

# Northern Territory Law Reform Committee

REPORT NO. 12

REPORT ON STATUTORY INTERPRETATION

DARWIN  
December 1987

The Northern Territory Law Reform Committee is an independent and permanent non-statutory committee governed by a written constitution.

The Committee receives references from the Attorney-General to examine and report to him on any area of law which he considers may be in need of reform. Such a reference may result from an initiative of the Committee or be prepared in consultation with it. The object of a report is to make recommendations which render more efficient the administration of justice and ensure that the law meets the needs of society.

Members of the Committee:

Chairman  
Justice Sir William Kearney

Members:

Mr Gordon Berner, Barrister and Solicitor  
Dr Clyde Croft, Secretary, Department of Law  
Mr Jim Dorling, Parliamentary Counsel  
Mr Max Horton, Barrister and Solicitor  
Mr Ian Maughan, Barrister and Solicitor, Department of Education  
Ms Suzanne Phillip, lecturer, Darwin Institute of Technology  
Mr Trevor Riley, Barrister  
Mr Ted Rowe, Executive Officer, Law Society (NT)  
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# Northern Territory Law Reform Committee

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18 December 1987

The Hon. D. Manzie, M.L.A.,  
Attorney-General for the Northern Territory,  
Chan Building,  
Mitchell Street,  
Darwin, N.T. 5790

My dear Attorney,

I have pleasure in forwarding the Committee's report and recommendations on the Reference relating to certain aspects of statutory interpretation.

The formal recommendations appear at p.27 and are summarized at p.6. In short, the Committee recommends that no legislative steps be taken to provide for the purposive construction of statutes or for the use of extrinsic materials to ascertain that purpose.

Should you wish to table the report in the Legislative Assembly further copies can be made available.

I take this opportunity, on behalf of the Committee, of wishing you the compliments of the Season.

Yours sincerely,



W.J. Kearney  
Chairman

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## BIBLIOGRAPHY

## APPENDIX A - AUSTRALIAN LEGISLATION

1. Acts Interpretation Act 1901 (Cth)  
ss 15AA and 15AB.
2. Interpretation Act 1987 (NSW)  
ss 33 and 34.
3. Interpretation of Legislation Act 1984  
(Vic) s 35.
4. Interpretation Act 1984 (WA) ss 18 and 19
5. Acts Interpretation Act 1915 (SA) ss 22

APPENDIX B - CASE REFERENCES TO PURPOSE APPROACH AND  
EXTRINSIC MATERIALS LEGISLATIONAPPENDIX C - EXAMPLES OF PURPOSE CLAUSES IN AUSTRALIAN  
LEGISLATION

## ABBREVIATIONS

Burrows - see Bibliography  
 LCC - see Bibliography  
 Macrossan - see Bibliography  
 Pearce - see Bibliography  
 Scutt - see Bibliography  
 Symposium - see Bibliography  
 Turnbull - see Bibliography

## Law Reports - Australian Courts:

ALJR - Australian Law Journal Reports (High Court)  
 ALR - Australian Law Reports  
 CLR - Commonwealth Law Reports (High Court)  
 FLR - Federal Law Reports  
 NSWLR - New South Wales Law Reports  
 SASR - South Australian State Reports  
 Tas SR - Tasmanian State Reports  
 VR - Victorian Reports  
 WAR - Western Australian Reports

## Law Reports - Overseas Courts:

AC - Appeal Cases (House of Lords and Privy Council)  
 All ER - All England Law Reports  
 CCC - Canadian Criminal Cases  
 DLR - Dominion Law Reports (Canada)  
 ER - English Reports  
 GLR - Gazette Law Reports (NZ)  
 LT - Law Times (UK)  
 NZLR - New Zealand Law Reports  
 WWR - Western Weekly Reports (Western Canada)

## 1. INTRODUCTION

### (a) Background to the Reference

A large amount of legislation is enacted each year by the Northern Territory Parliament. The accumulation of such legislation is considerable. As of 27 November 1987, there were over 300 separate Acts in the Northern Territory. The interpretation of legislation is a matter which occupies much of the time of government departments, lawyers, financial advisers and the courts.

In the common law, certain rules of interpretation have evolved. There are also rules of interpretation contained in the Interpretation Act (NT). A concern has sometimes been expressed that these rules have not been effective to ensure that the provisions of an Act are construed in accordance with the purpose of the Act - that an excessively literal or legalistic approach has been adopted by the courts without regard to the context of the Act as a whole (LCC 20.4 - 20.11).

It has similarly been said that when the courts interpret an ambiguous provision, not enough attention is paid to the intention that Parliament had in enacting the legislation. To encourage this, courts should be able to look at Parliamentary debates, reports on which legislation is based or other relevant extrinsic material to ascertain what Parliament intended.

As a result of these two related concerns, legislation has recently been enacted in some Australian jurisdictions which

- (a) requires courts to interpret a piece of legislation in a way that promotes its underlying purpose,
- (b) enables courts to look at extrinsic material in interpreting the ambiguous provisions of an Act.

These concerns led the Attorney-General to forward the present Reference to the Committee.

### (b) Terms of Reference

I, the Honourable JAMES MURRAY ROBERTSON, Attorney-General, hereby refer to the Northern Territory Law Reform Committee, for examination and report, the desirability of including specific provision in the Interpretation Act to provide:

1. An obligation that, in interpreting legislation, a construction which would promote the purpose or object underlying an Act is to be preferred to a construction that would not promote that purpose or object; and
2. An obligation or a discretion that any material not forming part of an Act, which is capable of assisting in the ascertainment of the meaning or

purpose of the Act, may or must be given consideration in construing particular provisions of the Act, and if so, the nature of such extrinsic material and the circumstances in which it may or should be considered.

Date: 31/10/84

(c) Recommendation

The Committee has examined the matter referred to it and considers on balance that there is no need to enact provisions like those specified in the Terms of Reference, and accordingly, recommends that the Interpretation Act not be amended.

(d) Conduct Of Reference

At the request of the Committee, the Executive Officer prepared a research paper on the reference. The contents of that paper appear in modified form as Chapters 2 to 7 of this Report. At its meeting in June 1986, the Committee considered the research paper, decided that no amendment to the Interpretation Act was necessary, and established a sub-committee consisting of Mr Dorling and Mr Horton (and later Dr Croft), with the assistance of the Executive Officer, to draft a report. At its meeting in November 1987 the Committee adopted as its final report the draft report submitted by the Sub-committee, subject to a number of amendments.

2. THE COMMON LAW ON THE PURPOSE APPROACH TO STATUTORY INTERPRETATION

The Mischief Rule of statutory interpretation has its origins in Heydon's Case (1584) 76 ER 637. The relevant part of the judgment is:

"And it was resolved by them (the judges) that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law), four things are to be discerned and considered:

1st What was the common law before the making of the Act.

2nd What was the mischief and defect for which the common law did not provide.

