# Statutory Interpretation in Australia 9th Ed. By Dennis Pearce

**Speech delivered by Arthur Moses SC, President, Law Council of Australia at the Dennis Pearce book launch, HWL Ebsworth, Canberra.**

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*Telephone* +61 2 6246 3788 • *Fax* +61 2 6248 0639 • *Email* mail@lawcouncil.asn.au
GPO Box 1989, Canberra ACT 2601, DX 5719 Canberra • 19 Torrens St Braddon ACT 2612
Law Council of Australia Limited ABN 85 005 260 622
*www.lawcouncil.asn.au*

Distinguished guests, ladies and gentlemen, it is a pleasure to speak to you today to launch the ninth edition of Statutory Interpretation in Australia by Emeritus Professor Dennis Pearce AO, FAAL.

Before I begin, I would like to acknowledge the traditional custodians of the land on which we gather, the Ngunnawal. I pay my respects to their Elders past, present and emerging.

Let me start with something of a truism for those gathered here today.

Mastery of words is an essential part of our profession.

The practice of law stands or falls on the written and spoken word.

To succeed, we must often make the best of the words available to us regardless of whether we like them or not.

The oft frustrating task of statutory interpretation is perhaps best captured by the words of 19th Century British satirist Samuel Butler:

*"Words are not as satisfactory as we should like them to be, but, like our neighbours, we have got to live with them and must make the best and not the worst of them."*

In a similar vein, in his Foreword to the last edition of the book we launch today, Chief Justice Robert French AC noted his predecessor Sir Garfield Barwick had described the reading of the first edition as both *"informative and pleasurable"* but said:

*"Some might say there are more pleasurable things to do than read a book on interpretation. But pleasure may be found in the avoidance of anticipated pain and the gaining of considerable benefits. The authors like good dentists, deploy their considerable learnings and skills to that end."*[1]

Dennis does look a bit like a dentist. But perhaps a more appropriate description of Dennis Pearce is "master of words" for his immeasurable contribution to administrative law and statutory interpretation.[2]

Past editions of the book I launch today have been an indispensable aid to statutory interpretation for Australian lawyers and courts. At last count, *Statutory Interpretation* alone has been cited in well over 2000 cases, 100 journal articles, and numerous parliamentary and government reports.[3] His text has also been of significant importance to members of Parliament who often refer to it to understand the interpretative rules of statutory interpretation so that they know the effect of the language which is being used in legislation that they are being asked to vote on in the Parliament.

The importance of this book has grown in this current "age of statutes" as the legislative word has become the primary source of law, rather than those "divined" by courts. It has played an important role in ensuring the adherence to the rule of law in Australia as the number of statutes and legislative instruments has grown exponentially.

At Federation in 1901, there was only 17 pieces of legislation passed by the Australian Parliament.

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[1] The Hon Robert French AC, *Statutory Interpretation of Australia*, 8th Edition, D C Pearce & R S Geddes, 2014, v.
[2] Justice Stephen Gagelar AC, *Public Law in the Age of Statutes: Essays in Honour of Dennis Pearce*, A Connolly and D Stewart (eds), 2015, 12.
[3] A Connolly and D Stewart, *Public Law in the Age of Statutes: Essays in Honour of Dennis Pearce*, A Connolly and D Stewart (eds), 2015, 5.

That number climbed rapidly as Australia has become more fiscally centralised and the role of the Commonwealth Government has become central to national affairs.

Since the 1970s, between 150 and 200 new pieces of legislation have been passed each year. Last year alone, 170 pieces of federal legislation were passed. And these numbers are even larger when legislative instruments are included; according to the Federal Register of Legislation, 1848 legislative instruments were registered last year.

Statutory interpretation is far more than the ascertainment of the meaning of various words and expressions – it's principally about the limitation of the exercise of Executive power.

The task of courts in interpreting this thicket of statute and legislative instruments, is set out in the now-familiar statement of the High Court in *Project Blue Sky – "to give the words of a statutory provision the meaning which the legislature is taken to have intended them to have"*[4].

This is a task built on common law traditions. Importantly, this common law constitutionalism defines the role of the legislature and the courts. In *Momcilovic*, Chief Justice French described it as follows:

*"The common law in its application to the interpretation of statutes helps to define the boundaries between the judicial and legislative functions. That is a reflection of its character as "the ultimate constitutional foundation in Australia". It also underpins the attribution of legislative intention on the basis that legislative power in Australia, as in the United Kingdom, is exercised in the setting of a "liberal democracy founded on the principles and traditions of the common law."*[5]

An important aspect of this tradition is the principle of legality – a presumption that Parliament does not intend to interfere with common law rights and freedoms except by clear and unequivocal language for which Parliament may be accountable to the electorate.

