



### Interpreting Legislation, an Introduction – Russel Walsh

Understanding how words in legal documents are used and what they **actually** mean is an art that takes many years of practice to come to grips with. Although everyday words are commonly used the context in which they are used can give them a subtly different meaning than that we are familiar with.

Before we delve into the meaning of common words in a legal context, we first need to understand the basics about where our laws come from and are made.

#### **An Act (of Parliament). A statute.**

An Act is the highest form of law in New Zealand; it is supreme law. An Act is made by Parliament and only Parliament can change it. During its process through the Parliamentary system an Act is called a Bill and only becomes an Act when it is given the Royal Assent, when it is signed by the Sovereign, the King or their nominated representative in New Zealand, the Governor General. Example, the Land Transport Bill became the Land Transport Act 1998 when it received the Royal Assent on 8 December 1998.

An Act can authorise the preparation of subordinate, secondary, legislation, such as Regulations and Rules. Section 152 of the Land Transport Act authorises the Minister of Transport to make Rules relating to many land transport functions. Regulations and Rules do not have to go through the full Parliamentary process as does an Act but do get Cabinet (Government) approval and the Minister is expected to keep Parliament informed.

#### **Land Transport Rules**

Land Transport Rules were introduced in 1998 and set out the detailed requirements for a subject. Rules should be written in simpler style of English (plain language) than required in an Act.

Most Rules are drafted by the New Zealand Transport Agency under an arrangement with the Ministry of Transport and have the title style *Land Transport Rule (subject)*, example *Land Transport Rule: Heavy Vehicles*. Two Rules however, the Driver Licensing and Road User Rule are drafted by the Parliamentary Counsel Office on behalf of the Ministry of Transport as these two Rules have a lot wider implications for most users of the Land Transport system. They are the source of many key offences. The title style of these rules varies from NZTA drafted rules, an example of this is the Road User rule title, *Land Transport (Road User) Rule*.

The Land Transport Act provides for the Director of Land Transport, or a person who holds the necessary authority (delegation) granted by the Director, to grant exemptions to the requirements in a Rule subject to conditions set down in the Act. The Director may not issue an exemption for something that is specified in the Act.

#### **Land Transport Regulations**

These are similar in context to Land Transport Rules but may set fees and charges whereas Rules cannot, example the *Land Transport (Offences and Penalties) Regulations*. Many Land Transport Rules have related offences set out in regulations.

As with Rules the Director, of Land Transport may grant exemptions to Regulations.

## Meaning of Words

Sometimes the words used in legislation have a plain and straightforward meaning, but this is not always the case, and some amount of interpretation is often necessary. The Interpretation Act 1999 is a good place to start to understand how Parliament intended legislation to be interpreted. This Act sets out the principles and rules for interpreting legislation, and includes definitions of words used in legislation, such as “person”, “working day”, “act” and “month”.

The meaning of specific words or phrases relating to a particular piece of legislation are often included in the legislation itself. For Acts these are in the “Interpretation” section and for Rules, the “Definitions.”

## Commonly used words or phrases.

The following lists some commonly used words or phrases and examples of where the use of these may be found:

Term	Meaning
“And”	Use of “and” to join one or more paragraphs or subparagraphs together means that all of the elements of a section must be met to satisfy the section.  Example, in section 28(1) of the Land Transport Act 1998, all of the elements – (a) to (k) – must be satisfied for a driver licence to be valid.
“Deemed”	To consider something to be something else, e.g. a deemed regulation.
“Does not include”	Means something is excluded from the legislation.  Example: In the Land Transport Act the definition of “Goods service” does not include (excludes) a vehicle recovery service.
“Includes”	Includes means whatever follows is specifically covered (included) by the Act. It does not mean that things not specified are not covered by the Act, however.  Example; in the interpretation section of the Land Transport Act goods are defined as “all kinds of movable personal property; and includes articles sent by post, and animals”
“May”	To be allowed or permitted to do something, it is a discretionary power. Example: Section 168D of the Land Transport Act says: “ <i>The Director may, if the Director thinks it appropriate</i> ” – (issue exemptions to a particular Land Transport Rule or regulation.).
“Must”	Means an obligation to do something or act in a particular way. Example: clause 2.1 of the Land Transport (Road User) Rule 2004 states: “ <i>A driver, when driving, must at all times drive as near as practicable to the left side of the roadway unless this rule otherwise provides.</i> ”



“Notwithstanding”	In spite of (without being prevented by something); all the same, nevertheless. Example. Section 4(3) of the Contractual Remedies Act 1979 says: <i>“Notwithstanding anything in section 56 or section 60(2) of the Sale of Goods Act 1908, this section shall apply to contracts for the sale of goods”</i>
“Or”	Use of “or” means that only one element of the section needs to be satisfied.  Example, in section 5(1) of the Land Transport Act 1998, only one of the three elements (a), (b), or (c) needs to be satisfied for someone to be allowed to drive.
“Provided that”	Means on the condition or understanding that something else will be fulfilled.
“Should”	An optional power or obligation, see also “may”. In Official correspondence to use of should is a strong recommendation to follow the suggested course of action even though it is not mandatory.
“Subject to”	Something is dependent or conditional upon something else.
“Such as”	Provides examples of what may apply in a situation. It does not exclude other items being taken into consideration.
“Shall”	In official correspondence “shall” is used in a similar way to “must” and is an instruction that is required to be followed

## Use of Latin

It is not unusual to come across words or phrases written in Latin especially when reading court proceedings. Below are three commonly found phrases:

Term	Meaning
“Adjournment sin die”	Without any future date being designated for resumption, (The hearing of a case is put off until a future date, maybe indefinitely.)
“Mens rea”	The person is of guilty mind. It is, in most cases, a necessary element of a crime that must be proved. It usually means intention or recklessness as to a person’s conduct which results in a crime.  Example: A driver deliberating and knowingly exceeding work time hours.
“Ultra vires”	When someone is exercising powers that have not been delegated to them it is said to be ultra vires, i.e. it will be void (have no legal force or validity).

The above are examples only and are put together in good faith. If in any doubt as to what any legislation means in practice always consult your lawyer.

A detailed list of common legal terms is available at <https://www.portia.law/glossary/>