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A Comparative Account of Statutory Interpretation in Singapore

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ABSTRACT

In 1993, the Singapore Parliament enacted legislative provisions adapted from Australian legislation directing, inter alia, that the courts apply the purposive approach in statutory interpretation. Those provisions also allowed for the extended use of extrinsic materials in the interpretative process. Fifteen years on, there is now a considerable body of Singapore case law to which a meaningful analysis may be undertaken. Indeed, from an initially cautious application of the enacted legislation, the courts began to read the enactments expansively, eventually providing for a statutory interpretation regime that is largely free of the confines of old. Nonetheless, the Singapore position does lend itself to some unique problems, as there are signs that the courts have in a limited number of cases evinced an intention to reverse the hitherto rather expansive approach. This article provides a brief overview of the evolution of the Singapore position to its present form, before making a brief comparison with parallel developments in Australia, from which Singapore’s provisions originated. It will then attempt to explain the present Singapore position in relation to statutory interpretation as distinguished from that taken in Australia. It is hoped that the account provided in this article will be of comparative interest to jurisdictions which have adopted similar legislative reform and, more broadly, to the enduring problem of the proper approach towards statutory interpretation.

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1. Introduction

Legislation prescribing principles of statutory interpretation are not new or uncommon. Indeed, several jurisdictions in the Commonwealth today have legislation providing for, among others, a particular approach to be taken in interpreting statutes. For example, Australia has sections 15AA and 15AB of the (Australian) Acts Interpretation Act 1901 (Cth) which, respectively, cover the approach to be taken in the interpretation of Commonwealth Acts (and delegated legislation made under such Acts) and the circumstances in which the use of extrinsic materials may be permitted in undertaking such interpretation.1 Provisions based on sections 15AA and 15AB have also been enacted in state and territorial provisions in Australia subsequently.2 The situation is similar in New Zealand, which has section 5(1) of the (New Zealand) Interpretation Act 1999, providing for a purposive approach to be adopted.3 However, there is no provision in New Zealand legislation providing for the circumstances in which extrinsic materials may be referred to; that is a matter left to the courts to resolve.4 As a final example, there is a provision in every Canadian Interpretation Act directing interpreters to give to every enactment ‘such fair, large and liberal construction and interpretation as

1 Sections 15AA and 15AB of the Acts Interpretation Act 1901 are discussed in greater detail below. For present purposes, it ought to be pointed out that section 15AA applies to Commonwealth Acts as well as delegated legislation made under such Acts by virtue of section 13 of the Legislative Instruments Act 2003. Section 15AB applies to Commonwealth Acts as well as delegated legislation made under such Acts under section 46 of the Acts Interpretation Act 1901. A further discussion of these sections can be found below.


3 This particular section directs that the meaning of an enactment must be ascertained from its text and in the light of its purpose and has as its predecessor section 5(7) of the (New Zealand) Interpretation Act 1888. Section 5(7), in turn, subject to few substantive amendments, became section 5(j) of the (New Zealand) Acts Interpretation Act 1924. Section 5(j) provided as follows: ‘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’. Section 5(j) remained the law in New Zealand until the present section 5(1) was enacted: see New Zealand Law Commission, A New Interpretation Act to Avoid ‘Prolixity and Tautology’ (Report No. 17) (Wellington 1990), 20–21. For a commentary on section 5(j), see JF Burrows, Statute Law in New Zealand (2nd edn Butterworths Wellington 1999), 121–42.

best ensures the attainment of its objections’. As with the case in New Zealand, there is no legislative provision in Canada dealing with when extrinsic materials may be referred to. Notwithstanding the prevalence of legislative provisions dealing with statutory interpretation, it is perhaps a little less evident that different jurisdictions also adapt such provisions from one another. In this respect, the New Zealand provisions predating the present section 5(1) were adapted from the Canadian provisions which still exist today. It is quite clear that when these previous sections were enacted, the New Zealand legislature turned to Canadian precedents; the reasons for doing so, however, in the face of other equally possible precedents, are not clear. It is interesting that the adaptation of similar provisions from elsewhere does not necessarily guarantee the identical development of the law. This is perhaps testament to the effect which each unique society has on the evolution of its own laws. Indeed, although New Zealand initially adapted Canadian provisions concerning the approach to be taken in statutory interpretation, it today has quite different legislative provisions from Canada.

These developments elsewhere have not gone unnoticed in Singapore. Singapore, being a former British colony, had attributed great weight to English precedent until fairly recently. Yet, in the area of statutory interpretation, it has adopted an approach

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6 Ibid., 279–302.
7 The (New Zealand) Interpretation Act 1888 had a section 5(7) which read as follows: ‘Every Act, and every provision or enactment thereof, shall be deemed remedial, whether its immediate purport is to direct the doing of anything which Parliament deems to be for the public good, or to prevent or punish the doing of anything which 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’. The provision was later subject to few minor amendments before its long-standing form as section 5(j) of the Acts Interpretation Act 1924. A provision like section 5(j) appeared as early as 1849 in legislation in Upper Canada and since then Canadian provincial legislatures and the Canadian Federal Parliament have consistently enacted similar provisions: see New Zealand Law Commission, above n 4, 21.
8 Ibid.
9 The foundation of the Singapore legal system is English law, owing primarily to the historical origins of modern Singapore, viz., it was a British Colony upon its founding in 1819 until the 1960s. As a result, developments in the English common law have traditionally had a strong influence in Singapore, even after its independence in 1965. However, after the passage of the Application of English Law Act (Cap. 7A, 1994 rev. edn.), which clarified that the English common law shall be applicable in Singapore with such modifications as the local circumstances require, the Singapore courts have begun to exercise some degree of departure from the English decisions: see, generally, A Phang, The Development of Singapore Law: Historical and Socio-Legal Perspectives (Butterworths Singapore 1990); A Phang, ‘Cementing the Foundations: The Singapore Application of English Law Act 1993’ (1994) UBC L Rev 28, 205; and A Phang, ‘Of Generality and Specificity—A Suggested Approach Toward the Development of an Autochthonous Singapore Legal System’ (1989) SAcLJ 1, 68. It is fair to say now that the Singapore courts no longer view themselves strictly bound to the English courts (if, formally speaking, ever); instead the Singapore courts now recognize that English authority, while of some persuasive strength, must never be applied blindly. Thus, A Phang J said in Tang Kin Hwa v. Traditional Chinese Medicine Practitioners Board [2005] 4 SLR 604: ‘… for English law, having been “exported” to so very many colonies in the past, has now to be cultivated with an acute awareness of the soil in which it has been transplanted. It must also be closely scrutinised for appropriateness on a more general level—that of general persuasiveness in so far as logic and reasoning are concerned’. Similarly, the Practice Statement (Judicial Precedent issued 11 July 1994) [1994] Statute L Rev, 689, issued by the Singapore Court of Appeal spoke of the need to ‘recognise that the political, social and economic circumstances of Singapore have changed enormously since [its independence]’ and that ‘the development of our law should reflect these changes and the fundamental values of Singapore society’.
that is both expansive and distinctly independent of the English position. In fact, it had enacted legislative provisions largely similar to the Australian provisions in 1993 by amending the then-existing Interpretation Act\(^\text{10}\) to put in place legislative reform on statutory interpretation. The adaptation of the Australian provisions was done swiftly and without much analysis of other parallel legislative provisions in, for example, New Zealand and Canada. Yet, it is undeniable, given the similarity in the legislative wording, that there is a historical nexus between the Singapore and Australian provisions. Today, 15 years later, there now exists a considerable body of Singapore case law of which a meaningful analysis of its statutory interpretation approach may be undertaken. The situation in Singapore is interesting not only for its own sake but also as a point of comparison with other jurisdictions, especially the Australian approach, from which Singapore based its 1993 legislative reform on. The purpose of this article, therefore, is to first provide a brief update of the present Singapore approach to statutory interpretation. It will then compare this with the Australian approach\(^\text{11}\) to see if, as in the Canada–New Zealand example, there is now departure in approach notwithstanding the similarity in legislative wording and origin. The article will then conclude by attempting to explain any differences between the current approaches in Singapore and Australia by highlighting the differences which exist between the two jurisdictions.

\section*{2. Background to the Present Singapore Statutory Interpretation Approach}

Before outlining the present Singapore statutory interpretation approach, it may be useful to briefly recount the background leading to the 1993 legislative reform. Fifteen years ago, the Singapore Parliament in 1993 swiftly passed the Interpretation (Amendment) Act 1993, enacting into law statutory provisions\(^\text{12}\) within the then-existing Interpretation Act, heralding in by way of legislative reform a new era of statutory interpretation in Singapore. The background to the aforementioned legislative reform was that the Interpretation (Amendment) Bill was first introduced in Parliament on 18 January 1993, where it was ordered to be read a

\textsuperscript{10} (Cap. 1, 1985 rev. edn.). Since 1993, the Interpretation Act has been amended several times, but mainly indirectly due to amendments to other Acts. The only time when it was amended directly and substantively was in 1998 via the Interpretation (Amendment) Act 1998 (No. 22 of 1998), which inserted section 2A, which in turn concerned the criteria for determining death, into the Act. Owing to the social importance of this amendment, there was a select committee report on the Interpretation (Amendment) Bill (No. 17 of 1997) (see Parliamentary Debates Singapore, Official Report, vol. 69, No. 9, at cols. 502–9) although there was no similar report for the insertion of sections 9A(1)–(4) in 1993. The present edition of the Act is the 2002 revised edition but the chapter number remains unchanged.

\textsuperscript{11} While the Australian approach to statutory interpretation would rightly include a discussion of all state and territorial approaches as well, the primary focus of this article will be on the effect of the Commonwealth statute, viz., sections 15AA and 15AB of the Acts Interpretation Act 1901.

\textsuperscript{12} The provisions concerned were sections 9A(1)–(4) of the Interpretation Act (Cap. 1, 1985 rev. edn). The present edition of the Interpretation Act is the 2002 revised edition. The amending Act to the 1985 edition of the Interpretation Act was the Interpretation (Amendment) Act 1993 (No. 11 of 1993).
second time at the next available parliamentary sitting. The Bill was then read a second and third time on 26 February 1993 and passed into law, coming into effect on 16 April 1993. Altogether, the entire legislative process took less than three months. The pertinent sections enacted (or, more accurately, amended into the existing Interpretation Act) were as follows:

**Purposive interpretation of written law and use of extrinsic materials**

9A—(1) In the interpretation of a provision of a written law, an interpretation 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 an interpretation that would not promote that purpose or object.

(2) Subject to subsection (4), 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—

(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 ascertain 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 unreasonable.

