SUPREME COURT OF QUEENSLAND

CITATION:	*R v Hannan, Hannan, Gillis, Murrell & Hannan* [2016] QSC 161
PARTIES:	**THE QUEEN** (Crown/Respondent) **v** **BEN ANDREW HANNAN** **SCOTT ALEXANDER HANNAN** **MATTHEW PHILLIP GILLIS** **NICHOLAS ALLAN MURRELL** **SARAH MCCARLIE MUIR HANNAN** (Defendants/Applicants)
FILE NO/S:	No 406 of 2016
DIVISION:	Criminal
PROCEEDING:	Application
ORIGINATING COURT:	Supreme Court at Brisbane
DELIVERED ON:	26 July 2016
DELIVERED AT:	Brisbane
HEARING DATE:	21 July 2016
JUDGE:	Peter Lyons J
ORDER:	I rule in each case that the applicant was not a vicious lawless associate for the purposes of the *Vicious Lawless Association Disestablishment Act* 2013.
CATCHWORDS:	STATUTES – ACTS OF PARLIAMENT – INTERPRETATION – PARTICULAR WORDS AND PHRASES – SPECIFIC INTERPRETATION – OTHER CASES – where the applicants have been charged with a number of offences – where a circumstance of aggravation that each of the applicants was a vicious lawless associate at the time offence has been charged – where each applicant seeks a ruling under 590AA of the *Criminal Code 1899* that it is not established that they were a vicious lawless associate at the time of offending – where the case turns primarily on the meaning of the word group in the definition of association under s 3 of the *Vicious Lawless Association Disestablishment Act* 2013 – whether the applicants' constituted a group within the meaning of association

Criminal Code 1899 (Qld)

Vicious Lawless Association Disestablishment Act 2013 (Qld)

Acts Interpretation Act 1954 (Qld)

Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue Norther Territory (2009) 239 CLR 27

Allianz Australia Insurance Ltd v GSF Australia Pty Ltd (2005) 221 CLR 568

Beckwith v The Queen (1976) 135 CLR 569

Catlow v Accident Compensation Commission (1989) 167 CLR 543

Cooper v Motor Insurers' Bureau [1985] 1 All ER 449

Kelly v R (2004) 218 CLR 216

Kibby v Registrar of Titles [1999] 1 VR 861

Project Blue Sky Inc v Australian Broadcasting Authority (1998) 194 CLR 355

S v Australian Crime Commissioner (2005) 225 ALR 123

Saeed v Minister for Immigration and Citizenship (2010) 241 CLR 252

Scott v Cawsey (1907) 5 CLR 132

Secretary of State for Education and Science v Thameside MBC [1977] AC 1014

COUNSEL:

J Hunter QC for the applicant Scott Alexander Hannan
D Lynch QC for the applicant Sarah McCarlie Muir Hannan
ST Courtney for the applicant Nicholas Allan Murrell
RA East for the applicant Matthew Phillip Gillis
AC Guest (sol) for the applicant Ben Andrew Hannan
M Cowen QC with C Marco for the respondent

SOLICITORS:

Legal Aid Queensland for the applicant Scott Alexander Hannan
Bamberry Lawyers for the applicant Sarah McCarlie Muir Hannan
Hannay Lawyers for the applicant Nicholas Allan Murrell
Legal Aid Queensland for the applicant Matthew Phillip Gillis
Guest Lawyers for the applicant Ben Andrew Hannan
Office of the Director of Public Prosecutions for the respondent

[1] Each of the applicants in these proceedings has been charged on the indictment with a number of offences, including trafficking in the dangerous drug, cannabis. In each case, a circumstance of aggravation has been alleged, namely, that the applicant was, at the time of the offences, a vicious lawless associate under the provisions of the *Vicious Lawless Association Disestablishment Act* 2013 (*VLAD Act*). Each applicant has applied under s 590AA of the *Criminal Code 1899* (Qld) for a ruling that, on the evidence relied upon by the prosecution, it is not established that he or she was such an associate at the time of the offending. In some cases, the ruling is sought as a matter of law; and in others it is contended that the applicant has no case to answer. However, in each case it is contended that the result flows from the proper construction of the VLAD Act.

Facts relied upon by prosecution

[2] In early 2010, the applicants Ben and Sarah Hannan were living at 148 Fairview Drive, Willow Vale. Ben Hannan obtained two large shipping containers. He arranged for the excavation of an area of land at the back of the property where the containers were placed. A concrete slab and large shed were erected over the containers. Cannabis was grown in the shipping containers[1].

