Context is to be considered much earlier in the process of interpretation.

This development has been described in another Australian case concerning an insurance claim, *CIC Insurance Ltd v Bankstown Football Club Ltd*[25]. This case concerned, relevantly, the construction of s 58 of the *Insurance Contracts Act* 1984 (Cth). Section 58 provided that an insurance contract that had, on its face, expired would be extended by a 'statutory policy' if the insurer had not complied with certain obligations, namely, notifying the insured of the upcoming expiration of the policy.

Bankstown Football Club's premises were twice badly damaged by fire, once prior to the expiration of their insurance contract on its face, and once afterwards. After the first fire, the Football Club made a claim, which CIC refused to pay. Moreover, CIC said that the claim was fraudulent, and as such terminated the insurance contract (as they were entitled to do under another section of the Insurance Contracts Act). Bankstown Football Club disputed this.

Meanwhile, the insurance contract expired, without CIC having sent any notice under s 58. However, the High Court held that the insurance policy was not a policy which was "set to expire" within the meaning of s 58, and as such, notice was not required to be given and no 'statutory policy' could be imputed. This was because after Bankstown Football Club made a claim in relation to the first fire, CIC had terminated the insurance contract on the basis that the Club's claim was fraudulent. They had done so in writing. The Club had received and accepted a refund of the remaining balance under the policy shortly after the first fire.

The High Court said:

> "[T]he modern approach to statutory interpretation (a) insists that the context be considered in the first instance, not merely at some later stage when ambiguity might be thought to arise, and (b) uses 'context' in its widest sense to include such things as the existing state of the law and the mischief which ... one may discern the statute was intended to remedy." (footnote omitted)

The Australian Law Reform Commission had identified a problem of policy whereby insurers were not notifying insureds of the expiration of their policies, to save the embarrassment on the part of the insurer of telling the insured that their policy will not be renewed.

This was problematic because insureds may overlook the expiration of their policy and may suffer (unknowingly) an uninsured loss, and also because if the reason for non-renewal was relevant to the nature of the risk, a subsequent insurer would not have access to

that information. Neither of these problems presented themselves in a case like this one, where the insured was well aware that the insurer had cancelled, or purported to cancel, their policy, notwithstanding that the cancellation was for a reason other than non-renewal.

In a subsequent case, *Singh v The Commonwealth*[26], the High Court was required to interpret the meaning of "alien" for the purposes of s 51(xix) of the Constitution. Section 51(xix) provides that the Commonwealth Parliament has the power to make laws with respect to "Naturalization and aliens".

The legal question which arose was whether an Indian child born in Australia and resident since birth was an alien and therefore subject to certain provisions dealing with aliens, to be found in the *Migration Act* 1958 (Cth). In discussing "meaning and context", former Chief Justice Gleeson said[27]:

> "Meaning is always influenced, and sometimes controlled, by context. The context might include time, place and any other circumstance that could rationally assist understanding of meaning."[28]

His Honour went on to mention a case in which it was necessary to apply *Magna Carta* and the *Habeas Corpus Act* 1679 (UK) 31 Car II c2 for the purpose of deciding whether there existed, in New South Wales in 1988, a right to a speedy trial. His Honour continued:

> "Both in the Court of Appeal of New South Wales, and in this Court, there was a detailed examination of the meaning of the texts by reference to wider contextual factors, including of course, history. The words of *Magna Carta* and the *Habeas Corpus Act* were read

through modern eyes, but modern eyes were not blind to their historical context."

It is plain that referring to "context" in its widest sense, as a rational aid to understanding meaning, covers not only history but also a wide range of material.

Before leaving the topic of context and purpose, I should mention two further matters, namely the use of extrinsic aids to interpretation and the circumstances in which a statute may be read down. The common law's fastidious approach to extrinsic materials was altered by s 15AB(1) of the *Acts Interpretation Act* 1901 (Cth), enacted in 1984[29]. That now provides that extrinsic material may be referred to:

"(a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; or

(b) to determine the meaning of the provision when:

(i) the provision is ambiguous or obscure; or

(ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act leads to a result that is manifestly absurd or is unreasonable."

Subsection 2 lists various extrinsic materials which may be taken into account. These include: reports of Royal Commissions or Law Reform Commissions, committees of inquiry, any treaty or other international agreement that is referred to in the Act, any explanatory memorandum relating to the Bill containing a provision,

and Second Reading Speeches made to a House of the Parliament by a Minister.

Subsection 3 provides that in determining whether consideration should be given to any extrinsic material or in considering the weight to be given to any such material, regard shall be had, in addition to other relevant matters, to:

> "(a) the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; and
>
> (b) the need to avoid prolonging legal or other proceedings without compensating advantage."