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

(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 explanatory statement relating to the Bill containing the provision;

(c) the speech made in 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 Parliament;

(d) any relevant material in any official record of debates in Parliament;

any treaty or other international agreement that is referred to in the written law; and
any document that is declared by the written law to be a relevant document for the purposes of this section.

In determining whether consideration should be given to any material in accordance with subsection (2), or in determining the weight to be given to any such material, regard shall be had, in addition to any other relevant matters, 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 written law and the purpose or object underlying the written law; and

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

The rather short legislative proceedings provided few clues as to the object and purpose behind the enactment of these sections. All that can be deciphered with any confidence is that the legislative reform addressed three broad issues, namely, first, the approach to be taken by the courts in interpreting statutes; secondly, the circumstances in which extrinsic materials may be referred to in interpreting statutes; and thirdly, the type of extrinsic materials which may be referred to. If at all, the minister’s speech at the Second Reading of the Interpretation (Amendment) Bill 1993 highlighted the purposive approach as being the ‘main amendment’ so as to result in the promotion of the ‘underlying purpose behind the legislation’. To a member’s suggestion that the ‘mythical’ legislative intent was really attributable to the draftsman who drafted the words, the minister disagreed, stating that ‘in this Government, in this Cabinet, the decisions and the intentions are made by Cabinet and the Ministers which compose the Cabinet’. As for the circumstances in which the courts may make use of extrinsic materials, the minister referred to the House of Lords decision of Pepper (Inspector of Taxes) v. Hart but perhaps inadvertently left out the effect of section 9A(2) in his speech. He said that the amendments were to ‘enable the Courts to have recourse to the use of Ministerial statements made in Parliament when interpreting any statute in order to ascertain the intention of Parliament should the statute be ambiguous or obscure in its purpose or if a literal reading of the statute would lead to an absurdity’. Whether fully intended or not, this ignored the use of extrinsic materials when the statutory provision

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14 Ibid., col. 517.
15 Ibid.
16 Ibid., col. 518. The member had in fact compared the intention of Parliament to a ‘mythical beast’.
17 See above n 13, col. 519.
19 Ibid., col. 517.
concerned was neither ambiguous nor would lead to an absurdity, whereas the new section 9A(2)(a) quite clearly conferred a confirmatory use of extrinsic materials even when there was no ambiguity or absurdity. Above all, however, the minister made it quite clear that in an age when the courts are flooded with ‘ever increasing legislation of a complexity and variety not encountered before’, the courts must have recourse to such extrinsic materials to ‘make well reasoned decisions’ and that such materials ‘may well be crucial to [the courts’] deliberations’.

Nonetheless, the timing and the context in which the legislative reform took place were perhaps satisfactorily indicative of the underlying reasons. First, the legislative reform took place shortly after the seminal House of Lords decision of Pepper v. Hart, which permitted recourse to extrinsic materials in statutory interpretation under limited circumstances. It is noteworthy that the Singapore courts were very quick to cite Pepper v. Hart as authority to support references to extrinsic materials shortly after it was decided. In Public Prosecutor v. Lee Ngin Kiat and Tan Boon Yong v. Comptroller of Income Tax, both decided within the short five-month period between Pepper v. Hart was decided and the 1993 legislative reform, the Singapore High Court and the Singapore Court of Appeal both, respectively, cited Pepper v. Hart in support of its reference to extrinsic materials, which, in both cases, included the relevant minister’s Second Reading speech.

Given the enthusiasm of the courts in embracing the new English common law approach, perhaps the Singapore Parliament was keen to legislatively endorse this approach, thereby adding a further sense of authority. Secondly, the 1993 legislative reform was effected at a time when there was no tolerably consistent approach to statutory interpretation by the Singapore courts. For instance, although the High Court in Low Gim Siah v. Law Society of Singapore, a decision before the 1993 legislative reform, examined the prevailing common law interpretative approaches before deciding to use the purposive approach, that...
decision must be considered in the context of other decisions following other interpretative approaches.\textsuperscript{28} The same uncertainty existed for the use of extrinsic materials in aid of interpretation. The Singapore Parliament evidently wanted to provide an authoritative direction in the face of conflicting approaches. Thirdly, caught in a time of similar developments elsewhere, especially similar legislation adopted in Australia and New Zealand, the Singapore Parliament might have wanted to adopt an approach which it perceived as being widely accepted around the Commonwealth. In the final analysis, however, the speed by which the Singapore Parliament was able to pass these enactments into law made it difficult to appreciate the detailed reasons behind the 1993 legislative reform.\textsuperscript{29} Nonetheless, in the years which followed, the Singapore courts took it upon themselves to expound upon the proper application of these new provisions in the Interpretation Act. What emerged was a considerable body of case law outlining a distinctively unique Singapore position. Three broad issues arise for consideration, and the next part of this article discusses each in turn.

3. The Present Singapore Statutory Interpretation Approach

(A) Purposive Approach

The first issue is the effect of section 9A(1) of the Interpretation Act in Singapore. This section directs that the courts adopt a purposive approach in statutory interpretation. After the 1993 legislative reform, the Singapore courts have stated the purposive approach to be the dominant interpretative approach to be used. In one of the most comprehensive survey of the law relating to section 9A of the Interpretation Act, V. K. Rajah JA in the Singapore High Court decision of \textit{Public Prosecutor v. Low Kok Heng}\textsuperscript{30} stated that in Singapore, any discussion on the construction of statutes takes place against the backdrop of that particular section.\textsuperscript{31} The learned judge opined that section 9A(1) ‘mandated’ a construction promoting legislative purpose to be preferred over one that does not promote such purpose or object.\textsuperscript{32} Accordingly, in Rajah JA’s view, any common law interpretative approach, such as the plain meaning rule and the strict construction rule, must yield to the purposive

\textsuperscript{28} For example, in \textit{Wah Tut Bank Ltd v. Chan Cheng Kum} [1972–1974] SLR 335 the Singapore High Court adopted the ‘plain and ordinary meaning’ of a certain statutory provision without (expressly) considering either the purpose or intention behind the statute. Similarly, in \textit{The ‘Permina 108’} [1975–1977] SLR 221 the Singapore Court of Appeal gave the statutory provision concerned its ‘plain and ordinary meaning’ because the words were ‘free of any ambiguity’ and ‘not reasonably capable of more than one meaning’. The Court of Appeal subsequently declined to consider extrinsic materials in the form of an international treaty to interpret the statutory provision concerned.


\textsuperscript{30} [2007] 4 SLR 183.

\textsuperscript{31} Ibid. at [39].

\textsuperscript{32} Ibid. at [41].
approach.\textsuperscript{33} Rajah JA’s views echo many cases decided before Public Prosecutor v. Low Kok Heng,\textsuperscript{34} including the important decision of the Singapore Court of Appeal in Planmarine AG v. Maritime and Port Authority of Singapore.\textsuperscript{35} It is fair to say that the purposive approach has taken root in Singapore following the enactment of section 9A(1). Indeed, a great many terminologies have been used to express this purposive approach, for example: to ‘ascertain the true legislative intention’,\textsuperscript{36} ‘to put Parliament’s intention into effect’,\textsuperscript{37} ‘to give effect to the intention of the legislature’,\textsuperscript{38} ‘to give effect to the intent and will of Parliament’,\textsuperscript{39} or simply that the court ‘should prefer an interpretation that will promote the purpose or object underlying the [Act concerned] (thereby replicating the words of section 9A(1))’.\textsuperscript{40} The general approach seems to be broadly that it is the legislative intent that must be given effect to.

Yet, despite this largely consistent front, there exists beneath the surface difficulties which require more specific consideration. First, there may be some conceptual misunderstanding of the true meaning of the purposive approach. In

\textsuperscript{33} Ibid. See also [44], wherein the learned judge referred to section 9A(2) of the Interpretation Act and held that the reference there to the reference to extrinsic materials when confirming or ascertaining that the meaning of the statutory 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’ is an unequivocal rejection of the literal rule and/or any other approach suggesting that the purpose or object can be considered only when the ordinary meaning is obscure or ambiguous. However, the position was never as clear at the start. Indeed, it was at first thought that ambiguity or absurdity was required before the purposive approach could be resorted to. In Comptroller of Income Tax v. GE Pacific Pte Ltd [1994] 2 SLR 690, the Court of Appeal concluded that the words of the statutory provision concerned were ambiguous before it became ‘necessary to search elsewhere for the intention of Parliament’. This suggests the prerequisites of ambiguity or absurdity. Such a position was unequivocally confirmed by the High Court in Re How William Glen [1994] 3 SLR 474, in which GP Selvam J decided that ‘[t]he first rule for the understanding of the words of a statute is the plain meaning of the rule [sic]’ (at 478). Although the judge said that he was ‘mindful’ of section 9A, he thought that that section did not affect the common law position and therefore the courts could not resort to the purposive approach if the words of the statute are unambiguous. The proper position was only clarified in Constitutional Reference No. 1 of 1995 [1995] 2 SLR 201.


\textsuperscript{35} [1999] 2 SLR 1.

\textsuperscript{36} See, for e.g. Raffles City Pte Ltd v. Attorney General [1993] 3 SLR 580 at 585.

\textsuperscript{37} See, for e.g. Comptroller of Income Tax v. GE Pacific Pte Ltd [1994] 2 SLR 690 at 698. For a similar expression, see, for e.g. L & W Holdings Pte Ltd v. Management Corporation Strata Title Plan No. 1601 [1997] 3 SLR 905 at [21]; Nicholas Kenneth v. Public Prosecutor [2003] 1 SLR 80 at [24]; and Rightrac Trading v. Ong Soon Heng [2003] 4 SLR 505 at [28].

\textsuperscript{38} See, for e.g. Tan Lim Tian v. Public Prosecutor [1994] 3 SLR 33 at 48.

\textsuperscript{39} See, for e.g. Constitutional Reference No. 1 of 1995 [1995] 2 SLR 201 at 210; and Public Prosecutor v. Heah Lian Khin [2000] 3 SLR 609 at [45].

some cases, the courts have stated that the purposive approach allows for the recourse to extrinsic materials. For instance, in *Public Prosecutor v. Low Kok Heng* itself, Rajah JA stated that the purposive approach ‘allows the judge the latitude to look beyond the four corners of the statute, should he find it necessary to ascribe a wider or narrower interpretation to its words’.\(^{41}\) As would be appreciated, strictly speaking, that is not entirely accurate since there are really two issues involved here: the purposive approach concerns the ‘method’ statutory provisions are to be interpreted, whereas the recourse to extrinsic materials concerns the ‘materials’ which may be referred to in carrying out the purposive interpretative approach.\(^{42}\) Secondly, it appears relatively unsettled what the purposive approach allows the courts to do. Specifically, the line between ‘interpreting’ a statutory provision and ‘rewriting’ the provision (i.e. by adding or subtracting to the legislative words) appears to be unclear. While Rajah JA was adamant in *Public Prosecutor v. Low Kok Heng* that the purposive approach does not allow for the interpretation of statutory provisions so as to go against all possible and reasonable interpretation of the express literal wording of the provision,\(^{43}\) the position is not clear. Indeed, this robust declaration must be contrasted with other decisions, particularly the one from the Constitution of the Republic of Singapore Tribunal\(^{44}\) in *Constitutional Reference No. 1 of 1995*,\(^{45}\) which seemingly accepted the argument that the courts are allowed to ‘to modify or reject the literal meaning of any provision to give effect to [the statutory] purpose or object, and to change the legislative words to achieve that purpose or object, once the intention of Parliament was ascertained’.\(^{46}\) More relevantly, the Singapore High Court has in at least one decision, under the articulated reason of advancing the legislative intent, actually introduced concepts into a statute not expressly provided for.\(^{47}\)

\(^{41}\) [2007] 4 SLR 183 at [30].

