

## The word “Includes”

OPCA adherents often search for a restrictive meaning in the word "includes", attempting to limit it to a particular stated example. This seems to originate in the Latin maxim "*Expressio unius est exclusio alterius*" meaning "expression of one thing is the exclusion of another". This can be seen in *Black's Law Dictionary* (6th edition at page 538, and 9th edition at page 831):

*"Expressio unius est exclusio alterius. A maxim of statutory interpretation meaning that the expression of one thing is the exclusion of another. Burgin v. Forbes, 293 Ky. 456, 169 S.W.2d 321, 325; Newblock v. Bowles, 170 Okl. 487, 40 P.2d 1097, 1100. Mention of one thing implies exclusion of another. When certain persons or things are specified in a law, contract, or will, an intention to exclude all others from its operation may be inferred. Under this maxim, if statute specifies one exception to a general rule or assumes to specify the effects of a certain provision, other exceptions or effects are excluded."*

OPCA adherents use this interpretation widely in every circumstance the term "includes" appears in legislation, for example, in [Van den Hoorn v Ellis \[2010\] QDC 451](#) (at 14, 37, 40):

*"Additionally, there was the puzzling contention that, before the lower court, the appellant was assumed to be a "corporation [sic]" by the fact of the court accepting the alleged "capitalisation of (his) family name" which so led to him being deemed to be a "corporative fiction of limited liability" when he was "a living/breathing soul ... of full liability". ... Since "driver" in the Transport Operations (Road Use Management) Act 1995 is defined as meaning the "person" driving the vehicle (including the "rider" of a vehicle), the appellant is not a person who falls within the Act because, from the same definitions just referred to, a person "includes" a "corporation" and the appellant is not a "corporation". Besides misunderstanding about what "includes" means, it is clear from the context of the definition – and reality – that a corporation could never drive or ride a vehicle. Such an interpretation is therefore absurd, and must be rejected. A similar fate follows from any argument that a "person" is only a fictitious legal entity."*

*"Include" is contended by the appellant, by reference to Black's Law Dictionary (5th ed), to mean to "shut in" or "keep within" and therefore "limiting" the subject to the specified objects: cf (9th ed) at p 831. Hence, the interpretation advanced by the appellant is that "transport" is limited to the transport of goods and that, in turn, means that the only objects that are vehicles are those that transport goods. The argument must fail. First, it is clear that the actual definition of the word "transport" is limited to defining such "in relation to" dangerous "goods". Secondly, both in the definition of "vehicle" and of "transport", "includes" is not intended to be an exhaustive definition: see Statutory Interpretation in Australia (6th ed) (Pearce & Geddes) at [6.56] – [6.59]. The limitation of "vehicle" to being one of transportation must be rejected."*

Another example is with [Romley Stewart Stover](#)'s misconception that the definition of "Australia" is limited to "Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands" as Part 2B of the [Acts Interpretation Act 1901](#) (Cth) provides:

*"Australia means the Commonwealth of Australia and, when used in a geographical sense, includes Norfolk Island, the Territory of Christmas Island and the Territory of Cocos (Keeling) Islands, but does not include any other external Territory."*

This was seen in [O'Hagan v Commissioner of Taxation \[2020\] QDC 288](#) where Morzone QC, DCJ noted (at 10):

*"...the appellant has a deep rooted but apparent genuine and firm belief that, amongst other things, the Australian Government and its subordinate bodies and beings are illegitimate, the laws of Australia are confined to Norfolk Island being the only place uninhabited at the time of federation and terra nullius..."*

#### **The distinction between an expansive and exhaustive function:**

[Epic Energy \(Pilbara Pipeline\) Pty Ltd v Commissioner of State Revenue \[2011\] WASCA 228](#): (from 139):

*"The word 'include' primarily has an expansive function. Usually, a definition which states that a word includes specified matters reveals a Parliamentary intention to add the meanings given in the definition to the ordinary meaning of the word. Often, the added meaning is not otherwise within the ordinary meaning. The ordinary meaning is amplified to the extent specified. See [Sherritt Gordon Mines Ltd v Federal Commissioner of Taxation \[1977\] VR 342](#), (McInerney J. at 353).*

*Sometimes, however, 'includes' has been taken to have an exhaustive function where it appears from the context that the Parliamentary intention was to confine the ordinary meaning of the word to the meaning conveyed by the matters specified in the definition."*

In [Hook v Rolfe \(1986\) 7 NSWLR 40](#), (at 49-50) Samuels JA said:

*'Includes' is a word of extension and not of restrictive definition. In [R v Hermann \(1879\) 4 QBD 284](#) (at 288), Lord Coleridge CJ observed: "The words "shall include" are not identical with, or put for "shall mean". The definition does not purport to be complete or exhaustive. By no means does it exclude any interpretation which the sections of the Act would otherwise have, it merely provides that certain specified cases shall be included."*

