

## DP5: Legislative definitions

### Introduction

1. This document is *DP5: Legislative definitions* (NSW Parliamentary Counsel's Office, 1st Ed, September 2017). It is a drafting practice document of the NSW Parliamentary Counsel's Office (*the PCO*).
2. The purpose of this document is to outline the drafting practices of the PCO concerning legislative definitions. It represents the official view of the PCO on the topic. See [DP1: Using PCO drafting practice documents](#) under the heading "PCO drafting practices" on the [Legislation information](#) page of the NSW legislation website ([www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)).

### What are legislative definitions

3. A **legislative definition** is a provision of an Act or other legislative instrument that gives a word or expression used in the Act or instrument a particular meaning (whether generally or for particular provisions).
4. In [section 21 \(1\)](#) of the *Interpretation Act 1987*, the word **definition** is defined for the purposes of Acts and instruments made under them to mean a provision of an Act or instrument (however expressed) that:
  - gives a meaning to a word or expression, or
  - limits or extends the meaning of a word or expression.
5. As that definition indicates, a legislative definition may be expressed to be exhaustive or inclusive (and, occasionally, as both).

Usually, this will be done so expressly. In some cases, it will appear from the context. This will be examined later in this document.

6. Legislative definitions may serve one or more functions (depending on the context). These include the following:
  - to shorten legislation by avoiding repeating longer phrases (for example, by defining an acronym for a body rather than using its full name repeatedly),
  - to expand what would otherwise be the ordinary meaning of a word or expression,
  - to limit what would otherwise be the ordinary meaning of a word or expression,
  - to remove a doubt concerning whether something does (or does not) fall within the ordinary meaning of a word or expression,
  - to create a special concept that does not have an ordinary meaning.

### Role of the *Interpretation Act 1987*

7. [Part 2 \(Words and expressions\)](#) of the *Interpretation Act 1987* contains a number of provisions relating to the meaning of words and expressions used in Acts and instruments. However, [section 5 \(2\)](#) of the Interpretation Act 1987 makes it clear that the Part (and the definitions in the Part) apply to an Act or instrument "except in so far as the contrary intention appears in [the Interpretation] Act or in the Act or instrument concerned".
8. [Section 3 \(1\)](#) of the *Interpretation Act 1987* defines **instrument** for this purpose to mean

an instrument (including a statutory rule or an environmental planning instrument) made under an Act, and includes an instrument made under any such instrument. Statutory rules include regulations and rules of court because of the definition of that expression in [section 21 \(1\)](#) of the *Interpretation Act 1987*.

9. It is important to bear in mind that the *Interpretation Act 1987* is the successor to a series of Acts in the 1850s called the Acts Shortening Acts. The purpose of those Acts was to enable the length of Acts to be shortened because routine interpretative provisions did not need to be repeated. That remains the principal purpose of the *Interpretation Act 1987*. Drafters in the PCO take this into account when drafting.
10. [Part 2](#) of the *Interpretation Act 1987* performs 2 important functions in relation to legislative definitions.
11. *First*, the Part includes provisions about how to read legislative definitions that are contained in Acts and instruments. In particular, the following provisions should be noted:
  - [section 6](#) provides that definitions that occur in an Act or instrument apply to the construction of the Act or instrument except in so far as the context or subject matter otherwise indicates or requires,
  - [section 7](#) provides that if an Act or instrument defines a word or expression, other parts of speech and grammatical forms of the word or expression have corresponding meanings,
  - [section 11](#) provides that words and expressions that occur in an instrument have the same meanings as they have in the Act, or in the relevant provisions of the Act, under which the instrument is made.
12. *Second*, the Part defines certain words and expressions that are commonly used in Acts and instruments.
13. Some of the words and expressions defined by the Part include the following:

- references to the Sovereign and Crown (see [section 13](#)),
- references to the Governor (see [section 14](#)),
- references to a Minister (see [section 15](#)),
- references to de facto partners and de facto relationships (see [section 21C](#)).

14. [Section 21](#) of the *Interpretation Act 1987* is a particularly important source of common definitions relied on by drafters. It includes definitions for each of the following:

- ***Australian lawyer*** and ***Australian legal practitioner*** (and for various other professions),
- ***bank***,
- ***calendar month*** and ***month***,
- ***contravene***,
- ***document***,
- ***Government***,
- ***indictable offence*** and ***summary offence***,
- ***individual*** and ***person***,
- ***land***,
- ***midnight***,
- ***minor***,
- ***penalty unit***,
- ***police officer***,
- ***property***,
- the ***Commonwealth***, ***the State***, or a ***State*** or ***Territory***.