\(^{42}\) Although cf the decision of the Singapore Court of Appeal in *The ‘Seaway’* [2005] 1 SLR 435, where the Court held that a purposive approach would ‘invariably’ (but not always) involve reference to extrinsic materials. This appears to be an implicit acknowledgement of the distinction between the issue of the purposive approach on the one hand and the issue of the circumstances in which references to extrinsic materials may be allowed on the other hand.

\(^{43}\) [2007] 4 SLR 183 at [50]. See also *Nation Fittings (M) Sdn Bhd v. Oystertec Plc* [2006] 1 SLR 712 at [27] and *Tan Kiam Peng v. Public Prosecutor* [2008] 1 SLR 1 at [59].

\(^{44}\) The Tribunal is formed pursuant to Art. 100 of the Constitution of the Republic of Singapore (1999 rev. edn.). Art. 100(1) provides that the President of Singapore may refer to a tribunal consisting of not less than three judges of the Supreme Court for its opinion any question as to the effect of any provision of this Constitution which has arisen or appears to him likely to arise. As such, the Tribunal technically does not form part of the mainline court system but yet consists of the same members as the Court of Appeal. Therefore, it is fair to say that its decisions have great persuasive strength in Singapore.

\(^{45}\) [1995] 2 SLR 201.

\(^{46}\) [1995] 2 SLR 201 at 205.

\(^{47}\) In *Public Prosecutor v. Knight Glenn Jegasingam* [1999] 2 SLR 499, the ‘without prejudice’ rule contained in section 23 of the Evidence Act (Cap. 97, 1997 rev. edn.) (which applies to civil proceedings) was applied to criminal proceedings on the basis that the Evidence Act was a ‘facilitative statute’ which permitted the introduction of ‘common law rules not expressly provided for under the … Act’ in accordance with ‘the will and intent of Parliament’ (at 518–9). However, this is a problematic view of the ‘purposive approach’ in that it effectively allows for the introduction of something not contemplated by the statutory words; to make matters worse, plea bargaining in criminal cases was a concept unknown at the time the Evidence Act was enacted. At the very least, it can be said that the court did not explain satisfactorily a view of the purposive approach which allowed it to do as it did.
Thirdly, it is not certain whether the purposive approach gives way to ‘other’ common law principles of statutory interpretation in cases concerning penal statutes. In *Public Prosecutor v. Low Kok Heng*, Rajah JA endorsed a line of Singapore cases which provide for the adoption of the ‘strict construction approach’ in relation to penal statutes when the literal and purposive interpretations of the provision concerned nonetheless leave the meaning in ambiguity. This presupposes that there might be cases in which the legislative intent is absent or indiscernible and would also go against Rajah JA’s own view in *Public Prosecutor v. Low Kok Heng* that ‘[a]ll written law (penal or otherwise) must be interpreted purposively’. Fourthly, though this does not really count as a ‘problem’, the courts are not clear whether it is the general purpose of the statute or the specific purpose behind a specific statutory provision that they should be concerned with. The greater trend, on balance, appears to be for the cases to focus on the purpose behind a ‘particular’ statutory provision. For example, in *Public Prosecutor v. Keh See Hua*, Yong Pung How CJ was able to locate an extract of the minister’s Second Reading speech to construe the purpose of section 5(8) of the Employment of Foreign Workers’ Act. In the final analysis, the broad effect of section 9A(1) resulting in the widespread adoption of the purposive approach must therefore be viewed with an eye on the difficulties just discussed.

**(B) Circumstances In Which Reference to Extrinsic Materials Permitted**

Moving on to the second issue of concern, this relates to the circumstances in which reference to extrinsic materials is permitted following the enactment of section 9A of the Interpretation Act. The position in Singapore has, once again, been authoritatively restated by Rajah JA in *Public Prosecutor v. Low Kok Heng*. In that case, the learned judge emphasized that extrinsic materials may be referred to by the courts in statutory interpretation even where the meaning of the provision concerned is clear in its face. This proposition is, of course, well supported by section 9A(2), which allows for both the confirmation of a meaning reached (under which no ambiguity or absurdity is required) and the ascertaining of meaning (under which no ambiguity or absurdity is required). Such clarity was, however, not as evident just less than a decade ago. In the first case to interpret section 9A,
Raffles City Pte Ltd v. Attorney General.\textsuperscript{54} L. P. Thean J seemed to refer only to the ascertainment aspect of section 9A(2) and opined that section 9A(2) ‘allows the courts, in appropriate cases, to have recourse to additional materials … to ascertain the meaning of a statutory provision’.\textsuperscript{55} There was no mention of the confirmatory aspect of section 9A(2) even though Thean J made no express finding of ambiguity or obscurity. The early trend in the decisions was thus to only pay heed to section 9A(2)(b), which provides for the ascertainment function of extrinsic materials in the event of ambiguity or absurdity, but to completely disregard the confirmatory aspect of section 9A(2)(a). Ironically, while the courts increased their focus on interpreting statutory provisions in their proper context, they had failed to appreciate that section 9A(2) did not require ambiguity or absurdity for extrinsic materials to be used.\textsuperscript{56} In fact, in Re How William Glen,\textsuperscript{57} the position curiously came to be resolved unequivocally in favour of the position that ambiguity and absurdity were essential prerequisites prior to the reference to extrinsic materials.

The position only came to be corrected in Constitutional Reference No. 1 of 1995, in which the Tribunal repeated, but did not expressly adopt, the Attorney General’s argument that section 9A enabled the Tribunal to ‘look at all legislative materials to ascertain the meaning of any provision of a written law, whether or not that provision was ambiguous’.\textsuperscript{58} The first case to unequivocally clarify the uncertainty in this regard appears to be the Singapore High Court decision of ACS Computer Pte Ltd v. Rubina Watch Co (Pte) Ltd,\textsuperscript{59} in which Warren Khoo J referred to sections 9A(2)(a) and 9A(2)(b),\textsuperscript{60} thereby taking into account the ascertainment function of section 9A(2). The ascertainment function of section 9A(2), of course, does not require there to be ambiguity or absurdity to operate. In Planmarine AG v. Maritime and Port Authority of Singapore, the Singapore Court of Appeal finally referred to sections 9A(2)(a) and 9A(2)(b) separately and affirmed the confirmatory function of section 9A(2)(a).\textsuperscript{61} The ambiguity in relation to the use of extrinsic materials appears to have been further cleared up in later cases,\textsuperscript{62} although there remains the occasional statement from the courts which adds a degree of confusion to the entire issue. For instance, in Progress Software Corporation (S) Pte Ltd v. Central Provident Fund Board,\textsuperscript{63} the Court of Appeal stated that section 9A(2) provides that extrinsic materials should be used only where the statutory provision is ambiguous, obscure, or leads to ambiguity.

\textsuperscript{54} [1993] 3 SLR 580. This decision was also noted by Beckman and Phang, above n 27.
\textsuperscript{55} Ibid. at 587 (emphasis added).
\textsuperscript{56} See also, for e.g. Public Prosecutor v. Keh See Hua [1994] 2 SLR 277 at 280 where mention was made to only the ascertainment function of section 9A(2), although the court did find an ambiguity in the interpretation of section 5(8) of the Employment of Foreign Workers’ Act (Cap. 91A, 1991 rev. edn.), the statutory provision concerned.
\textsuperscript{57} [1994] 3 SLR 474.
\textsuperscript{58} [1995] 2 SLR 201 at 205.
\textsuperscript{59} [1998] 1 SLR 72.
\textsuperscript{60} [1998] 1 SLR 72 at [18].
\textsuperscript{61} [1999] 2 SLR 1 at [22].
\textsuperscript{62} See, for e.g. American Express Bank Ltd v. Abdul Manaff bin Ahmad [2003] 4 SLR 780; The ‘Seaway’ [2004] 2 SLR 577; and The ‘Seaway’ [2005] 1 SLR 435.
\textsuperscript{63} [2003] 2 SLR 156.
Finally, the third issue concerns the types of extrinsic materials referable following the enactment of section 9A. In this regard, there generally appears to be no closed list as to the type of extrinsic materials referable. Indeed, it seems that the courts take the general view that section 9A(3), which provides some examples of the types of extrinsic materials referable, is not exhaustive and therefore a wide range of materials can be referred to. This approach was confirmed by the Singapore High Court in ACS Computer Pte Ltd v. Rubina Watch Co (Pte) Ltd, in which Khoo J held that the list of materials set out in section 9A(3) ‘is not exhaustive’ and that the ‘general provision’ of the section ‘allows reference to any material capable of assisting in the ascertainment of the meaning of the provision in the circumstances stated in [section] 9A’. Thus, under section 9A(3)(b), the courts have made several references to explanatory statements relating to the Bill concerned. As for section 9A(3)(c), which allows for reference to the Second Reading speech, the courts have made full use of this section. For section 9A(3)(d), which allows for reference to ‘any relevant material in any official record of debates in Parliament’, the courts have mainly referred to general comments of ministers prior to the introduction of the statute being interpreted and simply extracts of debates. Under section 9A(3)(f) read together section 9A(3), which does not limit the extrinsic materials referable, the courts have referred to previous manifestations of the Act concerned (whether local or foreign), Select

64 [1998] 1 SLR 72 at [19].
67 See, for e.g. Raffles City Pte Ltd v. Attorney General [1993] 3 SLR 580.
69 This is especially so to trace the legislative history of an Act, on the presumption that Parliament’s intention at the time of enactment endured until express parliamentary amendment: see, for e.g. American Express Bank Ltd v. Abdul Manaff bin Ahmad [2003] 4 SLR 780 and The ‘Seaway’ [2005] 1 SLR 435. However, in The ‘Seaway’ [2004] 2 SLR 577, the High Court remarked that ‘[e]xcept where a statute reveals a contrary intention, every statute must always be interpreted as an “always speaking statute”’ (at [32]).
Committee reports,70 Law Revision Committees’ reports,71 case law,72 academic commentaries,73 and even diplomatic notes exchanged in relation to international conventions.74 Indeed, it has even been implied that there is nothing to differentiate between the types of extrinsic materials referable and that the court has to determine which material better assisted the court in construing the statutory provision concerned.75 In many cases, references have been made to extrinsic materials without considering section 9A(3).76

However, there appears to be a concurrent line of cases which seek to limit the type of extrinsic materials referable. In Lee Kwang Peng v. Public Prosecutor,77 the Singapore High Court stated that section 9A(3) did not warrant the use of academic texts in construing the intention of Parliament as academic texts and the private works of draftsmen were ‘conspicuously absent’ from the list of extrinsic materials provided in section 9A(3).78 Yet another instance of a decision attempting to limit the extrinsic materials referable is Taw Cheng Kong v. Public Prosecutor,79 in which M. Karthigesu JA held that it was not correct to rely on earlier material to interpret subsequent legislation as if the subsequent legislation was tailored from a retrospective standpoint to fit in seamlessly with the earlier Act. He referred to sections 9A(3)(b) and 9A(3)(c) of the Interpretation Act as permitting only reference to explanatory statements or speeches relating to the Bill in

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71 This includes foreign reports, particularly when the local statute had its origins in a foreign statute: see, for e.g. Public Prosecutor v. Heah Lian Khin [2000] 3 SLR 609 and Lee Chez Kee v. Public Prosecutor [2008] SGCA 20.


