

### 5.3 General Interpretive Methods

General Interpretive methods are under taken the following steps, moving from the inner of the circle to the outer.

**Text:**

- What does the text say at a face value literal interpretation?
- Does it raise an ambiguity or inconsistency (“and” drafting error, principle of illegality)

**Context:**

- What was the context of the legislation (policy, political, remedy)
- Context = Purposive

**Historical Background:**

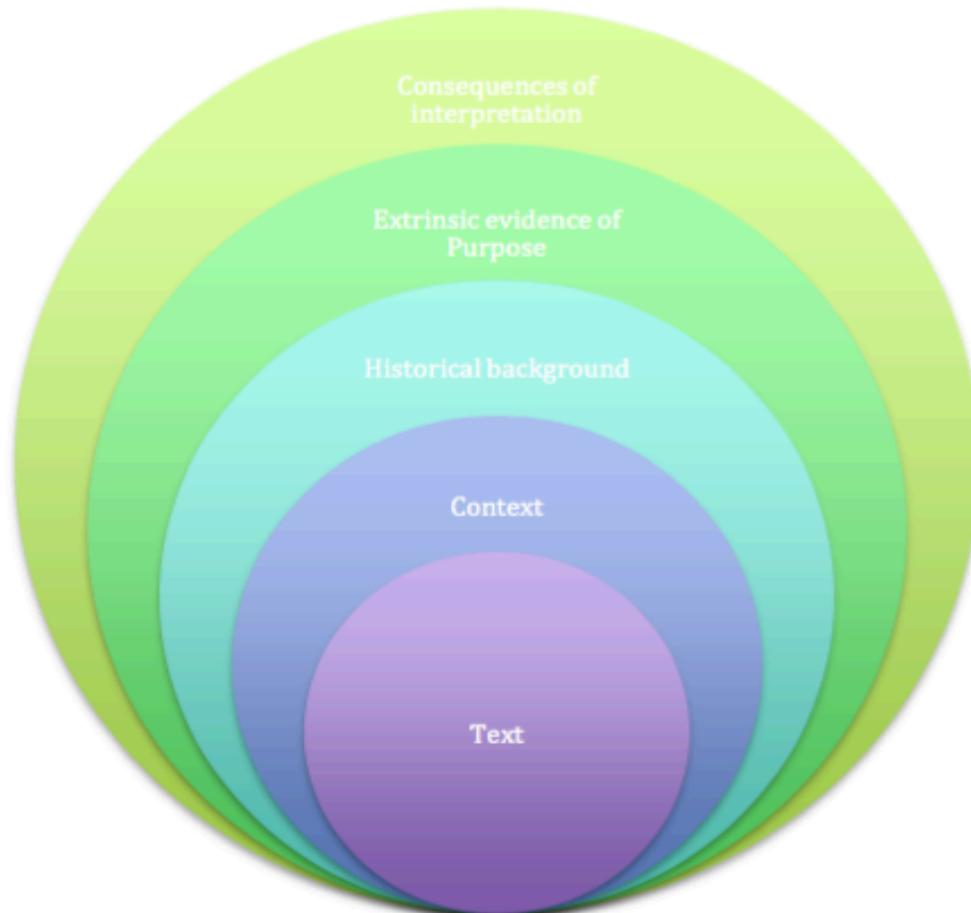
- Is there other legislation that makes use of this wording
- Or similar legislation that address the issue (insurance legislation in another state)

**Extrinsic Evidence:**

- Second readings, explanatory memorandum
- NB: there has been judicial commentary that this is unreliable (not all members of parliament being present)

**Consequences of interpretation:**

- Are the consequences of the application harsh unjust or unreasonable
- Does it contravene principles of legality or constitutional validity



*Victims Compensation Board v Brown (2002) 54 NSWLR 668*

(Conjunctive or Composite Definition of the word 'and')

Usually remedial acts should have beneficial interpretation, but when language unambiguous a beneficial interpretation cannot be read contrary to the literal meaning of the Act.

**Facts:**

- Attack of man at home with wife present.
- Husband claims for injury and shock while wife claims for shock
- Brown suffered symptoms, but was not disabled, for more than 6 weeks. Applied under the Act for compensation, arguing that the Act was **intended to benefit sufferers like him**.