15. The PCO takes the view that a legislative definition that is expressed to be exhaustive operates as a form of contrary intention and, as a result, displaces any corresponding definition in the *Interpretation Act 1987*.

16. However, the PCO takes the view that a legislative definition that merely includes matters that are not referred to in a definition in the *Interpretation Act 1987* does not necessarily operate to displace the core meaning of the word or expression expressed

in the *Interpretation Act 1987*.

17. The question of the effect of exhaustive or inclusive legislative definitions on other definitions will be examined in more detail later in this document.

## Locations for legislative definitions

18. Drafters generally adopt the following practices concerning the location of legislative definitions in Acts or other legislative instruments.
19. Legislative definitions that apply to the whole Act or instrument tend to be located at the beginning of the document concerned, usually after the sections or clauses dealing with its name and commencement.
20. Legislative definitions that apply only in relation to a Chapter, Part, Division, Subdivision or Schedule tend to be in a section or clause at its beginning.
21. Legislative definitions that apply to a single section or clause are usually (but not always) located in a subsection or subclause at the end of the provision. However, sometimes they may be located at the beginning of a section or clause if they constitute key concepts that need to be understood before reading the following provisions of the section or clause.
22. Sections or clauses containing mainly legislative definitions are usually headed “Definitions” or “Interpretation”. Sometimes legislative definitions involving related key concepts are located in standalone provisions or in separate Parts or Divisions headed “Key concepts”.
23. Although Acts or instruments have in the past used Dictionaries located at their end, this practice has now fallen into disfavour in the PCO. It is considered better drafting practice for legislative definitions of general application to be located at the beginning of a document rather than at its end, except in the case of very extensive sets of definitions.

## Kinds of legislative definitions

24. There are a number of different kinds of legislative definitions used in the PCO in Acts and other legislative instruments. This section outlines the most commonly used ones.
25. The distinctions between these kinds of definitions are not necessarily watertight. Sometimes it is possible to employ more than one kind of legislative definition in the same provision. Drafters will sometimes do this to highlight particular matters in different ways so as to assist readers to navigate the Acts or other legislative instruments.

## Standard legislative definitions

26. A **standard legislative definition** usually takes one of the following forms:
  - **defined term** means [substance of definition].
  - **defined term** includes [substance of inclusion].
  - **defined term** does not include [substance of exclusion].
  - **defined term** means [substance of definition] but does not include [substance of exclusion].
  - **defined term** means [substance of definition], including [substance of inclusion].
  - **defined term** includes [substance of inclusion] but does not include [substance of exclusion].
27. A standard legislative definition seeks to encapsulate the substance of the definition, or an inclusion in or exclusion from it, within the text of the definition.

## Adoptive legislative definitions

28. An **adoptive legislative definition** does not contain the substance of the definition, but instead adopts a definition in another Act, legislative instrument or publication to give the definition its meaning.

29. An adoptive legislative definition usually takes one of the following forms:

- **defined term** has the same meaning as in the [name of Act, instrument or other publication].
- **defined term** has the same meaning as it has in the [name of Act, instrument or other publication].

30. Because of [section 68 \(1\)](#) of the *Interpretation Act 1987*, a reference to an Act or instrument under an Act in an adoptive legislative definition will usually operate to pick up the Act or instrument as in force from time to time. As a result, the definition in the adopted Act or instrument will also be the definition as in force from time to time.

31. Difficulties may arise if the Act or instrument referred to is repealed or the definition referred to is omitted.

32. If the Act or instrument is re-enacted or remade with a definition of the same word or expression included, [section 68 \(3\)](#) of the *Interpretation Act 1987* will operate to adopt the definition by reference to the new Act or instrument.

33. However, if the repealed Act or instrument is not re-enacted or remade or a definition in an Act or instrument is omitted without a replacement, the reference to the definition will be read as being a reference to the definition before its repeal. See *R v Smith* (1873) LR 8 QB 146 at 149 (Cockburn CJ); [Amarantos Shipping Co Ltd v South Australia \[2004\] SASC 57](#) at [28] (Debelles J).