[3] In March 2012, Ben and Sarah Hannan purchased another property at 151 Hotham Creek Road, Willow Vale, through their company, Bensa Properties Pty Ltd. Ben Hannan arranged for the construction of a shed on this property, which was completed by early August 2012. In October 2012 Scott Hannan returned from Canada, and moved into 148 Fairview Drive. Until Scott's return, Ben had been producing cannabis and trafficking in it. On Scott's return, Ben asked him to take control of the operation, which Scott did under the direction of Ben[2].

[4] In turn, Scott Hannan employed Nicholas Murrell from June 2013 to assist in the production and sale of the cannabis, though Mr Murrell worked under the direction of Ben Hannan[3]. Matthew Gillis assisted in the production and sale of the cannabis from late October 2013[4].

[5] The operation resulted in the production of between 70 and 100 cannabis plants per eight week crop[5]. The cannabis was sold for approximately $3,000 per pound. Scott Hannan and Nicholas Murrell were paid $4,000 per week, the money coming from Ben Hannan's company, Hannan Industries Pty Ltd[6]. Mr Gillis was paid in cash by Ben Hannan[7], though I have not been able to identify the amounts.

[6] Ben Hannan remained involved in day-to-day operations, by attending to the crop, giving advice on chemicals and pest control, checking water consumption, and assisting with

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1 See Exhibit 5, p 1.
2 See Exhibit 5, p 1.
3 See Exhibit 5, p 2.
4 See Exhibit 3 p 2.
5 See Exhibit 5 p 1.
6 See Exhibit 1, p 1.
7 See Exhibit 5, p 3.

cultivation. Sarah Hannan, in conjunction with Ben, dealt with the money obtained from these operations[8].

[7] Sarah Hannan's role was related to the money received, and was described as funnelling the money through the various business enterprises of herself and her husband, to "legitimise the illegal funds"[9].

[8] The extent of the activities between September 2010 and October 2012 is not identified. In the period from October 2012 to October 2013 the quantity of cannabis produced was between approximately 675 and 864 pounds of cannabis, with an estimated yield between $2,025,000 and $2,592,000[10]. In the period from October 2013 to March 2014 the quantity of cannabis produced and sold was at least 179 pounds, with a yield of $537,000[11].

[9] In the period of their involvement, Scott Hannan, Mr Murrell and Mr Gillis attended at the place where the cannabis was grown on an almost daily basis, for the purposes of cultivation and/or harvesting. Attendance at the Hotham Creek Road property was restricted to those involved in the offending. The proceeds of sale Ben Hannan sought updates on the selling activities from Mr Gillis and Mr Murrell; and the proceeds of sale were paid to him.

[10] On some nine occasions Ben Hannan attended at the place where the crops were growing in the company of Scott Hannan and Murrell; and with Gillis on some occasions. Ben Hannan also went to Fairview Drive alone to inspect the progress of the cannabis crop, on two occasions. Sometimes cannabis was taken to Ben Hannan's house at Helensvale, for packaging. Ben Hannan paid expenses on behalf of Mr Gillis and Mr Murrell[12].

[11] These activities have resulted in a 68 count indictment, relating to trafficking, producing, supplying and possessing cannabis.

[12] These facts are more fully set out in Schedules of Facts provided on behalf of the respondent. It is common ground that they provide a proper basis for the determination of these applications, though at least in one case they may be contested at a trial.

The VLAD Act

[13] The Act includes the following provisions,

> "**2 Objects**
>
> (1) The objects of the Act are to—
>
> (a) disestablish associations that encourage, foster or support persons who commit serious offences; and
>
> (b) increase public safety and security by the disestablishment of the associations; and

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8 See Exhibit 5, p 1.
9 See Exhibit 2, p 2.
10 See Exhibit 5, p 2.
11 See Exhibit 1, p 1.
12 See Exhibit 1, p 9.

(c) deny to persons who commit serious offences the assistance and support gained from association with other persons who participate in the affairs of the associations.

(2) The objects are to be achieved by—

(a) imposing significant terms of imprisonment for vicious lawless associates who commit declared offences; and

(b) removing the possibility of parole for vicious lawless associates serving terms of imprisonment except in limited circumstances; and

(c) encouraging vicious lawless associates to cooperate with law enforcement agencies in the investigation and prosecution of serious criminal activity.

3 Definitions

In this Act—

association means any of the following—

(a) a corporation;

(b) an unincorporated association;

(c) a club or league;

(d) any other group of 3 or more persons by whatever name called, whether associated formally or informally and whether the group is legal or illegal.

further sentence, for a vicious lawless associate, means a sentence imposed on the associate under section 7(1)(b) or (c).

