HIGH COURT OF AUSTRALIA

GAGELER CJ,
GORDON, EDELMAN, JAGOT AND BEECH-JONES JJ

PALMANOVA PTY LTD APPELLANT

AND

COMMONWEALTH OF AUSTRALIA RESPONDENT

Palmanova Pty Ltd v Commonwealth of Australia
[2025] HCA 35
Date of Hearing: 13 June 2025
Date of Judgment: 3 September 2025
S147/2024

ORDER

Appeal dismissed with costs.

On appeal from the Federal Court of Australia

Representation

R P L Lancaster SC with N A Wootton for the appellant (instructed by Simpsons Solicitors)

G T Johnson SC with N D J Swan for the respondent (instructed by HWL Ebsworth Lawyers)

CATCHWORDS

Palmanova Pty Ltd v Commonwealth of Australia

Statutes – Construction – Temporal operation of statute – Where in June 2020 archaeological artefact imported into Australia – Where artefact seized by inspector under *Protection of Movable Cultural Heritage Act 1986* (Cth) ("Act") upon request for return of artefact from Government of Bolivia – Where artefact unlawfully exported from Bolivia before commencement of Act – Where appellant purchaser commenced action for recovery of artefact under s 37 of Act – Where Act enacted to bring Australia into conformity with obligations of State Party to UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970) prior to Australia acceding to Convention – Where s 14(1) of Act provides that "protected object of a foreign country" may be liable to forfeiture – Whether s 14(1) renders liable to forfeiture protected object of a foreign country unlawfully exported from that country before commencement of Act.

Words and phrases – "archaeological artefact", "context", "cultural property", "exportation of cultural property", "extrinsic material", "forfeiture", "has been exported", "import of cultural property", "modern approach to statutory interpretation", "movable cultural heritage", "obligations of a State Party", "ordinary language", "presumption against redundant words", "presumption against surplusage", "protected object of a foreign country", "redundant words", "statutory construction", "statutory purpose", "syntax", "temporal operation", "unlawful exportation".

Protection of Movable Cultural Heritage Act 1986 (Cth), Pts II, V, ss 3, 7, 8, 9, 10, 12, 14, 27, 28, 34, 37, 38, 41.
Acts Interpretation Act 1901 (Cth), ss 15AA, 15AB.
Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970), Arts 1, 2, 5, 6, 7, 15.

1 GAGELER CJ, GORDON, JAGOT AND BEECH-JONES JJ. This appeal turns on a question of statutory construction concerning the temporal operation of s 14(1) of the *Protection of Movable Cultural Heritage Act 1986* (Cth) ("the Act"). The question is whether s 14(1) of the Act renders liable to forfeiture, upon importation into Australia after the commencement of the Act, a protected object of a foreign country unlawfully exported from that foreign country before the commencement of the Act. The answer is that it does.

2 The majority of the Full Court of the Federal Court of Australia (Banks-Smith and Abraham JJ, Downes J dissenting) adopted that construction of s 14(1) of the Act in the judgment under appeal.[1] The Full Court in consequence ordered forfeiture of an archaeological artefact found by the primary judge (Perram J)[2] to be a protected object of Bolivia, having been manufactured by people of the Tiwanaku civilisation whose culture rose to prominence on the shore of Lake Titicaca between 600 and 1000 AD, and to have been unlawfully exported from Bolivia either in 1934 or around 1950 ("the Artefact").

3 The correctness of the construction adopted by the majority of the Full Court in the decision under appeal means that this appeal must be dismissed. The Artefact will remain forfeited.

Text and context

4 Statutory construction is the process of attributing meaning to statutory text.[3] The construction of a statutory provision begins and ends with the statutory text understood in context[4] and in light of the statutory purpose – being what the provision is designed to achieve in fact[5] – insofar as that purpose is discernible

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1 *The Commonwealth v Palmanova Pty Ltd* (2024) 304 FCR 163.

2 *Palmanova Pty Ltd v The Commonwealth* [2023] FCA 1391.

3 *Thiess v Collector of Customs* (2014) 250 CLR 664 at 671 [22].

4 *Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* (2012) 250 CLR 503 at 519 [39]; *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27 at 46-47 [47].

5 *NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs* (2023) 280 CLR 137 at 157 [40].

from the statutory text and context.[6] In the construction of a provision of a Commonwealth statute, the meaning that would best achieve the statutory purpose so discerned is to be preferred to each alternative meaning.[7]

5 That being the nature of the task to which the process is directed, the "modern approach" to statutory construction, as was explained nearly 30 years ago in *CIC Insurance Ltd v Bankstown Football Club Ltd*[8] in a statement repeated and endorsed many times since:[9] "(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, by legitimate means ... , one may discern the statute was intended to remedy". Use of extrinsic material in the construction of a provision of a Commonwealth statute is guided but not governed by a non-exhaustive list of categories of material statutorily recognised to have potential to illuminate the statutory context.[10]

6 Though the construction of s 14(1) of the Act adopted by the majority of the Full Court was correct, the majority saw the statutory text as so "clear" as to make material extrinsic to the Act "unnecessary to consider".[11] Understanding context, including so much of the context as might be revealed by extrinsic material, "has utility if, and in so far as, it assists in fixing the meaning of the

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6 *YBFZ v Minister for Immigration, Citizenship and Multicultural Affairs* (2024) 99 ALJR 1 at 12 [16]; 419 ALR 457 at 468.

7 Section 15AA of the *Acts Interpretation Act 1901* (Cth).

8 (1997) 187 CLR 384 at 408.

9 eg, *Newcastle City Council v GIO General Ltd* (1997) 191 CLR 85 at 112-113; *Network Ten Pty Ltd v TCN Channel Nine Pty Ltd* (2004) 218 CLR 273 at 280-281 [11]; *Australian Finance Direct Ltd v Director of Consumer Affairs (Vic)* (2007) 234 CLR 96 at 113 [39]; *Aussie Vic Plant Hire Pty Ltd v Esanda Finance Corporation Ltd* (2008) 232 CLR 314 at 332 [45].

10 Section 15AB(2) of the *Acts Interpretation Act 1901* (Cth).

11 *The Commonwealth v Palmanova Pty Ltd* (2024) 304 FCR 163 at 169 [27].

statutory text".[12] Focus on the statutory text is not to the exclusion of extrinsic material that has the potential to assist in fixing its meaning.

7 Appreciating the context of s 14(1) of the Act involves situating the Act in its international and constitutional setting and locating s 14(1) within the scheme of the Act so situated.

The international and constitutional context of the Act

8 The Act was enacted on 13 May 1986 and commenced on 1 July 1987 in anticipation of Australia acceding on 30 October 1989[13] to the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970)[14] adopted by the General Conference of the United Nations Educational, Scientific and Cultural Organization on 14 November 1970 ("the UNESCO Convention"). The UNESCO Convention entered into force with respect to Australia on 30 January 1990.