Hence 'includes' denotes a legislative intention to enlarge the ordinary meaning of the word defined, unless, perhaps, the items included in the definition would fall within it. In that case the definition, though introduced by the word 'includes', might be regarded as exhaustive; [YZ Finance Co Pty Ltd v Cummings \(1964\) 109 CLR 395](#) and [R v McN \[1963\] SR \(NSW\) 186; 80 WN 608](#) are cases in which different results followed the application of Lord Watson's latitudinarian test in [Dilworth v Commissioner of Stamps \[1899\] AC 99](#) (at 105-106). Dr D C Pearce in his *Statutory Interpretation in Australia*, 2nd ed (1981) at 115 - 118, favours the view that 'includes' should not generally be regarded as introducing an exhaustive definition, and quotes from Lord Selborne LC in [Robinson v Barton-Eccles Local Board \(1883\) 8 App Cas 798](#) (at 801):

*"An interpretation clause of this kind [ie one which uses the word "includes"] is not meant to prevent the word from receiving its ordinary, popular, and natural sense whenever that would be properly applicable; but to enable the word as used in the Act, when there is nothing in the context or the subject matter to the contrary, to be applied to some things to which it would not ordinarily be applicable."*

See also [R v Tkacz \[2001\] WASCA 391; \(2001\) 25 WAR 77](#) (Malcolm CJ. at 45-58).

[BGC Contracting Pty Ltd v Cliffs Asia Pacific Iron Ore Pty Ltd \[2019\] WASC 248](#) (from 64):

*"The meaning of the word 'including' depends upon the context in which it is used. The word 'including' in a definition can be interpreted to be inclusive but not exhaustive if it is intended to enlarge the ordinary meaning of a word or words."*

(See [Sherritt Gordon Mines Ltd v Federal Commissioner of Taxation \[1977\] VR 342; \(1976\) 10 ALR 441](#) (McInerney J. at 353). This was applied in [Hagipantelis v Legal Services Commissioner of New South Wales \[2010\] NSWCA 79; \(2010\) 78 NSWLR 82](#) (at 20, Spigelman CJ; Allsop P & Handley AJA agreeing):

*"In any event, s 85(1) goes on to identify "advertising by a barrister or solicitor" as falling within the scope of the regulation making power in s 85(1) by reason of the words "including (without limitation) ..." in the chapeau to s 85(1). The word "including" is often used by way of enlargement or, alternatively, by way of clarification. (See [Dilworth v Commissioner of Stamp Duties \[1899\] AC 99 at 105; Sherritt Gordon Mines Ltd v Commissioner of Taxation \(Cth\) \[1977\] VR 342 at 353.8.](#)) In my opinion, pars (a)-(d) were inserted to make it clear that advertising fell within the regulatory scheme."*

The word 'including' can also, in some contexts, be interpreted to reduce the ambit of a defined term; that is, to limit a defined term.

In [YZ Finance Co Pty Ltd v Cummings \(1964\) 109 CLR 395](#), the High Court was called upon to determine whether s 24(2) of the *Money-lenders and Infants Loans Act 1941* (NSW) exhaustively prescribed the ambit of the word 'security' which was defined to include certain transactions which did not list a promissory note among the inclusions. In this context, Kitto J observed (at 6):

*"I agree in the conclusion that sub-s (2) of s 24 exhaustively prescribes the ambit of the word 'security' for the purposes of the section. It is expressed as a statement of what the word 'security' in the section 'includes'. Unlike the verb 'means', 'includes' has no exclusive force of its own. It indicates that the whole of its object is within its subject, but not that its object is the whole of its subject. Whether its object is the whole of its subject is a question of the true construction of the entire provision in which the word appears. The well-known statement of Lord Watson in [Dilworth v Commissioner of Stamps \[1899\] AC 99](#) should not be taken so literally as to reduce the inquiry in a case like the present to an inquiry into the meaning of the word 'includes'. Strictly speaking, that word cannot be equivalent to 'means and includes'. But a provision in which it appears may or may not be enacted as a complete and therefore exclusive statement of what the subject expression includes. A provision which is of that character has the same effect as if 'means' had been the verb instead of 'includes'. The question whether a particular provision is exclusive although 'includes' is the only verb employed is therefore a question of the intention to be gathered from the provision as a whole."*

In [Credit Suisse AG, Sydney Branch v Springsure Property Holdings Pty Ltd \(in liq\) \[2017\] QSC 142](#) (at 35), Bond J had regard to the observations made by Kitto J in *YZ Finance Co Pty Ltd*, and pointed out:

(b) In [Urica Library System BV v Sanderson Computers Pty Ltd \[1997\] NSWSC 454](#), Sheller JA (with whom Mason P and Meagher JA agreed), observed that the word 'including' can serve a number of different functions:

(i) one is to 'extend the meaning of the word defined beyond its ordinary meaning';

(ii) another is 'not merely to add to the natural significance of the word defined, but to afford an exhaustive explanation of the meanings to be attached to that word in the particular document';  
and

(iii) a third might be 'not so much to extend the ordinary meaning of the defined term as to specify as falling within the definition that which might otherwise have been in doubt.



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