74 See, for e.g. The ‘Seaway’ [2004] 2 SLR 577.

75 The ‘Seaway’ [2005] 1 SLR 435.

76 See, for e.g. Lee Chez Kee v. Public Prosecutor [2008] SGCA 20.

77 [1997] 3 SLR 278.

78 [1997] 3 SLR 278 at [46]. At least one commentator has supported Yong CJ’s approach in Lee Kwang Peng v. Public Prosecutor, by pointing to the absence of any reference by the minister in the Second Reading speech of the Interpretation (Amendment) Bill in 1993 to any other extrinsic material apart from parliamentary materials and explanatory statements. See Low, above n 29, 187.

question, and thereby found support for his proposition that when interpreting an amendment to an Act, the court must look not to the explanations to the Act itself, but the explanations to the amendment. Although the learned judge stated that he was aware of the wide ambit of section 9A(3)(d), he did not think it wise to set a precedent for the unregulated use of original material in construing a subsequent amendment.

The above thereby sets out and explains the general statutory interpretation approach in Singapore. Generally speaking, the Singapore courts have adopted a fairly broad and expansive interpretation of section 9A. First, the purposive approach is regarded as being mandatory in all cases of statutory interpretation. The courts have been more active than ever to search for the ‘legislative intent’ in most cases, although there appears to be some doubt as to whether the purposive approach applies fully in cases involving the interpretation of penal statutes. Secondly, there appears now to be no limit to the circumstances in which recourse to extrinsic materials is permitted. The courts no longer draw the distinction between sections 9A(2)(a) and 9A(2)(b) of the Interpretation Act which, strictly speaking, allow for different uses of the extrinsic materials depending on which subsection is invoked. Extrinsic materials are referred to and used expansively without a considered discussion of the actual ambit of section 9A(2). Thirdly, while there is a countervailing force seeking to restrict the type of extrinsic materials referable, the predominant view appears to be that there is no real limit and the courts have indeed referred to a whole list of materials, sometimes without expressly considering whether these are ‘actually’ useful in interpreting the

81 [1998] 1 SLR 943 at 961. See also Volkswagen Financial Services Singapore Ltd v. Public Prosecutor [2006] 2 SLR 539, where Yong CJ in the High Court stated that ‘[p]arliamentary debates are not necessary if the wording of the statute is clear’. He then stated his concern that it was a worrying trend that lawyers were citing parliamentary speeches even when the statutory provision concerned was clear (at [46]–[47]). Prima facie, Yong CJ’s remarks would seem to contradict Rajah JA’s remarks in Low Kok Heng that no ambiguity or absurdity be necessary for recourse to extrinsic materials, and the learned judge was alive to the problem as he sought to rationalize Yong CJ’s remarks in Volkswagen Financial Services by saying that there was a ‘relevancy’ test before extrinsic materials may be relied on. Rajah JA thought that extrinsic materials had to be ‘relevant’ before they could be relied upon. It is respectfully submitted, based on the foregoing analysis relating to the prerequisite in section 9A(2) that such a requirement is not needed. Indeed, the key to understanding Yong CJ’s statement is to appreciate that there were two separate issues at play: first, the circumstances when a court could turn to (or ‘consider’) extrinsic materials and second, under those circumstances, the weight which the court should accord to the extrinsic materials. Viewed holistically, perhaps what Rajah JA (and, to some extent, Yong CJ) had in mind when he spoke of ‘relevancy’ was the subsequent weight the court could ascribe to the extrinsic materials after it had evaluated its relevancy by way of prior consideration. Viewed this way, the purported test of ‘relevancy’ finds no place in the scheme of section 9A(2). Indeed, reading the Minister’s Second Reading speech for the Interpretation (Amendment) Bill 1993, it is not at all clear that the legislative intent was that a limit should be placed on the circumstances in which extrinsic materials are referable. The court can choose not to place any weight on the extrinsic materials placed before it, but this is not to say that there is a rule against reliance where such materials are ‘irrelevant’. On one reading, indeed, it could be said that Yong CJ’s dicta in Volkswagen Financial Services is inconsistent with section 9A(2). Therefore, it is suggested that there be no relevancy criteria read into section 9A(2) when the section is quite clear that there is no conceivable circumstances in which extrinsic materials cannot be considered (as opposed to used).
statutory provision at hand. Most tellingly, section 9A(4), which places a limit on the use of extrinsic materials, has only been expressly referred to in two decisions, namely, Constitutional Reference No. 1 of 1995 and Planmarine AG v. Maritime and Port Authority of Singapore. Yet, in neither of these decisions was section 9A(4) actually comprehensively explained nor expressly invoked. It would be fair to say that section 9A(4) has never been expressly used by a Singapore court before. In the final analysis, the Singapore approach is based on broad rules as opposed to a more sophisticated consideration of the nuances of section 9A. For now, these broad approaches will be compared with the approach in statutory interpretation in Australia. The comparison with the Australian approach is especially interesting since section 9A of the Interpretation Act was in fact based on the equivalent sections in Australian legislation.

4. Comparison with the Australian Statutory Interpretation Approach

(A) Background to the Australian Statutory Interpretation Approach

In order to appreciate the possible differences in the treatment of certain issues in Australia, it is necessary to set out the legislative differences which exist between both jurisdictions. In both jurisdictions, there exists legislation providing for the adoption of certain principles of statutory interpretation. In Singapore, this, as discussed above, is section 9A of the Interpretation Act. In Australia, it is sections 15AA and 15AB of the Acts Interpretation Act 1901 (Cth). The Commonwealth Parliament introduced these sections in 1981 and 1984 following symposia which pushed for their adoption. The 1981 symposium led to the introduction of the new section 15AA in Parliament. In the second reading speech introducing the legislation, it was said that the purpose of section 15AA was to ‘confirm that in interpreting provisions regard is to be had to the object or purpose underlying the Act in question’, as well as to prevent the overly legalistic approach taken by the courts of the time. On the other hand, section 15AB was expressed to be Parliament’s ‘clear lead’ as to the way which extrinsic materials are to be used. Following the enactment of sections 15AA and 15AB in the Commonwealth

82 These sections first found life in two symposia, namely Another Look at Statutory Interpretation, AGPS, Canberra, 1982 and Symposium on Statutory Interpretation, AGPS, Canberra, 1983. The (more) detailed parliamentary background to these provisions were Parliamentary Debates 1981 (Senate) at 2308–15 (28 May 1981); Parliamentary Debates 1981 (House of Representatives) at 2893–4 (2 June 1981); Parliamentary Debates 1984 (Senate) at 582–3 (8 March 1984) and 955–64 (30 March 1984); and Parliamentary Debates 1984 (House of Representatives) at 1287–8 (3 April 1984), 1746–9 and 1790–6 (3 May 1984). See also Parliamentary Debates 1982 (Senate) at 1483–6 (14 October 1982) and Parliamentary Debates 1983 (Senate) at 3028–30 (30 November 1983). Also see the very useful account provided by DC Pearce and RS Geddes, Statutory Interpretation in Australia (6th edn, LexisNexis Butterworths Sydney 2006) at 29–38 and 78–113.


legislation, various state and territorial legislation were enacted as well. For completeness, the sections are set out below:

**Acts Interpretation Act 1901—section 15AA**
**Regard to be had to purpose or object of Act**

(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.

**Acts Interpretation Act 1901—section 15AB**
**Use of extrinsic material in the interpretation of an Act**

(1) Subject to subsection (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 ascertaining 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 subsection (1), the material that may be considered in accordance with that subsection 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;

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85 The state and territorial provisions based on section 15AA are as follows: Interpretation Act 1987 (NSW) section 33; Interpretation of Legislation Act 1984 (Vic) section 35(a); Acts Interpretation Act 1954 (Qld) section 14A; Acts Interpretation Act 1915 (SA) section 22; Interpretation Act 1984 (WA) section 18; Acts Interpretation Act 1931 (Tas) section 8A; Legislation Act 2001 (ACT) section 139; and Interpretation Act (NT) section 62A. With the exception of the Queensland, South Australian, and Australian Capital Territory provisions, the state and territorial provisions are substantively similar with the Commonwealth section 15AA. On the other hand, the state and territorial provisions based on section 15AB are as follows: Legislation Act 2001 (ACT) sections 141–3; Interpretation Act 1987 (NSW) section 34; Interpretation Act (NT) section 62B; Acts Interpretation Act 1954 (Qld) section 14B; Acts Interpretation Act 1931 (Tas) section 8B; Interpretation of Legislation Act 1984 (Vic) section 25(b); and Interpretation Act 1984 (WA) section 19. With the exception of the Victorian and ACT provisions, these provisions are substantively similar with section 15AB. See Pearce and Geddes, above n 2.
(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;

(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 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 Act and the purpose or object underlying the Act; and

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

While section 9A of the Interpretation Act and sections 15AA and 15AB of the (Australian) Acts Interpretation Act (Cth) are substantively similar, there are some subtle differences. On a ‘general’ level, there are two differences. First, while the word ‘interpretation’ is used in section 9A(1), ‘construction’ is used in section 15AA. This is not a significant difference but it should be noted that although the term construction is often used interchangeably with ‘interpretation’,
some commentators in the area of contractual interpretation regard these as qualitatively different processes. Second, while the expression ‘written law’ is used throughout section 9A, the word ‘Act’ is used in its place in both sections 15AA and 15AB. It should also be noted that section 18 of the Interpretation Act 1984 (WA) uses the word written law as well. The practical effect of this is whether the expression written law covers the same ground as the word Act. Two commentators writing shortly after the 1993 legislative reform noted this difference, but they made no definite conclusion on the issue. Ultimately, it is suggested that the difference in wording is not significant. This is because while written law is defined in section 2(1) of the Interpretation Act to include all Acts, Ordinances and subsidiary legislation being in force in Singapore, section 46 of the Acts Interpretation Act 1901 or section 13 of the Legislative Instruments Act 2003 provides that the principles set out in the principal Act are also applicable to delegated legislation. Accordingly, there is no great disparity in either the ordinary meaning or the scope of section 9A and sections 15AA and 15AB as a result of this particular difference in the statutory language.