## Signpost legislative definitions

34. A **signpost legislative definition** does not contain the substance of the definition, but refers instead to (that is, “signposts”) another provision of the same Act or instrument that defines the word or expression. Examples of signpost legislative definitions include the following:

- **defined term**—see [provision].
- **defined term** is defined in [provision].
- **defined term** has the same meaning as in

[provision].

35. Signpost legislative definitions are commonly used where the substance of a definition is complex and cannot be conveniently located in a standard legislative definition. For example, the definition may authorise or require conduct by a specified person to give it meaning or it may have many inclusions or exclusions. In that case, it is considered better drafting practice for the substance of the definition to be in a separate section or clause.

36. A signpost definition may also be used if the substantive provisions for the definition are better placed in the operative provisions of the Act or other legislative instrument to assist readers of the operative provisions.

## In-line legislative definitions

37. An **in-line legislative definition** does not expressly say that it is a definition, but rather uses visual cues to indicate that it is a definition. These definitions are said to be “in-line” because they are included in the text of a substantive provision rather than in a list of definitions.

38. In-line legislative definitions tend to be used in a single section or clause as an alternative to defining a word or expression at the end of the section or clause concerned.

39. The following is an example of a provision using in-line legislative definitions:

### Minister may make restriction orders

- (1) The Minister may, by order (a *restriction order*), prohibit or otherwise restrict specified conduct by a specified person (the *restricted person*).
- (2) A restriction order must be served on the restricted person and does not come into force until it is.
- (3) A restriction order is subject to the terms and conditions specified in it.
- (4) The Minister may vary or revoke a restriction order by serving a further order on the restricted person.

40. In-line legislative definitions have special formatting and are included in parentheses near the concept being defined.

41. The principal function of in-line legislative definitions is to avoid repetition of a particular phrase or concept. They also enable drafters to set out key concepts in a logical and structured way, including by providing indications as to how concepts relate to each other.

## Sentence legislative definitions

42. A sentence legislative definition defines a word or expression using an ordinary sentence in a section or clause.
43. The following is an example of a sentence legislative definition:

### Appointment of Judges of Administrative Review Court

- (1) The Governor may, by commission under the public seal of the State, appoint any qualified person to be a Judge of the Administrative Review Court.
- (2) A person is a *qualified person* if the person is:
  - (a) an Australian lawyer of at least 5 years' standing, or
  - (b) a person who holds, or has held, a judicial office of this State or of the Commonwealth, another State or Territory.

44. Sentence legislative definitions do sometimes have special formatting of the defined word or expression to indicate that it is being defined. However, this is not always the case.
45. Sentence legislative definitions, like in-line legislative definitions, enable drafters to set out key concepts in a logical and structured way.

## Referential legislative definitions

46. A **referential legislative definition** is a provision that requires references to a particular word or expression to be read as being (or as including or not including) a specified matter. It is, however, a PCO drafting practice to avoid referential legislative definitions if a standard legislative definition can be used instead.
47. An example of a referential legislative definition is a provision providing that “a reference in this Part to a vehicle includes a reference to a heavy vehicle within the meaning of the [Heavy Vehicle National Law \(NSW\)](#)”. Another example is “a reference in this Part to a vehicle does not include a bicycle”.
48. Referential legislative definitions do not usually have special formatting of the defined word or expression to indicate that it is being defined because it is considered obvious from the context.

## Formatting of legislative definitions

49. As mentioned previously, special formatting is often used by the PCO to indicate that a word or expression is being defined.
50. Common PCO formatting practices for definitions include the following:
  - Standard, adoptive and signpost legislative definitions indicate a defined word or phrase by formatting it in bold italics.
  - In-line definitions indicate a defined word or expression by formatting it in bold italics and including it in parentheses.
  - Sentence and referential legislation definitions may (but do not always) indicate a defined word or expression by formatting it in bold italics.
51. It should be noted that the PCO, unlike some other jurisdictions, does not use quotation marks to indicate these kinds of definitions (except in headings for sections or clauses that set out a particular definition).
52. Care must be taken when using legislation websites other than the NSW legislation website ([www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)) because the special formatting for definitions is not always accurately captured.
53. The NSW legislation website contains the official versions of the legislation of New South Wales and is maintained by the PCO. The official version of legislation should always be consulted in addition to any non-official version.

