

LAW ADMISSIONS CONSULTATIVE COMMITTEE ¹

STATEMENT ON STATUTORY INTERPRETATION

1. Locating and using legislation

A law graduate should be able to locate, and make appropriate use of, the text of a legislative provision relevant to a legal problem.

2. Aids to interpretation

A law graduate should be familiar with, and be able to make appropriate use of, the various aids to statutory interpretation authorized by law, including:

- (a) the intrinsic guides to interpretation offered by the text of the relevant legislation;
- (b) the principles and presumptions employed by the courts;
- (c) the common law and statutory regimes governing recourse to extrinsic materials as potential aids to interpretation;
- (d) the relevant Commonwealth, State or Territory Interpretation Act;
- (e) other contextual factors authorized by the law.

3. Deploying interpretative techniques

A law graduate should be able to deploy, where appropriate, a range of techniques in the course of solving an interpretative problem. In addition to deploying substantive interpretative factors, the techniques include:

- (a) determining whether a legislative provision is open to more than one construction;
- (b) identifying and articulating alternative constructions, where a provision is reasonably open to more than one construction;
- (c) resolving competing alternative constructions;
- (d) identifying how a suggested construction may be accommodated in a manner consistent with the existing text of a legislative provision (for example, whether it is to be by judicial gloss or by an implication);
- (e) reaching a considered view on the legal meaning, or likely legal meaning, of a doubtful legislative provision.

4. Special interpretative issues

A law graduate should be familiar with, and be able to handle adequately, problems raising special interpretative issues, including:

- (a) determining whether the exercise of a statutory power is invalid if a condition or procedure regulating its exercise, is breached;
- (b) determining whether a law has a retrospective operation;

¹ LACC's Charter is approved by the Council of Chief Justices which also appoints its Chairman. LACC is not, however, a committee of the Council, nor does it act on the Council's behalf.

- (c) determining whether a statutory offence contains a mental ingredient to be proved by the prosecution (*mens rea*); and, if so, what that ingredient is;
- (d) determining the scope of a statutory power to make delegated legislation in the light of delegated legislation which has purportedly been made under that power;
- (e) the application of a rule of interpretation in any applicable charter of human rights.

5. Written advice

A law graduate should be able to give a reasoned opinion as to the appropriate meaning of a legislative provision which takes adequate account of the law of statutory interpretation.