On a more ‘specific’ level, there is one significant difference between section 9A and sections 15AA and 15AB: this concerns the list of extrinsic materials referable under section 9A(3) as contrasted with section 15AB(2). In part, this is due to the structural differences in the legislative processes of Singapore and Australia. Thus, while section 15AB(2)(b) provides that any relevant report of a Royal Commission, Law Reform Commission, and so on, may be referable, there is no such equivalent body formally established in Singapore. As such, the omission of section 15AB(2)(b) is perfectly understandable, although, it must be said, the ‘catch all’ provision under section 9A(3) (viz., that the list of materials is not exhaustive) ought to negate any real differences between the list of materials in sections 9A(3) and 15AB(2). This is because, theoretically, given the non-exhaustive nature of both provisions, any extrinsic material may be referred to by the court.

On the whole, it can be seen that both section 9A and sections 15AA and 15AB are more similar than different. Any linguistic difference is not radically significant. The next section then deals with how the Australian approach to statutory interpretation has been in the light of sections 15AA and 15AB.

(B) Differences in Treatment of Certain Issues

(i) Issues relating to the purposive approach

With regard to the broad issues relating to the purposive approach, similar with the initial Singapore reaction to the enactment of section 9A(1), the initial
Australian reaction to section 15AA was guarded. The initial reluctance of the Australian courts to fully embrace the new purposive approach as legislated can be found in the case law. In one of the first, if not the first, cases to make express reference to section 15AA, the Federal Court of Australia in *Re Heath*[^89] had to interpret section 39 of the Compensation (Commonwealth Government Employees) Act 1971 (Cth). Franki J, in the majority, decided that it was not appropriate to depart from the literal meaning of the provision since this had a ‘powerful advantage in ordinary meaning and grammatical sense’.[^90] Although Franki J did consider that the interpretation could not have been ‘unintended’ by the legislature[^91], it is clear that his conclusion rested on the presumption laid down in *Cooper Brookes (Wollongong) Pty Ltd v. Federal Commissioner of Taxation*[^92] that if an interpretation has a ‘powerful advantage in ordinary and grammatical sense’, it would be representative of the legislative intent unless otherwise disproved. *Cooper Brookes (Wollongong) Pty Ltd v. Federal Commissioner of Taxation* was decided before the enactment of section 15AA, but it seems to have been cited by Franki J without an overt consideration of its interaction with section 15AA. It is at least arguable that the effect of section 15AA would be to displace the judicially pronounced presumption, since section 15AA mandated the courts to interpret statutes purposively, and not seek recourse to the literal rule in the first instance. Similarly, in the later case of *Re Meredyth Town v. Australian Telecommunications Commission and Alfred Alexander Eves*,[^93] Franki J in interpreting section 5(a) of the Commonwealth Employees (Employment Provisions) Act 1977 held that the words ‘by reason of the existence of any industrial action’ were ‘too plain’ to have recourse to section 15AA. Once again, this suggested that the purposive approach operated secondarily to other common law principles of interpretation.[^94] Indeed, in the first High Court of Australia decision to cite section 15AA, the Court at least implied that some degree of ambiguity was needed before section 15AA could be turned to.[^95]

[^94]: In fact, Franki J in *Re Repatriation Commission v. Paul Kupfer* [1982] FCA 155 once again appeared to treat section 15AA as subordinate to common law principles of statutory interpretation. He had stated that ‘it might have been appropriate to consider section 15AA ... if I had any doubt about the construction of [the provisions concerned] ...’. This seems to suggest that he thought that section 15AA only applied where there was some doubt as to the meaning of the statutory provision concerned, presumably where it was ambiguous or otherwise. See also, for e.g. the following cases in which section 15AA was regarded as being applicable only if the statutory provision concerned was unclear: *Abraham Bercove v. CL Hermes Chairman, ACC Menzies* (1983) 67 FLR 186; and *Trade Practices Commission v. TNT Management Pty Limited* [1984] FCA 251.
decisions applying section 15AA as a matter of course, the general judicial attitude in the few years after section 15AA was enacted could perhaps be best summed up by Bryson J’s extrajudicial comment, in which he said that section 15AA has not signalled any large new turn in the construction of statutes and that the appropriate response to that provision ought to be to treat it as declaratory.

In the end, it took the High Court of Australia a little less than 10 years after the enactment of section 15AA to lay down authoritatively its proper interpretation in Mills v. Meeking, albeit through an interpretation of state legislation substantively similar with the Commonwealth legislation. In that case, Dawson J examined section 35(a) of the Interpretation of Legislation Act 1984 (Vic), which was substantively similar with section 15AA of the Acts Interpretation Act 1901. As such, his comments have been taken to be just as applicable to the Commonwealth statute as well. He said:

[T]he literal rule of construction, whatever the qualifications with which it is expressed, must give way to a statutory injunction to prefer a construction which would promote the purpose of an Act to one which would not, especially where that purpose is set out in the Act. Section 35 of the Interpretation of Legislation Act must, I think, mean that the purposes stated in Pt 5 of the Road Safety Act are to be taken into account in construing the provisions of that Part, not only where those provisions on their face offer more than one construction, but also in determining whether more than one construction is open. The requirement that a court look to the purpose or object of the Act is thus more than an instruction to adopt the traditional


98 (1990) 169 CLR 214.


101 See also Pearce and Geddes, above n 2, 30–1.
mischief or purpose rule in preference to the literal rule of construction. The mischief or purpose rule required an ambiguity or inconsistency before a court could have regard to purpose: *Miller v. The Commonwealth* [1904] HCA 34; (1904) 1 CLR 668 at p 674; *Wacal Developments Pty. Ltd. v. Realty Developments Pty. Ltd.* [1978] HCA 30; (1978) 140 CLR 503 at p 513. The approach required by s 35 needs no ambiguity or inconsistency; it allows a court to consider the purposes of an Act in determining whether there is more than one possible construction. Reference to the purposes may reveal that the draftsman has inadvertently overlooked something which he would have dealt with had his attention been drawn to it and if it is possible as a matter of construction to repair the defect, then this must be done. However, if the literal meaning of a provision is to be modified by reference to the purposes of the Act, the modification must be precisely identifiable as that which is necessary to effectuate those purposes and it must be consistent with the wording otherwise adopted by the draftsman. Section 35 requires a court to construe an Act, not to rewrite it, in the light of its purposes.

It is clear after this decision that the purposive approach as embodied in section 15AA applied mandatorily even where there was no ambiguity or absurdity.103 This is similar with the approach in Singapore. Interestingly, across both jurisdictions, there was a period of initial reluctance to follow the statutory enactment. One reason in Australia could be that the High Court decided *Cooper Brookes (Wollongong) Pty Ltd v. Federal Commissioner of Taxation* just shortly before section 15AA was enacted. While that case was generally in line with the principles behind section 15AA, the presence of such an authoritative decision just prior to section 15AA’s enactment meant that the latter was always going to be interpreted in the former case’s shadow. In Singapore, a similar shadow existed, although the flavour was distinctly English rather than local. The strong persuasive strength of English authorities in 1993, when section 9A was enacted, meant that the courts had to grapple with what would be regarded as a ‘radical’ departure, or to follow the status quo. In the end, the courts struck a balanced approach,

and, similar with the Australian approach, took some time to interpret section 9A in its correct spirit.

However, unlike Singapore, in some Australian cases the proposition that the purposive approach applies mandatorily is expressed slightly differently, and this creates problems of its own. Rather than begin with the position that the purposive approach applies at the start, some cases state that the court must follow the ordinary meaning of the statutory text unless to do so would not give effect to the legislative intent (or ‘object or purpose underlying the Act’, pursuant to the words of section 15AA). This, as would be appreciated, puts the analysis the other way round. Thus, in *Brian Hilton v. Commissioner of Taxation*, the Federal Court of Australia, in summarizing the views in *Cooper Brookes (Wollongong) Pty Ltd v. Commissioner of Taxation, MacAlister v. The Queen*, *Saraswati v. The Queen*, thought that if the literal or grammatical meaning of a provision does not give effect to the purpose of the Act it was in, that meaning cannot be regarded as the ‘ordinary meaning’ and must give way to a meaning which will promote the underlying purpose or object. However, where the text is grammatically capable of only one meaning and neither the context nor any purpose of the Act throws any real doubt on that meaning, the grammatical meaning is to be adopted as the ordinary meaning. This ordinary meaning can be departed from only if it leads to a result that is ‘manifestly absurd’ or ‘unreasonable’ taking into account the purpose of the Act. With respect, this is a curiously circular way of stating the proposition. If in the first place, ordinary meaning embodies the concept of the words giving effect to the ‘purpose’ of the Act, then it would be superfluous to regard it as being possible to depart from this ordinary meaning where they produce an ambiguity or absurdity taking into account the purposes of the Act. But quite apart from this rather problematic way of stating the effect of section 15AA, most cases have taken the simpler (but no less correct) view that the purposive approach simply requires the court to give effect to the legislative intent which, as discussed earlier, is similar with the Singapore approach. However, apart from the broad question of when section 15AA may be applied, there are several more specific issues relating to the purposive approach as used in both Singapore and Australia, which this article now discusses.