## Content of legislative definitions

54. In [Kelly v R \[2004\] HCA 12](#); (2004) 218 CLR 216 at [103], McHugh J said that the function of a definition is not to enact a substantive law.
55. The PCO does not consider it to be good drafting practice for provisions that regulate substantive rights and liabilities to be included

in definitions. Provisions of that kind are best located in standalone provisions.

56. However, the PCO does sometimes confer powers on persons by means of definitions to deal with matters of a merely administrative nature. For example, it is common for the PCO to use a definition of **approved** in relation to documents that defines the word by reference to the approval of a specified person. A definition of this kind operates both to identify who can approve and, impliedly, confer the power to approve.
57. The PCO does not consider that an in-line or sentence legislative definition offends the drafting principle that definitions should not enact substantive law. Although these kinds of definitions are contained in a section or clause that may deal with substantive matters, the definitions are merely ancillary to the substantive provisions.

## Exhaustive or inclusive legislative definitions

58. Whether a legislative definition is exhaustive or inclusive is relevant to the question of whether another definition, or the ordinary meaning of a word or expression, is displaced.
59. The observation has been made that courts, because they are unfamiliar with drafting practices, are sometimes too ready to find that displacements have occurred. See D.C. Pearce and R.S. Geddes, *Statutory Interpretation in Australia* (LexisNexis, 8th ed, 2014) at [6.2].
60. This section examines some of the basic law concerning the displacement of legislative definitions and then states the PCO's usual drafting practices concerning displacements.
61. This statement of the PCO's usual drafting practices should not be treated as being completely comprehensive. As with all drafting, there are often departures from usual practices to suit particular projects. Also, definitions must be read having regard to the context in which they are used without applying inflexible assumptions and also

bearing in mind that drafting practices have changed over many years.

## Legislative definition displacing another legislative definition

62. As previously mentioned, [section 6](#) of the *Interpretation Act 1987* makes it clear that definitions that occur in an Act or instrument apply to the interpretation of the Act or instrument "except in so far as the context or subject-matter otherwise indicates or requires". Similarly, [section 5 \(2\)](#) of the *Interpretation Act 1987* provides that provisions in that Act (including those with legislative definitions) apply "except in so far as the contrary intention appears in [that] Act or in the Act or instrument concerned".
63. The test of "except in so far as the context or subject-matter otherwise indicates or requires" is sometimes referred to by lawyers as a test of **contrary intention**.
64. As a result, essentially the same legal analysis applies regardless of whether the contrary intention arises between 2 legislative definitions in the same Act or instrument or between a legislative definition in the *Interpretation Act 1987* and a legislative definition in another Act or an instrument.

## Legislative definition displacing ordinary, legal or technical meanings

65. In [Australian Leisure and Hospitality Group Pty Ltd v Director of Liquor Licensing \[2012\] WASC 463](#), Hall J said at [22]:

"If it is intended that a word in a statute will be used in a specific way that may not accord with ordinary usage such an intention is generally reflected in a definition in the statute. Absent such a definition, the ordinary meaning should prevail unless there is something in the context to suggest that another meaning is intended."
66. Similarly, if well-known legal or technical words are used, then those words will be given their legal or technical meaning unless a contrary intention appears from the context.

See [Attorney-General \(NSW\) ex rel Tooth & Co Ltd v Brewery Employees' Union of NSW \[1908\] HCA 94](#); (1908) 6 CLR 469 at 531 (O'Connor J).

67. Again, the relevant question when deciding whether a legislative definition displaces the ordinary, legal or technical meaning of a word or expression is whether there is a contrary intention.

### When legislative definitions are intended to be exhaustive or inclusive

68. The most obvious way that the PCO indicates that a definition is exhaustive is by saying that a word or expression “means” something. In this regard, the PCO takes what has been described as the orthodox view that the use of the word “means” in a legislative definition conveys an intention to make the definition exhaustive while the use of the word “includes” conveys an intention to enlarge the ordinary meaning of the defined word or expression. See D.C. Pearce and R.S. Geddes, *Statutory Interpretation in Australia* (LexisNexis, 8th ed, 2014) at [6.60]; [YZ Finance Co Pty Ltd v Cummings \[1964\] HCA 12](#) at [6]; (1964) 109 CLR 395 at 401-402 (Kitto J).

69. In other words, the use of the word “means” in a definition indicates that there is a contrary intention and, therefore, operates to displace another legislative definition of the word or expression (whether it is in the [Interpretation Act 1987](#) or in the legislation concerned). It also displaces the ordinary meaning of the defined word or expression if there is no other legislative definition for it.