9 The UNESCO Convention was the outcome of a long-term movement towards protecting movable cultural heritage which gained momentum in the aftermath of World War II with decolonisation and with mounting global concern about illicit trade in movable cultural heritage.[15] The expression "cultural property" is defined in Art 1 to mean property within any of a number of specified categories of movable property which, "on religious or secular grounds, is specifically designated by each State as being of importance for archaeology, prehistory, history, literature, art or science".

10 States Parties to the UNESCO Convention undertake a range of obligations expressed at different levels of generality within the UNESCO Convention. Most general are those set out in Art 2. By Art 2(1), States Parties recognise that "the

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12 *Port of Newcastle Operations Pty Ltd v Glencore Coal Assets Australia Pty Ltd* (2021) 274 CLR 565 at 594 [87], quoting *Federal Commissioner of Taxation v Consolidated Media Holdings Ltd* (2012) 250 CLR 503 at 519 [39].

13 *National Report on the Implementation of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property: Australia*, C70/15/National-report/Australia (2015).

14 823 UNTS 231.

15 Vrdoljak, "Introduction", in Vrdoljak, Jakubowski and Chechi (eds), *The 1970 UNESCO and 1995 UNIDROIT Conventions on Stolen or Illegally Transferred Cultural Property: A Commentary* (2024) 3 at 5-15.

illicit import, export and transfer of ownership of cultural property is one of the main causes of the impoverishment of the cultural heritage of the countries of origin of such property and that international co-operation constitutes one of the most efficient means of protecting each country's cultural property against all the dangers resulting therefrom". "To this end", States Parties undertake by Art 2(2) "to oppose such practices with the means at their disposal".

11 More specific obligations undertaken by States Parties to the UNESCO Convention with respect to the import, export and transfer of ownership of cultural property include those set out in Arts 5 and 6 concerning protections by States Parties of their own cultural property and those set out in Art 7 concerning protection of the cultural property of other States Parties.

12 The most relevant of the obligations set out in Arts 5 and 6 of the UNESCO Convention concerning protections by States Parties of their own cultural property are those in Arts 5(b), 6(a), 6(b) and 6(c). By Art 5(b), each State Party undertakes to set up "one or more national services" for the protection of its "cultural heritage" sufficient for the "effective carrying out" of the function of "establishing and keeping up to date, on the basis of a national inventory of protected property, a list of important public and private cultural property whose export would constitute an appreciable impoverishment of the national cultural heritage". By Art 6(a), (b) and (c) respectively, each State Party undertakes: to introduce a system of certification for the authorised exportation of cultural property; to prohibit exportation of cultural property unless accompanied by an appropriate certificate; and to publicise that prohibition "by appropriate means, particularly among persons likely to export or import cultural property".

13 The obligations set out in Art 7 of the UNESCO Convention concerning the protection to be afforded by a State Party to the cultural property of another State Party include that, by Art 7(a), each State Party undertakes "to prevent museums and similar institutions within [its territory] from acquiring cultural property originating in another State Party which has been illegally exported after entry into force of [the UNESCO Convention] in the States concerned". By Art 7(b)(i), each State Party undertakes "to prohibit the import of cultural property stolen from a museum or a religious or secular public monument or similar institution in another State Party to [the UNESCO Convention], after the entry into force of [the UNESCO Convention] for the States concerned". And by Art 7(b)(ii), which is not limited to museums and similar institutions, each State Party also undertakes "at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of [the UNESCO Convention] in both States concerned" subject to the proviso that "the resulting State shall pay just compensation to an innocent purchaser or to a person who has valid title to that property". The only temporal limitation in Art 7(b)(ii)

concerns the date of import of the cultural property. Accordingly, for the purposes of Art 7(b)(ii), "[n]either the date of the property's theft nor the date it was exported is relevant".[16] This reflects that, Art 7(b)(ii) not being limited to museums and institutions, the reference to "such cultural property" in that provision means "cultural property" as defined in Art 1 (which has no temporal dimension). It also reflects that, unlike Art 7(a) and (b)(i), Art 7(b)(ii) refers to "an innocent purchaser" of cultural property.

14 Another pertinent observation to be made is that the obligations set out in Art 7 of the UNESCO Convention do not exhaust the protection that can be afforded by a State Party to the cultural property of another State Party or to the cultural property of any other State. Quite apart from whatever force might be attributed to the general obligation in Art 2(2), to which reference has already been made, the non-exhaustive nature of the obligation imposed on a State Party by Art 7(b)(ii) is made clear by Art 15, which expressly contemplates States Parties entering into and implementing other bilateral or multilateral agreements with any other States for the recovery and return of cultural property of those other States irrespective of when that cultural property might have been exported from those States. Article 15 provides:

> "Nothing in this Convention shall prevent States Parties thereto from concluding special agreements among themselves or from continuing to implement agreements already concluded regarding the restitution of cultural property removed, whatever the reason, from its territory of origin, before the entry into force of this Convention for the States concerned."

15 Reflecting the legislative choice being made in enacting the Act to bring Australia into compliance with the obligations of a State Party to the UNESCO Convention prior to acceding to the UNESCO Convention, the Minister for Arts, Heritage and Environment commenced the Second Reading Speech for the Act in the House of Representatives by stating in general terms that the purpose of the Act was "to protect Australia's heritage of cultural objects and to extend certain forms of protection to the cultural heritage of other nations" and immediately added that "[a]s a result of these steps, Australia [would] be able to accede" to the

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16 Urice and Levy, "Article 7(b)(ii) of the 1970 UNESCO Convention: Cooperation for the Return of Cultural Property", in Vrdoljak, Jakubowski and Chechi (eds), *The 1970 UNESCO and 1995 UNIDROIT Conventions on Stolen or Illegally Transferred Cultural Property: A Commentary* (2024) 245 at 256. See also Arts 28, 31 and 32 of the Vienna Convention on the Law of Treaties (1969) 1155 UNTS 331.

UNESCO Convention.[17] By way of summary, the Minister referred to the Act providing for "[n]ew export and import controls to regulate the movement of important cultural objects" which would "enable the establishment of reciprocal arrangements with other countries for the return of illegally exported material".[18]

16 In respect of the import controls to be imposed by the Act, the Minister said this:[19]

> "The import controls exist solely to enable Australia to respond if an official complaint is received from a foreign government that an illegally exported object has been brought to Australia. If a foreign government does not consider an object sufficiently important to lodge such a complaint, we do not consider ourselves as having an obligation to protect that country's cultural property on its behalf. Although these controls relate essentially to Australia's treaty obligations under the [UNESCO] Convention, they will also make it possible for the Government to provide this form of protection to countries which may not yet be party to the Convention. An institution or individual buying an important cultural object from overseas will need to be satisfied that the requisite export authorisations have been issued in the country of origin."

