

## Guide to statutory interpretation

### 1. Commencement

Does the Act provide a commencement date?

If the Act does not specifically state a commencement date, rely on S3(2) of the ACA

"An Act (other than an Act to alter the Constitution) commences on the 28th day after the day on which that Act receives the Royal Assent."

Remember that an Act does not operate retrospectively. ⚡ this is a strong presumption and is illustrated in *Rodriguez v The Queen*

"The rule of common law is that a statute ought not be given a retrospective operation where to do so would affect an existing right or obligation"

However, this presumption is limited if the statute affects procedure. This is again outlined in *Rodriguez v The Queen*

"Where procedure alone is involved, a statute will invariably operate prospectively"

### 2. Break up the provision

List each element needed to satisfy a section of the Act

### 3. Non-contentious issues

If there are non-contentious issues, deal with them rapidly

Refer to definitions provided in the Act and in the ACA (S28-3)

### 4. Contentious issues – the contextual approach

Under *CR* *Heydon v EBF v Hainesworth Goodhart (Eds) Ltd*

"The modern approach to statutory interpretation . . . insists that the context be considered in the first instance"

Start with the ordinary and natural meaning of the words. This relies on definitions.

Remember to note whether a definition is open or closed and how this impacts the meaning of the provision. Do so in the following order:

Definition section of the Act

Definition section of the ACA

Judicial interpretation

Re-enactment constitutes approval of previous judicial interpretation. ⚡ weaker presumption

Its limitations are outlined in *Falvey v Gierga*:

"Where amendments of a statute not involving any re-enactment of the words in question could validly or even constitute approval of an interpretation of those words"

"At most, the principle affords a presumption of no great weight concerning the meaning of the words and cannot be relied upon to perpetuate an erroneous construction"

# Guide To Statutory Interpretation Student Guide Series

**SA Dillow**



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