First, what is the Australian position as regards the true meaning of the purposive approach? The conflation between the purposive approach and the use of extrinsic materials does not appear to be as pronounced in Australia as in Singapore. In fact, there appears only very few cases in which the conflation is seen. One of these cases is *Irish Country Bacon (Cooked Meats) Limited v.*  

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105 (1990) 169 CLR 324.
108 Ibid. See also *Prebble v. Commissioner of Taxation* [2003] FCAFC 165 at [25].
109 See also, for e.g. *Chief Executive Officer of Customs v. W & D Engineering Pty Ltd* [1999] FCA 460 in which the purposive approach was treated as being secondary to the literal rule (at [31]) even after *Mills v. Meeking* (1990) 169 CLR 214 was decided.
Comptroller-General of Customs and Castle Bacon Pty Limited, in which the Federal Court of Australia held that it could arrive at a clear interpretation of section 42 of the Customs Act 1901 and thereby did not require the assistance of sections 15AA and 15AB. While this might at first indicate an unwarranted requirement of ambiguity or absurdity before the application of the purposive approach, the Court makes clear in its judgment that it only had in mind the recourse to extrinsic materials. If so, by expressly including section 15AA, the Court clearly treated section 15AA as so related with section 15AB that it arguably conflated the two issues. However, in the vast majority of cases, the courts show a very clear awareness of the difference between sections 15AA and 15AB, as distinguished from Singapore. It may be that this is due to a very practical reason, whereas the twin issues of purposive approach and the use of extrinsic materials are in a ‘single’ statutory provision in Singapore, namely section 9A, the two issues are separately addressed in ‘two’ statutory provisions in Australia, namely sections 15AA and 15AB. The conflation of the two issues in Singapore may in fact stem from the statutory conflation of the two issues in Singapore in a single provision, thereby leading the Singapore courts to wrongly believe that the two are closely linked.

The second issue for comparison is the line both jurisdictions draw between ‘interpreting’ a statutory provision and ‘rewriting’ the provision. It is clear that the Australian courts take the broad view that section 15AA does not permit the courts to ignore the actual words of a statute. But while the Singapore approach imposes this condition because of the fear of judicial legislation, the Australian reasoning is much more sophisticated. One reason concerns the ‘two meaning’ requirement. This is said to arise from the use of the word ‘prefer’ in section 15AA: that is taken to imply that there must be two possible meanings for the court to prefer one over the other. This requirement in fact flows from the fine distinctions that the Australian cases draw in relation to the circumstances in which the purposive approach may be applied. Thus, in Brian William Skea v. the Minister of Immigration, Local Government and Ethnic Affairs, the Federal Court of Australia cited Romano Trevisan v. Commissioner of Taxation of the Commonwealth of Australia to the effect that section 15AA requires a court to prefer one construction to another. Such a requirement can only have meaning where two constructions are otherwise open. However, even if the words can bear the meaning advanced, the question section 15AA requires a court to address is whether one construction promotes the purpose of the Act and another does not. It is not which would best achieve the objects of the Act; that would be to stray into the prohibited realm of legislating. Indeed, in Romano Trevisan v. Commissioner of Taxation of the Commonwealth of Australia itself, the Court emphasized that it was

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111 (1991) 104 ALR 661 at [58].
not for the courts to legislate; a meaning, though illuminated by the statutory injunction to promote the purpose or object underlying the Act, must be found in the words of Parliament.\(^{115}\) To similar effect, Fitzgerald J said in *Federal Commissioner of Taxation v. Trustees of the Lisa Marie Walsh Trust*: ‘[E]ven if the extrinsic material does reveal the legislative purpose, there will continue to be boundaries beyond which the words used will not stretch even where it is known that they were intended to do so’.\(^{116}\) In the very recent case of *White v. Designated Manager of IP Australia (No. 2)*,\(^{117}\) the Federal Court refused to depart from the unambiguous clear meaning of the statutory provision because the applicant failed to advance any plausible construction by demonstrating any patent or even latent ambiguity in the text as a matter of ordinary syntax and grammar.\(^{118}\) In essence, it could be said that the Australian approach is fairly cautious against the danger of judicial legislation.\(^{119}\) Thus, while the Singapore courts undoubtedly require a possible meaning to fit within the words of the statute, the requirement is not as strict. In the first place, there is no requirement for a second possible meaning for the court to prefer over another. It is not treated as judicial legislating if the court were simply to ‘impose’ a given meaning to the statutory provision; in this context, the word prefer in section 9A(1) is effectively read away so as to give that

\(^{115}\) [1991] FCA 172 at [13].  
\(^{116}\) (1983) 48 ALR 253 at 278.  
\(^{117}\) [2008] FCA 816.  
\(^{118}\) [2008] FCA 816 at [20].  
\(^{119}\) See, for e.g. *Commissioner of Taxation v. John Langford Knight* (1983) 79 FLR 65 (In my opinion one should avoid a construction which leads to results such as arise from the various examples I have supposed. But one is not justified in that course, s.15AA of the Acts Interpretation Act notwithstanding, unless the words of the paragraph are apt to permit it); *GS & AM La Macchia and G & A Zagami v. the Minister of Primary Industry* [1986] FCA 452 (‘The Court cannot rewrite the legislative provision’: at [16]); *Reginald Chester Crowe v. JM Riordan* [1992] FCA 113 (‘The Court does not have to rewrite specific purpose legislation of this kind to effect internal consistency or create a workable framework for it to operate. It is for the legislature to undertake this role if that is its wish. The Court’s task is to interpret the words in the light of any perceived or apparent parliamentary intention’: at [58]); *R v. L* [1994] FCA 1134 (‘[S]ub-s.15AA(1) does not provide an answer to the question whether the term “Director of Public Prosecutions” in s.30A refers to the Commonwealth DPP or to the Territory DPP. The requirement of sub-s.15AA(1) that one construction be preferred to another can have meaning only where two constructions are otherwise open, and sub-s.15AA(1) is not a warrant for redrafting legislation nearer to an assumed desire of the legislature’: at [19]); *Newcastle City Council v. GIO General Ltd* (1997) 191 CLR 85 (When the express words of a legislative provision are reasonably capable of only one construction and neither the purpose of the provision nor any other provision in the legislation throws doubt on that construction, a court cannot ignore it and substitute a different construction because it furthers the objects of the legislation); *Dennis John Whitaker v. Comcare* [1998] FCA 1099 (it is an intent to be gathered from the language used, in its context and with the aid of those materials to which the court can properly have recourse in seeking that intent. However, if it is not possible for the Court to be confident of the intent of the author, it is not, we think, open to the Court to invent, under the guise of interpretation, its own version of how it thinks the text might read); *CPH Property Pty Ltd & Ors v. Commissioner of Taxation* [1998] FCA 1276; *Fox v. Commissioner for Superannuation* [1999] FCA 372; *Comcare v. Thompson* [2000] FCA 790 (at [40]); *Wharton v. Official Receiver in Bankruptcy* [2001] FCA 96 (at [73]); *Official Trustee in Bankruptcy v. Trevor Newton Small Superannuation Fund Pty Ltd* [2001] FCA 1267; and *Parrett v. Secretary, Department of Family & Community Services* [2002] FCA 716 at [27]–[28]. See further, Justice M Kirby, ‘Statutory Interpretation and the Rule of Law—Whose Rule, What Law?’ in David St L Kelly (ed), *Essays on Legislative Drafting* (Adelaide Law Review Association, Law School, University of Adelaide 1998, 94).
section a very expansive reach. Moreover, the Singapore approach does not deem it improper to depart from a perfectly possible meaning if to do so would be to give effect to the legislative intent; it is fairly easy to rebut the presumption that Parliament always expresses itself in clear language. Indeed, this is not an indefensible position to take: surely the enactment of section 9A would show that Parliament itself believes that it may not be clear on its use of language, hence the need for, inter alia, recourse to extrinsic materials. However, there is something to be said of the extent of the Australian caution against judicial legislating; indeed, in Singapore, as discussed earlier, the courts have sometimes written into statutes concepts completely alien at the time of enactment. The best approach, perhaps, is a balance between the two approaches.

Moving forward to the third issue for consideration, it is whether the purposive approach gives way to other common law principles of statutory interpretation in cases concerning penal statutes. As seen above, the Singapore position with regards to penal statutes is unclear in view of the contradictory dicta in Public Prosecutor v. Low Kok Heng. Fortunately, this issue has been dealt with by the Australian courts in consideration of section 15AA so as to provide a point of consideration. In some cases, the Australian approach is identical with that adopted in Singapore, that is the strict construction rule applies if the purposive approach fails. Thus, in Trade Practices Commission v. TNT Management Pty Limited, after considering the effects of sections 15AA and 15AB, Franki J followed the holding of Gibbs J in Beckwith v. The Queen and said that if the language of the Act after the ordinary rules of construction have been applied remains ambiguous or doubtful, it is appropriate to remove or resolve that ambiguity or doubt in favour of a defendant, at least, where the proceedings are for a penalty. In contrast to that approach, in Re A Reference To the Federal Court of Australia By the Australian Broadcasting Tribunal, the Federal Court of Australia arguably took the view that the purposive approach overruled the strict construction rule concerning penal statutes. In stating that section 15AA embodied ‘a more important rule’, the Court had earlier in the judgment rejected the application of the strict construction rule, albeit on the ground that the question of penal sanction was not actually affected by the statute concerned. Hence, it could be argued that this is at least some authority that the purposive approach applied to the exclusion of the strict construction rule. In Newcastle City Council v. GIO General Ltd, it was held by the High Court of

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120 Indeed this is not surprising since Public Prosecutor v. Low Kok Heng itself cited Beckwith v. The Queen (1976) 12 ALR 333 in support of its reasoning.
121 (1985) 58 ALR 423.
122 (1976) 12 ALR 333.
123 (1985) 58 ALR 423 at [270]. This statement was also endorsed by the High Court of Australia in Deming No. 456 Pty Ltd v. Brisbane Unit Development Corp Pty Ltd (1983) 155 CLR 129 and Waugh v. Kippen (1986) 160 CLR 156. See also Pearce and Geddes, above n 2, 286–7.
125 [1987] FCA 6 at [27].
126 [1987] FCA 6 at [25]–[26].
Australia that if any conflict arises from the operation of the two rules of construction, the strict construction rule cannot prevent the words of the section from being given their fair meaning, citing Waugh v. Kippen,\textsuperscript{128} which stated that the strict construction rule is one of last resort.\textsuperscript{129} On balance, it would appear that both jurisdictions take a broadly similar view in relation to the strict construction rule, although the Australian courts seem more attuned to the view that the purposive approach is the overriding approach. Indeed, as Pearce and Geddes note, the approach in Australia ought to be determined by the question, whether the legislature would have intended to include the activity in question or thing in the expression of the penal statute had it known about it?\textsuperscript{130} This, it is suggested, ought to be the approach in Singapore as well, rather than a difficult approach which seems to suggest that the purposive approach applicable by way of section 9A(1) operates \textit{in tandem} with some other common law rules of statutory interpretation.