17 The Minister stressed in the Second Reading Speech that the UNESCO Convention was "not concerned with restitution of cultural property taken from this country in the past or brought here in past years from other countries without proper authority". The "concern" of the Act, the Minister said, was "to draw a line across history to ensure that in future years transfers of important and valuable cultural objects from one country to another take place in a legal and orderly fashion and that sanctions imposed will discourage illicit trafficking in cultural material".[20]

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17 Australia, House of Representatives, *Parliamentary Debates* (Hansard), 27 November 1985 at 3739.

18 Australia, House of Representatives, *Parliamentary Debates* (Hansard), 27 November 1985 at 3740.

19 Australia, House of Representatives, *Parliamentary Debates* (Hansard), 27 November 1985 at 3740-3741.

20 Australia, House of Representatives, *Parliamentary Debates* (Hansard), 27 November 1985 at 3741.

18 The Explanatory Memorandum for the Act explained to similar effect that the purpose of the Act was "to provide for the protection of Australia's heritage of important movable cultural objects by introducing export controls and to extend protection to the cultural heritage of other countries through import controls", adding that "[i]mplementation of the Act [would] enable Australia to become a party to the ... UNESCO Convention".[21] Outlining the Act, the Explanatory Memorandum reiterated that "[i]mported objects forming part of the cultural heritage of a foreign country and so recognised under the law of that country will not be seized unless a formal request to return the object has been received from the government of that country" and made the point that the "primary sanction" in the Act "to discourage unlawful export or import of important cultural heritage objects will be loss of the object through seizure or forfeiture".

Section 14(1) in the context of the Act

19 Replicating in statutory form the broad legislative purpose identified in the Second Reading Speech and the Explanatory Memorandum, the long title to the Act describes it as "An Act to protect Australia's heritage of movable cultural objects, to support the protection by foreign countries of their heritage of movable cultural objects, and for related purposes". The Act makes no reference to the UNESCO Convention.

20 Part II of the Act is headed "Control of Exports and Imports". Within Pt II, Div 1, headed "Exports", pursues the first of the objectives identified in the long title of the Act: to protect Australia's heritage of movable cultural objects. Division 2, headed "Imports", pursues the second of those objectives: to support the protection by foreign countries of their heritage of movable cultural objects. For the purposes of the Act, "export" means export from Australia and "import" means import into Australia.[22]

21 The structure and relevant content of Div 1 of Pt II of the Act, protecting Australia's heritage of movable cultural objects by imposing controls on exports from Australia, conform broadly to the specific undertakings of a State Party to protect its own cultural property in Arts 5(a), 6(a) and 6(b) of the UNESCO Convention. The expression "the movable cultural heritage of Australia" is first explained in s 7 of the Act in terms consistent with the definition of "cultural property" in Art 1 of the UNESCO Convention. Provision is then made in s 8 of

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21 Australia, House of Representatives, *Protection of Movable Cultural Heritage Bill 1985*, Explanatory Memorandum.

22 Section 3(1) (definitions of "export" and "import") of the Act.

the Act for the establishment by regulation of the National Cultural Heritage Control List which is to comprise a list of categories of objects that constitute the movable cultural heritage of Australia, the export of which objects from Australia is to be "subject to export control". An object becomes an "Australian protected object"[23] by virtue of being within a category in the National Cultural Heritage Control List. Exporting or attempting to export such an Australian protected object otherwise than in accordance with an export permit granted by the Minister administering the Act under s 10 or a certificate of exemption granted by the Minister under s 12 is designated by the heading to s 9 of the Act to be "[u]nlawful" and is the subject of sanctions set out in that section. If the object is exported, the object is automatically forfeited by operation of s 9(1). If the object is merely attempted to be exported, the object is rendered liable to forfeiture by operation of s 9(2). In either event, a person exporting or attempting to export the object can be criminally liable for the commission of an offence against s 9(3).

22 The structure and relevant content of Div 2 of Pt II of the Act, supporting the protection by foreign countries of their heritage of movable cultural objects by imposing controls on imports into Australia, enables fulfilment of the undertaking of a State Party to protect the cultural property of another State Party set out in Art 7(b)(ii) of the UNESCO Convention and also facilitates the implementation of other bilateral and multilateral arrangements that are in alignment with the terms of the Act within the contemplation of Art 15.

23 The sole provision within Div 2 of Pt II of the Act is s 14. Section 14(1) provides:

> "Where:
>
> (a) a protected object of a foreign country has been exported from that country;
>
> (b) the export was prohibited by a law of that country relating to cultural property; and
>
> (c) the object is imported;
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> the object is liable to forfeiture."

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23 Section 3(1) (definition of "Australian protected object") of the Act.

Section 14(2) provides:

> "Where a person imports an object, knowing that:
>
> (a) the object is a protected object of a foreign country that has been exported from that country; and
>
> (b) the export was prohibited by a law of that country relating to cultural property;
>
> the person commits an offence."

24 The offence created by s 14(2) of the Act, like the offence created by s 9(3), is an indictable offence[24] to which Ch 2 of the *Criminal Code* (Cth) applies.[25] Within the schema of Ch 2 of the *Criminal Code*, s 14(2)(a) and (b) each refer to a distinct physical element of the offence, each such physical element being a "circumstance" in which the "conduct" of a person importing an object needs to occur with intention on the part of that person to engage in that conduct and with awareness on the part of that person of the existence of those circumstances in order for the offence to be committed.[26]

25 The expression "protected object of a foreign country", used in s 14(1) and (2), is defined to mean "an object forming part of the movable cultural heritage of a foreign country".[27] The reference in that definition to "movable cultural heritage", in relation to a foreign country, is in turn "a reference to objects that are of importance to that country, or to a particular part of that country", for "ethnological, archaeological, historical, literary, artistic, scientific or technological reasons" or for other prescribed reasons.[28]

26 It is apparent that each of the liability to forfeiture created by s 14(1) and the offence created by s 14(2) applies to any importation of any protected object of any foreign country. Each applies without reference to whether Australia or the foreign country is a State Party to the UNESCO Convention at the time of the

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24 Section 46(1) of the Act.

25 Section 6A of the Act.

26 Sections 3.1, 4.1(a) and (c), 5.1(1) and 5.2(1), 5.3 and 5.6(1) of the *Criminal Code*.

27 Section 3(1) of the Act.

28 Section 3(5) of the Act.

importation or whether Australia or the foreign country is a State Party to the UNESCO Convention when the protected object of the foreign country was exported from the foreign country.

27 To repeat the language of the Second Reading Speech, s 14(1) and (2) of the Act are constrained "solely to enable Australia to respond if an official complaint is received from a foreign government that an illegally exported object has been brought to Australia" through limitations on their enforcement for which provision is made in Pt V of Act.