I have said several times this year that with a proliferation of statutes – particularly in the area of national security – with a clear intention by parliament to abrogate rights and freedoms we can no longer rely on this principle to protect them.

That is why the Law Council strongly believes a Charter of Rights would offer a coherent legal framework to express and protect rights and freedoms.

However, courts will have to grapple with whether and how they can ensure there has been adherence to the rule of law by administrative decisions which have been made by government departments that use artificial intelligence. It is somewhat jarring for Australians to accept that they could be pursued for debts by decisions made by machines based on algorithms. This will be a new challenge in the area of judicial review.

Nevertheless, in acting in conformity with known common law principles to ascertain legislative intent, courts continue to play an important role in ensuring adherence to the rule of law by the Parliament and government.

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[4] *Project Blue Sky v Australian Broadcasting Authority (*1998) 194 CLR 35 at 384 per McHugh, Gummow, Kirby and Hayne JJ.

[5] *Momcilovic v The Queen* (2011) 245 CLR 1 at 46 per French CJ.

Of course, the task of the Court is not to speculate on the *“collective mental state of legislators”*[6].

Rather, it involves the application by the court of known common law and statutory rules of interpretation by reference to the express words of legislation, its context and its purpose. As stated by the High Court in *Lacey*:

*“Ascertainment of legislative intention is asserted as a statement of compliance with the rules of construction, common law and statutory, which are known to parliamentary drafters and the courts.”*[7]

Statutory interpretation lies *“at the heart of the constitutional relationship between the courts and parliament”*[8].

And this is why the book I launch today is so vital – it provides a comprehensive and lucid guide to the rules of statutory interpretation to judges, practitioners, teachers and students to ensure government acts according to law and within the bounds of their power.

I would like to say something about Dennis even though he is well known to all of us. Dennis completed his undergraduate studies in Adelaide and first moved to Canberra in 1963 as a Parliamentary Drafter in the Attorney-General’s Department. He joined the ANU College of Law in 1968 as a Lecturer and was promoted to Professor in 1981. He was Dean of the Law School in 1982–84 and 1991–93 and Acting Deputy Vice Chancellor in 1994.

During 1985-86, Dennis chaired the Commonwealth Tertiary Education Commission review of Australian law schools, producing what has come to be known as ‘the Pearce Report’, an analysis and critique which continues to influence legal education reform in this country[9].

In 2003 he was made an Officer in the Order of Australia. The citation for the award stated that it was given in recognition for his service to the law as an academic, particularly through his seminal work on the topics of statutory interpretation, delegated legislation and administrative law; as a teacher, researcher and university administrator; and as a significant contributor in the areas of public administration, press regulation, parliamentary law and copyright control.

One of Professor Pearce’s former students, the Hon Justice Gagelar, has suggested Dennis is responsible for two of the essential texts that every Australian public lawyer should own.

I agree.

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[6] *Zheng v Cai* (2009) 239 CLR 446 at 455 per Chief Justice French and Justices Gummow, Crennan, Kiefel and Bell.
[7] *Lacey v Attorney-General (Qld)* (2011) 85 ALJR 508 at 521-522 per French CJ, Gummow, Hayne, Crennan, Kiefel and Bell JJ.
[8] E Bell, ‘Judicial Perspectives on Statutory Interpretation’ (2013) 39 Commonwealth Law Bulletin 245 at 280, citing RS French CJ, ‘What Were They Thinking? Statutory Interpretation and Parliamentary Intention’ (The Sir Frank Kitto Lecture, Armidale, 23 September 2011).
[9] D Pearce et al, Australian law schools: A discipline assessment for the Commonwealth Tertiary Education Commission, 1987).

In *Cooper Brookes (Wollongong) Pty Ltd v Commissioner of Taxation (Cth)*, Justices Mason and Wilson quoted Professor Pearce with approval, for the statement that the rules of statutory construction are no more than rules of "common sense"[10].

It is perhaps modesty on Dennis' part to say that the dark arts of statutory interpretation are no more than "common sense".

Over more than 50 years Dennis has provided legal practitioners and judges with an invaluable resource that makes simple the complex.

It gives me great pleasure to launch the 9th edition of *Statutory Interpretation in Australia*.

Thank you.

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Marcus Priest

Director, Public Affairs and Communications

T. 02 6246 3715

E. Marcus.Priest@lawcouncil.asn.au

[10] *Cooper Brookes (Wollongong) Pty Ltd v Commissioner of Taxation (Cth)(1981) 147 CLR 297,* at 316 per Mason and Wilson JJ.