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### *Use of extrinsic material in construing statutes*

Section 15AB of the Commonwealth Acts Interpretation Act 1901 is a well known provision that permits a court or other tribunal or person construing a provision of a Commonwealth statute to consider material extrinsic to the statute that "is capable of assisting in the ascertainment of the meaning of the provision". Similar legislation operates in each other Australian jurisdiction except South Australia and the Northern Territory<sup>1</sup>

Instances of extrinsic material that may be considered are set out in the eight paragraphs of subsection 15AB(2), but the introductory words of the subsection make it clear that the range of the material that may be considered is not limited to those examples. Most of the reported cases, however, have involved consideration of material of one of the classes specifically mentioned in subsection 15AB(2) - eg., the explanatory memorandum, the Minister's second reading speech, and international agreements.

There are relatively few cases where the proffered extrinsic material has been rejected. One of them is *Federal Commissioner of Taxation v Murray*<sup>2</sup> in which Hill J described as being "of no assistance" documents from the files of the Commissioner that formed part of the material

used in framing the relevant bill before it was introduced into Parliament. His Honour said<sup>3</sup>:

[T]he intention of the Commissioner in submitting a matter for consideration of a governmental committee and the deliberations of that committee will, even if proved to come from the suggested source, tell little at all of the parliamentary intention. At best such material may suggest the mischief which some person had in mind when framing a Bill before it is put before Parliament. But if the Parliament is not apprised of that mischief by the proponent of the Bill in a second reading speech, by an explanatory memorandum or in debate, it will be difficult to be sure that the mischief was in truth that which Parliament sought to overcome.

Two recent judgments of Lindgren J in *Deloitte Touche Tohmatsu v Australian Securities Commission*<sup>4</sup> have referred to extrinsic material in construing section 50 of the *ASC Law (Cth)*. The case involved a challenge to the Commission's decision to begin a proceeding against the applicant and others seeking to recover damages for negligence and breach of duty. The action was brought by the Commission in the name of a company of which the applicant had been the auditor.

The proceeding was begun in the company's name by the Commission under section 50 of the *ASC Law (Cth)* which provides that in certain circumstances,

<sup>1</sup> The Victorian provision, section 35 of the *Interpretation of Legislation Act 1984 (Vic)*, unlike section 15AB and the other provisions, does not limit the circumstances in which the extrinsic material may be used.

<sup>2</sup> (1990) 92 ALR 671, @ 683. At 672 Sheppard J expressed his agreement with Hill J on this point.

<sup>3</sup> (1990) 92 ALR 671, @ 685.

<sup>4</sup> (1995) 54 FCR 562 ("the 1995 judgment"), and unreported delivered on 4 April 1996 ("the 1996 judgment").

... the Commission

- (c) if the person is a company - may cause; or
- (d) otherwise - may, with the person's written consent, cause;

such a proceeding to be begun and carried on in the person's name.

In the 1995 judgment his Honour quoted from and relied on the Report of the *Joint Select Committee on Corporations Legislation* in April 1989 ("the Report")<sup>5</sup> to support his conclusion that the Commission was required to consider the policy in the general law that in the absence of particular circumstances it was for a company's directors to determine whether it should commence proceedings for the enforcement of the company's rights. The Report is in the class of material referred to in paragraph 15AB(2)(c), which refers to "any relevant report of a committee of the Parliament ... that was made to the Parliament ... before the time when the provision was enacted".

The issue was re-argued before his Honour and in the 1996 judgment his Honour modified to some extent his formulation of the matter that he held the Commission was bound to consider. In reaching this conclusion Lindgren J considered not only the Report, but also the *Report of the Committee on Company Law Amendment* presented by the President of the Board of Trade, Mr Justice Cohen, to the United Kingdom Parliament in June 1945 (the Cohen Report)<sup>6</sup> which led to the enactment of subsection 169(4) of the *Companies Act 1948 (UK)* (which was adopted in Australia as subsection 169(7) of the *Uniform Companies Acts*), and the *Third Interim Report of the Company Law Advisory Committee to the Standing Committee of Attorney's General on the Investigations Provisions of the Uniform Companies Acts* in June 1969 (the Eggleston

Committee) which does not appear to have led directly to the enactment of any legislation. His Honour also referred to a commentary on subsection 169(7) of the *Uniform Companies Acts* in a text book<sup>7</sup>

Lindgren J's analysis of the precursors of section 50 of the *ASC Law (Cth)* and the reports of the Cohen Committee and the Eggleston Committee as well as the Report is extensive<sup>8</sup>. It indicates a preparedness for a court to consider an extensive range of extrinsic material in construing legislation. As a consequence the need for thorough and careful research is increased when one is dealing with the construction of important provisions that have been the subject of inquiries and similar consideration.