3rd What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth.

and

4th The true reason of the remedy. And then the office of all the Judges is always to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, pro bono publico."

The Mischief Rule is usually called the Rule in Heydon's Case, or more recently, "Purpose Approach". The modern approach is to consider not just the common law before the passing of the legislation, but the whole existing law, whether common law, statute, or a combination.

As stated by Pearce -

" The statement [of the Mischief Rule] in its pristine form is somewhat misleading in that it pre-supposes that all Acts are directed to changing the common law whereas nowadays many Acts constitute a whole new field of law. Its reference to "mischiefs" and "diseases" is also a little archaic but, subject to these points, it forms a reasonably accurate statement of the attitude of the courts today. The court will consider the legal and factual situation that existed when a law was passed paying particular heed to the reasons why it was considered necessary to make a change in that law. The "purpose" of the law is sought" (21)

This is clearly the rule in England:

"It is always necessary in construing a statute, and in dealing with the words you find in it, to consider the object with which the statute was passed, because it enables one to understand the meaning of the words introduced into the enactment.": Reigate RDC v Sutton District Water Co. (1908) 99 LT 168, 170.

"It has been well established that in the construction of a statute it is perfectly legitimate to give to some of its words a meaning different from their ordinary meaning where that is necessary to forward and effect the main purpose and object of the enactment": Ball v William Hunt & Sons Ltd [1912] AC 496, 505-6.

"Judges may not interpret statutes in the light of their own views as to policy. They may of course adopt a purposive interpretation if they can find in the statute read as a whole, or in material to which they are permitted by law to refer as aids to interpretation, an expression of Parliament's purpose or policy.": Akbarali v Brent LBC [1983] 2 AC 309, 348.

Lord Scarman in his Wilfred Fullagar Lecture at Melbourne on 9 September 1980 said that Australian judges have "hesitated to apply a purposive construction" and added: "In London, no one would now dare to choose the literal rather than a purposive construction of a statute: and 'legalism' is currently a term of abuse." (quoted (1981) 55 ALJ 175).

Lord Scarman's comment does reflect the kind of unease that led the Commonwealth to enact legislation to require a purposive approach in 1982. However Australian courts have always been able to interpret Acts according to their purpose:

"It is a rule of construction of statutes that words and expressions should be given as far as possible their ordinary meanings, but the legislative purpose and intent of a statute as revealed by its content is the primary object of consideration. The complexity of modern statutes is such that the day is long past when courts can safely guide themselves by the strictly literal meaning of a phrase or sentence when meaning is elusive. The task is, in many cases, much more complex if the true object of the statute is to be realized": Campbell v Epping [1970] Tas SR 215, 224.

There are many statements adopting the purpose approach: Bradley v Commonwealth (1973) 128 CLR 557, "subject matter and object" per Barwick CJ and Gibbs J (565); MP Metals Pty Ltd v Commissioner of Taxation (Cth) (1967) 40 ALJR 538, "policy" of an enactment per Windeyer J (539); Moreton Central Sugar Mill v Commissioner of Taxation (Cth)

(1967) 116 CLR 151, "apparent general purpose" per Kitto J (157).

It is clear not only that the purpose of an Act is to be used to interpret a provision where it is merely ambiguous, but also that the literal words of an Act may be disregarded if they are clearly inconsistent with the purpose of the Act.

In Cooper Brookes (Wollongong) Pty Ltd v Commissioner of Taxation (Cth) (1981) 55 ALJR 434 the High Court had to interpret a provision in a taxing Act. On a literal interpretation, a subsidiary company was not disentitled from claiming a taxation deduction. The court held that the literal interpretation should be departed from. Gibbs CJ said at p 438: -

"On a full view of the Act, considering its scheme and its machinery and the manifest purpose of it (to use the words of Earl Loreburn in Drummond v. Collins, [1915] AC 1011, at 1017) I consider that when the Parliament applied s80B(5) to the case of a holding company, it intended that the reference to "company" in par. (c) should apply to the subsidiary company and that the expression of its intention miscarried."

Mason and Wilson JJ said at p 443: -

"On the other hand, when the judge labels the operation of the statute as "absurd", "extraordinary", "capricious", "irrational" or "obscure" he assigns a ground for concluding that the Legislature could not have intended such an operation and that an alternative interpretation must be preferred. But the propriety of departing from the literal interpretation is not confined to situations described by these labels. It extends to any situation in which for good reason the operation of the statute on a literal reading does not conform to the legislative intent as ascertained from the provisions of the statute, including the policy which may be discerned from those provisions."

Aickin J, dissenting, said at p 449: -

"It was argued on behalf of the Commissioner that for the sections to operate in this way [that is, as literally construed] involved an "injustice" or was "unfair" to the subsidiary company. That view overlooks the evident purpose of the legislation."

In Canada and New Zealand, statutory obligations to interpret legislation in a manner that ensures the attainment of the object of an Act have existed since 1886 and 1888 respectively: see Chapter 4.

### 3. THE COMMON LAW ON THE USE OF EXTRINSIC MATERIALS

#### (a) Use to which Extrinsic Materials can be put

The traditional rule is that courts are permitted to use extrinsic materials only to identify the mischief that ambiguous legislation was designed to overcome, but not the remedy intended by the statute, so they cannot be used to interpret the statute.

##### (i) England

In Black-Clawson International Ltd v. Papierwerke Waldhof-Aschaffenburg A.G. [1975] AC 591 the majority held that where legislation is based on a public report, that report could be used to assist in resolving a statutory ambiguity.

Lord Simon said: "I am therefore of opinion that the Greer report [upon which the legislation is based] is available to your Lordships in construing the 1933 Act, by way of helping to show what facts were within the knowledge of Parliament and what was the defect in the pre-existing law which called for parliamentary remedy" (648). He also said "the Greer report is available as an aid to construction in such a way to make it clear it was not the intention of Parliament ... to abrogate the common law" (651).

Lord Reid, Lord Wilberforce and Lord Diplock adopted the traditional approach. Lord Reid said: "I think that we can take this report as accurately stating the "mischief" and the law as it was then understood to be, and therefore we are fully entitled to look at those parts of the report which deal with those matters." (614). However, in respect of other matters contained, "recommendations, a draft Bill and other instruments ... and comments on what the Committee thought the Bill achieved", he said although the "draft Bill corresponds in all material respects with the Act so it is clear that Parliament adopted the recommendations of the Committee, ... I do not think that we are entitled to take any of this into account in construing the Act." (614).

Viscount Dilhorne after referring to earlier judgments, said "Other instances could be cited and ... it is now, I think, clearly established that regard can be had to such reports" (621). "What weight is to be given to a committee's recommendation is another matter. That may depend on the particular circumstances" (622). He said it was "legitimate to make use of the recommendations, the draft Bill, notes on clauses, draft conventions, i.e. the whole of the committee's report, as an aid to the construction of the Act" (622).