28 Part V of the Act, headed "Enforcement of Act", sets out a regime for the enforcement of both the sanctions for the unlawful exportation from Australia of an Australian protected object set out in s 9(1), (2) and (3) of the Act and the sanctions for the unlawful importation into Australia of a protected object of a foreign country set out in s 14(1) and (2) of the Act. Within the nomenclature of the Act, each of a protected object of a foreign country and an Australian protected object is a "protected object".[29]

29 Part V provides for the enforcement of sanctions in respect of protected objects by inspectors appointed by the Minister administering the Act under s 28 of the Act. Section 34, read with s 27(1), empowers an inspector to seize a protected object that the inspector believes on reasonable grounds to be forfeited or liable to forfeiture. By operation of s 27(2), a seizure is taken to occur upon a Customs officer delivering an object to an inspector under s 203T of the *Customs Act 1901* (Cth).

30 Importantly, by s 41(1) of the Act, a power conferred on an inspector by Pt V, including most importantly the power of seizure, is not to be exercised in relation to a protected object of a foreign country unless the inspector believes on reasonable grounds that the Commonwealth has received a request for the return of the object from the government of the foreign country. Correspondingly, s 41(2) of the Act provides that proceedings for a contravention of s 14 in relation to a protected object of a foreign country are not to be instituted unless the Commonwealth has received a request of that nature from the government of the country. Nothing in s 41 is capable of confining such a request to an object that was only exported from the foreign country after the Act came into force.

31 Concordantly, the Explanatory Memorandum for the Act explained in its commentary on s 14 of the Act with specific reference to the operation of s 41 that "an official request from the government of the country concerned" was to be

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29 Section 3(1) (definition of "protected object") of the Act.

"prior condition" of the enforcement of s 14(1) and (2). The Explanatory Memorandum added, no doubt by reference to Art 7(b)(ii) of the UNESCO Convention, that "[a]s set down in the terms of the [UNESCO Convention], a country making such a request for the return of an illegally exported cultural object must be prepared to provide compensation to an innocent third party purchaser". The Explanatory Memorandum explained s 14(1) and (2) as providing for "the reciprocal protection of the movable cultural heritage" not only of other States Parties to the [UNESCO Convention] but also of countries with which Australia might have "bilateral agreements the purpose of which is to protect objects exported from a foreign country".

32 As part of the regime for the enforcement of ss 9(1) and (2) and 14(1) for which Pt V of the Act provides, s 37(1) allows the owner or immediate prior possessor of a protected object that has been seized by an inspector to bring an action for the recovery of the object "on the ground that the object is not forfeited or liable to be forfeited" in a "court of competent jurisdiction". The Federal Court answers that description by virtue of the jurisdiction conferred on it by s 39B(1A)(c) of the *Judiciary Act 1903* (Cth).[30]

33 If an action for the recovery of a seized object is brought in a court of competent jurisdiction under s 37(1) of the Act, the court is required by s 37(3)(a) or (b) as the case may be to determine on the balance of probabilities whether the object is an Australian protected object that is forfeited by virtue of s 9(1), or is an Australian protected object that is liable to be forfeited by virtue of s 9(2), or a protected object of a foreign country liable to be forfeited under s 14(1). If the court determines that the object is an Australian protected object that is forfeited by virtue of s 9(1), the court is required by s 37(3)(c) to reject the claim for recovery. If the court determines that the object is an Australian protected object that is liable to be forfeited by virtue of s 9(2) or a protected object of a foreign country liable to be forfeited under s 14(1), the court is authorised and required by s 37(3)(d) to order that the object is forfeited.

34 Upon forfeiture of a protected object by operation of s 9(1) of the Act or by order under s 37(3)(d), all title and interest in the object is vested in the Commonwealth by force of s 38(a) and the object is to be dealt with and disposed of in accordance with directions of the Minister administering the Act by force of s 38(b). Upon forfeiture, a protected object of a foreign country liable to be forfeited under s 14(1) is available to be returned at the direction of the Minister to the government of the foreign country which had made the request for the return

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30 See *R v Ward* (1978) 140 CLR 584 at 588-589, cited in *Kodak (Australasia) Pty Ltd v The Commonwealth* (1988) 22 FCR 197 at 201.

of the object which had prompted the seizure of the object by an inspector as permitted by s 41(1).

Facts and procedural history

35 Palmanova Pty Ltd, an Australian company, purchased the Artefact online from the Artemis Gallery in Colorado on or about 5 June 2020 for a purchase price of USD17,340. As a result, the Artefact was shipped by FedEx to Melbourne on or about 24 June 2020. Customs officers intercepted the Artefact upon entry into Australia.

36 Following receipt by the Government of Australia from the Government of Bolivia of a request for the return of the Artefact to Bolivia, a Customs officer on 17 May 2021 delivered the Artefact under s 203T of the *Customs Act* to an inspector appointed under s 28 of the Act as a consequence of which the Artefact was taken by operation of s 27(2) to have been seized by the inspector at that time. Palmanova subsequently commenced an action against the Commonwealth in the Federal Court for recovery of the Artefact under s 37 of the Act.

37 At first instance, Perram J found on the balance of probabilities that the Artefact is pre-Columbian in origin, having been manufactured by people of the Tiwanaku civilisation whose culture centred around the ancient city of Tiwanaku on the shore of Lake Titicaca in what is now modern-day Bolivia and rose to prominence between 600 and 1000 AD. His Honour characterised the Artefact as "an exceptional and unique piece of archaeological significance".[31] On that basis, his Honour found the Artefact to form part of the "movable cultural heritage" of Bolivia and therefore to be a "protected object of a foreign country" within the meaning of the Act.[32]

38 Perram J further found on the balance of probabilities that the Artefact was removed from the ruins of the city of Tiwanaku in contravention of a Bolivian statute of 1906 entitled "Law of Property of the Nation, Ruins of Tiahuanaco and Lake Titicaca". The removal was either by an identified archaeologist in the course of excavating the site in 1934 or by looters in or around 1950. Whether removed

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31 *Palmanova Pty Ltd v The Commonwealth* [2023] FCA 1391 at [211].

32 *Palmanova Pty Ltd v The Commonwealth* [2023] FCA 1391 at [210].

in 1934 or in or around 1950, the Artefact had been exported from Bolivia to Argentina by some time in the 1950s.[33]

39 Notwithstanding those findings, Perram J held that the Artefact was not liable to forfeiture under s 14(1) of the Act. The reason was that his Honour considered that, properly construed, s 14(1) did not apply to a protected object of a foreign country exported from the foreign country before the commencement of the Act on 1 July 1987 at least where the exportation of the object from that foreign country was unconnected with the importation of the object into Australia after 1 July 1987.[34]

40 In construing s 14(1) of the Act to have such a limited temporal operation, Perram J placed weight on the contrast between the use of the present perfect tense in s 14(1)(a) ("has been exported") and the use of the past tense in s 14(1)(b) ("was prohibited"). Holding to the syntactic tenet that "the present perfect tense indicates the completion of an event in the past where that completion has some relevance to the present",[35] his Honour pointed out that the description in s 14(1)(a) of where "a protected object of a foreign country has been exported from that country" indicates "a connection between the completed act of export and the present to which s 14(1) is speaking".[36] Were the connection between the completed act of export and the present to be inferred to lie in the mere present existence of the past exported object, his Honour thought, the use of the present perfect tense in s 14(1)(a) would be "otiose"[37] or redundant:[38] any object which satisfies s 14(1)(c) must necessarily have been exported and therefore satisfy s 14(1)(a).

