

The Cost of Meaning: Legal Interpretation and Unequal Access to Justice in Australia

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Abstract: The distinction between the letter and spirit of the law raises a practical question: who can afford to contest the meaning attributed to a legal rule? This article examines that question in Australia through doctrinal analysis and socio-legal scholarship. It argues that economic inequality affects the capacity to identify relevant law, substantiate legally significant facts and challenge institutional decisions. Australian statutory interpretation integrates text, context and purpose; purposive reasoning is neither an exceptional remedy nor a judicial licence to disregard legislation. Nevertheless, its effective use, alongside factual proof and procedural safeguards, may depend on resources that litigants possess unequally. The article develops this argument through Hart, Dworkin, Kennedy and Galanter, four expressly hypothetical illustrations, and the documented Robodebt litigation. Robodebt demonstrates the consequences of unlawful administrative practices and delayed correction, rather than a lawful literal interpretation producing harsh results. The article proposes accessible legal information, earlier legal assistance, proportionate evidentiary processes, stronger public accountability and targeted costs protection. Its central claim is that equal interpretive principles require institutions that make lawful arguments and remedies practically accessible.

Keywords: statutory interpretation; access to justice; purposive interpretation; legal capability; resource inequality; repeat players; Robodebt; rule of law

I. Introduction

Legal equality is usually expressed through rules that apply without regard to wealth. Yet a person's capacity to identify those rules, explain their application and obtain a remedy can depend heavily on money, time and institutional support. The resulting problem reaches beyond the price of representation. It concerns whose account of a dispute becomes the account on which a decision is made.

The familiar distinction between the letter and spirit of the law captures part of this problem. The letter suggests the enacted words; the spirit suggests their purpose or the principles informing their application. Taken literally, however, that contrast misdescribes Australian statutory interpretation. Courts do not ordinarily choose between text for one litigant and purpose for another. Text, context and purpose belong to a common interpretive method.¹ The question is whether people have comparable opportunities to place the relevant materials, facts and arguments before an institution applying that method.

This article describes that practical burden as the *cost of legal meaning*. It includes the work needed to locate an applicable rule, distinguish an institution's assertion from a legally sustainable conclusion, assemble evidence and pursue review. A claimant may possess a right without knowing its source, or know the source without being able to demonstrate the facts on which the right depends. An apparently settled institutional reading may therefore survive because it is difficult to challenge, rather than because it is correct.

¹ See *Acts Interpretation Act 1901* (Cth) s 15AA. Legislation and practice directions are discussed as in force on 30 September 2026.

The argument is especially relevant to people whose means do not secure private representation but who cannot obtain sufficient legal assistance. The Law Council of Australia's Justice Project identifies this problem among the low and middle income population commonly described as the missing middle.² That category is not a uniform legal aid eligibility rule: availability depends on the jurisdiction, service and type of matter. Its significance is the gap between practical need and affordable assistance.

The article combines doctrinal analysis with established socio-legal explanations of resource inequality. It does not present a new empirical study demonstrating that judges apply different interpretive methods according to litigants' class. Its four individual scenarios are hypothetical illustrations, while Robodebt supplies a documented example of institutional error and organised legal challenge. The analysis first clarifies the theoretical and Australian legal framework, then examines the costs of contesting institutional decisions, before considering technology, collective proceedings and reform. The central proposition is that formal access to lawful interpretation must be supported by practical access to the means of invoking it.

II Theoretical Framework: Interpretation and Its Practical Costs

A Hart: Open Texture and the Limits of Mechanical Application

Hart's account of open texture recognises that general legal language cannot determine every possible application in advance. Familiar cases may be relatively settled, while borderline cases require judgment. His distinction between settled applications and uncertain cases does not make legal positivism synonymous with rigid literalism.³

The practical implication is that a rule's apparent clarity does not eliminate the need to identify the legally relevant question. A dispute may concern whether a case falls within a category, how one provision interacts with another, or whether an official has assumed facts that remain unproved. Advice can be valuable even where the governing words are straightforward. Conversely, an extensive interpretive argument may be unnecessary where the text already provides a clear protection.

Certainty can itself serve access to justice. A clearly expressed entitlement may limit official discretion and make a challenge easier. The economic problem is therefore not that settled rules necessarily harm disadvantaged people. It is that the resources needed to distinguish a settled application from an arguable one are unevenly available.