Viscount Dilhorne said that confining the use of materials simply to ascertaining the mischief -

"seems to impose on judges the task of being selective in their reading ... What part may they look at and what not? Have they to stop reading when they come to a recommendation? Have they to ignore the fact, if it be the fact, that the draft Bill was enacted without alteration? To ignore what the Committee intended the draft Bill to do and what the Committee thought it would do? I think not. I think so to hold would be to draw a very artificial line which serves no useful purpose."  
(622)

Lord Wilberforce clearly dissented from Viscount Dilhorne's approach. He said that it is "not proper or desirable to make use of ... a report, or any official notes on clauses, for a direct statement of what a proposed enactment is to mean" (629). However, he has since changed this position, saying: "... that was 1975, and I now believe it to be wrong and the supporting arguments invalid." (Symposium at 8).

In the U.K., some judges have expressed the view favouring use of extrinsic materials to determine both the mischief and the statutory remedy but there is a division of opinion, eg for; Lawson J in Tottenham Hotspur Football & Athletic Co v Princegrove Publishers Ltd [1974] 1 All ER 17, Daymond v Southwest Water Authority [1976] AC 609 (Lord Kilbrandon at 652); against, Firman v Ellis [1978] 2 All ER 851, Fothergill v Monarch Airlines Ltd [1979] 3 All ER 445 (Browne LJ at 456).

The Committee concludes that the traditional rule that extrinsic materials may only be used to ascertain the mischief at which a statute was aimed or the state of law before it was passed, may no longer state the law in England. The law is in a state of change.

(ii) Australia

In Commissioner of Taxation (Cth) v Whitfords Beach Pty Ltd (1982) 56 ALJR 240 s. 26(a) of the Income Tax Assessment Act 1936 (Cth) was considered by the High Court. Mason J. repeated what he said earlier in Wacando v Commonwealth (1981) 56 ALJR 16 at 25 "Generally speaking, reference cannot be made to what is said in Parliament for the purpose of interpreting a statute. But in my opinion there are grounds for making an exception for the case where a Bill is introduced to remedy a mischief". The rationale would appear to be that there is no more accurate source of information as to the mischief the Act was intended to remedy.

In TCN Channel Nine Pty Ltd v. Australian Mutual Provident Society (1982) 62 FLR 366 and Wright v McLeod (1983) 74 FLR 146 at 191-2, the Federal court followed Mason J. in Wacando and Whitfords Beach, permitting the use of Hansard reports of the second reading speeches of Ministers, and the explanatory memorandum circulated with the Bill, to show the "mischief".

Despite such statements of the traditional rule, before the enactment of extrinsic materials legislation, courts have referred to extrinsic material to interpret provisions. In Re Toohey; ex parte Meneling Station Pty. Ltd. (1983) 57 ALJR 59, Brennan J. referred to a book of anthropological essays to interpret a provision:

"This [ie. the passage quoted from the book] renders intelligible and logical the statutory definition of 'traditional Aboriginal owners'" (70).

In Minnesota Mining and Manufacturing Co. v. Beiersdorf (Australia) Ltd (1980) 144 CLR 253 at 289-92 Aickin J. (with whose judgment Barwick C.J., Stephen, Mason and Wilson JJ. agreed) examined the history of the English and Australian Patents Acts to determine how s. 100(1)(e) of the Patents Act 1952 (Cth) should be interpreted. He described the various amendments that were made to the English legislation, and quoted from the reports of English and Australian committees.

In Dillingham Constructions Pty Ltd v Steel Mains Pty Ltd (1975) 132 CLR 323, Murphy J said:

"In my view, the use of the report... is not only permissible but desirable in this case. There should be no need to engage in the semantic exercise of justifying such use as merely being for the purpose of ascertaining what was the mischief or defect in the common law... Since ascertaining the mischief is part of the process of ascertaining the legislative intent ... it is pointless to draw a distinction between the two." (332)

The Committee concludes that, in interpreting a remedial statute, the common law permits the use of extrinsic materials to ascertain the mischief or defect in the existing law (whether common law or legislation). The Committee considers that there is scope in the common law to allow such material to be taken into account in ascertaining what is proposed to remedy the mischief, that is, in interpreting the provisions of the Act. However, in Australia, as in England, the common law cannot be regarded as settled.

(iii) Canada

Canadian courts have usually drawn a distinction between the use of extrinsic materials in constitutional and non-constitutional cases.

As to constitutional cases, in Reference Re Anti-Inflation Act (1976) 68 DLR (3d) 452, Laskin CJ (with whom the majority of the Supreme Court agreed) stated "... no general principle of admissibility or inadmissibility can or ought to be propounded by this Court and the questions of resort to extrinsic evidence and what kind of extrinsic evidence may be admitted must depend on the constitutional issues on which it is sought to adduce such evidence" (468). The Court received

into evidence, largely to determine whether legislation was constitutionally colourable, a Government White Paper, bulletins of Statistics Canada, studies by professors, opinions of economists, a speech of the Governor of the Bank of Canada, House of Commons debates, and the Minutes of a Standing Committee of Parliament. This decision has made it clear that there is no general rule excluding use of extrinsic materials.

The position concerning use of extrinsic materials in non-constitutional cases is not entirely clear.

In Laidlaw v Municipality of Metro Toronto (1978) 87 DLR(3d) 161, referring to a report of the Ontario Law Reform Commission, the Supreme Court said

"It has been established that such reports may be considered not by seeking to interpret the statute in accordance with the recommendations made in the report but to determine the problem which faced the legislators and which they must have sought to meet in the new statute" (165).

This, the traditional approach, has been affirmed by the Canadian Supreme Court, eg. Schneider v The Queen (1983) 139 DLR (3d) 417 at 434, despite regular attempts by provincial courts to adopt a wider view: see Alberta Supreme Court in Re Alberta Ombudsman Act, (1970) 10 DLR (3d) 47; Ontario High Court in Babineau v Babineau (1981) 122 DLR (3d) 508, affd (1982) 133 DLR (3d) 767n (Ont. C.A.) where reliance was placed on the Anti-Inflation Reference in a non-constitutional case; British Columbia Supreme Court in Crown Zellerbach Canada Ltd. v The Queen (1979) 92 DLR (3d) 459.

(iv) New Zealand

Black-Clawson has been followed in New Zealand in Harding v Coburn [1976] 2 NZLR 577 (CA) as far as allowing use of extrinsic materials to determine "at least" the mischief which an ambiguous statute was intended to remedy.

However, there are examples of the use of extrinsic materials which go beyond the traditional rule. New Zealand courts considering the 1908 consolidated Acts have freely referred to the Report of the Commission which prepared them to determine whether or not amendments to the old law were intended: Hughes v Hanna (1909) 29 NZLR 16, 22; R v Wilson (1912) 31 NZLR 850, 854. Courts have also referred to the Report and Draft Bill of the U.K. Criminal Code Commission of 1879 on which the New Zealand Crimes Act was based as a direct aid to interpretation: e.g. Downey v R [1971] NZLR 97, 100; R v Bennett [1981] 1 NZLR 519, 521. As Burrows has stated, "Normally this has been done without any explanation of how such a use can be justified in principle". (15)

(b) England: Types of Extrinsic Materials

## (i) Explanatory Memoranda

In Ealing London Borough Council v. Race Relations Board [1972] AC 342 Lord Simon considered that explanatory memoranda might "often be useful both in apprising legislators of the details for which they are assuming responsibility and in assisting courts in their task of interpretation" (360-61).

