

Core skills for statutory interpretation by environmental professionals in Queensland

By Dr Chris McGrath, Barrister, 12 November 2018

THREE BASIC STEPS

The following three steps will resolve 95% of problems involving the interpretation of Acts of Parliament (normally called statutes or legislation), regulations (subordinate legislation), planning schemes and conditions of approvals in Queensland. For simplicity here legislation, regulations, planning schemes and approvals are referred to as “statutes”.

1. Find the statute in force at the time relevant to your problem and any related document.

Normally, this will be the current version of a statute but if your problem involves something that occurred in the past the statute in force at that time may apply. Legislation starts as a Bill before Parliament. It may be amended many times before being repealed. Ensuring you have the version in force at the time relevant to your problem is a vital first step. If a statute was recently enacted, pay particular attention for transitional arrangements that link to any previous statute.

All relevant documents need to be obtained. For example, in problems involving a planning issue, the relevant planning legislation, regulations, planning scheme and any development application or approval will normally be required.

Legislation and subordinate legislation should be obtained from the official website of the government that created it (e.g. Federal Register of Legislation for Commonwealth legislation¹ and the OQPC website for Queensland legislation²). You can check the history of the statute there too.³ The Austlii website⁴ also covers all Australian legislation and regulations but the official government websites such as OQPC are preferable. Planning schemes are now commonly available on local government websites.⁵

2. If you are unfamiliar with the statute, skim-read it and any related documents and identify the parts relevant to your problem.

Modern statutes are often long and complex in their structure and it is important not to get bogged down in long parts that are not relevant to your problem. You might find it useful in this step to read the table of contents and note the chapter headings in a list on a single page so that you can see a simplified structure of the whole statute.

3. Interpret the parts of the statute and related documents relevant to your problem according to their plain meaning, having regard to the objects of the statute and the context.

Pay particular attention to terms defined in the statute (normally found in a schedule called “dictionary” or “definitions”). Some common terms are also defined in the *Acts Interpretation*

¹ See <https://www.legislation.gov.au/>

² See <https://www.legislation.qld.gov.au/>

³ The OQPC website has a very useful timeline feature that displays different versions of Acts and regulations over time.

⁴ See <http://www.austlii.edu.au>

⁵ E.g. The *Brisbane City Plan 2014* is available at <http://www.brisbane.qld.gov.au>

Act 1954 (Qld) (AIA) for each jurisdiction. For example, in common with other jurisdictions, in Queensland the AIA defines “person” to include corporations. You may need to follow definitions and cross-references through many other provisions in the statute and related documents (this is often *the* key challenge for large statutes).

If a term is not defined in the statute or AIA, the “plain meaning” is the definition of words found in a normal dictionary (e.g. the Macquarie Dictionary) and applying the normal rules of grammar. For instance, lists of things separated by “or” are disjunctive while lists of things separated by “and” are conjunctive.

For an example of the third and most important step in an environmental context, see *Minister for the Environment and Heritage v Queensland Conservation Council Inc* (2004) 139 FCR 24; [\[2004\] FCAFC 190](#) at paragraphs [52]-[57].

RECOGNISE YOUR LIMITS

You can have confidence that the three main rules given above will resolve 95% of problems involving statutory interpretation, but you should recognise that a small percentage of problems will be more difficult.

For such difficult problems, lawyers may apply a number of more complex rules for statutory interpretation⁶ and search for court decisions interpreting and applying the statute in question, particularly the parts relevant to your problem.

Court decisions, particularly decisions on appeal from earlier ones, can provide definitive interpretations of particular parts of a statute. Decisions applying the statute can also give guidance and show you how it should be applied in other cases. Finding and interpreting court decisions (particularly where there are conflicting judgments) can be difficult and is not essential for non-lawyers. It would be negligent for a lawyer not to do this but in the vast majority of cases you will either find no relevant decisions or decisions that merely affirm the plain meaning arrived at in the three steps set out above.

In difficult cases, lawyers often disagree and are unable to give a definitive answer. A definitive answer might not be found before an appeal court rules on the issue. See, for example, the complexity of determining whether the impacts of a mine on groundwater are relevant to consider under transitional arrangements for the *Environmental Protection Act 1994 (Qld)* in *New Acland Coal Pty Ltd v Smith & Ors* [\[2018\] QSC 88](#) (that decision is currently the subject of an appeal on this issue⁷).

Allow for more difficult cases and, if something is unclear, recognise it in your use of the statute. If the problem is important to resolve conclusively (e.g. because your client risks prosecution or major costs and delay if you get it wrong), you should seek professional legal advice.

⁶ A good textbook is Pearce DC & Geddes RS, *Statutory Interpretation in Australia* (8th ed, LexisNexis, Sydney, 2014).

⁷ See <http://envlaw.com.au/acland/>