B Dworkin: Principled Interpretation Without Unlimited Discretion

Dworkin's account of law as integrity treats interpretation as a principled exercise concerned with the coherence and justification of legal practice. It resists the suggestion that difficult cases can always be resolved by mechanically reproducing past decisions.⁴ This account helps explain why legal argument may require a party to connect a particular dispute with a broader body of principle.

For present purposes, the economic inference is distinct from Dworkin's theory itself. Preparing a coherent argument may require research, expertise and sustained attention. Those inputs can have a price. It does not follow that moral merit alone supplies a legal remedy, or that purchasing sophisticated advocacy authorises a court to disregard the limits of legislation. Principled interpretation remains an account of legal justification, not an entitlement to a favourable outcome.

C Kennedy: Rules, Standards and the Allocation of Burdens

Kennedy's analysis of rules and standards in private law identifies choices about legal form that carry substantive and political implications. Rules seek relatively determinate applications; standards often require more contextual judgment.⁵ Neither form has a fixed relationship with social equality.

² Law Council of Australia, *The Justice Project* (Final Report, August 2018), 'Legal Services' 16 ('Justice Project').

³ H L A Hart, *The Concept of Law* (Oxford University Press, 3rd ed, 2012), ch 7; H L A Hart, 'Positivism and the Separation of Law and Morals' (1958) 71 *Harvard Law Review* 593, 607–15.

⁴ Ronald Dworkin, *Law's Empire* (Belknap Press of Harvard University Press, 1986), ch 7.

⁵ Duncan Kennedy, 'Form and Substance in Private Law Adjudication' (1976) 89 *Harvard Law Review* 1685, 1685–9.

A protective rule may reduce a vulnerable party's need to prove hardship. A contextual standard may allow a decision-maker to recognise circumstances that a general rule overlooks. The same standard may also require additional evidence and expose the party to uncertainty. These are possible institutional effects, not proof that lawmakers deliberately reserve justice for those able to pay.

The useful question is which party bears the burden of making context visible. If relevant circumstances are held in an institution's records, requiring the individual to reconstruct them may create avoidable costs. If the facts genuinely remain disputed, adequate procedures must give both parties a fair opportunity to test them. The design of that process can matter as much as the interpretive formulation.

III The Australian Framework: Text, Context and Purpose

A Purpose Is Part of the Method

Section 15AA of the *Acts Interpretation Act 1901* (Cth) requires preference for the interpretation that best achieves an Act's purpose or object. That purpose need not be expressly stated. Section 15AB regulates the use of extrinsic materials, including explanatory memoranda and parliamentary material, to confirm meaning or assist interpretation in specified circumstances.⁶ These provisions concern Commonwealth legislation; the article does not assume that their wording governs every state statute or private contract.

In *Project Blue Sky Inc v Australian Broadcasting Authority*, the High Court explained that a provision is construed in the context of the statute as a whole, including its purpose and the need to reconcile its provisions. The Court also recognised that a provision's legal meaning may differ from its grammatical meaning.⁷ The statutory scheme therefore matters from the outset, rather than becoming relevant only after a literal reading produces an unattractive result.

In *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue*, the joint judgment emphasised the statutory text as the starting point and the importance of context and purpose, while rejecting the displacement of clear language by historical or extrinsic material.⁸ That reasoning does not establish a general retreat to isolated literalism. It identifies the limits within which contextual interpretation operates. Purpose assists construction of the enacted law; it does not provide a free-standing authority to substitute a preferred policy.

Kirby's discussion of statutory interpretation similarly illuminates the relationship between enacted language, contextual reasoning and the demands of judicial explanation.⁹ The existence of interpretive disagreement should therefore be distinguished from a claim that any result can be justified. Courts must explain why their construction follows from legally relevant materials.

B Four Questions That Should Not Be Collapsed

The letter-spirit distinction becomes misleading when it combines four different tasks. The first is *construction*: determining the legal meaning of a provision or contractual term. The second is *application*: identifying the facts and applying the governing rule to them. The third is *procedure*: obtaining records, presenting evidence and meeting the requirements of a forum. The fourth is *remedy*: establishing what relief is legally available and whether it can be obtained in time.