4 Meaning of *participant*

For this Act, a person is a ***participant*** in the affairs of an association if the person—

(a) (whether by words or conduct, or in any other way) asserts, declares or advertises his or her membership of, or association with, the association; or

(b) (whether by words or conduct, or in any other way) seeks to be a member of, or to be associated with, the association; or

(c) has attended more than 1 meeting or gathering of persons who participate in the affairs of the association in any way; or

(d) has taken part on any 1 or more occasions in the affairs of the association in any other way.

5 Meaning of *vicious lawless associate*

(1) For this Act, a person is a ***vicious lawless associate*** if the person—

(a) commits a declared offence; and

(b) at the time the offence is committed, or during the course of the commission of the offence, is a participant in the affairs of an association (***relevant association***); and

(c) did or omitted to do the act that constitutes the declared offence for the purposes of, or in the course of participating in the affairs of, the relevant association.

(2) However, a person is not a vicious lawless associate if the person proves that the relevant association is not an association that has, as 1 of its purposes, the purpose of engaging in, or conspiring to engage in, declared offences."

[14] Sections 7 and 8 regulate sentencing of a vicious lawless associate. It is sufficient to set out the following provisions of s 7:

"**7 Sentencing**

(1) A court sentencing a vicious lawless associate for a declared offence must impose all of the following sentences on the vicious lawless associate—

(a) a sentence for the offence under the law apart from this Act and without regard to any further punishment that may or will be imposed under this Act;

(b) a further sentence of 15 years imprisonment served wholly in a corrective services facility;

(c) if the vicious lawless associate was, at the time of the commission of the offence, or during the course of the commission of the offence, an office bearer of the relevant association—a further sentence of 10 years imprisonment served wholly in a corrective services facility which must be served cumulatively with the further sentence mentioned in paragraph (b).

(2) A further sentence—

(a) must not be mitigated or reduced under any other Act or law; and

(b) must be ordered to be served cumulatively with the base sentence imposed.

(3) However, if the base sentence does not—

(a) impose a term of imprisonment on the vicious lawless associate; or

(b) require the associate to immediately serve a term of imprisonment in a corrective services facility;

the associate is to immediately begin to serve the further sentence mentioned in subsection (1)(b) and the base sentence is to have

effect, so far as practicable, at the end of the further sentence or sentences.

(4) Also, if the base sentence imposed on the vicious lawless associate is life imprisonment, the further sentence mentioned in subsection (1)(b) is to have effect from the parole eligibility date applying to the associate as a prisoner under the *Corrective Services Act 2006*, section 181."

[15] Declared offences are identified in an extensive schedule to the Act. Under s 8, a vicious lawless associate is not eligible for parole during any period of imprisonment imposed for a further sentence.

Contentions

[16] The applicants contended that the fact that three or more persons together committed a declared offence was not sufficient to constitute them an association for the purposes of the VLAD Act. The Act is a penal statute, and uncertainty about the meaning of the term "association" should be resolved in favour of the subject. In interpreting the meaning of the term, the words "vicious" and "lawless" used in the Act's title, and elsewhere in it, were to be given meaning. A proper reading of the Act and extrinsic materials demonstrated that the Parliament did not intend the Act to operate so widely as to catch any three persons who jointly committed a declared offence. The purpose of the legislation was to be identified from the long title to the Act, the explanatory notes, and records of Parliamentary proceedings. A literal reading of the Act would mean that any three people who together commit a declared offence are an association, and thus each would be a vicious lawless associate, and thus subject to a minimum term of imprisonment of 15 years, even where the offending might not otherwise warrant time in custody. For example, if three people sharing accommodation agreed to grow a couple of cannabis plants to provide cannabis for their own use, allocating tasks, and occasionally meeting to consider the progress of their project, they would be a "group" and thus an "association" for the purposes of the Act, committing the declared offence of producing dangerous drugs, and each would be required to serve a minimum period of 15 years in prison (it might be added that if one of them was an "office bearer", that person would be required to serve a minimum period of 25 years in prison). This result was said to be "startling and absurd", and a result which could not have been intended[13].

[17] It was submitted that, because the words "vicious" and "lawless" were used in the Act, its operation was intended to be limited to certain types of association. They included those which "engage or (are) disposed to engage in brutal violence, or (are) characterised by vice, immorality, depravity, or profligacy, the latter word being used in the sense of utter and shameless immorality or dissolution." Further, it was submitted, "the association must have an ethos or culture that its members regard themselves as not being bound by the normal rules of law and human conduct that apply to others." A group that breaks a limited class of law and does not have the attribute of general lawlessness, it was submitted, was not an association for the purposes of the Act[14].