Cognate provisions have been enacted subsequently in other States and Territories, except for South Australia.[30]

As a result of such provisions, there is a reasonably liberal approach to the consideration of extrinsic materials in the quest to determine the meaning of a statute or provision. In the *CIC Insurance* case from which I quoted above, the Court identified that such materials could both establish the state of the law before the enactment of a statute and could reveal the mischief intended to be addressed.

However, greater use of extrinsic materials as an aid to interpretation has led to certain cautions being uttered - the High Court has found it necessary to say on numerous recent occasions that the search for meaning in a statute must always begin with

the text of relevant provisions.[31] As stated in a recent case, *Northern Territory v Collins*[32]:

> "Secondary material seeking to explain the words of a statute cannot displace the clear meaning of the text of a provision, not least because such material may confuse what was 'intended ... with the effect of the language which in fact has been employed'". (footnotes omitted)

That distinction between what was "intended" and "the language which in fact has been employed" had been made much earlier, by the Earl of Halsbury LC, in *Hilder v Dexter*[33].

Another point can appropriately be made in this context. Sometimes statutory language is undeniably opaque. This would seem mysterious if one ignored the fact, often revealed in parliamentary debates, that the language used in a statute may be the result of political compromise without which the legislation would not have been passed.

Another somewhat paradoxical point is that constraints inherent in the "plain English" prose now considered essential and appropriate to statutory drafting can themselves become an accidental source of ambiguity, more particularly where what is involved is rewriting a statute which had formerly been well understood as a result of judicial exegesis.

As to the relevance of extrinsic matters, without wishing to take the point to a fanciful extreme, even an understanding of the *zeitgeist* may rationally assist in understanding the meaning of a statute. Three examples might suffice.

First, in this decade there has been a political perception for the need for anti-terror legislation. This followed the adoption of Resolution 1373 by the United National Security Council on 28 September 2001. The resolution reaffirmed the principle that every state has a duty to refrain from organising, instigating, assisting or participating in terrorist acts in another states or acquiescing in organised activity within its own territory directed towards the commission of such an act.

Importantly, Resolution 1373 establishes specific tactics by which states could combat terrorism which includes preventing and suppressing the financing of terrorist acts by freezing funds or assets of persons who commit, or attempt to commit, participate in, or facilitate terrorist acts.

The *Criminal Code Act* 1995 (Cth) now contains a procedure for proscribing terrorist organisations and power for a court to issue interim control orders for the prevention of terrorist acts. The case, *Thomas v Mowbray*[34] concerned this legislation. As the Act exerted legal control over political violence, it was particularly important to place the law in its proper context and to construe even apparently plain words in the light of the apprehended mischief to be dealt with and the objects of the Act. The context inevitably included general public knowledge of recent terrorist attacks. These circumstances have generated public debate on what constitutes a reasonable restriction on personal liberty so as to prevent the public from terrorist acts. That same debate is occurring in the United Kingdom, most recently in the context of

the "stop and search" legislation considered by the European Court of Human Rights[35].

Further, in a not dissimilar development, there has been a perceived need to control organisations collectively involved in criminal activities. There is a strong sense that organised crime is a particular blight on society. An example of legislation dealing with organised crime is the *Corruption and Crime Commission Act* 2003 (WA)[36]. That act described one of its main purposes as being "to combat and reduce the incidence of organised crime."

The legislation contained provisions enabling the Commissioner of Police to serve notices requiring the compulsory dismantling of fortifications which obstructed access to premises. Procedures which allowed police to keep certain information confidential from those affected by a notification have been the subject of scrutiny and concern. As here, legislation also exists to enable civil confiscation of the proceeds of crime.

Thirdly, company directors have faced difficult decisions in connection with insolvent trading caused by the economic downturn related to the global financial crisis. This has led to fresh public debate about the width of application of the business judgement rule.

Statutes related to combating terrorism and the control of groups engaged in criminal activities are specifically designed to effect government policy. In each instance, the policy has been, in part, responsive to public concern and political debate. For this reason

without more, context, considered widely, is likely to remain crucial in interpreting legislation effecting or implementing policy or abrogating long-standing freedoms such as personal liberty, the freedom to associate and freedom of speech.

Reading down a statute is also a task which has been covered by legislation in Australia. Section 15A of the *Acts Interpretation Act* provides:

> "Every Act shall be read and construed subject to the Constitution, and so as not to exceed the legislative power of the Commonwealth, to the intent that where any enactment thereof would, but for this section, have been construed as being in excess of that power, it shall nevertheless be a valid enactment to the extent to which it is not in excess of that power."

