

interpretation NOW!

Episode 1 – 18 June 2015



Australian Government

Australian Taxation Office



interpretation NOW! is a reinvention initiative to drive awareness on what is happening on the statutory interpretation front. It responds to a one-ATO need to have sharp tools ready at all times when working with tax legislation. As French CJ says in *Pearce & Geddes* – ‘The centrality of statutory interpretation in our legal system must be reflected in legal education’. **interpretation NOW!** will comment briefly on recent cases, say why they are important, provide simple practical **iTips**, and signpost further learning. It will be regular, bite-sized and contemporary. Please enjoy!

Gordon Brysland Tax Counsel Network



Hierarchy & harmony

[Channel Pastoral v FCT \[2015\] FCAFC 57](#)

What should we do when provisions in different sectors of the tax system collide? Answer – apply the hierarchy/harmony principles the High Court told us about in *Project Blue Sky*¹. The provisions as a whole are presumed to be intended to produce harmonious goals. Conflict is alleviated by adjusting the meaning of competing provisions to give effect to the purpose and language while maintaining the unity of all provisions.

The collision was between Part IVA and the single entity rule in consolidations. For Allsop CJ (at [4-5]), *Project Blue Sky* principles were of ‘central importance’ here. The case shows how orthodox purposive rules promote coherence of the tax system – a favourite theme of Jeremy Hirschhorn.



Legislative intention

[Queensland v Congo \[2015\] HCA 17](#)

Some people may still think legislative intention has something to do with what the collective called parliament subjectively intended a provision to mean. Nothing could be more wrong, as the High Court has again reminded us (at [36])².

Legislative intention is really no more than a constitutional courtesy – that is, an objective conclusion attributed to parliament after interpretation rules are applied. The text of the law is the surest guide to legislative intention. Subjective mental states, real or imagined, are irrelevant. **iTip** – extrinsic materials do not determine legislative intention, even if they can otherwise be looked at for s 15AB purposes³.



Impractical obligations

[Ueese v Minister \[2015\] HCA 15](#)

Nettle J in this case (at [100]) was against a reading of migration obligations that would make them ‘impossible or impractical’ to comply with. He referred to previous cases about this, and to the textbook *Pearce & Geddes* (at [2.38-2.39]) on ‘Consequences of a particular interpretation’.

iTip - care needs to be exercised in applying this principle, as earlier cases show. It is not a broad licence to read tax laws in a convenient manner merely because taxpayer compliance may be difficult in some way. However, it might provide scope in some situations for an evolution in interpretation backed by practical experience.



Statutory definitions

[ICAC v Cunneen \[2015\] HCA 14](#)

Statutory definitions often create problems, and our tax laws are littered with them. A common issue, discussed (at [33]), is the circuitry involved in trying to construe the definition by reference to the actual term defined⁴. **iTip** – don’t do this!

Another issue is the principle that statutory definitions are generally not to be read down unless the context clearly demands it⁵. Both the majority (at [61-62]) and the dissenting judge, Gageler J (at [77]), discuss this important principle.

■ Michelle Janczarski and Rebecca Smith assisted with the content, editing and format for **interpretation NOW!**

¹ [Project Blue Sky Inc v Australian Broadcasting Authority](#) [1998] HCA 28 (at [69-71]), **iTip** - read these paragraphs!

² [Zheng v Cai](#) [2009] HCA 52 (at [28]), [Lacey v Attorney-General](#) [2011] HCA 10 (at [43]).

³ s 15AB of the [Acts Interpretation Act 1901](#).

⁴ [Owners of Shin Kobe Maru v Empire Shipping Co Inc](#) [1994] HCA 54 (at [26]).

⁵ [PMT Partners Pty Ltd v Australian National Parks and Wildlife Service](#) [1995] HCA 36 (at [18]).