These tasks interact but remain distinct. A parenting dispute may turn on evidence of risk rather than an ambiguity in the legislation. An insurance complaint may require proof of how damage occurred rather than a purposive reading of an Act. A welfare recipient may challenge an unsupported factual inference without asking for an exception to a valid debt. Calling every such challenge an appeal to the spirit of the law conceals what assistance is actually needed.

This distinction also limits the article's thesis. Resources cannot create an interpretation that the law does not permit, although they may improve the ability to identify and argue an available interpretation. Nor does a contextual approach

⁶ *Acts Interpretation Act 1901* (Cth) ss 15AA–15AB.

⁷ *Project Blue Sky Inc v Australian Broadcasting Authority* (1998) 194 CLR 355, 381–2 [69]–[71], 384 [78].

⁸ *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27, 46 [47] (Hayne, Heydon, Crennan and Kiefel JJ).

⁹ Michael Kirby, 'Statutory Interpretation: The Meaning of Meaning' (2011) 35 *Melbourne University Law Review* 113, 128–33.

necessarily favour the weaker party. Clear statutory language may protect that party, while broad discretion may favour an institution with greater capacity to shape the evidentiary record. The distributional concern is practical access to lawful argument, not a preference for interpretive flexibility in every case.

IV Resource Capability and the Cost of Contesting Meaning

A Repeat Players and One-Shot Litigants

Galanter's distinction between repeat players and one-shot litigants explains how recurring participation can produce accumulated knowledge, economies of scale and opportunities to pursue longer term legal objectives. The categories concern patterns of participation and capacity, rather than simply rich and poor individuals.¹⁰ A person involved repeatedly in disputes may lack the resources that make repetition advantageous; a legally assisted individual may benefit from an organisation's experience.

Applied to interpretation, the framework suggests that an institution can spread the cost of a legal opinion, policy template or expert assessment across many matters. An individual may need to fund comparable work for a single dispute whose financial value cannot justify that expense. The institutional position can then operate as a practical default. This is an analytical implication of the resource framework, not evidence that the institution's position is legally preferred.

Repeat participation may also help an organisation identify which disputes are worth defending, settling or appealing. An individual confronting immediate housing, income or family pressures may need a quick resolution. Even a legally arguable case can become unaffordable if pursuing it threatens necessities or produces an uncertain costs exposure. The resulting settlement or withdrawal does not, by itself, establish the correctness of the position left unchallenged.

B From Experienced Harm to a Legal Claim

Felstiner, Abel and Sarat's account of naming, blaming and claiming examines how experiences become recognised grievances and then demands for a response. It directs attention to stages before formal litigation.¹¹ This matters because unequal access to legal meaning can begin before a person enters a court or tribunal.

A person may regard a debt notice, rejected claim or termination notice as conclusive because it bears an institution's authority. Recognising a legal issue requires enough knowledge to distinguish a decision from the reasons that could justify it. Assistance may be needed to identify a review route, request the material relied upon or explain why the underlying facts are contested. Without that intervention, a dispute can end before any competing account is heard.

The Justice Project and the Productivity Commission's access to justice inquiry document financial barriers to legal services and the position of people inadequately served by existing assistance arrangements.¹² They support concern about access and capability. They do not establish a nationwide causal finding that courts use literalism for poor litigants and purposivism for wealthy ones. That stronger proposition would require comparative evidence controlling for legal merit, forum, subject matter and the assistance actually available.

The narrower conclusion is still significant. Equality in the rules governing adjudication does not ensure equality in the preparation that makes adjudication possible. A service that identifies a decisive statutory protection, secures relevant documents or corrects an evidentiary misconception may matter more than an elaborate interpretive submission. Access to justice policy should therefore examine the whole path from an institutional decision to an effective remedy.

V Four Hypothetical Illustrations

The following scenarios are fictional. They illustrate possible mechanisms of disadvantage under the identified legal frameworks; they are not reported cases, measured costs or predictions of a particular result.

¹⁰ Marc Galanter, 'Why the "Haves" Come Out Ahead: Speculations on the Limits of Legal Change' (1974) 9 *Law & Society Review* 95, 97–104.