## (ii) Expert Committee Reports

The practice of consulting the reports of expert committees, Royal Commissions, law reform bodies and like specialist bodies - where the report results in the legislation being interpreted - is firmly established: Eastman Photographic Materials Co Ltd v Comptroller-General [1898] AC 571.

## (iii) Hansard

In Davis v Johnson [1979] AC 264 the House of Lords unanimously adopted the traditional position, holding that it has always been a well-established and salutary rule that Hansard can never be referred to by counsel in court and therefore can never be relied on by the Court in construing a statute or for any other purpose. This rule must, however, be subject to the mischief exception, though it is not expressed to be.

(c) Australia: Types of Extrinsic Materials

In Australia courts have used extrinsic materials, such as those relating to the history of legislation, reports of law reform and other bodies, earlier legislation and Bills and proceedings of Parliament in the interpretation of legislation.

## (i) Explanatory Memoranda

In R v Murray [1982] 1 NSWLR 740 the Supreme Court referred to such memoranda to determine the meaning of a provision empowering the court to look at certain factors in sentencing an offender.

## (ii) Expert Committee Reports

In Dillingham Constructions Pty Ltd v. Steel Mains Pty Ltd (1975) 132 CLR 323 Murphy J. referred to an Interim Report of the Law Revision Committee of the United Kingdom, which led to the passing of the English Act on which the Act under consideration was based. That report was also taken into account by the High Court (Dixon C.J., McTiernan, Webb, Fullagar and Taylor JJ.) in a joint judgement in Bitumen and Oil Refineries (Australia) Ltd v. Commissioner for Government Transport (1955) 92 CLR 200. Similarly:

Totalizator Agency Board v Wagner [1963] WAR 180 (Royal Commission Report); Orton v Melman [1981] 1 NSWL 583 (Law Reform Commission Report).

(iii) Parliamentary Reports

In Barker v The Queen (1983) 57 ALJR 426 the High Court (Gibbs CJ, Mason, Murphy, Wilson, Brennan JJ) each referred to a U.K. Parliamentary Report on a British Act from which the provision being interpreted (s.76 of the Victorian Crimes Act) was derived.

(iv) Hansard

In Commissioner for Prices and Consumer Affairs (SA) v Charles Moore (Aust) Ltd (1977) 139 CLR 449 the High Court (Murphy J dissenting) rejected the use of Hansard for the purpose of construing a statute. In Whitford Beach and Wacando Mason J pointed out (at 247 and 25) that this rule is subject to the mischief exception.

(v) International Conventions

Where an Act gives effect to an international convention, the convention may be referred to resolve an ambiguity: Yager v The Queen (1977) 139 CLR 28 at 43-4, per Mason J.

(vi) View of Murphy J

In a number of High Court cases, Justice Murphy considered all extrinsic materials admissible in construing legislation: eg, learned treatises; Actors and Announcers Equity Assn v Fontana Films Pty Ltd (1982) 56 ALJR 366; non-legal literature; Church of Scientology v Woodward (1983) 57 ALJR 42.

The significance of Justice Murphy's view is that it constitutes, prior to the enactment of legislation permitting reference to extrinsic materials, a strand of judicial authority that all such materials could be used to directly interpret all legislation, whether or not there was an apparent ambiguity. This view has not received universal assent.

(d) Canada: Types of Extrinsic Materials

In constitutional cases no class of extrinsic material has been excluded from the court's consideration: Anti-Inflation Reference. In non-constitutional cases, the following material has been referred to -

- (i) explanatory memoranda: Re Reed [1980] Que.SC 391,
- (ii) expert committee reports: Schneider; Morquard Properties v Winnipeg (1984) 3 DLR (4d) 1,

(iii) Hansard: R v Vasil (1981) 58 CCC (2d) 97 (Supreme Court of Canada).

(e) New Zealand: Types of Extrinsic Material

New Zealand courts have referred to the following extrinsic materials

(i) expert committee reports: Worsdale v Polglase [1981] 1 NZLR 722, 726,

(ii) Hansard: Levave v Immigration Department [1979] 2 NZLR 74, 79.

## 4. LEGISLATION ELSEWHERE

(a) Purpose Approach

In the Canadian Interpretation Act, R.S.C. 1970, c.I-23, s. 11 provides-

11. Every enactment shall be deemed remedial, and shall be given such fair, large and liberal construction and interpretation as best ensures the attainment of its objects.

Similar provisions exist in most Canadian jurisdictions.

The New Zealand Acts Interpretation Act 1924, s.5(j) provides-

Every Act, and every provision or enactment thereof, shall be deemed remedial, [whether its immediate purport is to direct the doing of anything Parliament deems to be for the public good, or to prevent or punish the doing of anything it deems contrary to the public good], and shall accordingly receive such fair, large, and liberal construction and interpretation as will best ensure the attainment of the object of the Act and of such provision or enactment according to its true intent, meaning, and spirit.

A substantially similar provision, not containing the passage in brackets, was in the Acts Interpretation Act 1915 (SA). In 1986 it was replaced by a modern purpose clause (see Appendix A).

(b) Extrinsic Materials

The Ghana Interpretation Act 1960, s. 19 provides-

(1) For the purpose of ascertaining the mischief and defect which an enactment was made to cure, and as an aid to the construction of the enactment, a court may have regard to any text-book or other work of reference, to the report of any commission of enquiry into the state of the law, to any memorandum published by authority in reference to the enactment or to the Bill for the enactment and to any papers laid before the National Assembly in reference to it, but not to the debates in the Assembly.

(2) The aids to construction referred to in this section are in addition to any other accepted aid.

## 5. LEGISLATION IN AUSTRALIA

The Parliaments of the Commonwealth, N.S.W., Victoria and Western Australia have enacted provisions which required courts to construe legislation in a manner which would promote the purpose or object underlying the Act, and empowered the court to consider any extrinsic material capable of assisting in the ascertainment of the meaning of a provision. These changes came about solely by means of internal considerations by the relevant Attorneys-General.

In Victoria a Bill containing the above provisions was introduced and referred (in 1982) to the standing Legal and Constitutional Committee for consideration and report. The Committee recommended in 1983 that the clause dealing with extrinsic material be redrafted and five alternatives were proposed.

In the Commonwealth, a discussion paper was prepared and issued by the Attorney-General in 1982, after the purpose provision had been introduced, but before the extrinsic materials provision had been drafted.

