

STATUTORY INTERPRETATION – LEGISLATIVE LITERACY

ALLA conference, 5 May 2018

Sue Tongue

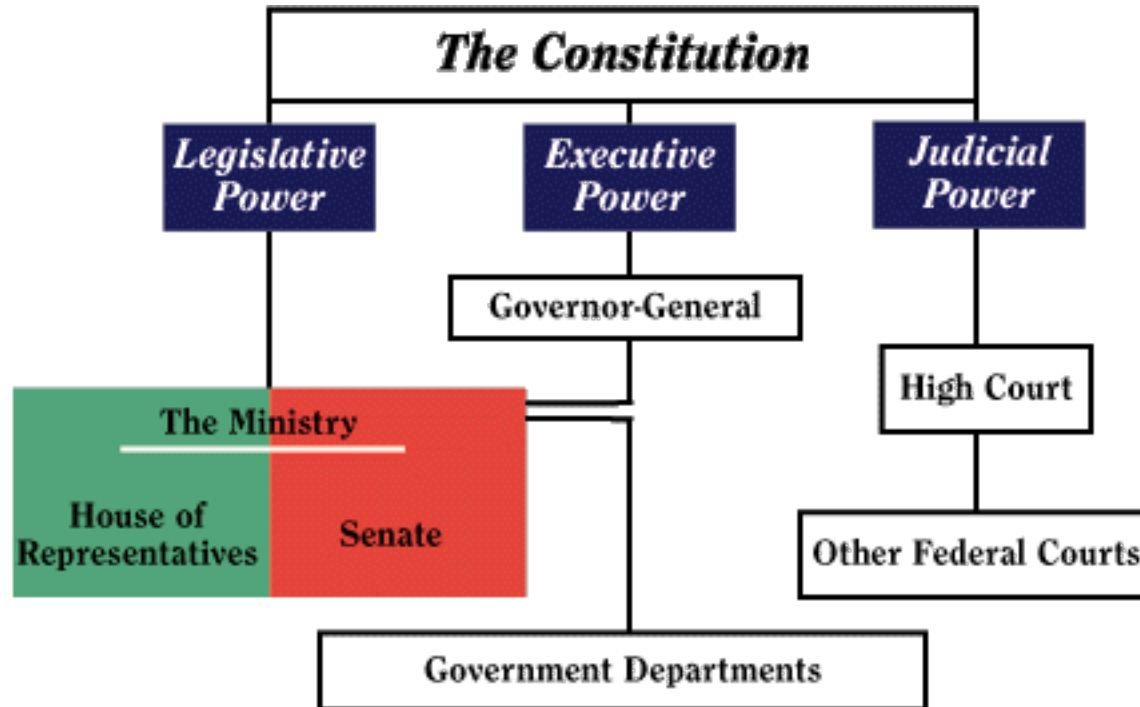


Australia relies on legislation being properly applied and administered. Statutory interpretation is underpinned by legislative literacy – supported by law librarians.

Agenda

1. Statutory interpretation: 5 keys
2. Legislative literacy
3. Regulators' tools
4. The federal courts' current approach
5. Case examples
6. Statutory interpretation rules, guides and useful sources
7. Discussion and questions