[18] In the present case, the applicants, it was submitted, did not constitute an association.

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[13] See Outline of Submissions on behalf of the Applicant Scott Alexander Hannan, 24 June 2016.
[14] See Outline of Submissions on behalf of the Applicant Scott Alexander Hannan, 24 June 2016, p 21.

[19] In addition, on behalf of Mr Gillis, it was submitted that there was no evidence that the applicants had "an identity as a 'group' or 'syndicate'"[15].

[20] For Ms Sarah Hannan it was also submitted that the purpose of the Act was to target criminal motorcycle gangs and their members, reference being made to what was said to be well known characteristics of such gangs[16].

[21] For the respondent, it was submitted that reference to the extrinsic material demonstrated that the purpose of the Act did not relate only to outlaw criminal motorcycle gangs but extended to what was described variously as "organised crime" and "criminal organisations" as well as to "paedophile rings". Although paragraph (d) of the definition of the word "association" in s 3 of the VLAD Act was to be read *ejusdem generis* with the other paragraphs of the definition, the resulting class was "an organised group of people who are united by a common object or purpose". (At one point in the course of oral submissions, it was contended that any three persons, or perhaps, any three persons who acted together, would constitute a "group"; but on questioning, Counsel for the respondent retreated to the submission just quoted.) The relevant roles of the applicants demonstrated that they were engaged in "organised crime, with Ben Hannan satisfying the definition of an office bearer" of the association. It was also submitted that the applicants formed a league, or an "unincorporated association", for the purpose of the definition of "association"[17].

Issues

[22] As argued, the case turns primarily on the meaning of the word "group" in the definition of "association" in s 3. Like many words in the English language, this word has a range of meanings, and may be used in a variety of contexts. In some cases, the connection between those who constitute a group may be very tenuous. One definition is[18], "a number of persons or things located close together, or considered or classed together". Thus physical proximity, which might be purely accidental, is sufficient to constitute a number of people as a group. Alternatively, under the latter part of that definition, people might be classed together because of a common characteristic; for example by someone carrying out a survey or some other form of study; and thus form a group, although they are otherwise unassociated.

[23] If this term, and other expressions used in the VLAD Act, are given the widest meaning then the reach of the Act is correspondingly very wide. Given the penalties which it imposes, it is important to establish the meaning of the terms used with some care. I intend to approach this first by a consideration of the text of the Act; then to have regard to some extrinsic materials; and after that, to consider some principles of statutory interpretation. I shall then discuss the other bases relied on by the respondent.

The legislative text

[24] There are, in my view, a number of indications in the language used in the Act, as to the sense in which the word "group" is used in s 3. It does not appear there in isolation. Rather, reference is made to a group "of 3 or more persons … whether associated formally

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15 See Outline of Submissions on behalf of the Applicant Matthew Phillip Gillis, 24 June 2016, p 2.
16 See Outline of Submissions on behalf of the Applicant Sarah McCarlie Muir Hannan, 1 July 2016, p 3.
17 See Outline of Submissions (Respondent), 11 July 2016.
18 B Moore (ed), *The Australian Oxford Dictionary*, (2nd ed, Oxford University Press) p 554.

or informally …" The words used in this paragraph suggest that the group is constituted by some form of association between the relevant persons.

[25] The defined term "association" appears significantly in ss 4 and 5. These sections are to be read as if each of the definitions of the word "association" was inserted into the section[19]. It would follow from s 4 that a group referred to in paragraph (d) of the definition is envisaged as having "affairs"; and that membership of, or association with, the group is something which can be sought, asserted, declared and advertised. Moreover, it would appear from s 4(c), that the "affairs" of the group might be participated in by those who constitute the group; or, by reference to s 4(d) that they might take part in the group's "affairs". By reference to s 5(1)(c) and s 5(2) it would appear that a group is likely to have one or more purposes.

[26] The stated objects of the Act refer to the "disestablishment" of "associations", and accordingly of "groups"[20]. That rather suggests that a group referred to in s 3(d) has some form of existence which is capable of disestablishment. Moreover, it would seem that a group is something that can encourage, foster or support, and provide assistance and support, to persons who commit serious offences[21].

