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ACTS INTERPRETATION AMENDMENT BILL 1984

Date Introduced: 8 March 1984
House: Senate
Presented by: The Attorney-General, Senator the Hon. Garth Evans, Q.C.

Short Digest of Bill

Purpose

To amend the Acts Interpretation Act 1901 so to facilitate the giving of effect to the intention of the Parliament when Acts or other instruments of the Parliament including rules, regulations, or by-laws are subject to interpretation.

Background

On 27 May 1981 the former Attorney-General, Senator the Hon. Peter Durack Q.C., introduced a Bill to incorporate what is now Section 15AA of the Acts Interpretation Act 1901 requiring the purpose or object of an Act to be taken into account in interpreting Acts of the Commonwealth Parliament. At that time Senator Durack advised that a discussion paper would be tabled in Parliament on the subject of extrinsic aids to interpretation, this was done on 14 October 1982 (Parliamentary Paper 285 of 1982) and on 5 February 1983 a symposium on statutory interpretation was conducted by the Attorney-General's Department. The proceedings of this symposium were printed and tabled by the Minister for Veterans' Affairs, Senator the Hon. A.T. Gietzelt, on behalf of the Attorney-General on 30 November 1983 (Parliamentary Paper 340 of 1983). In the Attorney-General's statement, incorporated by leave in Hansard, he advised that the Government could consider a general provision for insertion in the Acts Interpretation Act specifying relevant extrinsic material to which regard may be had in the interpretation of legislation.

This Bill by the proposed new Section 15AB seeks to provide for the use of extrinsic material in the interpretation of legislation. In addition the Bill
proposes seventeen further amendments to the Acts Interpretation Act, thirteen of which are of a technical nature and the remaining four will be discussed briefly in this Digest.

Main Provisions

Clause 6 of the Bill omits the existing sub-section 15AA(2) of the Principal Act. That provision as, advised in the Explanatory Memorandum accompanying the Bill, having been intended to preserve whatever the existing law was in relation to the use of extrinsic materials at the time of insertion of the then new Section 15AA in the Principal Act. This provision will now be replaced by the proposed new Section 15AB.

The proposed new Section 15AB is contained in Clause 7 of the Bill. The new Section would enable consideration to be given to extrinsic material where such material is capable of assisting in the interpretation of a provision of an Act.

Under the proposed sub-section 15AB(1) consideration may be given to extrinsic material:-

- to confirm that the meaning of the provision is the ordinary meaning conveyed by the text, taking into account its context in the legislation and the purpose or object underlying the Act;

- to determine the meaning of a provision which is ambiguous or obscure;

- to determine the meaning of a provision where the ordinary meaning conveyed by the text, taking into account its context in the Act and the purpose or object underlying the Act, leads to a result that is manifestly absurd or is unreasonable.

Sub-section 15AB(2), without purporting to limit the operation of sub-section (1), sets out categories of extrinsic material that may be used in the interpretation of legislation, these categories include:

- any relevant reports laid before or made to Parliament before the time when the provision was enacted;
any treaty or other international agreement that is referred to in the Act;

the explanatory memorandum relating to the Bill circulated to Members of Parliament before the time when the provision was enacted;

the Second Reading Speech of the Minister;

any document that is expressly declared by the Act in question to be a relevant document for the purposes of s.15AB;

finally, any relevant material in the Journals of the Senate or Votes and Proceedings of the House of Representatives or in Hansard.

Sub-section (3) of the proposed new Section 15AB provides that in determining whether consideration should be given to extrinsic material or in considering the weight to be given to such material regard shall be had to:

- the desirability of persons being able to rely on the ordinary meaning conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act; and

- the need to avoid prolonging legal or other proceedings without compensating advantage.

Clause 13 of the Bill inserts a new Section 25 in the Principal Act defining what is meant by document and would appear to extend to all known methods of storing and retrieving information. As a corollary of this the new Section 25A provides for the production of records kept in a computer etc. where an Act requires a person to produce the information in question.

The proposed new Section 25D provides that where an Act requires a tribunal, body or person making a decision to give written reasons for the decision the instrument giving the reasons shall also set out the findings on material questions of fact and refer to the evidence or other material on which these findings were based.

A new Section 25E is also incorporated in the Principal Act by Clause 13. The effect of this section is
that after 1 January 1985 reference in Commonwealth legislation to a person attaining a particular age, expressed in years, will be to the commencement, (i.e. the first moment), of the relevant anniversary of the date of the birth of that person.

New Sections 45A and 45B are proposed to be inserted in the Principal Act by clause 18 of the Bill. Section 45A(1) provides that where an Act increases the penalty in respect of an offence such increase applies only to offences committed after the commencement of the provision increasing the penalty. Conversely the proposed sub-section 45A(2) provides that where an Act reduces a penalty for an offence such reduction extends to offences committed before the commencement of the provision, but the reduction does not affect any penalty actually imposed before the commencement of the provision.

For further information, if required, contact:

29 March 1984

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