¹¹ William L F Felstiner, Richard L Abel and Austin Sarat, 'The Emergence and Transformation of Disputes: Naming, Blaming, Claiming...' (1980–81) 15 *Law & Society Review* 631, 631–7.

¹² *Justice Project* (n 2) 'Legal Services' 16; Productivity Commission, *Access to Justice Arrangements* (Inquiry Report No 72, 5 September 2014), vol 1, 20–1.

A Insurance: Coverage, Evidence and Accessible Review

Sarah's home is damaged during a severe weather event. Her insurer relies on an exclusion and an assessment of the cause of the damage. She disputes both the assessment and the application of the policy wording. The immediate questions concern the contract, the evidence and the available statutory protections, rather than whether an adjudicator should replace the contract with a general sense of fairness.

Sections 13–14 of the *Insurance Contracts Act 1984* (Cth) impose obligations of utmost good faith and limit reliance on contractual provisions where that reliance would breach the duty. Applicable unfair contract term protections for insurance contracts arise under the *Australian Securities and Investments Commission Act 2001* (Cth), including the statutory qualifications and exclusions.¹³ Neither regime guarantees coverage merely because the insured expected payment.

Sarah may need assistance obtaining the policy, understanding the insurer's reasons and assessing whether contrary factual evidence is necessary. Where a complaint falls within its jurisdiction, the Australian Financial Complaints Authority provides an alternative dispute resolution route. Its decision-making considers fairness in the circumstances, relevant legal principles, industry codes and good industry practice.¹⁴ It should not be characterised as simply reproducing an insurer's contractual reading.

The possible disadvantage is Sarah's capacity to test the material supporting that reading. Appropriate assistance or an accessible complaints process may reduce the gap. The example consequently supports investment in evidence and review, without assuming that only court litigation can produce a remedy.

B Tenancy: Enforcing a Protection Already in the Text

David, a New South Wales tenant, falls into rent arrears following a temporary loss of income and receives a termination notice. He pays the arrears before the tribunal determines the landlord's application. Sections 88–89 of the *Residential Tenancies Act 2010* (NSW) regulate termination for non-payment and provide protections where the tenant pays the relevant amounts or complies with an agreed repayment plan, subject to statutory qualifications, including frequent failure to pay.¹⁵ There is no automatic statutory three-strikes rule under which three late payments necessarily require eviction.

David's legal position may depend on his payment record, the notice and whether an exception applies. Advice could help him bring those matters to the tribunal's attention. The example does not depend on persuading the tribunal to overlook a valid rule through compassion: the protection may already be expressed in the legislation.

That feature challenges the assumption that literal text necessarily disadvantages a tenant. A clearly explained protection can be valuable precisely because it reduces discretion. The access problem arises if David cannot identify the protection, produce the payment records or respond to the landlord's account in time.

C Family Law: Making Safety Concerns Legally Visible

Elena seeks parenting orders after experiencing coercive and controlling conduct. The *Family Law Act 1975* (Cth) makes the child's best interests paramount and directs attention to safety and relevant histories of family violence. The presumption of equal shared parental responsibility was repealed from 6 May 2024; it should not be treated as a current presumption of equal parenting time.¹⁶

¹³ *Insurance Contracts Act 1984* (Cth) ss 13–14; *Australian Securities and Investments Commission Act 2001* (Cth) ss 12BF–12BG, 12BI.

¹⁴ Australian Financial Complaints Authority, 'How AFCA Makes Decisions' (Web Page) <<https://www.afca.org.au/what-to-expect/how-we-make-decisions>>.

¹⁵ *Residential Tenancies Act 2010* (NSW) ss 88–89, especially s 89(5); see also NSW Government, 'Tenants Who Are Frequently Late Paying Rent or Utility Charges' (Web Page) <<https://www.nsw.gov.au/housing-and-construction/rules/tenants-who-are-frequently-late-paying-rent-or-utility-charges>>.

¹⁶ *Family Law Act 1975* (Cth) ss 60CA, 60CC(2)(a), (2A), 60CG; Attorney-General's Department, 'Family Law Amendment Act 2023: Fact Sheet for Family Law Professionals' (Web Page, 12 January 2024) <<https://www.ag.gov.au/families-and-marriage/publications/family-law-amendment-act-2023-fact-sheet-family-law-professionals>>.