[27] The applicants place weight on the use of the words "vicious" and "lawless" both in the title to the Act and in a number of its provisions. The expression "vicious lawless associate" is defined in s 5, but not in a way which confines the expression to conduct or persons which are vicious or lawless. Other than by the incorporation of the defined term, the operative provisions of the Act do not include these words. Many of the declared offences are unlikely to be committed "viciously" (for example aiding persons to escape from lawful custody; possessing child exploitation material; permitting a young person to be at a placed used for prostitution, producing and supplying dangerous drugs; and receiving or possessing property obtained from trafficking or supplying dangerous drugs). While not decisive, this rather suggests that the operation of the Act is not intended to be confined to associations which are "vicious"; nor does it seems likely that lawlessness is a necessary characteristic of such an association.

Extrinsic materials

[28] For the respondent it was submitted that the provisions of the VLAD Act were not ambiguous, and accordingly the extrinsic materials relied upon by the applicants were not available for consideration. The written submissions for the respondent referred to the statement in the joint judgment of Brennan and Gaudron JJ in *Catlow v Accident Compensation Commission*[22] that "… it would be erroneous to look to the extrinsic material before exhausting the application of the ordinary rules of statutory construction."

[29] That statement was adopted by five members of the High Court in *Saeed v Minister for Immigration and Citizenship*[23]. Nevertheless their Honours went on to acknowledge[24]

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[19] See *Kelly v R* (2004) 218 CLR 216 at [103] per McHugh J; and see *Allianz Australia Insurance Ltd v GSF Australia Pty Ltd* (2005) 221 CLR 568 at [12]; *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue (NT)* (2009) 239 CLR 27 at [40].

[20] See s 2(1) (a) and (b).

[21] See s 2(1) (a) and (c).

[22] (1989) 167 CLR 543, 550.

[23] (2010) 241 CLR 252 at [33].

[24] At [34].

that resort to the extrinsic materials may be warranted to ascertain the context in which legislation was adopted; as well as its objective. Moreover, s 14A of the *Acts Interpretation Act* 1954 (*AI Act*) makes it necessary to give some consideration to the purpose of the Act, which, by virtue of the definition found in Schedule 1 of the AI Act, extends to policy objectives. As the present case demonstrates, it is not unusual to find such objectives in explanatory notes for proposed legislation.

[30] In the circumstances it seems to me appropriate at this point to record the references to extrinsic material which appear to me to be potentially of some significance, before determining the questions asked of me.

[31] The explanatory notes for this legislation contain a section headed "Policy Objectives and the Reasons for Them"[25]. This makes reference to an episode of violence at Broadbeach, involving criminal motorcycle gangs. It then records an announcement by the Government of the day to what might be sufficiently described as a proposed "crackdown on criminal gangs".

[32] The document then sets out the "primary objective" of the proposed legislation, in terms which closely reflect the objects set out in s 2(1) of the VLAD Act. That included references to "associations" of the kind described in that provision. The notes continued by referring to the "structure and operation of these criminal associations", identifying problems they present for law enforcement; and then stated that the legislation was "designed to address these particular challenges and (provide) for a targeted regime to dismantle these criminal associations".

[33] The Bill for the VLAD Act was one of a package of three Bills introduced into Parliament on 15 October 2013. Earlier in the day both the then Premier and the then Attorney-General made ministerial statements relating to these Bills[26]. The statement of the Premier identified the target as "criminal motorcycle gangs". The statement of the Attorney-General spoke of such gangs, but also referred to "organised crime" and "members of criminal organisations that commit serious offences". When introducing the Bill, the Attorney-General used language reflective of the long title of the Act, and s 2[27]. He summarised the provisions of the Bill, and referred to some aspects of the sentencing regime as "an important mechanism for destroying these gangs as it will drive a wedge into the membership so that morale is broken." There was no formal second reading speech. In his reply, the Attorney-General made reference to crushing "the enterprise of the criminal motorcycle gangs … their associations and their protection rackets"[28].

[34] The written submissions for the respondent referred to the debate, in the course of which one member stated that the legislation did "not apply just to criminal motorcycle gangs. It can extend to organisations such as the Mafia and the triads that operate in Queensland and, even more importantly to paedophile rings and the like"[29]. In response to a question, the Attorney-General said that the Bill also dealt with paedophile rings and other criminal gangs[30].

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25 See Exhibit 6 p 1.
26 See Exhibit 7 pp 3114, 3115.
27 Exhibit 7 p 3154.
28 Exhibit 7 p 3248.
29 Exhibit 7 at p 3225.
30 Exhibit 7 p 3268.