Finally, we come to the issue of whether it is the general purpose of the statute or the specific purpose behind a specific statutory provision that they should be concerned with.\textsuperscript{131} In \textit{Re Rita Marjorie Butler},\textsuperscript{132} which concerned the interpretation of the words ‘in respect of’ in sections 99(1)(b) and 102(1)(b) of the Compensation (Commonwealth Government Employees) Act 1971, the Federal Court of Australia turned to ‘the purpose and object of the Act in general and the repayment provisions in particular’. This therefore implies that there is usually no real distinction between the statute as a whole and the provisions in particular. Indeed, in the normal course of events, the two are likely to complement each other rather than be in opposition, although a balance should be struck at times.\textsuperscript{133} Thus, in some cases, the Australian courts had regard to the general purpose of the statute in question,\textsuperscript{134} whereas in others the courts have questioned the specific purpose of a provision.\textsuperscript{135} However, in Evans v. Minister for Immigration & Multicultural & Indigenous Affairs,\textsuperscript{136} it was laid down a pragmatic view of the value of ascertaining the general ‘purpose’ of a statute or, indeed, specifically of a statutory

\textsuperscript{128} (1986) 160 CLR 156.

\textsuperscript{129} See also, \textit{Port Marine Services–Hulten Engineers Pty Ltd v. Merrey} [1999] VSC 496.

\textsuperscript{130} Pearce and Geddes, above n 2, 285 and 287–8.

\textsuperscript{131} See also Pearce and Geddes, above n 2, 33–5.

\textsuperscript{132} (1984) 55 ALR 265.

\textsuperscript{133} See in this regard the decision of Young CJ in Eq in \textit{Edwards v. Attorney General} (2004) 60 NSWLR 667 where he said that a balance has to be struck between purposes that are general and those which are specific to particular provisions; Pearce and Geddes, above n 2, 34–5.


\textsuperscript{136} [2003] FCAFC 276.
provision. It was first said that the general object casts little, if any, light on the meaning of the specific provisions under the Act concerned. Indeed, even under the umbrella of the general object is a multitude of objects of specific provisions.\textsuperscript{137} Similarly, in \textit{Carr v. The State of Western Australia},\textsuperscript{138} the High Court of Australia held that the purposive approach may be of little assistance where a statutory provision strikes a balance between competing interests, and the problem of interpretation is that there is uncertainty as to how far the provision goes in seeking to achieve the underlying purpose or object of the Act. Glesson CJ pointed out that legislation rarely pursues a single purpose at all costs, where the problem is one of doubt about the extent to which the legislation pursues a purpose, stating the purpose is unlikely to solve the problem. In a practical evaluation of the problem, he said that for a court to construe the legislation as though it pursued the purpose to the fullest possible extent might be contrary to the manifest intention of the legislation and a purported exercise of judicial power for a legislative purpose.\textsuperscript{139} The distinction is undoubtedly a very fine and sophisticated one; on a very practical level, one may wonder how useful the questions put forward by the learned Chief Justice really are in view of the express wording of section 15AA (and section 9A(1)). It would be difficult to attach a caveat to the proposition that courts are to give effect to the legislative intent such that in some cases, it must be presumed that the legislature did not intend to further that intention beyond what is commonly intended. It is an intention \textit{upon} an intention and may be difficult to resolve on a practical level. It may be better, in the interests of convenience, to first have a broad proposition that general and specific purposes are usually the same or complementary or at least related and second, to presume that in the normal course of events, Parliament intended for its stated purpose to be pursued to the fullest extent. To think otherwise may, in some cases, amount likewise to judicial legislating and frustrate the legislative intent. Rather than lay down a complicated set of rules which, although more reflective of the true state of legislating, it is suggested that the simplicity of the Singapore approach preserves the true essence of section 9A(1) (and section 15AA) while reserving to a province of pragmatism certain justifiable departures which, it is envisaged, will not be many. To think otherwise may add confusion rather than clarity.

(ii) Clarifying circumstances in which reference to extrinsic materials permitted

Moving away from the issues surrounding the purposive approach to the circumstances in which reference to extrinsic materials may be taken, the broad

\textsuperscript{137} [2003] FCAFC 276 at [16]--[18].
\textsuperscript{138} [2007] HCA 47.
\textsuperscript{139} [2007] HCA 47 at [5]. It was accordingly said that the proper question is the general purpose of legislation of the kind here in issue is reasonably clear, but it reflects a political compromise. The question then is not: what was the purpose or object underlying the legislation? The question is how far does the legislation go in pursuit of that purpose or object? (at [7]).
similarity between the Singapore and Australian approaches is that there is no need for ambiguity or absurdity before extrinsic materials can be referred to. Thus, extrinsic materials may be taken into account even when the provision is ‘clear in its face’.\textsuperscript{140} In \textit{Gardner Smith Pty Ltd v. Collector of Customs (Vic)} (1986) 66 ALR 377, the Full Court of the Federal Court stated:\textsuperscript{141}

The argument that the Tribunal was in error in giving consideration to the explanatory notes was based on the applicant’s contention that the words ‘or otherwise modified’ in item 15.08 were not ambiguous or obscure nor, if given their ordinary meaning, would it lead to a result that was manifestly absurd or unreasonable. But it is plain that, to limit the use of extrinsic material to such circumstances—circumstances obviously referable to para (1)(b) of s 15AB of the Acts Interpretation Act 1901 – is to deprive para (1)(a) of that section of any operation.

Notwithstanding the above, as in Singapore, there remain certain cases in Australia thinking that ambiguity or absurdity is still required. For example, in \textit{Industry Research & Development Board v. Unisys Information Services Australia Pty Ltd (formerly Synercom Australia Pty Ltd)},\textsuperscript{142} the Federal Court of Australia seemed to think that ambiguity or absurdity still remained prerequisites before recourse to extrinsic materials could be had. Indeed, the Court had merely referred to the ascertainment function of section 15AB and neglected to mention its confirmatory function. General adherence and isolated desertion seem to the broad similarity between Singapore and Australia in relation to the circumstances in which extrinsic materials may be referred to.

However, despite the broad similarity as outlined above, unlike the Singapore approach, the Australian approach seems to draw a sharp distinction between the confirmatory and ascertainment functions of sections 15AB(1)(a) and 15AB(1)(b).\textsuperscript{143} Thus, Pearce has written that under section 15AB, any material outside of

\begin{itemize}
\item \textsuperscript{141} See also \textit{Commonwealth of Australia & Ors v. Christmas Island Resort Pty Ltd & Ors [1998] WASCA 302.}
\item \textsuperscript{142} [1997] FCA 777.
\item \textsuperscript{143} See, for e.g. \textit{Central Queensland Land Council Aboriginal Corporation v. Attorney-General of the Commonwealth of Australia and Queensland [2002] FCA 58: ‘As CIC Insurance makes clear, an Explanatory Memorandum may be used to ascertain the mischief that a statute is intended to cure. It may also be used to confirm the meaning of a provision; or to determine its meaning, when the provision is ambiguous or obscure or the ordinary meaning leads to a result that is manifestly absurd or unreasonable: see s 15AB of the Acts Interpretation Act. However, an Explanatory Memorandum is not a statute. In my opinion, it ought never be allowed to supplant a statutory provision that is unambiguous, and whose ordinary meaning does not lead to a result that is manifestly absurd or unreasonable’ (at [149]).}
\end{itemize}
the Act concerned may be used to discover the underlying purpose or object and then to confirm that the ordinary meaning was intended.\(^{144}\) In other words, if the provision concerned is clear on its face, extrinsic materials may only be used to ‘confirm’ the ordinary meaning. Extrinsic materials may be referred to, but they cannot ‘alter’ the interpretation that the court, without reference to those materials, would place upon the provision. Thus, in *Re Australian Federation of Construction Contractors; Ex parte Billing*,\(^{145}\) the High Court of Australia held that:\(^{146}\)

Reliance is also placed on a sentence in the second-reading speech of the Minister when introducing the Consequential Provisions Act, but that reliance is misplaced. Section 15AB of the Acts Interpretation Act 1901 (Cth), as amended, does not permit recourse to that speech for the purpose of departing from the ordinary meaning of the text unless either the meaning of the provision to be construed is ambiguous or obscure or in its ordinary meaning leads to a result that is manifestly absurd or is unreasonable. In our view neither of those conditions is satisfied in the present case.

While extrinsic materials may be taken in place even when the provision is clear in its face, the ‘effect’ of these extrinsic materials will differ according to whether it is the confirmatory or ascertainment function of section 15AB(1) that is being invoked. As Pearce and Geddes have written, in order that a reference to extrinsic materials may have the potential to change an interpretation of legislation which would otherwise have been arrived at, it is necessary for a court to conclude that one of the conditions in section 15AB(1)(b)(i) or (ii) has been met. That means that the court must conclude, without taking account of any materials not forming part of the Act, that the provision in question is ‘ambiguous’ or ‘obscure’ or that, taking account of its context and underlying purpose or object, the ordinary meaning leads to a result that is ‘manifestly absurd’ or ‘unreasonable’. This is a limitation on the operation of section 15AB compared with section 15AA. There are examples of cases whereby the court considers the extrinsic materials and then concludes that they cannot assist because the words are not ambiguous or obscure and that giving the words their ordinary meaning does not lead to a ‘manifestly absurd’ or unreasonable result.\(^{147}\) However, a contrary view was taken in *Parrett v. Secretary, Department of Family & Community Services*.\(^{148}\) In that case, the Federal Court of Australia held that:\(^{149}\)

Section 15AB(1)(a) has sometimes been considered as being of limited utility—see Pearce and op cit pp 60–62. The view seems to have been

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\(^{144}\) Pearce and Geddes, above n 2, 80.

\(^{145}\) (1986) 68 ALR 416.

\(^{146}\) (1986) 68 ALR 416 at 420.

\(^{147}\) Pearce and Geddes, above n 2, 81.


\(^{149}\) [2002] FCA 716 at [32].
taken that one cannot look to extrinsic material under para (1)(a) of s 15AB if the effect of such resort would be to depart from the ordinary meaning of the statutory text. However, with respect, para (1)(a) permits resort to extraneous material for the purpose of confirming (to confirm) that the real meaning of the text is its ordinary meaning. Para (1)(a) does not prohibit sensible use of a contrary indication resulting from a lack of such confirmation after looking at the non-statutory material, nor would it seem logical or profitable that such a prohibition should be implied, having regard to the far-reaching effect, which I take now to be settled, of s 15AA.

This contrary view would seem to have taken root in Singapore; it might be more plausible to say that the Singapore courts have yet to apply their minds to this specific issue. Indeed, the Singapore courts have merely used section 9A(2) generally and wholly, without distinguishing as to the effect of the provision bearing in mind whether there was ambiguity or absurdity to begin with. This may not be an incorrect approach. This approach could be justified on the basis that if, say, the purposively reached meaning was not ambiguous or absurd, and the court seeks extrinsic materials to confirm this meaning but, upon doing so, realizes that there is now a better meaning to promote the purpose and object of the Act. If so, there is, by definition, an ambiguity or absurdity such that section 9A(2)(b) operates seamlessly to permit the court to adopt a different meaning. It might be better to treat sections 9A(2)(a) and 9A(2)(b) as operating seamlessly with one another, with one ready to take over the other should the circumstances permit upon the consideration of the extrinsic materials. This is, arguably, though maybe unintentionally, the approach adopted by the Singapore courts.

