

1983 - 1984

The Parliament of the Commonwealth
of Australia

Senate

Acts Interpretation Amendment Bill 1984

Explanatory Memorandum

(Circulated by Authority of the Attorney-General,
Senator, The Honourable Gareth Evans, Q.C.)

Notes on Clauses of the Acts Interpretation Amendment Bill 1984

Clause 1 - Formal citation of the Act.

2. Clause 2 provides, except as otherwise stated, for the amendments effected by the Bill to apply to all Acts whether passed before or after the commencement of the Bill.
3. Clause 3 substitutes a new sub-section 3(1) providing that in every Act, the word "commencement" means the time at which the Act or provision comes into operation. The present sub-section refers to an Act as a whole and not to a part.
4. Clause 4 inserts new sections 8A, 8B and 8C dealing with, respectively, implied repeals, the effect of expiration of Acts and references to part of an Act. The proposed sections clarify and expand the operation of existing sections 7 and 8 (effect of repeal of Acts). The new sections will cover what is commonly known as "sunset" legislation.
5. Clause 5 inserts a new section 10A into the Act concerning references in Commonwealth Acts to a law of a State or Territory. The provision deals with the situation where that law is amended or re-enacted along lines similar to those in existing section 10 relating to references to amended or re-enacted Commonwealth Acts.
6. Clause 6 omits sub-section 15AA(2) as a consequence of the insertion of proposed section 15AB. The sub-section was a holding provision that was intended to preserve whatever the existing law was in relation to use of extrinsic materials pending the examination of this topic.

7. Clause 7 inserts new section 15AB, which provides that, if material extrinsic to an Act is capable of assisting in the ascertainment of the meaning of a provision of the Act, consideration may be given to that material in interpreting the provision. It sets forth, in a non-exhaustive way, the main categories of extrinsic materials that can assist in the interpretation of Acts (sub-section 2). Sub-section (3) expresses the view of the Parliament that in applying section 15AB regard shall be had to the matters set forth in the sub-section. The section does not propose that extrinsic material should be used to overturn the ordinary meaning of a provision conveyed by the text of the provision taking into account its context in the Act and the purpose or object underlying the Act unless there is ambiguity or obscurity or the result is manifestly absurd or is unreasonable.
8. Clause 8 inserts a new section 15C in the Act vesting jurisdiction in a court where an enactment provides for civil or criminal proceedings to be instituted in a particular court. This provision appears to be declaratory of the present law.
9. Clause 9 amends section 20 of the Act by extending the operation of that section to all persons who, at any time, occupy an office or position for the time being.
10. Clause 10 amends section 22 by inserting new definitions of financial year, calendar month, calendar year and contravene. It also inserts new sub-section 22(2) which clarifies that references in an Act to companies, bodies corporate or corporations does not imply that references in the Act to persons do not include references to companies, corporations or bodies corporate.
11. At present section 23 of the Act provides that words importing the masculine gender shall include females unless the contrary intention appears and deals with singular and plural references. Clause 11 repeals and

substitutes
/section 23 providing that, unless the contrary intention appears, words importing a gender include every other gender and re-enacts the existing provision regarding singular and plural.

12. Sub-Clause 12(1) updates the penalties in section 24 of the Act and brings them into line with those that, in 1982, were inserted in the Crimes Act 1914.
13. Sub-clause 12(2) clarifies that the amendment made by sub-clause 12(1) applies only to offences committed after the commencement of this Act.
14. Clause 13 substitutes a new section 25 and inserts new sections 25A, 25B, 25C, 25D and 25E dealing with (references in Acts to "documents" and "writing", production of records kept in computers, etc., alterations to names and constitutions, compliance with forms, content of statement of reasons for decisions, and attainment of age respectively.
15. Proposed new section 25 defines what is meant by a document and is intended to cover all advances that have been made in the methods that are used for recording information. The new definitions of "document" and "writing" make reference to modern modes of storing and reproducing words, figures, symbols etc.
16. Proposed 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.
17. Proposed section 25B provides that, where a change is made in the name of a body or the title of an office, the references in any legislation to the former name or title shall be construed in respect of matters that occur after the change, as references to the new name or title.

