

Interpretation of Legislation

Decision-making bodies of the University are required to interpret a wide range of external and internal legislation and related documents, including:

- **Acts of Parliament**
This includes the *La Trobe University Act 1964*, which can be found on the Legal Services website (see below) and at <http://www.legislation.vic.gov.au/>, as well as a range of State and Federal legislation relating to areas such as education, human resources, safety, finance, research and ethics. The following weblink contains a list of the main Acts which are relevant to La Trobe University:
http://www.latrobe.edu.au/legalservices/assets/downloads/relevant_legislation.pdf
- **Statutes of the University**
The University's statutes are made under the *La Trobe University Act 1964* and approved by the Council and the Minister responsible for the administration of that Act. See: <http://www.latrobe.edu.au/legalservices/legislation/statutes.html>
- **Regulations of the University**
Regulations are made under Statutes. Not all Statutes require regulations to be made. Regulations are typically used to prescribe legislative details that may be subject to frequent change, and which are, therefore, not suited for inclusion in a Statute. Examples of the sort of things frequently included in regulations are prescribed forms, fees and rules about the composition and membership of committees or other similar bodies. Most regulations are approved by the Council but some can be approved by the Academic Board. See:
<http://www.latrobe.edu.au/legalservices/legislation/regulations.html>
- **Policies of the University**
Policies are not legislation as such but they are useful for providing background information and guidance on the subject matter covered by legislation. Many policies can be viewed online at: <http://www.latrobe.edu.au/staff/resources.html>

The success of the University's governance will often hinge of the correct interpretation of legislation. Ideally, legislation is drafted in such a way as to minimise the amount of interpretation that is necessary. However, interpretation can be difficult given the infinite variety of situations to which the legislation may have to be applied. Not all situations can be foreseen at the time of drafting. For this reason, decision-makers need to use guiding principles of interpretation and where there is any doubt obtain the advice of Legal Services on the interpretation of legislation.

Principles of legislative interpretation

1. Hierarchy of Legislation

Legislation is essentially hierarchical in nature in the sense that any given piece of legislation derives its legal force from a hierarchically superior piece of legislation. For present purposes, this hierarchy can be thought of in the following terms:

1. Acts of Parliament (subordinate to the constitutional arrangements of the jurisdiction in which the relevant Parliament sits);
2. University Statutes (subordinate to Acts);
3. University Regulations (subordinate to Acts and Statutes);

“Subordinate legislation” is a term commonly applied to legislation that is made under an Act of Parliament. University Statutes are subordinate to the *La Trobe University Act 1964*, and University Regulations are subordinate to their respective parent Statutes and to the *La Trobe University Act 1964* itself. Subordinate legislation must always be interpreted consistently with the legislation under which it was made. Among other things, this means that it must not be interpreted in a way which alters the scope or objectives of the superior legislation and that words and phrases have the same meaning as in the superior legislation.

If a policy is inconsistent with an Act, Statute or set of Regulations, the policy is overridden by the Act, Statute or Regulations to the extent of the inconsistency.

2. The Interpretation of Legislation Act 1984

The *Interpretation of Legislation Act 1984* applies to the interpretation of the *La Trobe University Act 1964* as well as every Statute and set of Regulations made under it. The *Interpretation of Legislation Act 1984* includes a range of rules for the interpretation of legislation (see for example point 5 below regarding the purposive approach to interpretation) and defines a set of terms so that those terms have the same meaning across all Acts of Parliament and their respective pieces of subordinate legislation (see section 38 of the *Interpretation of Legislation Act 1984*). As of 1 July 2009, the University will also have its own *Interpretation Statute 2009*, which will define a range of terms used throughout the new University Statutes and Regulations coming into force on that date.

3. Text-based interpretation

In most cases, the first step in interpreting any legislative provision is to establish the ordinary and natural meaning of the words used in the provision. This can be done simply by using an English dictionary (the High Court of Australia tends to use the Macquarie). Sometimes a special meaning is given to words by the definitions or interpretation section of the legislation (usually found among the first few provisions of an Act, Statute or set of Regulations), and sometimes the legislation will adopt terms that carry an accepted and established legal meaning.

4. The Context

If the relevant text of the legislation can be interpreted in different ways, other features of the legislation can be used to clarify (but not distort) the meaning – such as the title, headings, structure and surrounding sections.

5. The Purposive Approach

There is always a purpose or range of objectives underlying each piece of legislation. Section 35(a) of the *Interpretation of Legislation Act 1984* provides that in interpreting legislation an interpretation that would promote the underlying purpose or object of the legislation shall be preferred to one that does not. If this purpose or range of objects is not stated expressly, it can often be identified by implication from the topic, structure and provisions of the legislation.

6. Avoiding absurd results

If a text-based approach to the interpretation of a legislative provision would result in an absurd outcome in practice, then the provision can be construed so as to avoid that outcome, but only to the extent necessary to avoid the absurd outcome. In cases like this, you should always seek the advice of Legal Services.

7. Rights-oriented interpretation

Generally speaking, the courts presume that legislation is not intended to interfere with fundamental rights unless Parliament clearly intended that this be so. Such an intention must either be spelled out in the legislation itself or be evidenced by necessary implication.

In addition to this, Victoria now has the *Charter of Human Rights and Responsibilities Act* 2006, section 32(1) of which provides:

So far as it is possible to do so consistently with their purpose, all statutory provisions must be interpreted in a way that is compatible with human rights.

The “human rights” mentioned in this section are those set out in Part 2 of the Charter, which may be characterised (for the most part) as civil and political rights.

In practical terms, this means that when interpreting legislation an interpretation that results in the least possible detriment to human rights or fundamental legal privileges should be favoured. Also, when making a decision under a legislative provision, the decision-making body is required to have regard to the way the decision may adversely impact on an individual and their rights and privileges.

~oo0oo~

Compliance with these principles of interpretation will minimise the potential for such decisions to be overturned on appeal or review by another decision-making body.

La Trobe University Legal Services
April 2009