41 Perram J also considered that the reference in the Second Reading Speech to the concern of the Act being "to draw a line across history to ensure that in future years transfers of important and valuable cultural objects from one country to another take place in a legal and orderly fashion" provided some, albeit limited, support for construing s 14(1) as applying only to a protected object of a foreign country that was exported from the foreign country after the commencement of the

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33 *Palmanova Pty Ltd v The Commonwealth* [2023] FCA 1391 at [341].

34 *Palmanova Pty Ltd v The Commonwealth* [2023] FCA 1391 at [378], [380], [381].

35 *Palmanova Pty Ltd v The Commonwealth* [2023] FCA 1391 at [353].

36 *Palmanova Pty Ltd v The Commonwealth* [2023] FCA 1391 at [356].

37 *Palmanova Pty Ltd v The Commonwealth* [2023] FCA 1391 at [378].

38 *Palmanova Pty Ltd v The Commonwealth* [2023] FCA 1391 at [358].

Act.[39] He derived no assistance from a consideration of the UNESCO Convention, taking the view that "the differences between Art 7 and s 14(1) are too large to make comparison useful".[40]

42 The Commonwealth appealed to Full Court. The sole issue on the appeal to the Full Court was the correctness of the construction of s 14(1) of the Act adopted by Perram J. Neither party sought to support the construction treated as open by his Honour according to which s 14(1)(a) might apply to a protected object of a foreign country where the exportation of the object from the foreign country before the commencement of the Act was somehow continuous with the importation of the object into Australia after the commencement of the Act.

43 Before the Full Court, issue was joined between the parties as to whether s 14(1)(a) of the Act properly construed applies: only to a protected object of a foreign country exported from that country after the commencement of the Act, as Palmanova contended; or to any protected object of a foreign country exported from that country before or after the commencement of the Act, as the Commonwealth contended. Both parties accepted that the commonality of statutory language and purpose between s 14(1) and s 14(2) requires that whichever of those alternative meanings is attributed to s 14(1)(a) must also be attributed to s 14(2)(a).

44 The majority in the Full Court, Banks-Smith and Abraham JJ, considered that "the critical time for the operation" of the provisions of Pt II of the Act "is the time of import into, or export from, Australia"[41] and that the text of s 14(1) provided "no basis" to limit its application to exports from a foreign country after the commencement of the Act.[42] Despite expressing the view, already noted, that the text was so "clear" as to make extrinsic material "unnecessary to consider",[43] the majority went on to conclude, in response to the reasoning of Perram J, that nothing in the Second Reading Speech suggested that s 14(1) and (2) were

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39 *Palmanova Pty Ltd v The Commonwealth* [2023] FCA 1391 at [365]-[370].

40 *Palmanova Pty Ltd v The Commonwealth* [2023] FCA 1391 at [375].

41 *The Commonwealth v Palmanova Pty Ltd* (2024) 304 FCR 163 at 166 [16].

42 *The Commonwealth v Palmanova Pty Ltd* (2024) 304 FCR 163 at 168 [25].

43 *The Commonwealth v Palmanova Pty Ltd* (2024) 304 FCR 163 at 169 [27].

designed to be limited to "objects exported after the date of enactment, which are then imported into Australia".[44]

45 The dissentient in the Full Court, Downes J, considered Palmanova's construction to be that which best achieves the purpose of the Act.[45] Her Honour relevantly identified that purpose, by reference to Art 6 of the UNESCO Convention and to the statements in the Second Reading Speech about "requisite export authorisations" and "draw[ing] a line across history", as being to control the importation into Australia of protected objects of foreign countries exported from the territories of those countries in the future: at a time when exportation of those objects from the territories of those countries ought to occur only if authorised by certification in accordance with Art 6(a) in order not to be prohibited in accordance with Art 6(b) and when the existence of such a prohibition on export ought to be publicised to persons likely to be importers or exporters of those objects in accordance with Art 6(c).[46] Her Honour regarded the alternative construction as creating a practical necessity for honest importers and exporters to engage in onerous and unworkable inquiries into the provenance of traded objects in order to obviate the risk of forfeiture under s 14(1) and of criminality under s 14(2), a result which her Honour regarded as "unreasonable and improbable".[47]

46 On its appeal by special leave to this Court, Palmanova called in aid both the textual reasoning of Perram J and the purposive and contextual reasoning of Downes J. Palmanova relied also on what it argued to be the consistency of its construction of s 14(1)(a) and (2)(a) with the temporal limitation in Art 7(a) of the UNESCO Convention. Fairly acknowledging that "[t]he rule formerly accepted, that statutes creating offences are to be strictly construed, has lost much of its importance in modern times" to the point of having become "one of last resort",[48]

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44 *The Commonwealth v Palmanova Pty Ltd* (2024) 304 FCR 163 at 169 [29].

45 *The Commonwealth v Palmanova Pty Ltd* (2024) 304 FCR 163 at 178 [77], 181 [96].

46 *The Commonwealth v Palmanova Pty Ltd* (2024) 304 FCR 163 at 178 [75]-[76], 180 [90]-[91].

47 *The Commonwealth v Palmanova Pty Ltd* (2024) 304 FCR 163 at 179-180 [87]-[88].

48 *Waugh v Kippen* (1986) 160 CLR 156 at 164, quoting *Beckwith v The Queen* (1976) 135 CLR 569 at 576. See also *Aubrey v The Queen* (2017) 260 CLR 305 at 325 [39]; *R v A2* (2019) 269 CLR 507 at 525 [52].

Palmanova also sought to derive assistance from the consideration that s 14(2)(a) expresses an element of a criminal offence.

The preferable construction of s 14(1)

47 The purpose of s 14 of the Act expressed in the long title to the Act, as has been noted, is "to support the protection by foreign countries of their heritage of movable cultural objects". Pursuit of that statutorily identified purpose by s 14(1) and (2) is moderated by the constraints on enforcement imposed by s 41(1) and (2).

48 As its enforcement is constrained by s 41(1), s 14(1) of the Act pursues the statutorily identified purpose of supporting the protection by foreign countries of their heritage of movable cultural objects by permitting seizure of a protected object of a foreign country (leading eventually to forfeiture of the object to the Commonwealth and return of the object to the government of the foreign country) only after receipt of a request for the return of that object by the government of the foreign country. For an object to be liable to forfeiture by operation of s 14(1), the criteria set out in s 14(1)(a), (b) and (c) must all be met at the same time. The criterion in s 14(1)(a) is that "a protected object of a foreign country has been exported from that country". The criterion in s 14(1)(b) is that "the export was prohibited by a law of that country relating to cultural property". The criterion in s 14(1)(c) is that "the object is imported". Obviously, the event referred to in the criterion set out in s 14(1)(c) – the present act of importation – furnishes the temporal reference point for the criteria set out in s 14(1)(a) and (b).

