

11/90

## SUPREME COURT OF VICTORIA

**ENTWISTLE v PARKES**

Marks J

27 April 1990 — [1991] VicRp 24; [1991] 1 VR 317; (1990) 11 MVR 105

**STATUTORY INTERPRETATION – PROVISION FOR ACT TO COME INTO OPERATION ON ONE OR MORE DAYS – WHETHER ACT INDIVISIBLE – PARLIAMENT'S INTENTION TO BE ASCERTAINED – "OR DAYS" – WORDS NOT SURPLUSAGE – WHETHER ACT MAY OPERATE ON MORE THAN ONE DAY: INTERPRETATION OF LEGISLATION ACT 1984, S10A(2); ROAD SAFETY ACT 1986, SS2, 49(1)(f).**

There is no support for the proposition that an Act of Parliament is indivisible. A court must, if possible give a meaning to every word of a statute. Therefore, where an Act provides for its coming into operation "on a day or days" the words "or days" are not to be treated as mere surplusage but be given the meaning that Parliament intended that the Act come into operation on one or more days. Accordingly, as the *Road Safety Act 1986* has a similar provision, a magistrate was in error in holding that the Act was not in operation because its different provisions were proclaimed to operate on different days.

**MARKS J:** [1] On Friday last, 20 April, I granted to the plaintiff an order nisi to review a decision by the Magistrate constituting the Magistrates' Court at Prahran on 12 April 1990 striking out an information alleging an offence under s49(1)(f) of the *Road Safety Act 1986* ("the Act") and a contravention of Regulation 1001.1(c) of the *Road Safety (Traffic) Regulations 1988*, ("The Regulations") made under s95.

The Magistrate upheld a submission by counsel for the defendant that the Act was not in operation because any purported proclamation by the Governor in Council was either invalid or ineffective to bring the provisions of the Act into operation. The grounds of the order nisi sufficiently raise the issue whether the submission was correctly upheld so that it is unnecessary to set them out. The informations which were struck out allege offences to have been committed by the defendant on 26 July 1988. Mr Hammond, of counsel, who persuaded the Magistrate in the court below, appeared here for the defendant to argue for the discharge of the order nisi. His argument essentially relied on the construction for which he contends of s2 of the Act and s10A(2) of the *Interpretation of Legislation Act 1984*. Section 2 of the Act provides:

"This Act (including the items in schedule 3 and the amendments in schedule 4) comes into operation on a day or days to be proclaimed".

Section 10A(2) of the *Interpretation of Legislation Act 1984* provides:

"If an Act provides for the Act or provisions of the Act to come into operation on a day or days to be proclaimed, the Act confers power on the Governor in Council to fix by proclamation or proclamations published in the *Government Gazette*—

[2] (a) a day for the Act or provisions to come into operation; or  
(b) different days for different provisions of the Act to come into operation".

The proclamation did what is provided for in s10A(2)(b), but Mr Hammond's contention is that that provision did not apply having regard to the interpretation for which he contends of s2 of the Act. By a proclamation published 25 February 1987 in the *Government Gazette*, the provisions under which the defendant was charged and the regulations empowered, were to come into operation on 1 March 1987. Other dates, namely 1 May and 1 July 1987, were fixed for commencement of operation of other provisions of the Act.

Thus the Act was not proclaimed to come into operation on the one day, but some provisions were to come in on one day and others on other days. Mr Hammond submitted that there was no power in the executive to bring the Act into operation in this way and that the proclamation was

accordingly ineffective or invalid, as not authorized. His submission rested on two propositions, one, that the "Act" or the expression "the Act" in s2 refers to an indivisible piece of legislation, and that, as a matter of grammar, something which is indivisible can only come into operation at the one time and cannot do so at several times. That being so, the words "or days", he submitted, were mere surplusage or incapable of being given sensible meaning. The latter proposition, as I understand it, follows from the first proposition. Mr Hammond conceded that his argument rested fundamentally on an interpretation which assigns no meaning to the words "or days" and treats them as surplusage.

[3] The argument has, in my opinion, little to commend it and it is surprising not only that it was put by responsible counsel, but came to be accepted. It is conceded that it is a well established rule of construction that a meaning must be given, if possible, to every word of a statute. As Lord Brougham said in *Auchterarder Presbytery v Lord Kinnoull* [1839] EngR 653; 6 Cl & F 646 at p686; 7 ER 841, in a passage quoted in *Hardcastle (Craies) on Statutory Law*, 4th Edition and referred to by O'Connor J in *Brisbane City Council v Attorney-General (Qld)* [1908] HCA 8; (1908) 5 CLR 695 at p720,

"A Statute is never supposed to use words without a meaning."

