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Theories of Statutory Interpretation

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> *The law of statutory interpretation has become the most important single aspect of legal practice. Significant areas of the law are determined entirely by statute. No area of law has escaped statutory modification.*[1]

In recent years there has been a wide-ranging debate, particularly in the United States, Canada and Europe, concerning the appropriate theoretical bases for interpreting statutes. Various theories have been advanced by scholars and judges. These theories seek to establish normative standards to be applied to the interpretation of statutes. While the importance of this debate has been acknowledged in scholarly writing,[2] it has only recently begun to impact on Australian judicial decisions.

The fundamental question in developing theories of interpretation is how one deals with statutes within a system of law and legal reasoning. In the case of Australia, the system of law is a common law system in many ways dominated by statute and also limited by a written Constitution. This means that any Australian theory must provide for the interaction of common law, statutes and the Constitution; and, for the relative primacy to be given to each of those components. This is not unique to Australia, hence the international debate and, as we will see, the similarity of issues

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1 Chief Justice of NSW, JJ Spigelman AC, 'The Poet's Rich Resource: Issues in Statutory Interpretation' (Address to the Government Lawyer's Convention, Parliament House, Sydney, 7 August 2001).

2 DC Pearce and RS Geddes, *Statutory Interpretation in Australia* (5th ed, 2001) 19; cf PD Finn, 'Statutes and the Common Law' (1992) 22 *University of Western Australia Law Review* 7.