Principles of interpretation

[35] The parties referred to the approach to be taken to the construction of a statute which is penal in character. Reference was made to the passage from the judgment of Isaacs J in *Scott v Cawsey*[31], where his Honour pointed out that, "a Court should be specially careful, … to ascertain and enforce the actual commands of the legislature, not weakening them in favour of private persons to the detriment of the public welfare, nor enlarging them as against the individuals towards whom they are directed."

[36] I was also referred to the statement by Gibbs J in *Beckwith v The Queen*[32] that the ordinary rules of construction must be applied; but if the language of the statute remained ambiguous or doubtful the ambiguity or doubt was to be resolved in favour of the subject; and describing this approach as one of last resort.

[37] The applicants also referred to a passage from *Project Blue Sky Inc v Australian Broadcasting Authority*[33], to the effect that a Court must strive to give meaning to every word in a statutory provision.

[38] I was also referred to *S v Australian Crime Commissioner*[34] for the proposition that an objects clause in a statute, while relevant to the proper construction of the statute, "cannot cut down the plain and unambiguous meaning of a provision if that meaning in its textual and contextual surrounds is clear".

[39] I have already mentioned the respondent's reference to the *ejusdem generis* rule.

[40] Problems which might be considered analogous to that raised by the present legislation have been considered by text writers. *Bennion*[35] discusses the question under the heading "*Meaning wider than the object (casus male inclusus)*". The author states,

> "The intention of Parliament is to remedy a mischief. Since an Act is a coercive instrument, backed by the physical forces of the state, it is presumed that Parliament does not intend the enactment to go wider in its operation than is necessary to remedy the mischief in question." (references omitted)

[41] The author also observes that the literal meaning of many enactments "takes their coercive force wider than is necessary to remedy the mischief."

[42] *Cross*[36] provides two examples of cases where broad language was read down by reference to the purpose of the statutory provisions, though the authors did not identify a principle or class of case where this approach might be taken[37].

[43] I should also record that I was referred to authorities which emphasise the importance of the statutory text. Thus, I was referred to the passage from *Alcan (NT) Alumina Pty Ltd*

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31 (1907) 5 CLR 132, 154-155.
32 (1976) 135 CLR 569, 576.
33 (1998) 194 CLR 355 at [71].
34 (2005) 225 ALR 123, 130.
35 O Jones & F AR Bennion, *Bennion on Statutory Interpretation (*6th ed, *LexisNexis*, 2013) at p 795.
36 Cross, *Statutory Interpretation*, John Bell and Sir George Engle, (3rd ed, Butterworths 1995) pp 76-77.
37 The cases were *Cooper v Motor Insurers' Bureau* [1985] 1 All ER 449 and *Secretary of State for Education and Science v Thameside MBC* [1977] AC 1014.

v Commissioner of Territory Revenue[38] which, amongst other things, points out that the task of statutory construction must begin with a consideration of the text itself; and that the language which has actually been employed in the text of legislation is the surest guide to legislative intention. I was also referred to *Project Blue Sky Inc v Australian Broadcasting Authority*[39] for the proposition that a court construing a statutory provision must strive to give meaning to every word of the provision; and[40] for the proposition that context, the consequences of a literal construction, the purpose of the statute, or the cannons of construction may require a departure from the literal or grammatical meaning.

Construction of the word "group" in the VLAD Act

[44] The operative provision of the VLAD Act is s 7. It uses the term "vicious lawless associate", and so must be read as if the definition of that term in s 5 were introduced into the language found in s 7. However s 5 itself incorporates the expression "a participant in the affairs of an association", found in s 4; which in turn uses the word "association", defined in s 3. There is thus a chain of incorporation which ultimately requires the definition found in the last-mentioned section to be incorporated into s 7. It is in that context that I shall attempt to construe the language of s 3.

[45] I have already mentioned one definition of the word "group". Another definition is[41], "A number of persons or things regarded as forming a unity on account of any kind of mutual or common relation, or classed together on account of a certain degree of similarity". It seems to me unlikely that the legislative intent was to make s 7 applicable to every case where more than two persons were parties to the commission of a declared offence. If that were so, the legislation could have been drawn in a far more simple and clear fashion. The chain of provisions suggests that the existence of an association was a matter considered important by the legislature, notwithstanding the width of the definitions found in the VLAD Act.

[46] I have already noted that provisions of the Act envisage that an association will have members. The provisions, in my view, envisage that a participant might rely on membership as of a means of distinguishing himself or herself from those who are not members; and membership would provide a basis for claiming some form of assistance or support from, and accordingly asserting some form of obligation, probably not legal, falling on, others who are members. These considerations suggest that an association, including a "group", has some form of existence which would be recognised by others, and is in some way capable of identification as an entity. For want of better expressions, I would describe these characteristics as "recognisable group existence" and "recognisable group identity".