1st key - Separation of powers

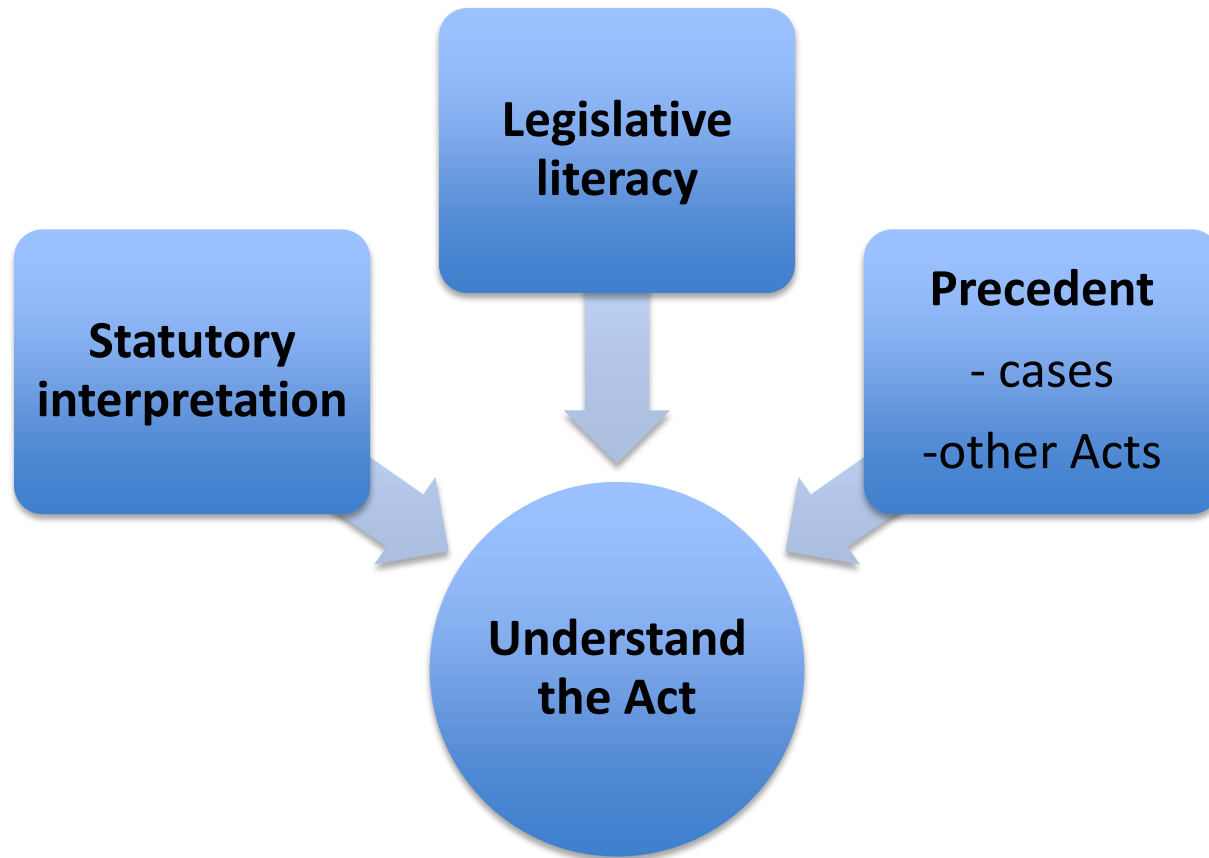


2nd key - Importance of statutory interpretation

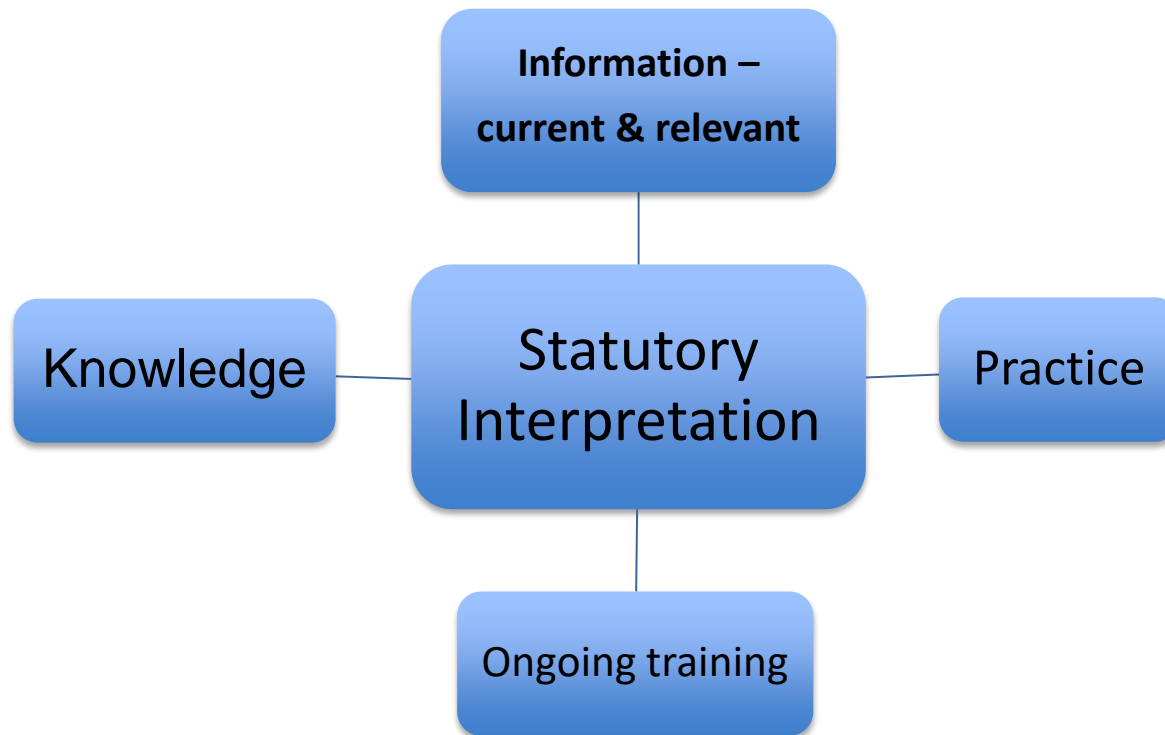
Majority of superior court decisions involve statutory interpretation

e.g. HCA decisions 2018 – 15 decisions by 15 April – 11 (73%) had statutory interpretation

3rd key - Understanding Acts



4th key - Knowledge, skills and attributes of lawyers and library and information professionals



5th key - Unlock legislation through vision that is global and specific



2. Legislative literacy

- Truly know the legislation
- Understand its context
- Recognise why it was passed
- Know the 'pressure points'
- Appreciate other ways it might be interpreted