70. The PCO sometimes uses alternative language to “means” to indicate that a legislative definition is exhaustive. For example, it might be said that a word or expression “is” something. Similarly, it might be said that a word or expression has the same meaning as in another Act and that other Act provides that the word or expression “means” a particular thing. Also, in-line legislative definitions are necessarily exhaustive because they highlight concepts (for the purposes of avoiding repetition) that are set out in the

provisions in which they are used.

71. The PCO considers that a legislative definition that is expressed to “include” a concept does not, of itself, operate to displace another legislative definition unless the included concept is necessarily inconsistent with a concept in that other definition. Also, the PCO takes the view that the displacement is only to the extent of the inconsistency. It is convenient to refer to these kinds of definitions as inclusive legislative definitions.
72. An obvious example where an inclusive legislative definition is necessarily inconsistent with another legislative definition is if it includes a concept that is expressly excluded by the other definition. For example, if a general legislative definition provides that an animal does not include a cat, but a particular legislative definition provides that it does, then the particular definition prevails over the general definition to the extent of the inconsistency.
73. Whether there is an inconsistency between 2 inclusive legislative definitions depends on whether the inclusions can sit together. For example, if one definition of an animal includes a frog and another definition includes a bat, both definitions can sit together. However, difficulties may arise if one definition includes a particular variant of a concept but another includes a different variant. It may be that the courts will discern a contrary intention because different variants have been used. For example, if one definition says it includes green frogs and another definition says it includes blue frogs, this may indicate a contrary intention.
74. An inclusive legislative definition will not be necessarily inconsistent with another definition that defines a word or expression to “mean” something if it simply operates to expand that meaning. For example, if a general legislative definition defines a vehicle to mean a motorised form of transport, then an inclusive legislative definition that provides that the word includes a bicycle is not relevantly inconsistent.

75. There is case law that suggests that an inclusive legislative definition of a word or expression that includes matters that would in any event fall within the ordinary meaning of the word or expression can result in the definition being read as being exhaustive rather than as merely inclusive. See, for example, *Lamont v Commissioner for Railways* (1963) 80 WN (NSW) 1242.

76. This approach, which stems from a statement of the Privy Council in *Dilworth v Commissioner of Stamps [1898] UKPC 62*; [1899] AC 99 at 106, has been criticised. See D.C. Pearce and R.S. Geddes, *Statutory Interpretation in Australia* (LexisNexis, 8th ed, 2014) at [6.61] and [6.62] and *Cranbrook School v Woollahra Council [2006] NSWCA 155* at [89] (Basten JA).

77. Having regard to the PCO's approach to drafting definitions mentioned in paragraphs 68 and 71, the PCO considers that it is incorrect for too much emphasis to be placed on the fact that an inclusive legislative definition includes matter that would fall within the ordinary meaning of a word or expression. There may be good reasons for doing so apart from intending to create an exhaustive list, particularly when such a list could easily have been created by using the word "means". The reasons may include any of the following:

- to overcome doubt or for the purposes of abundant caution,
- to provide obvious examples for the benefit of readers,
- to avoid concerns or sensitivities among the target audience for the legislation.

### Legislative definitions that both mean and include or that mean and exclude

78. The current drafting practice of the PCO is not to use the composite phrase "means and includes" in a legislative definition. The two terms are inconsistent with one another as one suggests exhaustiveness and the other inclusiveness. See D.C. Pearce and R.S. Geddes, *Statutory Interpretation in Australia*

(LexisNexis, 8th ed, 2014) at [6.64].

79. Examples of this kind of definition are only to be found in old New South Wales legislation. For example, [section 2](#) of the [Copyright Act 1879](#) provides that "**Book** means and includes any volume part or division of a volume newspaper pamphlet libretto sheet of letter-press sheet of music map chart or plan separately published". A definition of this kind tends, in any event, to be read as being equivalent to a simple "means" definition. See *Hepples v Federal Commissioner of Taxation* (1990) 22 FCR 1 at 21 (Gummow J).

80. The PCO does, however, use legislative definitions that use both "means" and "includes", but not as a composite phrase. It is convenient to call a definition of this kind a **means and includes legislative definition**.

