

3

The Architecture of Interpretation: Dynamic Practice and Constitutional Principles

Suzanne Corcoran

If there is something to be interpreted, the interpretation must speak of something which must be found somewhere, and in some way respected.¹

Dynamic statutory interpretation is a theory of interpretation which holds that 'the meaning of a statute is not fixed until it is applied to concrete circumstances, and it is neither uncommon nor illegitimate for the meaning of a provision to change over time'.² Dynamic interpretation is by its very nature pragmatic. This essay argues that the interpretation of statutes in Australia must be dynamic. It will show that, despite official positions identifying textual or purposive interpretation as the norm, Australian legal and constitutional history actually supports a dynamic theory of interpretation. It is also the case that Australian courts now approach the interpretation of statutes in a much more dynamic and pragmatic way than the official positions would suggest. The fact that statutory law and the common law co-exist and interact requires dynamic practice, as does the fact that both the common law and constitutional law evolve over time. International practice will also require dynamic interpretation if techniques applied overseas, such as 'harmonising interpretation'³

1 Umberto Eco, *Interpretation and Overinterpretation* (1992) 43.

2 William N Eskridge Jr, *Dynamic Statutory Interpretation* (1994) 9. See generally, *Issues in Legal Scholarship: Dynamic Statutory Interpretation* (2002) 38-9 Berkeley Electronic Press <<http://www.bepress.com/ils/iss3/art16>> (a collection of 16 articles on the topic of dynamic statutory interpretation).

3 Harmonising interpretation can refer both to a technique used within a particular jurisdiction and between jurisdictions. Within a legal system it refers to the technique by which courts make an adjustment to the interpretation of a statute to harmonise the statute with other extrinsic material also regarded as sources of law. See D Neil MacCormick & Robert S Summers, *Interpreting Statutes: A Comparative Study* (1991) 320-1. The term is also used in a transnational sense to refer to a mutual adjustment of statutory interpretation in the countries concerned. Ibid 330-1.

This is a preview. Not all pages are shown.