The N.S.W. and Western Australian provisions were the result of Departmental consideration.

See Appendix A for the Australian legislation in full. In summary the provisions are:

- Cth - s15AA (purpose)  
s15AB (extrinsic materials)
- NSW - s33 (purpose)  
s34 (extrinsic materials)
- Vic - s35(a) (purpose)  
s35(b) (extrinsic materials)
- WA - s18 (purpose)  
s19 (extrinsic materials)
- SA - s22 (purpose)

The Interpretation Act 1987 (NSW) ss 33 and 34 and the Interpretation Act 1984 (WA) ss 18 and 19 contain provisions that are almost identical to s 15AA and s 15AB of the Commonwealth Act. The Western Australian provisions refer to a "written law" whereas the Commonwealth and South Australian provisions refer to an "Act". A "written law" is defined in the WA Act to include "all subsidiary legislation". Sections 15AA and 15AB of the Commonwealth Act apply to the interpretation of subordinate legislation by virtue of s.46 of that Act. The South Australian provision applies to the interpretation of all "statutory instruments", which includes regulations and by-laws, by s.14a of the Act. The N.S.W.

provisions apply to the interpretation of "an Act or statutory rule".

Section 35(a) of the Interpretation of Legislation Act 1984 (Vic) is almost identical to the other purpose provisions, while s.35(b) is different. It is less elaborate than the other extrinsic material provisions, but more extensive, as unlike the other provisions, it does not restrict the circumstances in which extrinsic materials can be used.

## 5. ARGUMENTS RELATING TO THE ENACTMENT OF A PURPOSE PROVISION

(a) Effectiveness

Provisions directing a purpose construction are not new. Courts in those jurisdictions which have them seldom refer to those provisions, although they are directed to give effect to the intention of the legislature when legislation is being interpreted. The formulations are not very different from the Rule in Heydon's case as it has been developed and applied in the common law. It is difficult to see how these provisions direct a court to do something it is not already doing when construing legislation the purpose of which is relevant to its construction.

In Canada the relevant statutory provision has been equated with the common law -

"In the absence of a statutory definition of a statutory term it must be interpreted in the light of the purpose of the Act in question and of the setting or context in which the term appears. In other words when the term is in an Alberta statute the approach to its interpretation must be governed by Interpretation Act RSA 1952 s9." R v Meehan [1950] 2 WWR 627.

There has been disagreement on the key issue of effectiveness. In International Hotel Ltd v McNally (1940) 64 CLR 24, Starke J quoted in full the SA pre-1986 provision describing it as a "curious section" (29) and then ignored it. Dixon CJ said that the respondent's proposition did represent "either the object or true intent" (34) of the section in issue. McTiernan J was of a similar view (35).

In Smith v McArthur [1904] AC 389 the Privy Council said "to adhere to language so literally as to defeat the plain intention of the legislature ... is to run counter to" the New Zealand purpose provision (398). The court held that the literal meaning of a licensing statute which did not permit renewal in the instant case had to be ignored. The result is similar to that which was achieved without a purpose provision in Cooper Brookes.

In Hutton v Hutton (1910) 13 GLR 201 the court considered it was arguable that the N.Z. section "may not make any material alteration in the law". In Gifford v Police [1965] NZLR 484 it was considered "of limited assistance" (500).

In several New Zealand cases courts have stated that determining the objects of an Act has not assisted in interpreting particular provisions: Columbia Films (NZ) Ltd v Cinematograph Films Censorship Board of Appeal [1967] NZLR 191 at 201, Aburn v Police [1964] NZLR 435.

Some Acts may have no object. They may simply codify various rules of law, such as the various Sale of Goods Acts.

In R v Coneybear [1966] NZLR 52 the court concluded that the object of Part VI of the Crimes Act was "to protect the administration of law and justice" (56). It is difficult to see how such a general concept can assist in interpreting a particular provision.

The effect of the modern Australian purpose provisions is yet to be determined. They have been considered in a number of cases but in no case has it been stated or implied that such a provision would lead to a result different from that which would have resulted from the application of the pre-existing rules. In GTK Trading Pty Ltd v Export Development Grants Board (1981) 40 ALR 375 the Federal Court used s 15AA(1) to accept one of two possible interpretations of the phrase "produced .. in Australia". In their joint judgment Evatt, Deane, and Ellicott JJ said at 383 in respect of the non-geographical interpretation arrived at, in the context of the purpose of the Act:

This is a construction of the Act which, in our view, clearly promotes the purpose and object underlying it and is therefore to be preferred by us in accordance with s. 15AA of the Acts Interpretation Act.

However it is clear from their Honours' earlier remarks that the same construction would have been arrived at, applying the Mischief Rule. Such comments are typical in cases which refer to purpose provisions (see Appendix B for a list).

Although the argument from silence is not particularly convincing, the Committee has been unable to find a case where a court in a jurisdiction with an obligatory purpose construction provision has adopted an interpretation of a provision which was different to the approach adopted in a jurisdiction without such an obligation, when identical statutes were in issue.

Consideration of cases such as those listed in Appendix B has led the Committee to conclude that the effect of enacting such a provision would not alter the way courts interpret legislation.

#### (b) Directing the Courts

Is it proper to push the courts to an interpretation which goes beyond the actual words of the enactment? (Macrossan at 554) In Black-Clawson at 629 Lord Wilberforce makes a similar point, that interpretation is "the function of the courts". Lord Wilberforce has said later (see symposium at 7) said that he considered an extraneous materials provision would be acceptable if it "did not complicate and prolong" the task of interpretation and if the courts' "essential functions are not impeded". He said that if courts "thought that this essential role was being diminished by some extra-statutory direction ... they would resist. But I do not believe that they have anything to fear."

The Committee considers that a statutory provision directing courts to construe legislation in a way that promotes its underlying purpose would not intrude on the independence of the courts in discharging their functions. Such a provision would not blur the separation of the legislative and judicial function.

(c) Purpose Clauses

It was a recommendation of the Renton Committee (para 11.8) that Bills should include clauses stating the general purpose, "a statement of purpose which is designed to delimit and illuminate the legal effects of the Bill". Such clauses are now included in all Commonwealth and Victorian Acts. A sample of such clauses is included in Appendix C.

The Committee considers that these clauses are drafted in such general terms that, usually, nothing is added to the interpretation of the legislation that a perusal of the contents would not disclose. However, the Committee recognises that there may be cases where, for a particular Act, it may be considered desirable to state a general purpose. Such instances could be essentially philosophical (see s.4(2) of the Mental Health Act 1986 (Vic) and the long title of the Juvenile Justice Act 1983 (NT) in Appendix C); or practical, e.g. to make it clear that the common law is being abolished (see s.52 of the Work Health Act 1986 (NT) in Appendix C). Accordingly, the Committee considers that the practice of including a purpose clause in a particular Act can be useful for the better understanding of the intention of the legislature and the object of the Act.