81. The following is an example of a means and includes definition:

**vehicle** mean a motorised form of road transport, and includes a hovercraft.

82. A means and includes legislative definition is functionally equivalent to an ordinary inclusive legislative definition. This is because both assume a core central concept and then expand or confirm the content of that core concept. In the case of an ordinary inclusive legislative definition, the core concept is the ordinary meaning of the defined word or expression or the meaning provided by another more general legislative definition. In the case of a means and includes legislative definition, the core concept is set out in the definition itself.

83. As means and includes legislative definitions are functionally equivalent to ordinary inclusive legislative definitions, the following principles should apply to their interpretation:

- the core central concept set out after "means" should be treated as exhaustive, subject to the inclusions. See [Cheetham v Goulburn Motorcycle Club Inc \[2017\] NSWCA 83](#) at [48] (Basten JA), citing P Herzfeld, T Prince and S Tully, *Interpretation and Use of Legal Sources – The Laws of Australia* (2013, Thomson

Reuters) at [25.1.1070],

- the inclusions should be interpreted in the same way as inclusions in an ordinary inclusive legislative definition having regard to the matters mentioned in paragraph 77.

**84.** It is also common for the PCO to use legislative definitions that provide for a word or expression to mean something, but not to include something. These kinds of definitions should also be interpreted on the basis that the core central concept set out after “means” should be treated as exhaustive, subject to the exclusions.

## Reading legislative definitions into legislation

**85.** The PCO, in conformity with observations made by the courts, assumes that if a defined word or expression is used in the text of legislation, the words of the definition will be read into that text unless there is a contrary intention disclosed by that text. It is also assumed that generally it is incorrect to try to give a meaning to the text before this “reading-in” is done.

**86.** McHugh J in [Kelly v R \[2004\] HCA 12](#); (2004) 218 CLR 216 at [103] usefully summarised the correct approach to interpreting legislative text that uses a defined word or expression:

“Nothing is more likely to defeat the intention of the legislature than to give a definition a narrow, literal meaning and then use that meaning to negate the evident policy or purpose of a substantive enactment. There is, of course, always a question whether the definition is expressly or impliedly excluded. But once it is clear that the definition applies, the better – I think the only proper – course is to read the words of the definition into the substantive enactment and then construe the substantive enactment – in its extended or confined sense – in its context and bearing in mind its purpose and the mischief that it was designed to overcome.

To construe the definition before its text has been inserted into the fabric of the substantive enactment invites error as to the meaning of the substantive enactment. In so far as the judgment of Megarry J in *No 20 Cannon St Ltd v Singer & Friedlander Ltd* [1974] Ch 229 at 240 suggests his Lordship thought that an interpretation or definition clause should be construed independently of the substantive enactment, I think his Lordship erred. The long title to the first Interpretation Act 1850 (UK) (13 & 14 Vict c 21) was “An Act for shortening the Language used in Acts of Parliament”. The long title to the Acts Interpretation Act 1931 (Tas), is “An Act to provide certain rules for the interpretation of Acts of Parliament; to define certain terms commonly used therein; and to facilitate the shortening of their phraseology”. These titles convey the true purpose of an interpretation or definition clause. It shortens, but is part of, the text of the substantive enactment to which it applies.”

**87.** However, if there is difficulty in “reading-in” a definition of a word or expression into the text of legislation that uses the word or expression, this may be a primary basis for deciding that the text of the legislation has excluded the definition by implication. See [Tovir Investments Pty Ltd v Waverley Council \[2014\] NSWCA 379](#) at [17] (Basten JA).

## Using ordinary meaning of word of defined expression to interpret legislative definition

**88.** It has sometimes been said that it is impermissible on the grounds of circularity to use the ordinary meaning of the words in a defined expression to give meaning to the definition. For example, if the expression “proprietary maritime claim” is defined to mean a particular thing, then (on this approach) the ordinary meaning of the word “proprietary” should not be used to read down the generality of the definition. See [Owners of the Ship “Shin Kobe Maru” v](#)

[Empire Shipping Company Inc \[1994\] HCA 54](#) at [26]; (1994) 181 CLR 404 at 419.

89. However, this approach has not been applied in all situations. In [Tovir Investments Pty Ltd v Waverley Council \[2014\] NSWCA 379](#) at [20], Basten JA indicated that the approach is limited to preventing the use of the ordinary meaning of a word in the defined expression to read down:

- a definition that otherwise widens the ordinary meaning, or
- a special meaning in a definition that is derived from existing practice and principle.