This section has been explicated in a case known as the *Industrial Relations Case*[37]:

> "Section 15A of the Interpretation Act may fall for application in two distinct situations. It may fall for application in relation to 'particular clauses, provisos and qualifications, separately expressed, which are beyond legislative power'. It may also fall for application in relation to general words or expressions. It is well settled that s 15A cannot be applied to effect a partial validation of a provision which extends beyond power unless 'the operation of the remaining parts of the law remains unchanged'. Nor can it be applied to a law expressed in general terms if it appears that 'the law was intended to operate fully and completely according to its terms, or not at all'." (footnotes omitted)

The principle of legality

In his *Introduction to the Study of the Law of the Constitution*[38], AV Dicey states that federalism "means legalism" which means "the prevalence of a spirit of legality among the people". That

"spirit of legality" is not confined to federations; it is part and parcel of any social or political arrangement animated by the rule of law. It is a spirit which tempers power and counteracts arbitrary or capricious lawmaking.

Dixon CJ pointed out in *Commissioner for Railways (NSW) v Agalianos*[39] that the "consistency and fairness" of a statute or provision is a surer guide to meaning than the logic with which a statute is constructed. It is impossible not to hear in that proposition some echo of the now outmoded idea of the "equity" of a statute defined by Grotius as "the correction of that, wherein the law, (by reason of its universality) is deficient."[40]

Because the Australian Constitution is framed on the assumption of the rule of law, it is assumed for the purpose of statutory interpretation that Parliament is rational and that Parliament's "will" involves a will to make rational, fair and clear laws capable of commanding both consensus and ready obedience. It is also assumed that Parliament does not intend to abrogate long-standing common law freedoms such as the freedom of speech, freedom of movement and freedom from arbitrary search or detention. These freedoms are part and parcel of the rule of law. Their abrogation could only be achieved by unambiguous language showing that Parliament had consciously decided to abrogate or curtail such freedoms[41].

In *Reg v Home Secretary; Ex parte Simms*[42], in a passage relied on since in Australia[43], Lord Hoffman said:

> "[T]he principle of legality means that Parliament must squarely confront what it is doing and accept the political cost. Fundamental rights cannot be overridden by general or ambiguous words. This is because there is too great a risk that the full implications of their unqualified meaning may have passed unnoticed in the democratic process. In the absence of express language or necessary implication to the contrary, the courts therefore presume that even the most general words were intended to be subject to the basic rights of the individual. In this way the courts of the United Kingdom, though acknowledging the sovereignty of Parliament, apply principles of constitutionality little different from those which exist in countries where the power of the legislature is expressly limited by a constitutional documents."

In perceiving the principle of legality as a broad and unifying concept, Chief Justice Spigelman of the Supreme Court of New South Wales has said extrajudicially[44] that rebuttable presumptions which can be conveniently considered under the principle of legality are the presumptions that Parliament did not intend:

> "...
>
> - to invade fundamental rights, freedoms and immunities;
> - to restrict access to the courts;
> - to abrogate the protection of legal professional privilege;
> - to exclude the rights to claims of self-incrimination;
> - to permit a court to extend the scope of penal statute;
> - to deny procedural fairness to persons affected by the exercise of public power;
> - to give immunities for governmental bodies a wide application;
> - to interfere with vested property rights;
> - to alienate property without compensation;
> - to interfere with equality of religion."

The principle of legality is rooted in both common law and in the relationship between individuals and Parliament in a liberal democracy. All arms of government know and understand that the principle gives rise to permissible assumptions about legislation.

Considerations of fairness and the principle of legality can be expected to continue to be especially important in the context of both immigration law and anti-terrorism laws or indeed any law abrogating long-standing freedoms.

Conclusion

It is probable that I have said nothing which has not already been the subject of some reflection by lawyers present. However, what I have attempted to do tonight is to give you some access to both the relevant provisions of Australian Acts Interpretation legislation and to a selection of Australian cases which have grappled with meaning in the context of interpreting statutes.

Let me conclude with a summary statement. The current explication of legislative intention or the will of Parliament and contemporary approaches to construction, which seek meaning by reference to purpose and by reference to context considered widely, and also by reference to fairness and to the principle of legality, are all interpretative approaches which work to ensure that meaning is not sacrificed by the application of inflexible principles or rigid theories of statutory interpretation.

[1] Pearce and Geddes, *Statutory Interpretation in Australia*, 6th ed (2006) at 23-24. See also, Corcoran, "Theories of Statutory Interpretation" in Corcoran and Bottomley (eds), *Interpreting Statutes*, (2005) at 24.

[2] William N Eskridge Jr, *Dynamic Interpretation*, (1994) as quoted in Corcoran "The Architecture of Interpretation: Dynamic Practice and Constitutional Principles" in Corcoran and Bottomley (eds), *Interpreting Statutes,* (2005) at 31.

[3] Blackstone, *Commentaries on the Law of England*, (1765) vol 1 at 59.

[4] Blackstone, *Commentaries on the Law of England*, (1765) vol 1 at 59.

[5] Craies, *On Statute Law*, 7th ed (1971) at 14.