7. ARGUMENTS RELATING TO THE ENACTMENT OF AN EXTRINSIC MATERIALS PROVISION

(a) Special Material

It is now the practice of the Commonwealth, N.S.W. and Victorian Ministers to circulate explanatory memoranda when introducing Bills. Such documents deal with the main purpose of legislation, and are not intended to cover all cases or exceptions. According to Turnbull "it is hard to see how such a document can be of assistance in applying an Act to borderline cases - yet it is only the borderline cases that present the problems" (74).

Lord Wilberforce offered the following view:

"I do not believe that the form of explanatory memorandum which normally accompanies statutes - at least United Kingdom statutes - is likely to do what we want. As the Renton Committee of 1975 (Discussion Paper paragraph 4.11) said, the purpose of these memoranda, which are drafted by civil servants, is to enable busy M.P.s to take a quick look and see broadly what the Bill is about. For this reason they may not contain anything controversial. The judge, and the Bill's customers, or audience, want something different, something much more precise; as one put it, the M.P. needs a picture, the judge needs a Bradshaw." (Symposium at 13).

Criticism of the explanatory memoranda proposal is that they would take more time and care to draft than the Bill and, if accurate, would convey exactly the same meaning as every provision of the Bill. There would be two documents to construe instead of one, a "split-level" statute.

The Committee considers that permitting reference to explanatory memoranda would not necessarily assist in the interpretation of legislation, and may possibly hinder the interpretation process.

(b) Lack of Availability of Materials

There may be a possible lack of availability of materials, particularly Hansard, especially in country areas. However, members of the Law Institute of Victoria said that on consideration, accessibility of materials "was not regarded as being a real problem" (Scutt at 490). It is clear that this comment is substantially directed at Hansard. Many other extrinsic materials such as expert committee reports or Parliamentary reports will be difficult to obtain.

The observations of Lord Reid are pertinent:

"For purely practical reasons we do not permit debates in either House to be cited: it would add greatly to the time and expense involved in preparing cases

involving the construction of a statute if counsel were expected to read all the debates in Hansard, and it would often be impracticable for counsel to get access to at least the older reports of debates in select committees of the House of Commons; moreover, in a very large proportion of cases such a search, even if practicable, would throw no light on the question before the court": Beswick v Beswick [1968] AC 58.

The Committee considers that if a provision were enacted enabling extrinsic materials to be referred to in every case where an ambiguity is alleged there would be problems arising from the lack of availability of most extrinsic materials, particularly in areas outside Darwin.

Further, in the Northern Territory, much existing legislation came into being as a result of an administrative process. It was not passed or debated by any Parliament, but brought into being by proclamation of the Governor-General in Executive Council.

(c) Creating Or Resolving Doubt

Many lawyers believe that use of extrinsic materials will encourage counsel to attempt to discern ambiguities where none is apparent on the face of the statute. While Commonwealth, NSW and Western Australian legislation essentially permit use of such materials only when an ambiguity appears, cases where the extrinsic materials provisions have been used rarely indicate that the apparent ambiguity has been established (see Appendix B).

The Committee considers that replacing the existing common law with a wider ability to introduce extrinsic material would encourage counsel to argue that a provision is ambiguous where no ambiguity is apparent on the face of the Act.

(d) Effectiveness

If extrinsic materials are of no assistance, then they need not take up the time of courts. In Black-Clawson, Lord Simon said that "experience in the United States has tended to show that scrutiny of the legislative proceedings is apt to be a disappointingly misleading and wasteful guide to the legislative intention" (645).

In Commissioner for Prices & Consumer Affairs (SA) v Charles Moore (Aust.) Ltd. (1977) 139 CLR 449 the High Court construed a provision in a way contrary to that which Parliament in fact intended. A disagreement arose between the two Houses of Parliament when the legislation was before the Legislative Council. The purpose of the Bill was to impose credit controls over various organisations. The Council sought to exclude major departmental stores like David Jones and Myers from the scope of the Fair Credits

Reports Act. After negotiation, an amendment was made which, it was clearly believed by the members, had this effect. When the issue came before the High Court, it held (Murphy J dissenting) that the Act included organisations like Myers and David Jones, declining to look at Parliamentary Debates. The case arose in South Australia where the Interpretation Act required a purposive interpretation.

The Committee recognises that there are cases where consulting Hansard would make it clear that Parliament intended an interpretation that is different to the interpretation a court would adopt by reference to the words of a statute alone. However the Committee considers this argument is outweighed by the conclusions reached in paragraphs (b), (c) and (f).

(e) Relevance

The Minister's second reading speech, in introducing the Bill, usually identifies the mischief the Bill is intended to deal with but if one goes beyond that speech, there may be a variety of views concerning the legislation which do not necessarily aid in identifying what Parliament is seeking to do.

The Committee considers that, while what is said in Parliament may be relevant to the general effect of legislation, it is unlikely to assist in the interpretation of particular provisions in most cases. The Committee recognises, however, that there will be cases where resort to Hansard or a report of an expert committee will be relevant to the interpretation of a provision. The Committee considers that the limited ability at common law to refer to expert committee reports, where relevant, does not need to be expanded.

(f) Expression in the Act versus Intention of Parliament

In Black-Clawson Lord Simon said-

"... interpretation cannot be concerned wholly with what the promulgator of a written instrument meant by it: interpretation must also be frequently concerned with the reasonable expectation of those who may be affected thereby. This is most clearly to be seen in the interpretation of a contract: it has long been accepted that the concern of the court is not so much with the subject-matter of consent between the parties (which may, indeed, exceptionally, be entirely absent) as with the reasonable expectation of the promisee. So, too, in statutory construction, the court is not solely concerned with what citizens, through their parliamentary representatives, meant to say; it is also concerned with the reasonable expectation of those citizens who are affected by the statute, and whose understanding of the meaning of what was said is

therefore relevant. The sovereignty of Parliament runs in tandem with the rule of objective law." (645)

To similar effect see Fuller v McLeod [1981] 1 NZLR 390, 395.

This argument is essentially that courts are also concerned with what Parliament has said, and not only with what Parliament intended an Act to say or, at least, what members of Parliament intended it to say.

The Committee considers that the words of a provision, interpreted in the context of the Act as a whole and the purpose of that Act, provide more certainty of meaning than would be achieved by allowing reference to extrinsic material to be made in more instances than the law presently permits.

## 8. RECOMMENDATIONS

(a) Purpose Approach

The Committee concludes that the common law requires courts to interpret provisions of an Act in a manner that is consistent with the object of the Act. The common law enables ambiguous provisions to be interpreted in this light and enables courts to reject a literal interpretation if it is inconsistent with that object. The enactment of a general statutory requirement to interpret a provision of an Act in accordance with the object of the Act would not alter the way, courts interpret legislation. Accordingly the Committee's recommendation is:

Recommendation 1

The Committee recommends that the Interpretation Act not be amended by providing an obligation that, in interpreting legislation, a construction which would promote the purpose or object underlying an Act is to be preferred to a construction that would not promote the purpose or object.

