

## Foreword

Statutory Interpretation in Australia 10ed 2024 (book)

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The first edition of *Statutory Interpretation in Australia* in 1974 was a landmark in legal publishing. Sir Garfield Barwick, then Chief Justice of Australia, remarked in his foreword to the first edition that it brought “to notice and into due relationship with English case law, the decisions of the Courts of Australia involving the interpretation of legislation” and was “in this respect unique amongst books on statutory interpretation”. It was the first Australian text on statutory interpretation; it was also the first truly Australian text on a subject-matter of general law. It prioritised the pronouncements of Australian courts on matters of common law principle. It did so boldly at a time when recognition of a distinctly Australian body of common law principle, hampered by the lingering availability of appeals from some Australian courts to the Privy Council, still lay in the future.

The current edition of *Statutory Interpretation in Australia*, appearing exactly fifty years later, is another landmark in legal publishing. Rarely has a legal text continued in circulation for such a long period. Even more rarely has such a text continued under the same authorship.

The eponymous subject-matter of *Statutory Interpretation in Australia* was vitally important in 1974. It has only increased in importance in the fifty years since. Two simple numerical comparisons suffice to make that point.

First, the size of the statute book. The year after the publication of the first edition of *Statutory Interpretation in Australia*, the Australian Government Publishing Service published *Acts of the Australian Parliament 1901-1973*. Its twelve volumes contained consolidated versions of all 745 of the principal Acts of the Parliament of the Commonwealth of Australia then in force. Together, they comprised some 11,600 pages. No further reprint of the totality of the consolidated Acts of the Parliament of the Commonwealth of Australia has been published since then and new Acts as made have not been routinely published in hard copy since 2011. If a similar consolidation were to be published this year, it would be likely to comprise at least nine times the number of volumes. There are 1,241 principal Acts of the Parliament of the Commonwealth of Australia now in force. Counting only compilations, they comprise in excess of 109,000 pages, or more than 2.8 million words.

Second, the focus of the case law. The volume of the *Commonwealth Law Reports* covering the period within which the first edition was published was volume 131. It reported 36 judgments of the High Court. Nineteen (or approximately 53%) involved matters of statutory interpretation. The most recently published complete volume of the *Commonwealth Law Reports* is volume 274. It reports 17 judgments of the High Court. All but one involve matters of statutory interpretation.

The growth in the importance of statutory interpretation in Australia has been accompanied by increasingly intense scrutiny, rethinking, reformulation and refinement of almost all of its informing principles. Those developments can be traced through the ten editions of *Statutory Interpretation in Australia*, each of which provided a concise and reliable snapshot of the law as then understood.

In important respects, *Statutory Interpretation in Australia* also contributed to those developments. The very idea of statutory interpretation being informed by common law principles directed broadly to the ascertainment of legislative intention and derived in large measure from the doctrine of separation of powers (as distinct from statutory interpretation being governed by common law rules - “the literal rule”, “the golden rule” and “the mischief rule”, along with numerous other more specific rules often expressed as “canons” or “maxims”) cannot be said to have

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been widely accepted before it was championed in the first edition. The idea was taken up by Mason and Wilson JJ in *Cooper Brooks (Wollongong) Pty Ltd v Federal Commissioner of Taxation*<sup>1</sup> with reference to the first edition. That was just one of many occasions on which *Statutory Interpretation in Australia* has been cited in the High Court.

The author, Emeritus Professor Dennis Pearce AO, FAAL, brought to the writing of the first edition the enthusiasm and industry of youth. He has brought to the writing of successive editions the wisdom gained from his accumulated experience as a legal scholar, as a drafter, as an administrator of complex and sensitive legislation, and as a legal practitioner. The third to eight editions he wrote in collaboration with Professor Harry Geddes. This, like the others, he has written alone. In this edition, as in all of the others before, there is an absence of clutter, an economy of language and a simplicity of style. Nothing is presented as being more complicated than it is.

For the whole of my professional life, judges and practitioners have turned to *Statutory Interpretation in Australia* as a standard work of reference. A copy of the ninth edition sits on my shelf. So will a copy of this historic edition.

Fittingly, I have written this foreword in the chambers first occupied by Sir Garfield Barwick in the High Court building in the parliamentary triangle which lies at the seat of national government in Canberra. Sir Garfield was personally involved in the design of the building. The chambers have windows which face north. They also have a small vertical angled window which protrudes to the south-west. According to his biographer,<sup>2</sup> Sir Garfield had the window installed so that he could look out on Parliament House several hundred metres away. That view, in the distance, is symbolic.

The separation of powers within our system of parliamentary democracy produces an inexorable relationship between the legislative and judicial branches of government. The legislative branch makes the law. The judicial branch declares and enforces the law as so made. The legislative branch speaks with constitutional authority. The judicial branch interprets with constitutional authority. The interpretation is through the application of consistent principles which can be taken to be known to the speaker. Through its clear and systematic identification and statement of those principles for half a century, *Statutory Interpretation in Australia* has contributed to the stability of that relationship.

*Chief Justice Stephen Gageler AC*

Chief Justice Chambers

High Court of Australia

21 November 2023

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<sup>1</sup> (1981) 147 CLR 297 at 320.

<sup>2</sup> Marr, *Barwick* (1980) at 296.