49 Section 14(2) of the Act pursues the same purpose of supporting the protection by foreign countries of their heritage of movable cultural objects by complementary means. As its enforcement is constrained by s 41(2), s 14(2) permits criminal prosecution of an importer who was aware at the time of importation of the circumstance set out in s 14(2)(a) that "the object is a protected object of a foreign country that has been exported from that country" and the circumstance set out in s 14(2)(b) that "the export was prohibited by a law of that country relating to cultural property". Prosecution can occur only after receipt of a request from the government of the foreign country of the same nature as the request required to permit seizure and forfeiture of the object.

50 There was properly no dispute between the parties that s 14(1) and (2) of the Act speak in the present so as to apply upon and only upon the importation of a protected object of a foreign country occurring on or after the commencement of the Act. The parties also correctly proceeded on the basis that neither of their competing constructions of s 14(1)(a) and (2)(a) would result in either of those provisions operating retroactively in the sense that would invoke "[t]he general

rule of the common law ... that a statute changing the law ought not, unless the intention appears with reasonable certainty, to be understood as applying to facts or events that have already occurred in such a way as to confer or impose or otherwise affect rights or liabilities which the law had defined by reference to the past events".[49] That is to say, it was common ground that neither construction would result in s 14(1) and (2) "provid[ing] that as at a past date the law shall be taken to have been that which it was not" and either construction would simply involve "the creation by [s 14(1) and (2)] of further particular rights or liabilities with respect to past matters or transactions".[50]

51 The question of construction on which the parties joined issue was confined to how the textual reference in each of s 14(1)(a) and (2)(a) to a protected object of a foreign country that "has been exported from that country" is best construed in its overall context.

52 The context of the Act, having been enacted with a view to bringing Australia into conformity with the obligations of a State Party prior to Australia acceding to the UNESCO Convention, furnishes no basis for considering that the purpose of s 14 is more limited than that expressed in the long title to the Act or for construing s 14(1)(a) and (2)(a) to apply only to a protected object of a foreign country that was exported from that country on or after the commencement of the Act in order for those provisions not to conflict with Australia's obligations as a State Party to the UNESCO Convention.[51] That is for three independent and sufficient reasons. None of those reasons relies on the generality of the obligation of a State Party under Art 2(2) of the UNESCO Convention and none therefore involves any consideration of the relationship between Art 2(2) and any of the specific obligations of a State Party under Arts 5, 6 and 7 of the UNESCO Convention.

53 The first reason derives from the circumstance that, although the obligations of a State Party under Art 7(a) and (b)(i) of the UNESCO Convention are limited

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49 *Maxwell v Murphy* (1957) 96 CLR 261 at 267.

50 *The Commonwealth v SCI Operations Pty Ltd* (1998) 192 CLR 285 at 309 [57], citing *Coleman v Shell Co of Australia Ltd* (1943) 45 SR (NSW) 27 at 30-31. See also *Stephens v The Queen* (2022) 273 CLR 635 at 653 [33].

51 Compare *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273 at 287; *Minister for Immigration and Multicultural and Indigenous Affairs v QAAH of 2004* (2006) 231 CLR 1 at 14-16 [34]; *CPCF v Minister for Immigration and Border Protection* (2015) 255 CLR 514 at 627 [385].

by reference to the timing of the export or theft of the cultural property of another State Party, the obligation of a State Party under Art 7(b)(ii) of the UNESCO Convention is limited only by the timing of the import of cultural property. The obligation of a State Party under Art 7(b)(ii), as has been noted, is "at the request of the State Party of origin, to take appropriate steps to recover and return any such cultural property imported after the entry into force of [the UNESCO Convention] in both States concerned". Article 7(b)(ii) itself expresses no limitation on the cultural property which can be the subject of a request by reference to the time of the export of that cultural property from the territory of the country of origin and no such limitation can be inferred from Art 6(a), (b) or (c), all of which are addressed to the distinct topic of the obligations of a State Party with respect to its own cultural property, or from Art 7(a) or (b)(i), which are concerned with museums and institutions.

54 The absence from Art 7(b)(ii) of the UNESCO Convention of any limitation as to the timing of the export of cultural property from the territory of the country of origin requesting its return is important as ss 14(1) and 41(1) of the Act together provide the statutory mechanism which enables Australia to respond to a request by the government of that country for the return of that property so as to fulfil Australia's obligation under Art 7(b)(ii) to take appropriate steps to recover and return the requested cultural property. To construe s 14(1)(a) to contain a limitation as to the timing of the export of the protected object from its country of origin would not facilitate compliance with Australia's obligation under Art 7(b)(ii) of the UNESCO Convention.

55 The second reason is that, as has also been noted, Art 15 of the UNESCO Convention makes abundantly clear that the obligations undertaken by a State Party under Art 7 do not constrain the State Party from entering into and giving effect to other bilateral or multilateral agreements for the recovery and return of cultural property of other States, irrespective of when that subject cultural property might have been exported from those States. Again, s 14(1) in combination with s 41(1) provides the statutory mechanism to enable Australia to implement any such other bilateral or multilateral agreement that is in alignment with the terms of the Act.

56 The third reason is that, as s 41 does not limit the objects that can be the subject of a valid request by a foreign country to those objects exported from that country after the Act came into force, the contrary interpretation would leave a request made by a foreign country in respect of an object exported from that country prior to the Act coming into force unable to be acted upon. Such an outcome tells strongly against that contrary interpretation.

57 The Second Reading Speech and the Explanatory Memorandum reinforce those reasons for considering the purpose of s 14 to be no more limited than that expressed in the long title to the Act and for construing s 14(1)(a) and (2)(a) to contain no limitation as to the timing of the export of a protected object from a foreign country. Both the Second Reading Speech and the Explanatory Memorandum have been seen to allude to ss 14(1) and 41(1) providing the statutory mechanism to enable Australia to respond to a request by a foreign country for the recovery and return of a protected object of that foreign country in accordance with Art 7(b)(ii) of the UNESCO Convention and both allude to the same statutory mechanism also being available to enable Australia to implement bilateral agreements for the recovery and return of protected objects of foreign countries.

58 The "line across history" to which the Minister referred in the Second Reading Speech was drawn in s 9(1), (2) and (3) of the Act by reference to exports or attempted exports of Australian protected objects from Australia which were to occur on or after the commencement of the Act and in s 14(1) and (2) by reference to imports of protected objects of foreign countries into Australia which were to occur on or after the commencement of the Act. No further line was drawn in s 14(1) and (2) by reference to exports of protected objects from those foreign countries which were to occur on or after the commencement of the Act.

59 Having regard to these textual and contextual considerations, the consideration that s 14(2)(a) expresses an element of the criminal offence created by s 14(2) need hardly be said to be of no assistance in construing s 14(2)(a) let alone in construing s 14(1)(a). The consideration could at its highest carry some weight in the attribution of statutory meaning were considerations drawn from text and context finely balanced. Here, they are not.