Elena's difficulty may lie in organising evidence of the conduct and explaining its implications for safe parenting arrangements. A contextual account can require careful preparation, but the legal task is to address the statutory criteria, not to purchase an exemption from an equal-time default. Reports by family consultants and the appointment of an independent children's lawyer are distinct statutory mechanisms; neither should be described as a private expert that every parent must fund.¹⁷

The relevant policy question is whether Elena can obtain timely, suitable assistance and whether the process enables safety concerns to be identified and tested fairly. Wealth alone does not determine the result. The illustration concerns the means of presenting legally relevant facts within an existing protective framework.

D Sentencing: Evidence Within Lawful Discretion

Michael faces sentencing in a jurisdiction and for an offence where the court has sentencing discretion. His history includes substantial childhood deprivation, but the material before the court is incomplete. In *Bugmy v The Queen*, the High Court recognised the continuing relevance of profound deprivation and stressed the importance of evidence concerning the particular offender. Its effects do not simply disappear with time or repeated offending.¹⁸

Preparation might include obtaining records, suitable assessments or reliable evidence from people familiar with Michael's circumstances. The extent of that work depends on the issues in the case. An unsupported assumption about a person's background cannot substitute for individual evidence, and *Bugmy* does not confer a general power to disregard a valid mandatory minimum.

The example identifies a possible gap between legally relevant circumstances and the material available to a sentencing court. It does not establish that a privately funded report automatically produces leniency, or that defendants facing different offences and statutory regimes can be compared as if their cases were otherwise identical.

VI Robodebt: Unlawful Administration and the Resources for Correction

Robodebt provides a documented example of the significance of organised challenge. Its central legal problem should be distinguished from a valid statute operating harshly. Income averaging used annual taxation information to infer income in particular social security fortnights. Annual earnings alone could not establish the relevant fortnightly amounts where employment income fluctuated. The defect concerned the evidentiary foundation for debts, rather than an inability to buy a more compassionate interpretation.¹⁹

The different legal proceedings must also be distinguished. The declarations in *Amato v Commonwealth of Australia* were made by consent in November 2019 and concerned the challenged debt decision. They were not a contested trial judgment determining every recipient's liability. *Prygodicz v Commonwealth of Australia (No 2)* concerned approval of a class action settlement under s 33V of the *Federal Court of Australia Act 1976* (Cth). Settlement approval did not establish every pleaded cause of action on its merits.²⁰

Justice Murphy's reasons in *Prygodicz* recorded earlier Administrative Appeals Tribunal decisions rejecting reliance on income averaging and the Commonwealth's failure to heed or appeal those decisions. The reasons also addressed the substantial disparity between the parties' resources.²¹ Those observations identify a problem of institutional response and the reach of individual review. It would be inaccurate to treat the tribunal as having supplied no corrective decisions merely because the scheme continued.

¹⁷ *Family Law Act 1975* (Cth) ss 62G, 68L–68LA.

¹⁸ *Bugmy v The Queen* (2013) 249 CLR 571, 594–5 [41]–[44].

¹⁹ *Prygodicz v Commonwealth of Australia (No 2)* [2021] FCA 634, [4]–[8] ('Prygodicz').

²⁰ *Amato v Commonwealth of Australia* (Federal Court of Australia, VID611/2019, Davies J, 27 November 2019) (consent declarations), recorded in *Prygodicz* (n 19) [58]. On settlement approval, see [1], [85]–[86], [139]; *Federal Court of Australia Act 1976* (Cth) s 33V.

²¹ *Prygodicz* (n 19) [7], [10].

Legal assistance helped translate individual objections into sustained challenge. Victoria Legal Aid represented Deanna Amato in the test case.²² Representative proceedings subsequently provided a means of addressing related claims collectively. The analytical lesson is that an unlawful practice can persist when affected individuals must repeatedly reconstruct the same challenge and favourable decisions do not generate adequate organisational correction. Resources affect the capacity to expose the defect; they do not determine whether the original practice was lawful.

The Royal Commission's recommendations reinforce that institutional focus. Recommendation 20.4 addresses publication of first-instance tribunal decisions involving significant legal conclusions or matters of wider importance. Recommendation 17.1 calls for a consistent legal framework for government automation, clear review routes and greater transparency about automated processes and algorithms.²³ These are recommendations for reform, not a statement that all proposed measures have been enacted.

