

## Chapter 4

# Commentary on 'Statutory Interpretation as Private Law'

*The Hon Ashley Black*

It is a privilege to have the opportunity to comment on Justice Leeming's chapter. This is a happy inversion of the usual relationship between a first instance judge such as myself and an appellate judge such as Justice Leeming, although I will not take full advantage of the consequent opportunity. Justice Leeming addresses a complex example of the interaction between statute law and private law. Before turning to the particular issues raised by his chapter, I want to comment briefly as to the wider issues arising from that interaction which provide the context for his chapter.

### Wider issues

The relationship between general law and statute has been addressed both generally<sup>1</sup> and also by reference to particular fields including in respect of equity, corporations and tort. Professor Finn, prior to his appointment to the Federal Court, addressed the question in an article written in 1992.<sup>2</sup> Professor Finn there pointed to the proliferation of statutes and to the significance of the introduction of the *Trade Practices Act 1974* (Cth) and the prohibition on misleading and deceptive conduct in s 52 of that Act (now s 18 of the Australian Consumer Law). Professor Finn observed that statutory trends were directed to protecting the citizen from abuse of power and

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1 As to extra-judicial comments on questions of statutory interpretation, see also JJ Spigelman, 'The Poet's Rich Resource: Issues in Statutory Interpretation' (2001) 21 *Australian Bar Review* 224 (emphasising the significance of the law of statutory interpretation where '[s]ignificant areas of the law are determined entirely by statute' and '[n]o area of the law has escaped statutory modification', and reviewing the approach adopted by courts in seeking to identify Parliament's intent in a statute, and the issues arising in relation to purposive construction); K Mason, 'The Intent of Legislators: How Judges Discern It and What They Do If They Find It' (2006) 27 *Australian Bar Review* 253; JJ Spigelman, 'The Intolerable Wrestle: Developments in Statutory Interpretation' (2010) 84 *Australian Law Journal* 822 (dealing with the scope of the purposive approach to statutory interpretation, at general law and as required by s 15AB of the *Acts Interpretation Act 1901* (Cth)); S Gageler, 'Common Law Statutes and Judicial Legislation: Statutory Interpretation as a Common Law Process' (2011) 37 *Monash University Law Review* 1.

2 PD Finn, 'Statutes and the Common Law' (1992) 22 *University of Western Australia Law Review* 7.

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