O'Connor J went on to say, and Mr Hammond relied on this passage,

"Courts will, however, when necessary, take cognizance of the fact that the legislature does sometimes repeat itself, and does not always convey its meaning in the style of literary perfection."

and O'Connor J cited from the Master of the Rolls, Lord Jessel, in *Yorkshire Insurance Co v Clayton*, (1881) 8 QBD 421 at page 424 to the effect that it is not always possible to give a meaning to every word used in Parliament and many instances may be found of provisions put into statutes merely by way of precaution. It is accepted that there may be occasions, although, in my experience, very rare, where a court is unable to give a meaning to some word or words or an expression in a statute, but I repeat that the occasion is very rare. This is not one of them.

There is little difficulty here, in my opinion, in giving the words, "or days", in their context, a sensible meaning in s2 of the Act. The fallacy of the argument put by counsel for the defendant is the assertion that an Act or [4] the Act is indivisible. There is no support in the authorities for applying a concept of indivisibility to an Act. It is proper to have regard to an Act in its entirety and to speak of an Act in distinction from its provisions, but to do so is not to say that an Act is indivisible. When the expression, "Act or its provisions", or like words are used in a statute which distinguished between an Act and its provisions, no more is intended, I should think, than to draw the distinction between the Act considered in its entirety and individual provisions or groups of them in the Act. They do not, in my opinion, as was submitted by Mr Hammond, support a proposition that the law recognizes some concept of indivisibility. I have not fully understood what Mr Hammond meant by reference to the expression "indivisibility" and, after questioning counsel in this regard, did not receive any satisfactory explanation. It is difficult to accept that it is appropriate to speak of a statute as indivisible. It may well be that as matter of interpretation some sections or provisions of statute are not severable, but to speak in a vacuum of indivisibility of a statute seems to me either inappropriate or without sensible meaning.

The Solicitor General, Mr Berkeley QC, referred me to s7 of the *Interpretation of Legislation Act 1984*, which reads:

"Every section of an Act has effect as a substantive enactment without introductory words".

The reference in the section to "introductory words" is a reference to a historical practice, no longer followed, of introducing a section of an enactment by such words as, "And be it further enacted". Section 7 is designed, as I [5] understand it, to end the practice without altering the significance of the former custom or practice. [6] I accept the submission of the Solicitor-General that s7 tells strongly against any concept of indivisibility, whatever it might mean, for which Mr Hammond contended.

Mr Hammond's fundamental submission is that an Act cannot come into operation on different days. It does no violence, in my opinion, to the ordinary use of language to speak of

an Act doing that very thing. Section 2 clearly assumes that an Act might come into operation either on the one day or on more than one day. The words of s2 clearly manifest the intention of Parliament to provide the executive with a power to take either course. Thus there is no difficulty in ascribing to the words "or days" not only a meaning, but a sensible one.

In 1985 the *Interpretation of Legislation Act* 1984 was amended to include s10A. This section replaced earlier provisions which fitted with the practice of draughtsmen of legislation, as was submitted by the Solicitor-General, of expressing proclamation powers in greater length. In recent years, particularly in the 1980s, there has been a concerted and conscious attempt to simplify the language of statutes, including development of what has come to be known as the "plain English" movement. As was submitted by the Solicitor-General, s2 represents, in conjunction with s10A, the new approach and endeavours to state more succinctly with less words and more precisely what was stated at greater length and more compendiously in former times. It is a long and well-established practice for statutes to provide for their provisions to be brought into operation or commence operation piecemeal. Section 2 [7] is a sample of many provisions in like form adopted by Parliament in many statutes since 1985 when, as I have mentioned, s10A was introduced into the *Interpretation of Legislation Act* 1984. I have been referred by the Solicitor-General to some twenty-six statutes passed in 1986 with a like provision to that of s2 of the Act.

Mr Hammond submitted that s10A(2) is to be construed to mean that an Act must provide that "provisions of the Act" may be proclaimed to come into operation "on days". I do not agree. In my opinion, s10A fits, and was almost certainly designed to fit, the language of a provision such as s2 of the Act. Section 10A(2) follows precisely that language when it states:-

"If an Act provides for the Act or provisions of the Act to come into operation on a day or days ..." etc.

In their context, and when regard is had to s10A(2)(a) and (b), these words apply to an Act which provides for "the Act" to come into operation "on a day or days" or where it provides for "the provisions of the Act" so to come into operation. Moreover, I find that s2 provides different meaning to be given to the expressions "the Act" and "the provisions of the Act". I am of the opinion that there is no foundation for treating the words "or days" in s2 as mere surplusage. The Act has been validly proclaimed and at all material times the provisions of it, and particularly those here relevant, have been in operation. The order nisi is made absolute with costs.

Solicitor for the applicant: Victorian Government Solicitor.  
Solicitors for the respondent: Purves Clarke Richards.