90. Outside of this limited context, the better view is that “the ordinary meaning of the word [used in a defined expression] is part of the material which can be used to construe the definition”. See [Birmingham City Council v Walker \[2007\] UKHL 22](#); [2007] 2 AC 262 at [11] (Lord Hoffman).

91. In the context of the interpretation of contractual definitions (where the approach indicated in [Owners of the Ship “Shin Kobe Maru” v Empire Shipping Company Inc \[1994\] HCA 54](#); (1994) 181 CLR 404 has also been used), Lord Hoffman made observations in [Chartbrook Ltd v Persimmon Homes Ltd \[2009\] UKHL 38](#); [2009] 1 AC 1101 at [17] that are equally relevant to the interpretation of legislative definitions that use expressions constituted by ordinary words:

“[T]he contract does not use algebraic symbols. It uses labels. The words used as labels are seldom arbitrary. They are usually chosen as a distillation of the meaning or purpose of a concept intended to be more precisely stated in the definition.”

See also [Barangaroo Delivery Authority v Lend Lease \(Millers Point\) Pty Ltd \[2014\] NSWCA 279](#) at [10]-[11] (Leeming JA); [Hardy Wine Company Ltd v Janevruss Pty Ltd \[2006\] VSCA 28](#) at [5] (Callaway JA).

92. This is most certainly the case with an inclusive legislative definition that defines an

expression with an ordinary, legal or technical meaning.

93. The PCO assumes that the courts will apply the ordinary, legal or technical meaning of a word or expression that is defined by an inclusive legislative definition with the inclusions (but subject to any express exclusions) in the definition. For example, if a vehicle is defined to include a bicycle, it is assumed that other kinds of vehicles (as that term is ordinarily understood) are also covered.

## Key points

94. The following is a summary of the key points of this document:

- A legislative definition is a provision of an Act or other legislative instrument that gives a word or expression used in the Act or instrument a particular meaning (whether generally or for particular provisions).
- [Part 2 \(Words and expressions\)](#) of the *Interpretation Act 1987* contains a number of provisions relating to the meaning of words and expressions used in Acts and instruments. Drafters in the PCO rely on these provisions when drafting to help shorten the length of the legislation. However, [section 5 \(2\)](#) of the *Interpretation Act 1987* makes it clear that the Part (and the definitions in the Part) apply to an Act or instrument “except in so far as the contrary intention appears in [the Interpretation] Act or in the Act or instrument concerned”.
- With some exceptions, legislative definitions tend to be located at the beginning of the Act or other legislative instrument (or at the beginning of the part of the Act or instrument) to which the definitions relate.
- There are several different kinds of legislative definitions used in the PCO. Legislative definitions are not limited to provisions that say a word or expression “means” or “includes” something.

- Special formatting is often used by the PCO to indicate that a word or expression is being defined. Typically, this involves formatting the defined word or expression in bold italics. Care must be taken when using legislation websites other than the official NSW legislation website ([www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)) because the special formatting for definitions is not always accurately captured.
- The PCO does not consider it to be good drafting practice for provisions that regulate substantive rights and liabilities to be included in definitions. Provisions of that kind are best located in standalone provisions.
- The most obvious way that the PCO indicates that a definition is exhaustive is by saying that a word or expression “means” something. Also, the PCO typically indicates that a definition is not exhaustive by saying that a word or expression “includes” something.
- The PCO considers that a legislative definition that is expressed to “include” a concept does not, of itself, operate to displace another legislative definition unless the included concept is necessarily inconsistent with a concept in that other definition. Also, the PCO takes the view that the displacement is only to the extent of the inconsistency.
- The PCO considers that it is incorrect for too much emphasis to be placed on the fact that an inclusive legislative definition includes matter that would fall within the ordinary meaning of a word or expression. There may be good reasons for doing so apart from intending to create an exhaustive list, particularly when such a list could easily have been created by using the word “means”.
- The PCO generally assumes that if a defined word or expression is used in the text of legislation, the words of the definition will be read into that text unless there is a contrary intention disclosed by that text. It is also assumed that generally it is incorrect to try to give a meaning to the text before this “reading-in” is done.
- The PCO generally expects the ordinary meaning of a word used in an expression that is defined by a legislative definition to be part of the material that can be used to interpret the definition. This is certainly the case for inclusive legislative definitions.