60 There remains finally to deal with the syntax. The context and purpose of a statutory provision "are surer guides to its meaning than the logic with which it is constructed".[52] Nonetheless, the syntax of s 14(1)(a) and (2)(a) is consistent with s 14(1)(a) and (2)(a) not being confined to applying only to a protected object of a foreign country that was exported from that country on or after the commencement of the Act, by reference to the logic with which those provisions of the Act are constructed.

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52 *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 381 [69], quoting *Commissioner for Railways (NSW) v Agalianos* (1955) 92 CLR 390 at 397.

61 The temporal focus of s 14(1) of the Act, like the temporal focus of s 14(2), is the time of the importation of an object into Australia. That is made clear by s 14(1)(c), as it is made clear by the chapeau to s 14(2). The condition set out in s 14(1)(c) can only be met where an object is imported into Australia after the commencement of the Act. Unless that condition is met, s 14(1) does not render the object liable to forfeiture.

62 In respect of an object that is imported into Australia after the commencement of the Act so as to meet the condition set out in s 14(1)(c), s 14(1)(a) and (b) set out cumulative criteria which must be met for the object to be liable to forfeiture. The sequence of those criteria and the differences between them reflect the different tenses in which they are expressed in accordance with the ordinary use of the English language.

63 Section 14(1)(a), like s 14(2)(a), expresses two criteria each addressed to a characteristic of the object at the time of importation. The first is that the object is at that time a protected object of a foreign country: that the object is then of importance to that country, or to a particular part of that country, for ethnological, archaeological, historical, literary, artistic, scientific or technological reasons or for other prescribed reasons. The second is that the object "has been" exported from that country. Each being addressed to a different characteristic of the same object at the same time, the temporal shift in those two criteria explains the use of the present perfect tense ("has been") in the expression of the second of them. The use of the present perfect tense indicates no more than that the completion of the act of exportation of the protected object of the foreign country in the past has some relevance to the present. The connection between the completed act of exportation and the present lies in the circumstance that the object that is in the present a protected object of a foreign country, thereby meeting the first criterion, is the same object that was in the past the subject of the completed act of exportation, thereby meeting the second criterion.

64 Section 14(1)(b), like s 14(2)(b), then expresses the additional criterion that the past completed act of exportation of the object in question was prohibited by a law of the foreign country in question. The shift from the use of the present perfect tense in the expression of the second criterion in s 14(1)(a) to the simple past tense in s 14(1)(b), to the extent it requires explication, simply reflects the shift from s 14(1)(a) concerning an act of exportation completed in the past as a present characteristic of the protected object of a foreign country to s 14(1)(b) concerning a quality of that act of exportation which was completed in the past: the quality being that the act of exportation was unlawful when it was completed in the past.

65 The text of s 14(1) and (2) of the Act therefore involves neither surplusage nor redundancy. In using the present perfect tense, s 14(1)(a) and (2)(a) each

express the criterion of operation that an object which is at the time of importation into Australia a protected object of a foreign country is also an object that was previously exported from that foreign country. The use of the present perfect tense indicates no further temporal limitation as to when the object was exported from that foreign country.

Conclusion

66 The appeal is to be dismissed with costs.

67 EDELMAN J. I agree with the reasons of Gageler CJ, Gordon, Jagot and Beech-Jones JJ ("the joint reasons") and with their conclusion that the appeal should be dismissed with costs. I wish to address only two additional points. The first concerns a principle of statutory interpretation sometimes described as a presumption against surplusage or redundant language. The second concerns the relevance of extrinsic materials.

68 One aspect of the clear and comprehensive submissions made by senior counsel for the appellant, relying upon the typically lucid reasons of the primary judge, was reliance upon an interpretive principle that has been described as a "presumption" against surplusage.

69 The appellant's submission was that the words "has been exported" in s 14(1)(a) of the *Protection of Movable Cultural Heritage Act 1986* (Cth) ("the Act") would be redundant if they were given the meaning of "was exported" which, in effect, was the meaning attributed to those words by the majority in the Full Court of the Federal Court. The appellant argued that since s 14(1)(a) requires that the object liable to forfeiture be "a protected object of a foreign country", and since s 14(1)(c), read with the definition of "import" in s 3, imposes a requirement that the object is imported into Australia, the protected object must be one that was exported from the foreign country (directly to Australia or via another country to Australia). In short, an object of a foreign country that is imported must also have been exported. Hence, the appellant rightly argued, it would be surplusage to interpret the words "has been exported" in s 14(1)(a) to mean "was exported" from the foreign country.

70 The appellant's alternative interpretation, which was preferred by the primary judge and the minority of the Full Court, was that the words in the present perfect tense—"has been exported"—meant that the object has been exported after the commencement date of the Act. Thus, on the appellant's alternative interpretation, s 14(1) would not apply to an object that was exported prior to the commencement of the Act from the foreign country in which it was protected, even if that object "is imported" into Australia after the commencement of the Act. In this way, the interpretation of "has been exported" would avoid the redundancy of those words that would arise if those words were taken to mean "was exported".

71 As Professor Pearce rightly points out, a so-called "presumption against surplusage" has sometimes been treated as having the effect that courts "are not at liberty to consider any word or sentence as superfluous or insignificant. All words must prima facie be given some meaning and effect".[53] The force with which this interpretive principle has sometimes been expressed may have been a reason for the primary judge's avoidance of the interpretation involving redundant words by a heavy focus on the present perfect tense of s 14(1)(a). Although the approach of

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53 Pearce, *Statutory Interpretation in Australia*, 10th ed (2024) at 69 [2.44].

the primary judge was critically described by the majority of the Full Court as a construction that was "based almost entirely" upon the use of that tense,[54] that approach by the primary judge is consistent with those cases which have given great weight to interpretations which avoid redundant words.[55]

72 The decisions that have taken such a strict approach to the interpretive presumption against redundant words do not accurately reflect the nature of interpretive presumptions as no more than generalisations of ordinary language use. As Lord Wilberforce once said, "[m]odern linguistic theory has helped us to realise that language is deeply rooted in social habits and cultures".[56] The interpretation of legal instruments, whether by members of the public or by lawyers or judges, is the interpretation of language, which must generally employ the same ordinary language techniques used in society with the lodestar being the intention of the speaker. As with the techniques used to understand ordinary language, presumptions in interpretation of legal instruments are only loose aids to ascertaining meaning. This is particularly true of the interpretation of legislation, the laws that govern people generally, which should usually involve (and is intended to involve) the governed and lawyers alike using ordinary techniques of communication without the rigid application of special legal rules.

