Statutory Interpretation in Australia by D. C. Pearce, 2nd edition 1980 (Butterworths). Retail Price $27.00 (hard cover only). ISBN 0 908417 012.

As this is the second edition of Professor Pearce's excellent work on construing statutes, it is only necessary to make a few comments.

The first edition fully deserved the high praise accorded to it in the Foreword by Sir Garfield Barwick. Few areas of the law are more difficult to chart, as I well know from experience. To have largely confined his examples to Australian cases (including only a few salient English decisions) was a most useful exercise — and one even more so in the six years since 1974 during which our courts have distanced themselves more from English courts.

Yet the older difficulties of trying to discover the 'intention' of Parliament remain. As Sir Garfield remarked, 'the so-called rules of interpretation are but frail guidelines to which recourse is had as a last rather than a first resort'. It is better to see them as 'approaches' — 'they may provide part of the tools for the task of interpretation; they should only unusually dictate its result'. Yet courts often give the impression that they are rules they are bound to follow; and this creates more confusion, especially among students.

Professor Pearce has been very selective in his choices of illustrations (no easy task). For the second edition he has added only some ninety cases concerning a very important area of a fast growing body of statute law in the six years since 1974. They all appear to justify inclusion, because they represent both the new approaches of some Judges on new topics and the more striking disagreements between Judges on the proper approaches.

Professor Pearce's only major change has been in the 'Mandatory-Directory' area — perhaps the most unsatisfactory part of the whole process of making sense in particular situations and in providing criteria for prediction. Correctly he observes that the result of courts looking to the *effects* of the rule 'has been to produce a multiplicity of irreconcilable decisions making it impossible to assert with any certainty that a provision will be held mandatory or directory in a particular context' (163). There is no single formula. One test applied is that, if the *main purpose* of the Act would be defeated if a task were not performed, it will call the procedure 'mandatory'. However, if injustice' would follow a mandatory test, it will be held to be only directory. If the practical consequences are enormous, it also will regard even a major defect as only directory — as in *Simpson v. Attorney-General*,[1] where a strict adherence to Constitutional procedures would have meant that a large amount of existing legislation would have been nullified (170).

Again, some courts have relied on the test of 'substantial' compliance. In a rough and ready way this can be useful, despite its vagueness; but as Professor Pearce points out, there are situations of 'all-or-nothing'. Either the requirement was fulfilled or it was not. A requirement of advertising the particulars of a proposed development was held to be an essential feature of the duty to notify the public — the effect would be completely defeated if this relatively small step was not taken (175).[2] 'Substantial' compliance is no help here.

It is then no wonder that Professor Pearce cannot do more than he has done: namely to divide the area into certain sub-areas and set out the prevailing idea in that sub-area as best he can. For sometimes courts have ignored even an Acts Interpretation Act stating that 'may' equals 'discretionary 'and 'shall' equals 'mandatory'. He provides a neat summary on p. 178.

Finally, he shows how, in general, subjective judicial views may lead to each Judge 'being his own interpreter' (179). The Law Commission in England had stressed that the main approaches in practice were often contradictory and that the 'literal', 'golden' and 'mischief' rules 'cannot stand with one another' (180). The most widely asserted — the literal rule — is in practice riddled with exceptions. It has become self-delusory

[1] [1955] N.Z.L.R. 271.
[2] *Scurr v. Brisbane City Council* (1973) 133 C.L.R. 242.

to talk of 'plain meanings' when different courts disagree on what those meanings are (183). He puts up a case — supported by Sir Garfield Barwick and some English judges of late, that there should be *more* scope — not complete — to look at the *travaux preparatoires*. Unfortunately, his text was written before Senator Durack's addition to the Commonwealth Acts Interpretation Act (s. 15AA) was passed; and thus he is not able to comment on its possible effects. Yet similar provisions, like those in New Zealand some years ago, do not seem to have clarified the difficulties. One can only hope that our judges in future will look more closely at the whole statute and try to implement its purpose, even if some words or clauses, taken alone, seem 'plain'.[3] A Ministerial Memorandum, when introducing the Act, might simplify this very difficult role of the courts today.

It is not only courts that suffer from such uncertainties. Businessmen looking at a contract, public servants studying a policy directive and theologians discussing an official statement are all in the same dilemma. Even the Greeks knew how elusive language can be: despite Wittgenstein, Glanville Williams and Chomsky we are not much clearer today.

Professor Pearce has made the best of a very troublesome topic. We all must be grateful that he has cleared up (or at least set out plainly) the problems of construction so effectively and with so apt, selective and compact a set of illustrative Australian decisions. For teachers of legal method it is essential reading.

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[3] W. T. Murphy and R. W. Rawlings have made a detailed study of judgments of the House of Lords during recent years. Their conclusions are most interesting. After the Ancien Regime (1981) 44 *Modern Law Review* 623.

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BOOKS RECEIVED

Litigation: Evidence and Procedure by Aronson, Reaburn and Weinberg, (Third edition, Butterworths, Sydney, 1982) ISBN 0 409 30794 7.

An Introduction to the Law of Contract by P. S. Atiyah, (Third edition, Oxford University Press, New York, 1981) ISBN 0 19 876141 4.

An Introduction to Company Law by R. Baxt, (Second edition, The Law Book Co. Ltd, Sydney, 1982) ISBN 0 455 20465 9.

An Introduction to the Securities Industry Codes by R. Baxt, H. A. J. Ford, G. J. Samuel and L. M. Maxwell, (Butterworths, Sydney, 1982) ISBN 0 409 30340 2.

The Law of Education by B. Boer and V. Gleeson, (Butterworths, Sydney, 1982) ISBN 0 409 30923 0.

Controls over Public Corporations in India by Dr R. Chandra, (Delhi University, 1981).

Power, Conflict and Control in Australian Trade Unions by K. Cole, (Pelican, Victoria, 1982) ISBN 0 14 022379 9.

The Contractual Remedies Act 1979 by F. Dawson and D. W. McLauchlan, (Sweet and Maxwell, New Zealand, 1981) ISBN 457 01690 6.

The Judge by P. Devlin, (Oxford University Press, Oxford, 1981) ISBN 0 19 285105 5.

Experimentation in the Law by The Federal Judicial Center (Report of the Federal Judicial Center Advisory Committee on Experimentation in the Law, 1981).

The Workings of the Administrative Review Tribunal by J. Golding, (Canberra College of Advanced Education, 1980) ISBN 0 85889 182 4.

Victorian Pleading Precedents by T. Graham, (The Law Book Co. Ltd, Sydney, 1982) ISBN 0 455 20362 8.

Mental Retardation Law, Policy and Administration by S. C. Hayes and R. Hayes, (The Law Book Co. Ltd, Sydney, 1982) ISBN 0 455 20470 5.