The true meaning of a legal text almost always depends on a background of concepts, principles, practices, facts, rights and duties which the authors of the text took for granted or understood, without conscious advertence, by reason of their common language or culture.’

In this session we will:

Overview statutory interpretation

• General Principles:
• General Method; and
• Central Interpretive Criteria

Group Exercise: Your rule rocks
Section One:
This Act is intended to prevent solicitation for purposes of prostitution in streets and other public places.

Section Two:
It shall be an offence for a sex worker to loiter or solicit in a street or public place for the purpose of sex work.
How do you decipher an Act?

- Central Interpretative Criteria
- General Principles
- General Method
General Principles:

- Multifactorial assessment where more than one construction available
- Not selective application but a judgment based on all relevant criteria
- Object is to determine the intention of the legislature
- Context of the provision and legislative purpose
General Method

- Work up from problems, not one-size-fits all
- Locate the provision
- Read it in context
- Identify relevant and multiple interpretative criteria for the problem
- Critically analyze how and to what extent those factors assist in the light of the indications of meaning gathered so far
- Compare constructions – make a judgment as to which carries more weight and is to be regarded as expressing the legal meaning
Central Interpretative Criteria

• Intrinsic guides of the provision and Act concerned
• The relevant Commonwealth, State or Territory Interpretation Act
  • Acts Interpretation Act 1901 (CTH)
  • Interpretation Act 1987 (NSW)
• Interpretative requirements of other relevant Acts of application such as a Charter of Rights
• Pre-existing, related or similar statutes and common law doctrines
• Interpretative principles and presumptions developed by courts including the principle of legality; presumption against retrospectivity; implied repeal
• Extrinsic materials
• Precedent in comparable cases
• Other contextual factors include the effect of any alternative construction (absurdity or injustice)
Your statutory interpretation rule is the best, Why?

- Look up commentary
- Look up journal articles
- Look up case law

Argue your case in 4 minutes.
Who has the most important rule?
Intrinsic – The Act

- The Act/section of the Act itself
- Long title/short title
- Preamble
- Definition section
- Any schedules
- Any other provisions within that part that will be relevant.
- Headings to chapters, parts and divisions are taken to be parts of the act. But generally headings to sections, marginal notes, footnotes or endnotes are not to be taken into consideration.
Intrinsic - the text in the Act

- All words have meaning
- Ordinarily, the meaning is the ordinary meaning
- A technical or legal meaning may be used
- Current meaning
- Dictionary meaning
- Consistent meaning across the Act
Interpretation legislation

• Mostly uniform across all jurisdictions however each Interpretation Act should be used to interpret in its own jurisdiction
• Applies equally to primary and delegated legislation
• Covers references in legislation to gender, age, number, distance, time
• Commencement, amendment, repeal and invalidity of Acts
Section 15AA Acts Interpretation Act

Section 15AA Acts Interpretation Act 1901 (CTH):

- 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 each other interpretation.

i.e. if two constructions – choose the best one that would fit the purpose.

Section 33 Interpretation Act 1987 (NSW)
Extrinsic Aids - Section 15AB and common law approach to use of extrinsic material

- Parliamentary debates
- Executive documents
- Law reform commission reports
- Explanatory memoranda
- Second reading speeches/parliamentary debates
- Parliamentary committee reports
- International treaties and agreements

**Limitation:** Section 15AB Acts Interpretation Act 1901 (CTH) – lists materials that can be taken into account if provision is ambiguous or ordinary meaning produces an absurd result.
Extrinsic- traditional Common Law Approaches

- Coexist with statutory approaches (rather than being subsumed within them)

**Literal** - plain and ordinary meaning of words ‘even if we think the result to be inconvenient or impolitic or improbable’: *Amalgamated Society of Engineers v Adelaide Steamship Co Ltd* (1920) 28 CLR 129 161-2

**Golden Rule**: Depart from the ordinary (or grammatical) meaning to avoid an absurd result: *Grey v Pearson* (1857) 6 HL Cas 61, 106

**Purposive**: Determine the purpose of Parliament in passing legislation or the particular provision in question. Origins in the *mischief rule*: *Heydon’s Case* (1584) 3 Co Rep 7a, 7b.

A search for the purpose of a legislative provision was not always successful- Kirby J in considering the *Gaming and Betting Act 1912* (NSW):

The legislation relevant to the present appeal…does nothing to add to the coherency of this body of law. It is a jumble of ill-matched and poorly integrated enactments: *Avel Pty Ltd v Attorney-General (NSW)* (1987) 11 NSWLR 126.
Context in Legislation

Interpretation with reference to accompanying words
Interpretation with reference to other parts of legislation – title, preamble, definitions, headings, schedules etc
Interpretation legislation
Dictionaries ok
Consistent use of words is assumed
All words assumed to carry meaning
Words should be interpreted in accordance with current meaning
Express mention may draw attention to absence elsewhere
Provisions may be interpreted with reference to other legislation
Provisions may be interpreted with reference to the audience
Provisions may be interpreted with reference to existing law
Knowledge, skills and attributes of lawyers

Knowledge

Information – current & relevant

Statutory Interpretation

Ongoing training

Practice
Presumptions Used in Interpreting Legislation

- Statutes do not operate retrospectively
- Parliament does not interfere with common law rights
- Parliament does not abrogate the privilege against self-incrimination
- Parliament does not abrogate legal professional privilege
- Parliament does not deprive people of access to the courts
- Re-enactment of a provision constitutes approval for a previous judicial interpretation of a provision
- Legislation does not bind the crown
- Penal provisions are strictly construed
- Property rights are not taken away without compensation
- Legislation does not have extraterritorial effect
- Parliament intends to legislate in conformity with international law
- These are rebuttable – only where there is ‘clear and unambiguous words’: *Durham Holdings Pty Ltd v New South Wales* (1999) 47 NSWLR 340, 353-4.
In Conclusion: Statutory interpretation

- Multifactorial assessment
- Statute guidance
- Common law presumptions
- Extrinsic and intrinsic aids