[47] The references in s 4 to "association with" and seeking to be "associated with" the association or group, it seems to me, confirm this view. It is difficult to see how a person might seek to assert, declare or advertise association with a group, or seek to be associated with a group, except in a case where there is recognisable group existence, and recognisable group identity. Although the law does not attribute personality to such bodies, it has, in some cases, recognised that such bodies have some form of existence. Clubs and associations provide an example. It seems to me not to be inaccurate to speak

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38 (2009) 239 CLR 27 at [47].
39 (1998) 194 CLR 355 at [71].
40 At [78].
41 See The Oxford English Dictionary, Volume VI (2nd ed, Claredon Press, 1989) definition 3.

of their "existence", even if the law does not regard them as capable of owning property, or having the benefit of rights or the burden of obligations. It is not inappropriate to speak of the establishment of such bodies; nor of their dissolution. The definition of "association" in s 3 of the VLAD Act, at least in paragraphs (b) and (c), appears to recognise the existence of such bodies. The fact that the Act envisages that a group will have "affairs", in which members might participate[42], also suggests that an association is a body with some form of identity, and some form of ongoing existence. The references in the Act to the disestablishment of associations also support the view that its provisions are directed at bodies which might be regarded as having some form of existence, and some recognisable group identity.

[48] I conclude, therefore, that a person who acts with two or more others is not a vicious lawless associate, unless it is also shown that these persons when considered together have what I have referred to as a recognisable group existence, and a recognisable group identity. I do not consider that the language of the Act is adequately reflected by the expression relied on by the respondent, "an organised group of people who are united by a common object or purpose".

[49] My conclusion has been reach from an analysis of the language of the VLAD Act. It seems to me, however, that there are other considerations which support it. It is possible to identify a genus in paragraphs (a), (b) and (c) of the definition of "association", which supports my conclusion. The fact that the statute is penal would, if I were otherwise in doubt, lead me to adopt a construction of the Act which would result in its application being no wider than its language clearly requires. The occasion which led to the introduction of the legislation provides some support for my conclusion, though I do not consider this to be of any real significance. To construe the Act more broadly would lead to the inclusion of bodies of persons beyond those against whom the legislation was directed; so that its operation would go beyond addressing the identified "mischief". Indeed, I consider the consequences of a broader construction to be unreasonable, unjust, and even absurd; and would not adopt it without clearer language[43]. To the extent that it might be appropriate to look beyond the statement of objects in the VLAD Act, and to have regard to Parliamentary proceedings, they too, provide some support for my conclusion. The references to criminal gangs suggest the legislation is directed to bodies with some form of existence, and with a recognisable group identity. The use of the expression "organised crime" does not, it seems to me, alter this conclusion. I should add that my construction is, in my view, consistent with the achievement of the objects of the Act.

[50] I was referred to a statement by the then Attorney-General in the course of the consideration in detail of the Bill, where he said, "we are dealing not only with criminal motorcycle gangs … we are also with paedophile rings and other criminal gangs that are not patched and motorcycle riders"[44]. He then referred to a statement which he made earlier in the debate, which I take to be[45], "The definition is sufficiently broad enough to go after paedophile rings in Queensland…". These statements, it seems to me, reflect the view of the speaker as to the effect of the Bill. I do not find them of assistance.

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[42] See s 5(i)(c).
[43] Compare *The Laws of Australia* Westlaw AU online service, Interpretation and Use of Legal Sources [25.1.880].
[44] Exhibit 7 p 3268.
[45] See Exhibit 7 p 3252.

[51] The applicants drew attention to the words "by whatever name called" in the definition of "association" in s 3 of the VLAD Act. They submitted that a group would not come within the definition, unless it had a name. There is some degree of consistency between this submission, and my view that the definition refers to a group with some recognisable group identity. I am not, however, convinced by the submission. It may be that this phrase was introduced to cover bodies which might not be referred to as groups but in some other way. Moreover, paragraph (d) is clearly intended to ensure that the defined term has a broad scope. Nevertheless, I have been able to determine the applications without deciding this question, and I refrain from doing so.

[52] I have previously mentioned the reliance of the applicants on the words "vicious" and "lawless" in the VLAD Act. In my respectful opinion, there is great force in the observations of French CJ and Hayne J in *Kuczborski v Queensland*[46] that the expression "vicious lawless association" does not correctly identify the scope of the Act. Similarly, I am inclined to the view that the use of the words "vicious" and "lawless" cannot operate to constrain the scope of the defined term, "association". The applicants submitted that the appearance of these words in statements of the purpose or object of the Act should confine its scope, by application of the purposive approach, but that seems to me to be unusual. However, I have come to a conclusion about the outcome of these applications, without finding it necessary to rule on this submission.