**Issue:**

- The respondents had 'symptoms' of shock, which persisted for 6 weeks, but neither had a 'disability'.
- Is it sufficient that just one of those things exist, or is it required that both 'symptoms' and 'disability' need to be existing for 6 weeks?
- Their claim for shock depended on whether in **cl 5(a)**, did 'and' mean both conditions were needed? Or did 'and' include 'or'?

**Clause 5, Schedule 1 of the Act provided:**

"The following applies to the compensable injury of shock:

- a. Compensation is payable only if the symptoms and disability persist for more than 6 weeks.
- b. The injury comprises conditions attributed to post traumatic stress disorder, depression and similar conditions.
- c. The psychological symptoms include anxiety, tension, insomnia, irritability, loss of confidence, agoraphobia and pre-occupation with thoughts of self-harm or guilt.
- d. The physical symptoms include alopecia, asthma, eczema, enuresis and psoriasis.
- e. Relevant disabilities include impaired work or school or other educational performance, significant adverse effects on social relationships and sexual dysfunction.

**Note:** Symptoms AND Disabilities...must be present (for compensable injury of shock)

**Majority of the NSW Court of Appeal:**

**Mason P:** 'symptoms and disability' is a **composite (disjunctive) expression** – **existence of either for 6 weeks will suffice** it does not require proof of both symptoms and disability for more than six weeks (and meant or)

**Deciding factors:**

- Section had to be read as whole
- Broad and general purpose of the legislation
- Concluded that "symptoms and disability" is a composite expression.
- E.g. If an applicant is required to be "fit and proper" then obviously he must be both fit and proper
- However if the use of a village green is required to be for the indulging by the inhabitants in "lawful sports and pastimes" then it will obviously not matter if a particular green is devoted exclusively to sports (but not pastimes) or pastimes (but not sports)."
- In Para B, Conditions does not require proof of every category of psychological symptoms, physical symptoms and relevant disabilities.
- Any single "condition" will suffice.
- **Legislation has to be read for the broad and general purpose or its benefit.** 'It does not appear to promote the broad and beneficial legislative purpose. If anything, the converse is true.' (clause 5).
- You can argue that every argument is to be given a meaning or intention.
- Spiegelman CJ dissented (thought that and should mean and)

### Majority of the High Court of Australia:

**Heydon J:** The ordinary meaning of "and" is **conjunctive** (cumulative: have to show existence of both disability and shock for 6 weeks).

- **Wording unambiguous** – ‘and’ meant ‘and’. Conjunctive meaning preferable
- Clause 5(a) requires proof of **both** symptoms and disability for more than six weeks
- Where an Act is **remedial** or **beneficial** in nature, the Act should ordinarily and in the case of ambiguity, be construed in a way that benefits the parties the Act was intended to benefit (i.e. adopt a more purposive approach)
- However, where the wording is **unambiguous**, a **beneficial interpretation cannot be read** contrary to the **literal meaning** of the Act.

**On grounds given below, there is no occasion to depart from the ordinary meaning here.**

- **Textual Aspects:** There is no convincing textual reason emerging from the rest of the Act for departing from the ordinary meaning.
- Heydon J has a **literal text approach**, even though admits to beneficial nature of act using the context of other provisions/clauses/subsections to aid this discussion
- In reference to ‘**precise language**’ being used does not permit universal recovery, therefore, not required to give clause most expansive interpretation possible
- **Reference to other uses of ‘and’ in legislation:** there are strong indications that the legislation employs the word "or" when it is desired to convey a disjunctive meaning
- **Background to the Legislation:** There is no reason to be found in the background to the Act or in the Second Reading Speech for departing from the ordinary meaning of the word "and" in clause 5(a).
- The conjunctive construction does have the effect of limiting eligibility to recover compensation for claims which, though they arise from what may have been extremely alarming experiences, are nevertheless relevantly less significant than other claims.
- **Harsh result: not decisive** When something leads to a harsh result, we are indecisive as to the decision. We have to show certain situations and define the limitations.