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[The opinions expressed in this note are those of the author and not those of the Australian Securities Commission]

## Uniform Credit Code delay

The *Uniform Credit Code*, the implementation of which has now been delayed until 1 November, will replace all existing state law with a uniform set of consumer finance rules. In addition to providing uniformity throughout the country, the Code will extend consumer protection. The implementation date has already been postponed from 1 March to 1 August 1996. A spokesperson for the NSW Minister for Consumer Affairs, Ms Lo Po, said the decision has been made to allow a couple of the States more time to make the changes to their administrative systems

(Source: *Australian* 20 May 1996 p5)

<sup>5</sup> (1995) 54 FCR 562, @580 - 583

<sup>6</sup> Cmd 6659.

<sup>7</sup> Wallace and Young, *Australian Company Law and Practice*, Law Book Co, 1965, p 512

<sup>8</sup> Pages 10 - 20 of the 1996 judgment

## ***Workplace Relations Bill introduced***

The *Workplace Relations and Other Legislation Amendment Bill 1996 (Cth)* was introduced into the House of Representatives on the 23 May 1996. The controversial Bill aims to develop a decentralised arrangement to workplace relations in order to foster greater flexibility and productivity in the workplace. The Bill will substantially amend the *Industrial Relations Act 1988 (Cth)*, which will be retitled the *Workplace Relations Act 1996 (Cth)*, to provide a new framework for the industrial relations system. The legislative reforms are directed at supporting a more direct, co-operative relationship between employers and employees and greater labour market flexibility. The objects of the new Bill focus the system on giving primary responsibility for industrial relations and agreement making to employers and employees at the enterprise and workplace level, with the role of the award system confined to providing a safety net of minimum wages and conditions; ensuring freedom of association; ensuring the avoidance of discrimination, and assisting employees to balance their work and family responsibilities effectively. It also sets out to replace the unfair dismissal provisions with new laws that apply the principle of a "fair go all round".

(Source: "A fair go for all: workplace relations reform information kit" Hon Peter Reith MP, Minister for Industrial Relations 23 May 1996)

## ***Rights of the Terminally Ill Act 1995, Northern Territory***

Everyone's favourite piece of NT legislation, the *Rights of the Terminally Ill Act 1995 (NT)*, finally has some regulations and a commencement date - 1 July 1996. This has not yet been gazetted so anything could happen. Check with NT A-G's Librarian, **Julie Fisher** on Ph: (08) 8999 7372.

Access to the Act on the Internet can be found on the Legislative Assembly Site at URL <http://www.nt.gov.au/lant/>

The site has the draft consolidation of the whole Act and contains:

- 1 Extracts from the Parliamentary Record of the Debates of the Legislative Assembly on the *Respect for Human Life Bill (NT)* and the *Rights of the Terminally Ill Amendment Act (NT)* on 20 February 1996.
2. *Rights of the Terminally Ill Amendment Act 1996 (NT)*
- 3 Draft consolidation of the *Rights of the Terminally Ill Act 1995* as amended (amendments highlighted).

The text of the 1995 Bill and related secondary material are still to be found at the National Library site.

URL <http://www.nla.gov.au/nt/rotti/rotti.html>

## ***Bibliographical Guide to Overseas Statutes***

A bibliographical guide to overseas statutes held in the National Library has been published on the Internet. The guide has sections on British legislation, United States Legislation, Canadian Legislation, New Zealand Legislation, European Communities Legislation and Asian Legislation. Where available, it provides hypertext links to Australian and international web sites of fulltext legislation.

URL <http://www.nla.gov.au/1/gencoll/guides/16.html>