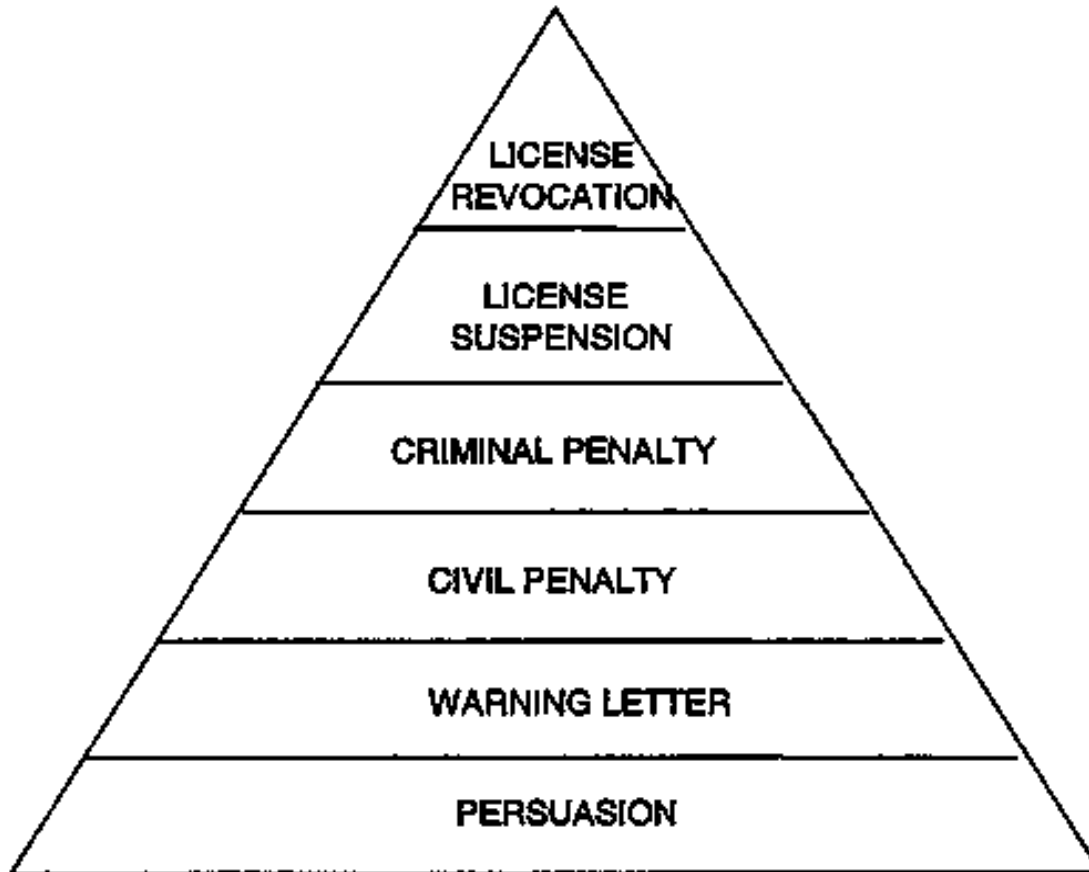
3. Regulator's tools

- 'Carrots and Sticks' – the pyramid of compliance
- Acts
- Delegated legislation – regulations, rules, determinations, orders etc
- Legislative Instruments
- Codes



3. Pyramid of compliance

Braithwaite & Ayres



3. Example – *ABF Act 2015*

Acts

- *Australian Border Force Act 2015*
- *Public Service Act 1999*
- *Public Governance and Performance Accountability Act 2013*
- *Law Enforcement Integrity Commissioner Act 2006*

Rules

- Oath and Affirmation
- Secrecy and Disclosure
- Alcohol and Drug Tests

Secretary Determinations

- Determination of IBP workers
 - Original determination 29 June 2015
 - Amended determination 30 Sept 2016
- Professional Standards 29 June 15
- Employment Suitability and Security Screening 29 June 15
- Integrity Measures 1 July 2015



4. The federal courts' current approach

- French HCA:
 - Text
 - Context
 - Purpose (history)
- Kiefel HCA:
continuing this;
proportionality
- History is important:
 - Origin
 - International instruments
 - Comparative jurisprudence
 - Understand: amendments, sunseting, de-regulation, use of similar provisions in other legislation

5. Examples

- *Minister for Immigration and Border Protection v Kumar* [2017] HCA 11 (8 March 2017)
- *Esso Australia v The Australian Workers' Union* [2017] HCA 54 (7 December 2017)



5. Examples – citizenship cases

Re Nash (No.2) [2017] HCA 52 (6 December 2017)

Re Lambie [2018] HCA 6 (14 March 2018)

Re Kakoschke-Moore [2018] HCA 10 (21 March 2018)

6. Statutory Interpretation rules, guides and useful sources

- Common law rules
- *Acts Interpretation Act 1901*
- *Regulatory Powers (Standard Provisions) Act 2014*
- *Statute Law Revision Bills* e.g Bills Digest (aph), Spring 16
- *Legislation Handbook 2017* (dpmc)
- Office of Parliamentary Counsel documents
- Pearce and Geddes *Statutory Interpretation in Australia* 8th ed
- Perry Herzfeld & Thos Prince *Statutory interpretation principles* Thomson Reuters 2014
- Overseas guides e.g NYU law school research guides (law.nyu.edu)

7. Discussion and Questions?

- Helpful tips to share?
- Challenges and solutions?