18. Proposed section 25C provides that where a form is prescribed in an Act, or by a regulation, unless the contrary intention appears, any form which is like or has the effect of the prescribed form will be sufficient for the purposes of the Act or regulation. The inclusion of this provision will remove the need to include such a provision in particular Acts and regulations.
19. Proposed section 25D provides that, where an Act requires the giving of written reasons for a 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 those findings were based (cf. s.28 of the Administrative Appeals Tribunal Act 1975 and s.13 of the Administrative Decisions Judicial Review Act 1977).
20. Proposed sub-section 25E(1) provides that, for the purposes of any Act, the time at which a person attains a particular age, expressed in years, is the commencement of the relevant anniversary of the date of the birth of that person. There is a little known legal rule of ancient lineage that a person attains a particular age at the first moment of the day immediately before the anniversary of his birth. This provision abolishes that rule in the case of references to or in Commonwealth Acts and regulations.
21. Proposed sub-section 25E(2) provides that the operation of sub-section 25E(1) will not come into force until 1 January 1985.
22. An amendment is proposed by Clause 14 of the definition of "Court of summary jurisdiction" in paragraph 26(d) of the Act to include courts of the external Territories.

23. Clause 15 inserts proposed section 28A to deal with service of documents in respect of a natural person and a body corporate.
24. Proposed sub-section 28A(1) specifies the basis upon which valid service can be effected. Proposed sub-section 28A(2) provides that the operation of proposed sub-section 28A(1) will not affect contrary provisions in any other specific legislation, (including State and Territory legislation) dealing with service of documents or the power of a court to authorize service of a document.
25. Clause 16 makes a number of amendments to section 33 of the Act in relation to the exercise of powers and duties. Paragraph 16(a) inserts new sub-sections 33(3A) and 33(3B). Proposed sub-section 33(3A) provides that where an Act confers the power to make an instrument (including rules, regulations or by-laws) in respect of particular matters, such power includes a power to make, grant or issue such instruments in respect of classes of those matters and to make different provisions in respect of different classes or matters.
26. Proposed sub-section 33(3B) provides that where an Act confer a power to make grant or issue any instrument such grant of power shall not preclude, by implication, the power to make provision in respect of a particular aspect of a matter if the Act in question contains a reference to another aspect of that matter or to another matter.
27. Paragraph 16(b) amends sub-section 33(4) by providing for the making of an acting appointment to a vacant office provided such appointment does not exceed 12 months.
28. Paragraph 16(c) is a consequential amendment.

29. Paragraph 16(d) inserts a new sub-section 33(5) which provides that, where an Act empowers the prescribing of penalties, the limitation on the penalties that may be prescribed does not prevent the requirement for the making of a statutory declaration.
30. Clause 17 inserts a new section 34AA which provides, unless the contrary intention appears, that where an Act confers a power the power may be exercised by the holder for the time being of the office.
31. Clause 18 inserts new sections 45A and 45B relating to the effect of alterations in penalties and continuing offences respectively.
32. Proposed sub-section 45A(1) provides that where an Act increases the penalty or maximum penalty for an offence such increase applies only to offences committed after the commencement of the provision increasing the penalty.
33. Proposed sub-section 45A(2) provides that where an Act reduces a penalty or maximum 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.
34. Proposed sub-section 45B(1) provides where an act or thing is required to be done within a particular period then the obligation to do that thing continues until the act or thing is done even though that period has expired.
35. Proposed sub-section sub-section 45B(2) provides that charges against the same person for a number of offences against the same provision of an Act may be included in the same information, complaint or summons if those

charges are founded on the same facts or form, or are part of, a series of offences of the same or a similar character.

36. Proposed sub-section 45B(3) provides that if a person is convicted of 2 or more offences, the court may impose one penalty in respect of both or all those offences but that penalty is not to exceed the aggregate of the maximum penalties that could have been imposed if separate penalties were imposed.
37. Clause 19 is a drafting amendment of section 46 of the Act