

Chapter 5

Statutory Interpretation and Private Law Obligations

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Introduction

Statute is pervasive as a source of law governing most aspects of societal conduct. As Justice Leeming has written extra-judicially:

Most of the time, as Windeyer J said, ‘it is misleading to speak glibly of the common law in order to compare and contrast it with a statute’. It is misleading because it distracts attention from what Gummow J called the ‘supreme importance of statute law’ in *most* areas of conduct ... As Finn J has said, ‘we live in an age of statutes and ... it is statute which, more often than not, provides the rights necessary to secure the basic amenities of life in modern society.’¹

Even in the context of private law, statute is of great significance in establishing individuals’ rights and obligations. This is not a recent phenomenon.² It follows that statutory interpretation – the rules and techniques of statutory interpretation that are used to determine the meaning of statutes – is unquestionably important in establishing private obligations. However, this chapter’s thesis is that those rules and techniques are, in fact, of far more limited value than we might assume. To be sure, the foundational principle of statutory interpretation, that we give effect to the purpose of a statute,³ is still often central to the process of interpreting statutory provisions. Further, the courts must, of course, adhere to the *processes* of statutory interpretation; however, those processes do not necessarily provide answers to the questions of interpretation

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1 See, eg, M Leeming, ‘Theories and Principles Underlying the Development of the Common Law: The Statutory Elephant in the Room’ (2013) 36(3) *University of New South Wales Law Journal* 1002, 1004-1005, citing *Gammage v The Queen* (1969) 122 CLR 444, 462; *Sons of Gwalia Ltd v Margaretic* (2007) 231 CLR 160, 186 [35] and *Buck v Comcare* (1996) 66 FCR 359, 364-365 respectively. Similarly, see M Gleeson, ‘The Meaning of Legislation: Purpose and Respect for Fundamental Rights’ (Victoria Law Foundation Oration, Melbourne, 31 July 2008) 1, quoted in DC Pearce and RS Geddes, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 8th ed, 2014) 3.

2 Leeming, above n 1, 1004-1005.

3 See *Acts Interpretation Act 1901* (Cth) s 15AA as amended by the *Acts Interpretation Amendment Act 2011* (Cth): ‘In interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) is to be preferred to each other interpretation.’ And at common law, the purposive approach to statutory interpretation must be noted.

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