The Committee recognises that it may be desirable, in a particular Act, to include a clause stating the object of the Act. Accordingly, the Committee does not recommend that this practice should be discontinued.

(b) Extrinsic Materials

The Committee concludes that the common law enables many extrinsic materials to be used in the interpretation of provisions of an Act. Accordingly the Committee's recommendation is:

Recommendation 2

The Committee recommends that the Interpretation Act not be amended by providing an obligation or a discretion that any material not forming part of an Act, which is capable of assisting in ascertaining the meaning or purpose of the Act, may or must be given consideration in construing particular provisions of the Act.

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- (e) any explanatory memorandum relating to the Bill containing the provision, or any other relevant document, that was laid before, or furnished to the members of, either House of the Parliament by a Minister before the time when the provision was enacted;
- (f) the speech made to a House of the Parliament by a Minister on the occasion of the moving by that Minister of a motion that the Bill containing the provision be read a second time in that House;
- (g) any document (whether or not a document to which a preceding paragraph applies) that is declared by the Act to be a relevant document for the purposes of this section; and
- (h) any relevant material in the Journals of the Senate, in the Votes and Proceedings of the House of Representatives or in any official record of debates in the Parliament or either House of the Parliament.

(3) In determining whether consideration should be given to any material in accordance with sub-section (1), or in considering the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to—

- (a) 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
- (b) the need to avoid prolonging legal or other proceedings without compensating advantage.

## New South Wales

### *Interpretation 1987*

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#### **Regard to be had to purposes or objects of Acts and statutory rules**

33. In the interpretation of a provision of an Act or statutory rule, a construction that would promote the purpose or object underlying the Act or statutory rule (whether or not that purpose or object is expressly stated in the Act or statutory rule or, in the case of a statutory rule, in the Act under which the rule was made) shall be preferred to a construction that would not promote that purpose or object.

#### **Use of extrinsic material in the interpretation of Acts and statutory rules**

34. (1) In the interpretation of a provision of an Act or statutory rule, if any material not forming part of the Act or statutory rule is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material—

- (a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision (taking into account its context in the Act or statutory rule and the purpose or object underlying the Act or statutory rule and, in the case of a statutory rule, the purpose or object underlying the Act under which the rule was made); or

(b) to determine the meaning of the provision—

- (i) if the provision is ambiguous or obscure; or
- (ii) if the ordinary meaning conveyed by the text of the provision (taking into account its context in the Act or statutory rule and the purpose or object underlying the Act or statutory rule and, in the case of a statutory rule, the purpose or object underlying the Act under which the rule was made) leads to a result that is manifestly absurd or is unreasonable.

PART IV.—PROVISIONS APPLICABLE TO ACTS AND  
SUBORDINATE INSTRUMENTS

**Principles of and aids to interpretation.**

**35.** In the interpretation of a provision of an Act or subordinate instrument—

- (a) a construction that would promote the purpose or object underlying the Act or subordinate instrument (whether or not that purpose or object is expressly stated in the Act or subordinate instrument) shall be preferred to a construction that would not promote that purpose or object; and
- (b) consideration may be given to any matter or document that is relevant including but not limited to—
  - (i) all indications provided by the Act or subordinate instrument as printed by authority, including punctuation;
  - (ii) reports of proceedings in any House of the Parliament;
  - (iii) explanatory memoranda or other documents laid before or otherwise presented to any House of the Parliament; and
  - (iv) reports of Royal Commissions, Parliamentary Committees, Law Reform Commissioners and Commissions, Boards of Inquiry or other similar bodies.

## Interpretation of Legislation Bill 1984

### EXPLANATORY NOTES

The purpose of this Bill is to repeal the *Acts Interpretation Act 1958* and to enact in its place a new and more comprehensive Interpretation Act. The purpose of the Interpretation legislation is to shorten and simplify the language used in Acts of Parliament. Such legislation contains definitions of expressions frequently used in Acts as well as provisions relating to the construction and application of laws generally.

This Bill restates those provisions of the *Acts Interpretation Act 1958* which are still necessary and useful. A large number of those provisions are restated with amendments designed to improve their efficacy. In addition, several new provisions are included in the Bill. In particular, the Bill applies in a very extensive manner to subordinate legislation. The majority of the provisions contained in the *Acts Interpretation Act 1958* have no application to subordinate legislation.

*Clause 35* is a new provision and deals with the principles to be applied in the interpretation of Acts and subordinate instruments and the materials to be taken into consideration for that purpose.

*Paragraph (a)* is based on section 15AA (1) of the *Acts Interpretation Act 1901* of the Commonwealth and requires a purposive approach to be adopted in the interpretation of Acts and subordinate instruments. It provides that in the interpretation of a provision of an Act or subordinate instrument, a construction that would promote the purpose or object underlying the Act or subordinate instrument is to be preferred to a construction that would not promote that purpose or object.

*Paragraph (b)* makes it clear to courts that they may take a range of extrinsic materials into consideration when interpreting Acts and subordinate instruments. The sub-clause lists a number of possible and legitimate aids to construction and provides that courts may have recourse to whatever other materials falling outside that list are considered relevant in the particular case. The sub-clause is intended to encourage courts to examine material not traditionally considered by them in the interpretation of legislation.

18. In the interpretation of a provision of a written law, a construction that would promote the purpose or object underlying the written law (whether that purpose or object is expressly stated in the written law or not) shall be preferred to a construction that would not promote that purpose or object.

Regard to be had to purpose or object.

19. (1) Subject to subsection (3), in the interpretation of a provision of a written law, if any material not forming part of the written law is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material—

Use of extrinsic material in interpretation.

- (a) to confirm that the meaning of the provision is the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law; or
- (b) to determine the meaning of the provision when—
- (i) the provision is ambiguous or obscure; or
  - (ii) the ordinary meaning conveyed by the text of the provision taking into account its context in the written law and the purpose or object underlying the written law leads to a result that is manifestly absurd or is unreasonable.

(2) Without limiting the generality of subsection (1), the material that may be considered in accordance with that subsection in the interpretation of a provision of a written law includes—

- (a) all matters not forming part of the written law that are set out in the document containing the text of the written law as printed by the Government Printer;
- (b) any relevant report of a Royal Commission, Law Reform Commission, committee of inquiry or other similar body that was laid before either House of Parliament before the time when the provision was enacted;
- (c) any relevant report of a committee of Parliament or of either House of Parliament that was made to Parliament or that House of Parliament before the time when the provision was enacted;

- (d) any treaty or other international agreement that is referred to in the written law;
- (e) any explanatory memorandum relating to the Bill containing the provision, or any other relevant document, that was laid before, or furnished to the members of, either House of Parliament by a Minister before the time when the provision was enacted;
- (f) the speech made to a House of Parliament by a Minister on the occasion of the moving of a motion that the Bill containing the provision be read a second time in that House;
- (g) any document (whether or not a document to which a preceding paragraph applies) that is declared by the written law to be a relevant document for the purposes of this section; and
- (h) any relevant material in any official record of proceedings in either House of Parliament.