73 In legislation, as in ordinary language, there can be a number of reasons for repetition, tautology, and surplusage. One reason may be a desire for emphasis or comprehensive coverage, to cover a field by the use of similar concepts, even if the concepts might have identical effect, "for more abundant caution".[57] Another reason is looseness in drafting,[58] or matters of emphasis, such that although "there may be a superfluous expression here or there ... the Act will be consistent

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54 *The Commonwealth v Palmanova Pty Ltd* (2024) 304 FCR 163 at 167 [18].

55 See, for instance, *The Commonwealth v Baume* (1905) 2 CLR 405 at 414, citing *R v Berchet* (1690) 1 Show 106 [89 ER 480].

56 Wilberforce, "A judicial viewpoint", in Australia, *Symposium on Statutory Interpretation*, Parliamentary Paper No 340/1983 (1983) 5 at 6.

57 *Leon Fink Holdings Pty Ltd v Australian Film Commission* (1979) 141 CLR 672 at 679.

58 *Beckwith v The Queen* (1976) 135 CLR 569 at 574.

throughout".[59] A third reason is that the drafter "may not have appreciated" the surplusage.[60]

74 As with ordinary language, the force of an interpretive principle against surplusage will also depend upon the extent of the surplusage. A few redundant words might be more reasonably expected than a redundant sentence which, in turn, might be more reasonably expected than a redundant provision. Even at the level of a sub-section, Lord Hoffmann remarked that he seldom thought "that an argument from redundancy carries great weight".[61] And in *Minister for Resources v Dover Fisheries Pty Ltd*,[62] Gummow J expressed the interpretive principle at the level of a provision, saying that it was "improbable that the framers of legislation could have intended to insert a provision which has virtually no practical effect".

75 Ultimately, and again modelling on the techniques of interpreting ordinary usages of language, the overriding concern of statutory interpretation is with the heuristic of the notional intention of the Parliament as revealed by the purpose of the words of the statutory provision and the context in which those words are used.[63] Hence, in determining Parliamentary intention the context and purpose of the words of a provision are "surer guides" than the logic with which the words are constructed[64] and an interpretation that would best achieve the purpose of an Act is to be preferred to any other interpretation.[65] As the joint reasons explain, the context and purpose of s 14(1)(a) inexorably support the interpretation preferred by the majority of the Full Court, far outweighing the slight force of the interpretive principle that relies upon the few redundant words, "has been exported", in s 14(1)(a).

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59 See *Commissioners for Special Purposes of Income Tax v Pemsel* [1891] AC 531 at 589.

60 *Western Australian Planning Commission v Southregal Pty Ltd* (2017) 259 CLR 106 at 122 [55].

61 *Walker (Inspector of Taxes) v Centaur Clothes Group Ltd* [2000] 1 WLR 799 at 805; [2000] 2 All ER 589 at 595.

62 (1993) 43 FCR 565 at 574, citing *AMP Inc v Utilux Pty Ltd* [1972] RPC 103 at 109.

63 *Automotive Invest Pty Ltd v Federal Commissioner of Taxation* (2024) 98 ALJR 1245 at 1266 [115]; 419 ALR 324 at 352-353. See also *Ravbar v The Commonwealth* (2025) 99 ALJR 1000 at 1043 [172]; 423 ALR 241 at 291.

64 *Commissioner for Railways (NSW) v Agalianos* (1955) 92 CLR 390 at 397; *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355 at 381 [69].

65 *Acts Interpretation Act 1901* (Cth), s 15AA.

76 The important aspects of that context to which the joint reasons refer include the Second Reading Speech and Explanatory Memorandum for the Act and the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (1970). By contrast, the majority of the Full Court had concluded that the extrinsic material was unnecessary to consider because the construction of s 14 was clear (although the majority properly did consider the extrinsic material and found that it did not tell against their preferred interpretation).[66]

77 The cautious approach to extrinsic materials by the majority of the Full Court was probably informed by the terms of s 15AB(1) of the *Acts Interpretation Act 1901* (Cth), which, superficially, appear to be in tension with the modern approach to statutory interpretation, reflecting ordinary language use, by which text, context, and purpose all inform each other and together shape the meaning of the provision.[67]

78 In theory, that tension arises in any case in which s 15AB(1) is seen as requiring a stepped, iterative approach to interpretation, by which the literal or semantic meaning of words in their internal context (described in s 15AB(1) as an "ordinary meaning") is considered before considering whether that "ordinary meaning" is altered by extrinsic material.[68] In practice, however, even with reliance only upon s 15AB(1) without reference to the common law position, there should rarely, if ever, be a need for such a stepped approach since: (i) s 15AB(1)(b)(i) reflects the modern approach to statutory interpretation by which all context is relevant in the first instance to determine the meaning of a provision whenever the provision is ambiguous or obscure; and (ii) ambiguity includes latent ambiguity, the existence of which cannot be eliminated without reference to extrinsic materials.

79 In any event, s 15AB of the *Acts Interpretation Act* was introduced in 1984[69] as a facultative provision, by which "Parliament should give a lead",[70] partly because the common law rules of interpretation at that time were "neither clear nor

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66 *The Commonwealth v Palmanova Pty Ltd* (2024) 304 FCR 163 at 169 [27].

67 *Harvey v Minister for Primary Industry and Resources* (2024) 278 CLR 116 at 160-161 [111]-[112]. See also *CIC Insurance Ltd v Bankstown Football Club Ltd* (1997) 187 CLR 384 at 408.

68 See *Acts Interpretation Act 1901* (Cth), s 15AB(1)(a), (1)(b)(ii).

69 *Acts Interpretation Amendment Act 1984* (Cth), s 7.

70 Australia, House of Representatives, *Parliamentary Debates* (Hansard), 3 April 1984 at 1288. See also Australia, Senate, *Parliamentary Debates* (Hansard), 8 March 1984 at 583.

convincing".[71] The section provided a baseline of circumstances in which, in cases considered to be appropriate,[72] reference could be made to extrinsic materials, including the non-exhaustive list in s 15AB(2). But the section was not limited to those circumstances. Reference to extrinsic materials was "to be left to the discretion and the judgment of the courts".[73] That discretion and judgment now generally extends beyond the stepped, iterative process of s 15AB(1) to apply the modern approach to statutory interpretation, as applied in this case by the joint reasons.[74]

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71 Dharmananda, "Sliding Doors: Harvey and the Dual Legal Gateways to Extrinsic Materials" (2024) 35 *Public Law Review* 105 at 105, quoting Mason, "Summing up", in Australia, *Symposium on Statutory Interpretation*, Parliamentary Paper No 340/1983 (1983) 81 at 81.

72 *Acts Interpretation Act 1901* (Cth), s 15AB(3).

73 Australia, House of Representatives, *Parliamentary Debates* (Hansard), 3 April 1984 at 1287.

74 See *Newcastle City Council v GIO General Ltd* (1997) 191 CLR 85 at 99, 112. See also *Ravbar v The Commonwealth* (2025) 99 ALJR 1000 at 1033-1034 [120], 1043 [172], 1065 [270]; 423 ALR 241 at 277-278, 291, 320-321.