[6] [2000] 2 AC 115 at 131.

[7] See s 1(a).

[8] [1978] 1 WLR 231 at 234; [1978] 1 All ER 948 at 951.

[9] (1990) 169 CLR 214, 234.

[10] *Mills v Meeking* [1978] 1 WLR 231 at 234; [1978] 1 All ER 948. at 951.

[11] Gummow, *Change and Continuity, Statute, Equity and Federation*, (1999) at 24.

[12] [2009] HCA 52 [28]

[13] [2009] HCA 52 [28].

[14] "The Meaning of Legislation: Context, Purpose and Respect for Fundamental Rights", Victorian Law Foundation Oration, Melbourne, 31 July 2008 at 7-8.

[15] *Cooper Brookes (Wollongong) Pty Ltd v Federal Commissioner of Taxation* (1981) 147 CLR 297 at 319 per Mason and Wilson JJ.

[16] (1584) 3 Co Rep 7a at 638 [76 ER 637 at 638].

[17] *Interpretation Act* 1987 (NSW) s 33; *Interpretation of Legislation Act* 1984 (Vic) s 35(a); *Acts Interpretation Act* 1954 (Qld) s 14A; *Acts Interpretation Act* 1915 (SA) s 22; *Interpretation Act* 1984 (WA) s 18; *Acts Interpretation Act*

1931 (Tas) s 8A; *Legislation Act* 2001 (ACT) s 139; *Interpretation Act* (NT) s 62A.

[18] (1981) 147 CLR 297.

[19] (1981) 147 CLR 297 at 321 per Mason and Wilson JJ.

[20] (1997) 191 CLR 85.

[21] At 93.

[22] (1998) 194 CLR 355.

[23] *Bennion On Statutory Interpretation*, 5th ed (2008) at 443.

[24] *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 384 per McHugh, Gummow, Kirby and Hayne JJ.

[25] (1997) 187 CLR 384 at 408 per Brennan CJ, Dawson, Toohey and Gummow JJ.

[26] (2004) 222 CLR 322.

[27] (2004) 222 CLR 322 at 332.

[28] *Singh v Commonwealth* (2004) 222 CLR 322 at 332.

[29] The common law approach was altered by *Pepper v Hart* [1993] AC 593.

[30] *See* Pearce and Geddes, *Statutory Interpretation in Australia*, 6th ed (2006) at 79-80.

[31] *Roy Morgan Research Centre Pty Ltd v Commissioner for State Revenue (Vic)* (2001) 207 CLR 72 at 77 [9] per Gaudron, Gummow, Hayne and Callinan JJ, 89 [46] per Kirby J; [2001] HCA 40. See also *Stevens v Kabushiki Kaisha Sony Computer Entertainment* (2005) 224 CLR 193 at 206 [30] per Gleeson CJ, Gummow, Hayne and Heydon JJ, 240-241 [167]-[168] per Kirby J; [2005] HCA 58 and *Griffiths v Minister for Lands, Planning and Environment* (2008) 235 CLR 232; [2008] HCA 20.

[32] (2008) 235 CLR 619 at 642 [99] per Crennan J; [2008] HCA 49; see also Gummow ACJ and Kirby J at 623 [16].

[33] *Hilder v Dexter* [1902] 1 AC 474 at 477-478.

[34] (2007) 233 CLR 307; [2007] HCA 33.

[35] *Case of Gillan and Quinton v The United Kingdom* (Application no 4158/05) 12 January 2010.

[36] Considered in *Gypsy Jokers Motorcycle Club Incorporated v The Commissioner of Police* (2008) 235 CLR 532.

[37] *Victoria v The Commonwealth (Industrial Relations Case)* (1996) 187 CLR 416 at 502.

[38] Dicey, *Introduction to the Study of the Law of Constitution*, 10th ed (1959) at 175.

[39] (1955) 92 CLR 390 at 397.

[40] As quoted by Blackstone, *Commentaries on the Laws of England*, (1765) vol 1 at 61.

[41] *Al-Kateb v Godwin* (2004) 219 CLR 562 at 577 [19] per Gleeson CJ (in dissent on the result); [2004 HCA 37. See also *Coco v The Queen* (1994) 179 CLR 427 at 437 per Mason CJ, Brennan Gaudron and McHugh JJ.

[42] [2000] 2 AC 115 at 131.

[43] *Plaintiff S157/20020 v Commonwealth* (2003) 211 CLR 476 at 492 per Gleeson CJ [2003] HCA 2; *Al-Kateb v Godwin* (2004) 219 CLR 562 at 577 per Gleeson CJ (in dissent on the result). See also *Evans v New South Wales* (2008) 168 FCR 576 at 594.

[44] Spigelman, "The Principles of Legality and the Clear Statement Principle", (2005) 79 ALJ 769 at 775.