

Basic steps for statutory interpretation in Papua New Guinea

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THREE BASIC STEPS

The following three steps will resolve 95% of problems involving the interpretation of Acts of Parliament (normally called statutes or legislation), regulations (subordinate legislation), planning schemes and conditions of approvals in Papua New Guinea (PNG). For simplicity here legislation, regulations, planning schemes and approvals are referred to as “statutes”.

1. Find the statute in force at the time relevant to your problem and any related document.

Normally, this will be the current version of a statute but if your problem involves something that occurred in the past the statute in force at that time may apply. Legislation starts as a Bill before Parliament. It may be amended many times before being repealed. Ensuring you have the version in force at the time relevant to your problem is a vital first step. If a statute was recently enacted, pay particular attention for transitional arrangements that link to any previous statute.

All relevant documents need to be obtained. For example, in problems involving a planning issue, the relevant planning legislation, regulations, planning scheme and any development application or approval will normally be required.

Legislation and subordinate legislation should be obtained from the official website of the government that created it, if possible, but in PNG there are no official compilations of legislation currently freely available. The best freely available source for PNG legislation is [Paclii](http://www.paclii.org),¹ although the compilations have not been updated since around 2010, and it is, therefore, necessary to check each subsequent year for amendments.

2. If you are unfamiliar with the statute, skim-read it and any related documents and identify the parts relevant to your problem.

Statutes can be long and complex in their structure and it is important not to get bogged down in long parts that are not relevant to your problem. You might find it useful in this step to read the table of contents and note the chapter headings in a list on a single page so that you can see a simplified structure of the whole statute.

3. Interpret the parts of the statute and related documents relevant to your problem according to their plain meaning, having regard to the objects of the statute and the context.

Section 109(4) of the [Constitution of the Independent State of PNG 1975](#) (PNG Constitution) provides:²

“Each law made by the Parliament shall receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the law according to its true intent, meaning and spirit, and there is no presumption against extra-territoriality.”

¹ See <http://www.paclii.org/countries/pg.html>

² Note also: an interpretation of any Act that gives effect to the National Goals and Directive Principles stated in the preamble to the PNG Constitution, including principle 4 (Natural resources & environment), is to be preferred: PNG Constitution, s 25(3); and [Louis Medaing v Ramu Nico Management \(MCC\) Ltd \[2011\] PGNC 95; N4340](#) at [120]-[124] per Cannings J.

In [Gari Baki v Allan Kopi \[2008\] PGNC 251; N4023](#), the Deputy Chief Justice Sir Salamo Injia, as he then was, said at [16]:³

“The principles of statutory interpretation are settled. The Court must give effect to the legislative intention and purpose expressed in the language used in the statute. If the words used in the statute are clear and unambiguous, the Court must adopt the plain and ordinary meaning of those words. There is no need for the Court to engage in any statutory interpretation exercise. If the words are not so clear or ambiguous, the Court must construe the words in a fair and liberal manner in ascertaining their meaning and give an interpretation which gives meaning and effect to the legislative intention in the provision. The purpose of words or phrases used in question should be read and construed in the context of the provision as a whole. The Court should avoid a technical or legalistic construction of words and phrases used in a statutory provision without regard to other provisions which give context and meaning to the particular word (s) and phrases in question.”

In interpreting the plain language of a statute, pay particular attention to any terms defined in it (in PNG the definitions are normally found at the start of the statute). Some common terms are also defined in the *Interpretation Act* 1975 (PNG). For example, the *Interpretation Act* defines “person” to include corporations. You may need to follow definitions and cross-references through many other provisions in the statute and related documents (this is often *the* key challenge for large statutes).

If a term is not defined in the statute or *Interpretation Act*, the “plain meaning” is the definition of words found in a normal dictionary (e.g. the Oxford English Dictionary) and applying the normal rules of grammar. For instance, lists of things separated by “or” are disjunctive (i.e. separate; not connected or combined) while lists of things separated by “and” are conjunctive (i.e. connected or combined).

RECOGNISE YOUR LIMITS

You can have confidence that the three main rules given above will resolve 95% of problems involving statutory interpretation, but you should recognise that a small percentage of problems will be more difficult. For such difficult problems, lawyers may apply a number of more complex rules for statutory interpretation⁴ and search for court decisions interpreting and applying the statute in question, particularly the parts relevant to your problem. Court decisions, particularly decisions on appeal from earlier ones, can provide definitive interpretations of particular parts of a statute. Decisions applying the statute can also give guidance and show you how it should be applied in other cases. Finding and interpreting court decisions (particularly where there are conflicting judgments) can be difficult and is not essential for non-lawyers. It would be negligent for a lawyer not to do this but in the vast majority of cases you will either find no relevant decisions or decisions that merely affirm the plain meaning arrived at in the three steps set out above. In difficult cases, lawyers often disagree and are unable to give a definitive answer. A definitive answer might not be found before the PNG National Court of Justice or Supreme Court rules on the issue.

Allow for more difficult cases and, if something is unclear, recognise it in your use of the statute. If the problem is important to resolve conclusively (e.g. because your employer or client risks major costs and delay if you get it wrong), you should seek professional legal advice.

³ The PNG Supreme Court (comprised of Salika DCJ (as he then was), Cannings and Gabi JJ) unanimously endorsed the correctness of this approach to statutory interpretation in [Salamo Elema v Pacific MMI Insurance Ltd \[2011\] PGSC 9; SC1114](#) at [23]-[24]. See also: [Bety Palaso v Phillip Kereme \[2016\] PGNC 381; N6638](#) at [13] per Gavara-Nanu J; and [Georgina Lupin v Bernard Bonava \[2018\] PGNC 4; N7078](#) at [18]-[19] per Anis J.

⁴ See Salamo Injia, *Injia on statutory interpretation in Papua New Guinea and the Pacific* (UPNG Press, Port Moresby, 2013).