(3) In determining whether consideration should be given to any material in accordance with subsection (1), or in considering the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, to—

- (a) 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 written law and the purpose or object underlying the written law; and
- (b) the need to avoid prolonging legal or other proceedings without compensating advantage.

South Australia

### Acts Interpretation Act

Construction that would promote purpose or object of an Act to be preferred.

22. (1) Subject to subsection (2), where a provision of an Act is reasonably open to more than one construction, a construction that would promote the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) shall be preferred to a construction that would not promote that purpose or object.

(2) This section does not operate to create or extend any criminal liability.

Commonwealth

*Acts Interpretation Act 1901*

**Regard to be had to purpose or object of Act**

**15AA.** (1) In the interpretation of a provision of an Act, a construction that would promote the purpose or object underlying the Act (whether that purpose or object is expressly stated in the Act or not) shall be preferred to a construction that would not promote that purpose or object.

**Use of extrinsic material in the interpretation of an Act**

**15AB.**<sup>2</sup> (1) Subject to sub-section (3), in the interpretation of a provision of an Act, if any material not forming part of the Act is capable of assisting in the ascertainment of the meaning of the provision, consideration may be given to that material—

- (a) to confirm that the meaning of the provision is 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; or
- (b) to determine the meaning of the provision when—
  - (i) the provision is ambiguous or obscure; or
  - (ii) 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 leads to a result that is manifestly absurd or is unreasonable.

(2) Without limiting the generality of sub-section (1), the material that may be considered in accordance with that sub-section in the interpretation of a provision of an Act includes—

- (a) all matters not forming part of the Act that are set out in the document containing the text of the Act as printed by the Government Printer;
- (b) any relevant report of a Royal Commission, Law Reform Commission, committee of inquiry or other similar body that was laid before either House of the Parliament before the time when the provision was enacted;
- (c) any relevant report of a committee of the Parliament or of either House of the Parliament that was made to the Parliament or that House of the Parliament before the time when the provision was enacted;
- (d) any treaty or other international agreement that is referred to in the Act;

APPENDIX B

(a) Purpose Provision References

(i) Australia

Parke Davis Pty Ltd v Sanofi (1982) 67 FLR 110

(ii) New Zealand

Union Steamship Company v Northland Harbour Board [1980] 1 NZLR 273

Boyd v Auckland City Council [1980] 1 NZLR 337

Champtaloup v Northern Districts Aero Club [1980] 1 NZLR 673.

Lowe v. Commissioner of Inland Revenue [1981] 1 NZLR 326, 342  
Mr Molloy urged us to adopt what he described as a purposive construction ... However, I do not find the reconciliation of general objectives and the quest for the assumptions underlying the new section helpful in determining the precise scope of para (d).

(iii) Canada

Crown Zellerback Canada v. The Queen (1979) 92 DLR (3d) 459

R v McIntosh [1984] 4 WWR 734

Piroth v Kalinocha [1986] WWR 88

(b) Extrinsic Material Provision References

Kirmani v. Captain Cook Cruises Pty. Ltd and Green (1985) 59 ALJR 265, 279 per Wilson J.

"Resort to the Parliamentary debates as encouraged in cases of ambiguity by s.15AB of the Acts Interpretation Act 1901 (Cth), as amended, has not given me any assistance in my consideration of the question. The Hansard materials reveal no awareness of the existence of a problem."

Queensland Electricity Commission v. Commonwealth (1985) 59 ALJR 699, 703 per Gibbs C.J.

"... that this is the meaning of the Act is confirmed by extrinsic material to which regard may be had under s.15AB of the Acts Interpretation Act 1901 (Cth), as amended."

Trade Practices Commission v TNT Management Pty Ltd (1985) 58 ALR 423, 471 per Franki J.

"Senior Counsel for the first, fifth and seventh defendants sought to rely upon a considerable amount of material under the provisions of s.15AB. I have done the best I can with this section, which I find extremely difficult to apply, especially in a case like this where at least some counsel are not easily deterred by the time required to argue a point fully."

## Transport Accident Act 1986

### Purpose.

1. The purpose of this Act is to establish a scheme of compensation in respect of persons who are injured or die as a result of transport accidents.

## Futures Industry (Application of Laws) Act 1986

### Purpose.

1. The purpose of this Act is to make provision for the establishment and maintenance of futures markets, and the making of futures contracts, in Victoria, to provide for the licensing of futures brokers and certain other persons, and for related purposes.

## Mental Health Act 1986

### Objects of Act.

4. (1) The objects of this Act are—
- (a) to provide for the care, treatment and protection of persons who are mentally ill; and
  - (b) to establish a Mental Health Review Board; and
  - (c) to establish a Psychosurgery Review Board; and
  - (d) to provide for the appointment and functions of community visitors; and
  - (e) to ensure that persons who are mentally ill are informed of and make use of the provisions of this Act.

(2) It is the intention of Parliament that the provisions of this Act are to be interpreted and that every function, power, authority, discretion, jurisdiction and duty conferred or imposed by this Act is to be exercised or performed so that—

- (a) persons who are mentally ill receive the best possible care and treatment in the least restrictive environment enabling the care and treatment to be effectively given; and
- (b) in providing for the care and treatment of persons who are mentally ill and the protection of members of the public any restriction upon the liberty of patients and other persons who are mentally ill and any interference with their rights, dignity and self-respect is kept to the minimum necessary in the circumstances.

# AN ACT

Relating to the investigation of offences alleged to have been committed by juveniles, the establishment of the Juvenile Court, the procedures to be adopted in and in relation to proceedings against juvenile offenders, the punishment of juvenile offenders, the transfer of juvenile offenders between the Territory and the States, and for other purposes, with the intention that juveniles be dealt with in the criminal law system in a manner consistent with their age and level of maturity (including their being dealt with, where appropriate, by means of admonition and counselling) and to extend to juveniles the same rights and protections before the law as apply to adults in similar circumstances

[Assented to 28 November 1983]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

## PART I - PRELIMINARY

### 1. SHORT TITLE

This Act may be cited as the *Juvenile Justice Act 1983*.

### WORK HEALTH ACT 1986 (NT)

### 52. ABOLITION OF CERTAIN RIGHTS TO BRING ACTION

(1) Subject to section 189, no cause of action for damages in favour of a worker or a dependant of a worker shall arise or lie against the employer of the worker or the Nominal Insurer in respect of -

(a) an injury to the worker; or

(b) the death of the worker -

(i) as a result of; or

(ii) materially contributed to by,

an injury.

(2) The purpose of subsection (1) is to ensure that, so far as the legislative power of the Legislative Assembly permits, no action for damages at common law shall lie in the Territory or otherwise in the circumstances described in that subsection and nothing in this Act shall be construed as derogating from that purpose.