**Heydon on Mason’s “remedial objectives argument”:**

- Although the purpose of the Act is beneficial, it does not follow that recovery is contemplated for every act of violence or every consequence that could be described as an injury.
- Numerous injuries set out in the Table to Sched 1 identified w/ considerable precision.
- **Due to precision of words**, legislation confers benefits, and no doubt it should not be construed restrictively, but in dealing with specific limited words like those of cl 5, it is not open to apply much liberality of construction.

**Heydon on the composite and portmanteau phrase” argument:**

- "Symptoms and disability" could be treated as being "a composite or portmanteau phrase"
- Reminiscent of avoiding collisions between conjunctive constructions and disjunctive constructions
- The first and second respondents the advantage of that approach would be that it would not render fatal the fact that, they had symptoms but no disability.
- Sub-cl (c) and (e) of cl 5 proceed on the assumption that "symptoms" and "disability" are distinct entities,
- Composite expression is one which is a compound created out of at least two elements or integers which is different from each of them
- Portmanteau expression combines the meanings of two distinct words to create a new expression
- Characterisation of "symptoms and disability" as "a composite or portmanteau phrase" did not explain how two elements or integers worked together to create a new composite or portmanteau result, besides, bluntly reading "and" as "or"

**Dissenting (Minority per Mason P):**

"Symptoms and disability" is a composite or portmanteau phrase in its context in cl 5, does not require proof that both symptoms and disability persisted concurrently for the minimum period

## Key Quotes From VCF:

### Federal Court:

- In my view, it does not require proof of both symptoms **and** disability for more than six weeks. Either will suffice, as will a period of symptoms followed by a period of disability. This conclusion stems from the following considerations:
- The clause is to be read as a whole, and the relevant "*symptoms and disability*" are those manifesting themselves in "*conditions attributed to post traumatic stress disorder, depression and similar conditions*".
- *The first category is that of cases where, if "and" was given its natural meaning, the result was so extraordinary (to quote Lord Parker CJ in **R v Oakes** [1959] 2 QB 350, "an absurdity or unintelligibility") that in order to make sense of the provision the court was obliged to say that it must read the word "and" as if it had been "or".*
- *The cases in the second category were those in which there was a list of items being joined by "and" and the list being governed or affected by words which showed that the list was a list of alternatives. In such a case, the word "and", which is used to join the items in the list, is truly cumulative; it links the members of a class and its function is to indicate that the whole class is to be considered together. Governing the words which enumerate the members of the class are other words which categorise the class, as a whole, as a class of alternatives ... the word "and" inside the class does not have dispersive or alternative force; its force is wholly cumulative; it is the words outside the class which give the dispersive effect. That is the explanation of **Associated Newspapers Ltd v Wavish***

### Majority Heydon J:

- **Ordinary meaning.** The ordinary meaning of "and" is conjunctive. On grounds given below, there is no occasion to depart from the ordinary meaning here.
- **Textual aspects of the rest of the Act.** There is no convincing textual reason emerging from the rest of the Act for departing from the ordinary meaning.
- Further, there are strong indications that the legislation employs the word "or" when it is desired to convey a disjunctive meaning. One example is cl 5(e) of Sched 1, set out above. Another is cl 8 of Sched 1. It may be inferred that when the legislature uses "and" it wishes to convey a conjunctive meaning.
- There is no reference in the Table to recovery for disability alone. There is no reference in the schedule to recovery for *either symptoms or disabilities*. All of the references I have set out above require *both* a symptom *and* a disability wherever there is any reference to disability. I see no difficulty in this context, in allowing the word 'and' in cl 5(a) to mean what it says.
- There is no reason to be found in the background to the Act or in the **Second Reading Speech** for departing from the ordinary meaning of the word "and" in cl 5(a).
- However, it can be said that the Act as a whole, and its background, point more to a conjunctive construction than a disjunctive construction. The conjunctive construction does have the effect of limiting eligibility to recover compensation for claims which, though they arise from what may have been extremely alarming experiences, are nevertheless relevantly less significant than other claims.
- The idea that symptoms alone are not enough to attract compensation for shock but must be accompanied by disability, is not harsh, irrational or, in a scheme creating thresholds, anomalous, particularly since non-medical opinion is often very suspicious about claims that shock is causing the degree of harm alleged, and this suspicion has had some influence on the common law. Even if it were considered harsh or anomalous, it could not be said that this would be fatal to the construction urged by the appellant if the text otherwise required that construction.