On a related note, and even more interestingly, the High Court of Australia in *Newcastle City Council v. GIO General Ltd* seemed to suggest that notwithstanding section 15AB, the court could still refer to extrinsic materials when it said that independently of section 15AB, the modern approach to statutory interpretation permits recourse to the extrinsic material. This seems to suggest that section 15AB is merely declaratory rather than permissive. The application of a common law authority has not been considered in Singapore, although it is arguable that such an authority exists since the Singapore courts have not usually cited section 9A(2) in referring to extrinsic materials in aid of statutory interpretation.

(iii) Limiting the type extrinsic materials permitted?

Finally, while there has been much use of section 15AB to admit and take account of extrinsic materials in Australia, is there a limit on the type of extrinsic materials permitted? The High Court of Australia, for example, has relied on the provision to take account of parliamentary debates, particularly the reports of the Second Reading speech by the minister concerned as well as explanatory
memoranda.\(^{150}\) In Re Commissioner of Taxation of the Commonwealth of Australia v. Trustees of Lisa Marie Walsh Trust,\(^{151}\) Fitzgerald J stated that:

We were pressed with the Treasurer’s Explanatory Memorandum to Parliament, which accompanied the Bill by which s.94 was introduced into the Act, as an aid to construction. It may be that such material is admissible for the purpose of disclosing the object of the section, thus providing a basis in appropriate cases for the implementation of s.15AA of the Acts Interpretation Act in addition, of course, to the rules of the common law which permit and require due regard to legislative intention which is manifest despite inappropriate phraseology: see, e.g. Tickle Industries Pty Ltd v. Hann [1974] HCA 5; (1974) 130 C.L.R. 321, 330; Cooper Brookes (Woollongong) Pty Ltd v. F.C.T. (1981) 55 A.L.J.R. 434; Shah v. Barnet Borough London Council (1983) 1 All E.R. 226, 238. However, it seems to me obvious that such an approach is worth little and indeed will seriously impede the efficient operation of the courts, adding to costs, length of hearings and delays in the judicial system if the extrinsic material itself is unclear and requires debate as to its meaning. Further, even if the extrinsic material does reveal the legislative purpose, there will continue to be boundaries beyond which the words used will not stretch even where it is known that they were intended to do so. [emphasis added]

Similarly, in Re Trade Practices Commission v. TNT Management Pty Limited,\(^{152}\) Franki J found section 15AB ‘difficult to apply’, especially cases where at least some counsel are not easily deterred by the time required to argue a point fully.\(^{153}\) It would seem that there exists in both Singapore and Australia a certain desire on the part of the courts to restrict recourse to extrinsic materials. However, the manners in which both jurisdictions have gone about doing so are rather different. In Singapore, as seen, the approach is to expressly ‘ban’ certain types of materials even though nowhere is this allowed for on the face of an expansive section 9A(2) read with section 9A(3). In Australia, this reluctance is expressed as not giving any weight to the extrinsic material which is deemed to be useless by the court; the difference between reference and weight is well understood by the Australian courts in this regard. Interestingly, while section 15AB(3) has been cited in many Australian decisions, that provision, like in Singapore, has not really been expressly applied. It may be that section 15AB(3) (and section 9A(4)) is difficult to apply in practice because it would be hard to identify situations in which it applies.

5. Analyzing the Differences in the Singapore and Australian Approaches

As has been seen, it would be justified to say that the Singapore courts have, from an initially cautious approach, now adopted an expansive interpretation of the

\(^{150}\) Pearce and Geddes, above n 2, 83.
\(^{151}\) (1983) 69 FLR 240.
\(^{152}\) (1985) 58 ALR 423.
\(^{153}\) (1985) 58 ALR 423 at [265].
1993 legislative reform so as to effect a very open approach to all aspects of statutory interpretation. The approach in Australia, while equally expansive now, took perhaps a bit longer to effect, and there are signs that the approach is not yet as expansive as in Singapore. However, while the Australian approach is stated in a series of sophisticated rules taking into account the exact words of sections 15AA and 15AB, the Singapore approach is stated more broadly and sometimes carried out without very detailed consideration of the law. It will now be suggested that the approach in statutory interpretation in Singapore, as well as the difference between that approach and the Australian approach, may be attributable to unique factors not found elsewhere.

(A) Ease of Reference to Applicable Materials

The rapid development of statutory interpretation in Singapore following the enactment of section 9A may be attributable to the ease of reference to applicable materials. The rule as stated is an easy one: give effect to the legislative intent of Parliament. To give effect to that rule might be difficult if the reference to applicable materials is not forthcoming enough. It is suggested that the ease of such reference in fact encouraged the courts to give effect to section 9A to its fullest possible effect, to the extent of even glossing over the statutory language to accord it a more expansive interpretation than is the case in Australia. First, parliamentary debates and select committee reports in Singapore are readily available to practising lawyers by way of the local Lawnet 2 database at an affordable cost.\footnote{Accessible at http://www.lawnet.com.sg.} While old legislative materials may not be as easily available, the situation is improving with the increased digitization of books online. The relatively small size of the Singapore jurisdiction also means that legislative amendments are more easily tracked and researched. In fact, there has recently been websites\footnote{See, for e.g. Singapore Law Watch, accessible at http://www.singaporelawwatch.com.} launched consolidating recent developments in Singapore law, increasing further the ease of research. Secondly, the Attorney General Chambers now provides a free electronic database of all Singapore statutes, including a brief citation of the history of the statute concerned. This makes it easier for lawyers to do preliminary research before going into the databases.\footnote{Accessible at http://statutes.agc.gov.sg.}

But more important is the actual ‘effectiveness’ of these materials. Parliamentary materials are actually easy to read and straight to the point. This is partly due to the nature of Singapore politics, whereby a single political party dominates the Parliament. As such, Bills are passed without excessive debates which usually carry with them superfluous language which makes for difficult reading and (more importantly) deciphering.\footnote{The situation has not changed much from 15 years ago: see Beckman and Phang, above n 27, 90.} As contrasted with Australia as well, the relatively fewer number of Bills passed per year and the lack of state legislation
makes for easier reference as well. All these factors make for the implementation of section 9A easy and quick. Rather than be hampered by excessive submissions, it is submitted that the courts, in construing problematic statutes, are actually aided by the availability of materials. This may well explain why, notwithstanding the few cases which seem to show a resistance to extrinsic materials, accept these materials rather receptively. Altogether, this may well explain the rapid development of statutory interpretation in Singapore in the first instance.

(B) Smaller Numbers and Interaction Between Singapore and Australian Cases

Next, as to the broad propositions of law coming from the Singapore courts, this may be attributable to two reasons. First, whereas there are state and federal courts in Australia, the court system in Singapore is a single vertical system. There are thereby fewer courts and fewer cases reaching them in relation to statutory interpretation. Fewer cases may mean that less chances for the courts to develop anything more than broad principles. In the fullness of time, the Singapore courts may well develop similarly complicated rules as the Australian authorities. The more uniform nature of the Singapore approach may likewise be attributable to the smaller number of Singapore cases; fewer cases mean lesser opportunities for confusion.

Secondly, the lack of interaction between the Singapore and Australian cases may likewise explain the different approach taken in Singapore. As to the lack of reference to Australian cases, it may be thought that there are two reasons for this. First, as canvassed earlier, the Singapore Parliament did not make it clear that section 9A was based on sections 15AA and 15AB of the Acts Interpretation Act. While lawyers would of course be able to figure this out, the lack of an express linkage may mean that the Singapore courts are far less willing to consider Australian decisions than if such express linkage had been made. Thus, apart from *Public Prosecutor v. Low Kok Heng*, which made rather extensive reference to Australian decisions, the citation of Australian decisions pertaining to sections 15AA and 15AB was few. Indeed, the only widely cited case appears to be *Mills v. Meeking*,158 and this only for very broad propositions such as that the purposive approach may be resorted to even if there is no ambiguity or absurdity. There had simply been no conscious effort by the Singapore courts to consider the more sophisticated points of law emerging from the broad body of Australian decisions touching on provisions which were substantively similar with section 9A.

On a broader level, this state of affairs is reflective of the long dependence that Singapore courts have had on English authorities to the exclusion of other

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158 In, for e.g. *Constitutional Reference No. 1 of 1995* [1995] 2 SLR 201 and *Planmarine AG v. Maritime and Port Authority of Singapore* [1999] 2 SLR 1.
jurisdictions. Given Singapore’s legal heritage, it had until recently given little consideration to non-English authorities, although the situation has since changed dramatically. Coupled with the ease of the use of extrinsic materials, the Singapore courts may have found it unnecessary (and indeed, did not have the necessary reference to Australian authorities) to develop rules reflective of a more sophisticated analysis.

In the final analysis, if there is one thing that unites both the Singapore and Australian approaches, it is the overhanging shadow of English law. With Singapore courts increasingly willing to consider other jurisdictions other than the English one, its approach to statutory interpretation may now take into account the Australian approach. Indeed, as discussed at the outset of the present article, provisions providing for principles of statutory interpretation are not at all uncommon, and the Singapore courts may one day have recourse to these other jurisdictions as well. However, for now, the Singapore approach is, it could be fairly said, a body of discernable and unique case law culminating in a broad and pragmatic reading of section 9A. For its benefits and problems, it is an approach which lends itself to reference from other jurisdictions as well.

6. Conclusion

To conclude, this article has provided a brief overview of the evolution of the Singapore position to its present form, and made a brief comparison with parallel developments in Australia, from which Singapore’s provisions originated. The Singapore approach is interesting in that it developed quite independently from the Australian approach. It is a broad approach, with few specific rules. This makes it of easy application, no doubt aided by the easy (and direct) access to extrinsic materials, especially parliamentary materials. The ease of application, along with the implicit licence to develop on its own, has turned the Singapore approach into what it is today. In contrast, the Australian approach, which has had slightly more than a decade to develop than Singapore, is a series of sophisticated rules which broadly resemble the Singapore approach. It has most evidently given thought to problems which may have arisen due to the sheer large number of cases reaching the Australian courts. In the end, the Singapore courts will have to consider the Australian approach in greater detail, given the undoubted historical linkage between the two approaches. In the fullness of time, the Australian approach may well be more reflective of the Singapore approach. However, for now, the Singapore approach, as unique as it is, is surely also a model of comparison for other jurisdictions in its own right.