The implications extend beyond an individual litigant's access to advocacy. Agencies should be designed to detect legal error, respond to adverse review decisions and reconsider materially similar cases where appropriate. Publication can reduce the cost of discovering a successful argument, but its value depends on whether people can understand and use the decision and whether institutions respond to its reasoning. A system that repeatedly requires isolated recipients to litigate the same defect places the burden of legal correction on those least equipped to sustain it.

Robodebt therefore supports a stronger institutional conception of access to justice. The issue is not simply whether an individual can eventually obtain a hearing. It is whether lawfully established limits on government action shape the administration of claims before widespread harm requires litigation. That question preserves the article's concern with unequal resources while locating the failure in legality, evidence and accountability.

VII Technology and Collective Proceedings

A Digital Assistance and the Continuing Need for Verification

Digital tools may reduce some costs of locating legislation, explaining terminology and organising material. Whether they improve access in a particular setting depends on accuracy, usability, language, disability access and the availability of human assistance. Lower research costs do not necessarily resolve disputes about missing records, credibility, expert evidence or urgent relief.

Generative artificial intelligence adds a particular verification burden. The Supreme Court of New South Wales' Practice Note SC Gen 23 identifies risks including fictitious citations, inaccurate content and bias, and requires verification of AI-assisted submissions and cited authorities. Its rules distinguish permitted assistance from restricted uses, including the generation of evidentiary material.²⁴ A plausible explanation is not itself a reliable statement of current Australian law.

The distributional concern is prospective. People unable to afford checking may be more exposed to poor advice from an apparently authoritative tool. The response should be to evaluate tools against real legal tasks, provide reliable source links and create a clear route to human help. This article does not claim that Australian courts have already adopted an automated system that systematically substitutes literalism for contextual judgment in low income cases.

B Collective Capacity

Part IVA of the *Federal Court of Australia Act 1976* (Cth) permits representative proceedings where the statutory requirements are met, including related claims raising a substantial common issue of law or fact. Settlement or discontinuance requires court approval.²⁵ Aggregation can make shared legal and evidentiary work feasible where separate claims would not sustain it.

²² Victoria Legal Aid, 'An In-Depth Look at Our Robo-Debt Test Case' (Web Page) <<https://www.legalaid.vic.gov.au/depth-look-our-robo-debt-test-case>>.

²³ Royal Commission into the Robodebt Scheme, *Report* (Report, 7 July 2023), recommendations 17.1, 20.4 <<https://robodebt.royalcommission.gov.au/publications/report>>.

²⁴ Supreme Court of New South Wales, *Practice Note SC Gen 23: Use of Generative Artificial Intelligence (Gen AI)* (28 January 2025), [7], [10]–[18].

²⁵ *Federal Court of Australia Act 1976* (Cth) pt IVA, ss 33C, 33V.

Collective proceedings nevertheless remain subject to eligibility requirements, litigation risk and questions about the adequacy of representation. They cannot address every urgent or individualised dispute. Legal aid, community legal services, pro bono work, specialist complaints schemes and regulatory action can also supply institutional capacity. The objective is an appropriate route to effective review, rather than dependence on a single mechanism.

VIII Reform: Making Legal Meaning Practically Accessible

A Accessible Rules, Reasons and Review Routes

Plain language should connect an institutional decision with its legal basis, factual assumptions and available review process. A notice that announces an outcome without explaining what could be contested makes formal rights harder to use. A useful explanation should identify the governing provision, describe the material relied upon and state what the affected person can do next.

Simplifying presentation does not require pretending that every legal issue is simple. Where a rule contains qualifications, the explanation should make them visible. Digital publication should bring relevant provisions, authoritative decisions and practical guidance together, with accessible alternatives for people who cannot use the online service. Clear information is especially valuable where the protection already appears in the enacted text.

B Earlier Assistance and Proportionate Evidence

Legal assistance should be available at the point when an apparently authoritative decision first needs to be assessed. A short intervention may identify a missing document, a protective provision or an appropriate review forum before a dispute becomes entrenched. More complex matters may require sustained representation. Funding should account for that difference rather than treating information alone as an adequate response to every legal need.

