

STATUTORY INTERPRETATION

A. Identifying Ambiguity

Ambiguity in statute

1. Words are capable of more than one meaning
 - Some general words have more than one meaning depending on whether it is interpreted broadly or narrowly. E.g. the word 'vehicle'
 - Some words have a technical meaning and an ordinary meaning (e.g. 'action' may mean to 'act' or a legal process).
2. Interpreting a number of words together:
 - The terms 'in respect of', 'in relation to' and 'related to' are connecting phrases indicating some connection or relation between two subject matters: *Martin v Cth*
 - The term 'as soon as practicable' means a length of time that is to be judged against what is practicable from the point of view of the person or body who has to comply with the requirement: *Martin v Cth*
3. Contextual ambiguity:
 - The heading does not limit the scope of the rule: *Silk Bros v State Electricity Commission*
4. Consideration of effect:
 - Courts are more willing to consider the outcome that results from a particular interpretation in deciding whether ambiguity exists: *King v Rowlings* [1987]
 - Mere inconvenience of result is not a good reason to depart from the natural and ordinary interpretation but may assist the court in concluding that an alternative construction is reasonably open: *Cooper Brookes v FCT*

B. Resolving Ambiguity

The language of the statute

- The literal/plain meaning approach: words in a statute will be given their ordinary and natural meaning: *Cooper Brookes v FCT*
 - If the language is clear and unambiguous,
 - Is consistent and harmonious with other provisions of the enactment
 - And can be intelligibly applied to the subject matter
- The purposive approach: captured *AIA 1901 s 15AA; Kingston v Keoprose*
 - Used 'not only where provisions on their face offer more than one construction, but also in determining whether more than one construction is open': *Mills v Meeking*
 - 'The duty of a court is to give the words of a statutory provision the meaning that legislative is taken to have intended them to have...' *Project Blue Sky*=
 - Consider the objective intention of Parliament, not the subjective intention: *Gibbs v NSW*

USING ACTS INTERPRETATION ACT

In interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) is to be preferred to each other interpretation – s 15AA

Section 15AB(1)

- Relates to admissibility of extrinsic evidence
- CAN use extrinsic materials to → not compelled to consider as per s 33(2A)
 - Confirm meaning of clear words
 - Determine meaning of words where meaning is ambiguous/unclear
 - Determine meaning of words where ordinary meaning leads to absurd or unreasonable
- CANNOT use them to identify ambiguity – 15AB(1) does not permit this
- Note that courts MAY consider extrinsic material – not COMPELLED to

S15AB(2) types of admissible extrinsic material

JURISDICTIONAL FACT

Parliament can stipulate that the power to make a decision is conditional upon the existence or occurrence of a fact, event or circumstances.

1. Existence of a JF

Whether there exists a jurisdictional fact depends upon the proper construction of the statute: *Timbarra Protection Coalition Inc v Ross Mining NL* (1999)

The jurisdictional fact requires:

- a) Objectivity: must exist in fact (If X, then D can do Y): *Timbarra Protection Coalition* (1999)
 - OR subjective: mental state of the decision maker (If D satisfied of X, then D can do Y)
- b) Essentiality: legislature intends that the absence or presence of the fact will invalidate action under the statute: *Project Blue Sky* (1998)

Other facts:

- Location of the fact in a statutory formation: Likely JF where the factual reference is 'an essential preliminary to the DM process': *Colonial Bank of Australia v Willan* (1874)
- Purpose of the fact in the legislative scheme: Likely JF where facts are not only used in the DM process but also informs other authorities/parties
 - E.g. the species impact statement informs those who make submissions as well as the Director General of National Parks and Wildlife: *Timbarra Protection Coalition* (1999)
- Broad judgment: Unlikely JF where the obligation is triggered by a formulation requiring the exercise of a broad judgment on a matter of potentially significant dispute on which 'reasonable minds may differ': *Timbarra Protection*
- Despite this, the test of whether a report was 'substantially favourable' to an employee was found to be an objective one: *Sutherland Shire Council v Finch* (1969)
- Inconvenience: unlikely JF where inconvenience arises from having a decision invalidated
 - E.g. if authority decides that a species impact statement is not required and the decision is subsequently found to be wrong: *Timbarra Protection Coalition* (1999)

There are two types of jurisdictional facts:

- Objective: requires actual existence or non-existence of fact/s (If X, then D can do Y) – Anvil Hill
- Subjective: mental state of the decision maker to form opinion, belief, a state of satisfaction or suspicion (If D satisfied of X, then D can do Y) – *Anvil Hill; Plaintiff M70*

2. Satisfaction of a JF

The court has full jurisdiction to determine whether or not an objective jurisdictional fact is satisfied: *Timbarra*

- The court is not restricted to evidence before the original decision-maker.

Subjective JF

- 'The critical question is whether the determination was irrational, illogical and not based on findings or inferences of fact supported by logical grounds. If the decision did display these defects, it will be no answer that the determination was reached in good faith': *MIC v SZMDS* (2010)
- Even though the evaluation of facts for the requisite state of satisfaction is for the Minister, the court may inquire into: *MIC v SZMDS* (2010)
 - Whether the facts exist, and have been taken into account.
 - Proper self-direction: whether the judgment has been made upon a proper self-direction as to those facts.
 - Irrelevant facts: whether the judgment has been made on irrelevant facts (*R v Connell*)