

12. Statutory interpretation and the Interpretation Act 1999

In reaching an interpretation of an Act, a court will rely on certain rules and conventions of statutory interpretation as well as the fundamental principles of law (see Chapter 3). The Interpretation Act⁹⁰ is the primary source of the rules of statutory interpretation in New Zealand, although some of its provisions are supplemented by the common law.

An awareness of the general principles of statutory interpretation and also the specific provisions of the Interpretation Act will assist in providing sufficient interpretive aids in the legislation, and reduce the risk of an unexpected judicial interpretation.

The Legislation Amendment Bill currently before the House will repeal the Interpretation Act and move most of its key provisions to the Legislation Act 2012⁹¹.

Guidelines

12.1. Have you considered the key principles of statutory interpretation?

The primary rules of statutory interpretation should be considered when designing legislation.

The meaning of an enactment must be ascertained from its text and in light of its purpose (Interpretation Act s 5):

- Generally words in an enactment will be given their natural or ordinary meanings. However an Act must be read as a whole; and other factors, such as the surrounding words, the subject matter of the relevant part of the Act, and the overall scheme of the Act will sometimes call for a different interpretation. The use of an interpretation section can greatly reduce the scope for ambiguity.
- Other features of the enactment, such as the table of contents, headings, marginal notes, diagrams, graphics, examples and explanatory material, as well as the organisation and format of the Act, may also be considered as part of the interpretation task.
- The purpose provision of the Act is a key aid to interpretation. Each new Act should have a purpose provision and, if possible, every provision in the Act should be interpreted consistently with the purpose provision. The large pool of sources that the courts will draw on in interpreting an Act highlights the need to ensure that the Act has internal coherence, and a clear purpose or policy objective that is adequately reflected in the provisions of the Act and any explanatory material.

Some Acts, such as Treaty settlement Acts (see Chapter 4) and the Parliamentary Privilege Act 2014⁹², have specific provisions directing the reader how to interpret them.

⁹⁰ <http://www.legislation.govt.nz/act/public/1999/0085/latest/DLM31459.html>

⁹¹ <http://www.legislation.govt.nz/act/public/2012/0119/latest/DLM2997666.html>

⁹² <http://www.legislation.govt.nz/act/public/2014/0058/latest/whole.html>

An enactment applies to circumstances as they arise (Interpretation Act s 6): Where possible legislation should be “future-proofed” by ensuring that it is flexible enough to properly address foreseeable developments in technology or society generally.

An enactment does not have retrospective effect (Interpretation Act s 7): See Chapter 11.

Interpretation consistent with NZBORA is to be preferred wherever possible: See Chapter 5.

Common law rules of statutory interpretation: While many of the fundamental principles of statutory interpretation are reflected in the Interpretation Act, a number continue to exist in the common law. One such principle is that where a list of specific things is followed by a general description of those things. The general description is presumed to be restricted to the same class as the specific references. This principle is referred to as *ejusdem generis*. Another example is the presumption that Parliament will intend to legislate consistently with fundamental human rights and New Zealand’s international obligations.

12.2. Have you considered the specific provisions of the Interpretation Act 1999?

Legislation should be consistent with the Interpretation Act 1999. Matters that are already provided for in the Interpretation Act should not be re-stated in new legislation.

The following paragraphs are intended to raise awareness of the kinds of issues that the Interpretation Act provides for and that therefore do not need to be re-stated in the new legislation. The paragraphs do not analyse the provisions of the Interpretation Act in depth. Nor do they explain how the common law supplements those provisions.

The Interpretation Act contains provisions relating to the aspects noted below.

- The date and time of day when Acts and regulations come into force (ss 8–10).
- In what circumstances a power granted by an Act may be exercised before that Act comes into force (s 11).
- General rules that concern when a power may be exercised by a delegate. Examples include what powers are deemed to be held by someone granted the power to appoint a person to an office and the power to make or issue delegated legislation; and when a person may exercise a power to correct minor errors in the prior exercise of that power (ss 12–16).
- The effect that repealing legislation will have on existing rights, powers and situations, things that may have been done under the repealed legislation, and on legislation that the repealed legislation amended or repealed. This includes rules concerning the fate of enactments made under the repealed legislation, powers previously exercised under the repealed enactment, and how to treat references to the repealed enactment in other legislation (ss 17–22).
- Legislation will not bind the Crown unless the enactment expressly says so. The practice in New Zealand is for all legislation to apply to the Crown (s 27) (see Chapter 10).

Any of these provisions can be overridden, extended or restricted by clear language in a particular case; but that should be done deliberately and only if necessary.

12.3. Have you considered the specific definitions and meanings of expressions in Part 5 of the Interpretation Act 1999?

Legislation should apply the definitions in Part 5 of the Interpretation Act. New legislation should not re-state those definitions.

Part 5 of the Interpretation Act defines what certain words and phrases mean. It is not necessary to re-state these rules in new legislation, although it may be helpful to readers to include a flagging provision identifying that the following words and phrases will have the meaning given to them by the Interpretation Act:

- Act, enactment, Order in Council, Proclamation, regulations
- commencement
- Commonwealth country; part of the Commonwealth
- de facto partner; de facto relationship
- enactment
- Gazette
- Governor-General in Council
- Minister & consular officer
- Month and working day (but not “week”)
- New Zealand, North Island, South Island
- territorial limits of New Zealand; limits of New Zealand
- person
- prescribed
- public notice; public notification
- repeal
- regulations
- rules of court
- writing
- words that use the prefix “step-” (such as step-parent)
- Definitions of “Act”, “Governor”, “land”, and “Person” in enactments passed before the Interpretation Act

Again, particular statutes can define these words and phrases differently; but only if necessary. See, for example, the definition of “public notice” in s 5 of the Local Government Act 2002⁹³; and the many different statutory definitions of “working day”, including several that exclude the period from Christmas to mid-January.

Part 5 also includes rules for the interpretation of:

- words that denote the masculine gender used in enactments before and after enactment of the Interpretation Act;
- the use of parts of speech and grammatical forms of words;
- the use of plural and singular words;
- the calculation of time and distance.

⁹³ <http://www.legislation.govt.nz/act/public/2002/0084/latest/DLM170873.html>