Evidentiary processes should also be examined for avoidable duplication. Depending on the forum's powers and the interests at stake, reforms could improve access to institutional records, support suitable independent assessments and clarify the scope of genuinely disputed facts. Shared or publicly supported expertise warrants evaluation where multiple claimants confront the same technical issue. These measures should preserve the ability of each party to test evidence and address its relevance.

C Active Case Management Within Impartial Adjudication

Procedural assistance should help parties understand what must be decided and how relevant material can be presented. Clear directions, intelligible forms and early identification of issues may reduce the chance that an available argument is lost through confusion. The content and extent of assistance must remain consistent with the forum's powers and procedural fairness.

A court or tribunal cannot become a party's advocate or resolve a dispute by disregarding a valid rule. A more useful objective is to ensure that both parties understand the issues and have a fair opportunity to address them. Reforms should be assessed against timely, legally sound decisions, not simply the number of matters processed.

D Accountability for Public Repeat Players

The Commonwealth's model litigant obligations are more than informal ethical aspirations. The *Legal Services Directions 2025*, which commenced on 2 March 2026, require honesty and fairness, including avoiding unnecessary delay, not exploiting a claimant's lack of resources and limiting reliance on technical defences. Their scope and qualifications must be respected.²⁶ They do not require the Commonwealth to abandon legitimate claims or defences.

The enforcement position is also important. Section 55ZG of the *Judiciary Act 1903* (Cth) restricts enforcement of the Directions to the Attorney-General and restricts who may raise non-compliance in proceedings.²⁷ An individual therefore cannot assume that identifying a breach supplies an independently enforceable cause of action.

Reform should examine accessible complaint handling, transparent reporting and meaningful responses to patterns of non-compliance within that statutory framework. Where broader independent enforcement is proposed, the need for legislative change should be confronted directly. Public agencies should also explain how they respond to review

²⁶ *Legal Services Directions 2025* (Cth) ss 2, 38–43, especially s 41(a), (g)–(h).

²⁷ *Judiciary Act 1903* (Cth) ss 55ZF, 55ZG(2)–(3).

decisions exposing recurring defects, so that responsibility for correction does not rest solely on successive individual claimants.

E Targeted Costs Protection

The possibility of an adverse costs order can discourage a claimant even where legal services are available. Protection should be considered early enough to inform a realistic decision about proceeding. It should address arguable matters of public significance and serious resource disparity while retaining safeguards against abusive conduct.

This is an area for improving existing mechanisms, not assuming that Australian procedure contains none. Rule 40.51 of the *Federal Court Rules 2011* (Cth) permits an application for an order specifying maximum recoverable party-and-party costs, with specified exceptions. The Productivity Commission recommended protective costs orders in appropriate public interest litigation where the matter would otherwise be unlikely to proceed.²⁸

The proposed priority is clearer, accessible pathways for early consideration of suitable protection, coupled with evaluation of their operation. Costs protection cannot remove every expense or guarantee success. It can reduce one barrier to having a legally arguable institutional position tested.

IX Conclusion

The cost of legal meaning is the cost of making the law's available arguments and protections usable. It arises when a person must identify an applicable rule, challenge an unsupported inference, assemble relevant evidence and secure timely review. Those burdens are not distributed equally simply because the governing law is formally the same.

Australian statutory interpretation does not reserve text for poor litigants and purpose for wealthy ones. Its integration of text, context and purpose nevertheless operates through institutions whose participants possess unequal resources. The resulting danger is that an institutional assertion becomes practically conclusive before its legal or factual foundations have been adequately tested.

The hypothetical illustrations identify different points at which that risk may arise; Robodebt demonstrates the importance of legal assistance, collective challenge and institutional response to error. Together they support reform directed at accessible information, suitable assistance, proportionate evidence, fair procedure and public accountability. They do not establish a universal causal relationship between wealth, interpretive method and outcome.

Further empirical work should examine which interventions help people recognise arguable errors, present relevant material and obtain effective remedies. The normative demand is already clear: equal legal principles require practical opportunities to invoke them. The rule of law is weakened when the ability to test an institution's account of the law depends on resources that the affected person cannot obtain.

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