Were the applicants a "group", and thus an association, for the VLAD Act?

[53] In essence, the evidence reveals that Mr Ben Hannan conducted an operation which involved the growing of cannabis plants, and the sale of cannabis. He employed Scott Hannan, Mr Murrell and Mr Gillis. Sarah Hannan dealt with the money from this operation. For the respondent, this summary was accepted, as was its analogy with other small-scale farming operations, such as the growing and selling of carrots, save for the illegality involved.

[54] I should also note that there was some suggestion in the course of submissions that Mr Gillis may have sold cannabis on his own account, having purchased it from Ben Hannan. That does not seem consistent with the relevant Schedule of Facts[47]. For the purpose of deciding the applications, it is unnecessary for me to determine this question. On either basis, my conclusion would be the same.

[55] In my view, the roles of each applicant in this operation does not have the consequence that they can be regarded as a group with some form of group existence, and some recognisable group identity. It is not enough that their activities were organised (by Mr Ben Hannan); nor that they assisted him in achieving his purpose of conducting a profitable business of producing and selling cannabis. The operation was the operation of Mr Ben Hannan. Each of the other male applicants worked as his employee, each being paid for his work. Their relationship with each other was no more than a consequence of this employment. Unlike many clubs and associations, it was not the product of an interest which each had, and which they came together for the purpose of furthering by some form of common activity. Their relationship with Ben Hannan was not the product of a shared purpose. His was to make profit from the production and sale of cannabis; theirs, to earn money from their employment, which required them to assist

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[46] (2014) 254 CLR 51 at [13]-[14]; [67].
[47] Exhibit 3 p 3.

him. Their relationship with Sarah Hannan was more tenuous, but again was not the product of a shared purpose; nor could it be said that they, with her, formed a group which had some recognisable form of existence and identity.

[56] Unless it can be shown that these three constituted a group or association for the purposes of the VLAD Act, or that at least one of them together with Ben Hannan and Sarah Hannan constituted such a group or association, the circumstance of aggravation cannot be made out. In my view, the evidence does not reveal the existence of a group , and thus an association, under that Act. I should add that the matters identified in the Schedules of Fact as "Further VLAD considerations" are not sufficient to establish these matters.

Other matters

[57] The respondent also contended that the applicants constituted an unincorporated association, or alternatively a league, thus coming within the definition of "association" in the VLAD Act.

[58] The respondent submitted that an "unincorporated association" is a "non-legal entity" whose characteristics were identified by Mandie J in *Kibby v Registrar of Titles*[48]. His Honour said,

> "I consider that the essence of an 'association' may be described as some form of combination of persons (with a common interest or purpose) with a degree of organisation and continuity at least sufficient to distinguish the combination from an amorphous or fluctuating group of individuals and with some clear criteria or method for the identification of its members."

[59] In my view, the applicants considered together were not "some form of combination". Nor does the evidence show them to have a common interest or purpose, in the sense which I understand his Honour to mean. That is to say, the interest or purpose of Mr Ben Hannan was to make a profit from the production and sale of cannabis. The interest or purpose of Sarah Hannan appears to have been to support Ben Hannan in that enterprise. While the other three applicants each had the purpose of earning money by assisting in the production and sale of cannabis, that was an individual purpose for each of them; and not a common interest or purpose. Nor were they together a combination distinguished from an amorphous or fluctuating group of individuals. Nor do I consider that there was any real sense in which the applicants were "members" of some relevant body.

[60] For the respondent, it was submitted that a "league" is a "covenant or compact between persons, parties, states etc, for the maintenance or promotion of common interests or from mutual assistance or service".

[61] There is no evidence of a covenant or compact made between all five applicants; though it may be accepted there was a covenant or compact of some form between Ben Hannan, and the other three male applicants individually. Nor, in my view, did they have "common interests". It follows that they did not constitute a league.

Conclusion

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[48] [1999] 1 VR 861 at [40]-[52], especially at [50]-[51].

[62] In my view, the evidence reveals that the applicants did not constitute an association for the purposes of the VLAD Act, and accordingly none of them was a "vicious lawless associate" for the purposes of s 7 of that Act. The circumstance of aggravation in each indictment is not made out on that evidence. I shall invite the parties to make submissions as to the form of order to be made in each case.