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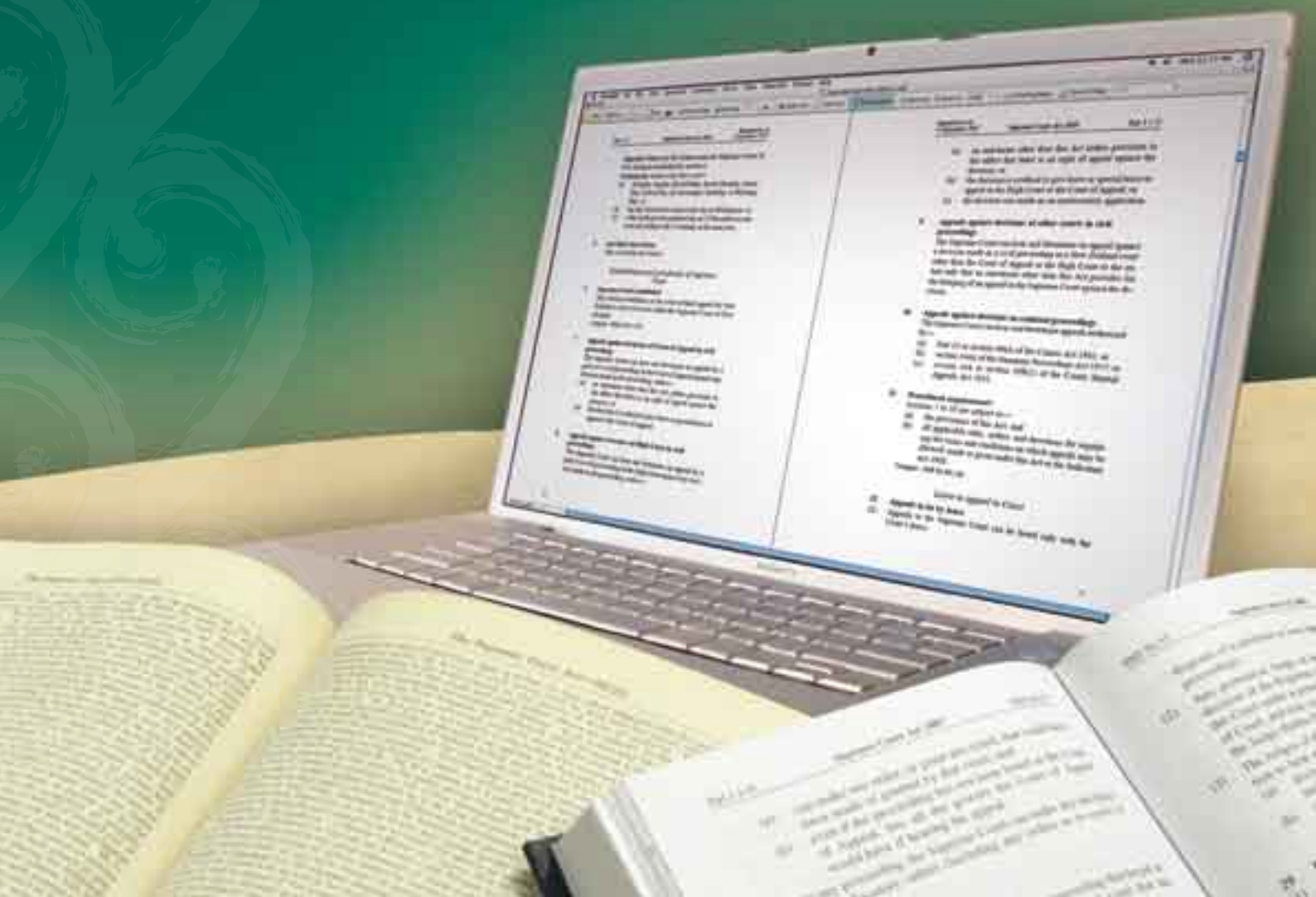
LAW·COMMISSION
TE·AKA·MATUA·O·TE·TURE

October 2008, Wellington, New Zealand | REPORT 104

PRESENTATION OF NEW ZEALAND STATUTE LAW

IN CONJUNCTION WITH PARLIAMENTARY COUNSEL OFFICE



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TE TARI TOHUTOHU PĀREMATA

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The Law Commission is an independent, publicly funded, central advisory body established by statute to undertake the systematic review, reform and development of the law of New Zealand. Its purpose is to help achieve law that is just, principled, and accessible, and that reflects the heritage and aspirations of the peoples of New Zealand.

The Commissioners are:

Right Honourable Sir Geoffrey Palmer – President

Dr Warren Young – Deputy President

Emeritus Professor John Burrows QC

George Tanner QC

Val Sim

The General Manager of the Law Commission is Brigid Corcoran

The office of the Law Commission is at Level 19, HP Tower, 171 Featherston Street, Wellington

Postal address: PO Box 2590, Wellington 6140, New Zealand

Document Exchange Number: sp 23534

Telephone: (04) 473-3453, Facsimile: (04) 471-0959

Email: com@lawcom.govt.nz

Internet: www.lawcom.govt.nz

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The Hon Annette King
Minister Responsible for the Law Commission
Parliament Buildings
WELLINGTON

20 October 2008

Dear Minister

NZLC R104 – PRESENTATION OF NEW ZEALAND STATUTE LAW

I am pleased to submit to you Law Commission Report 104, Presentation of New Zealand Statute Law, which we submit under section 16 of the Law Commission Act 1985.

Yours sincerely

Geoffrey Palmer
President

FOREWORD

The power to legislate is one of the most fundamental constitutional powers of a civil society. The New Zealand Parliament has, as one of its prime functions "full power to make laws", as the Constitution Act 1986 puts it.

The rule of law is an important concept in most democratic societies. One aspect of the rule of law is to ensure Acts of Parliament are accessible and available. Otherwise those to whom the law applies cannot find its content. The prime issues with which this report deals with are how to present that law so people can find the law and how to ensure the law is up-to-date.

The New Zealand statute book is both massive and unmanageable.

The New Zealand statute book has no index. This report recommends one. It is difficult to navigate one's way around the New Zealand statute book. It is easy to overlook important provisions because they are not where they may be expected to be.

Now that all New Zealand statutes are accessible on-line free of charge to everyone, things are much better than they were. But the new technology allows us to make more improvements still. We need to do better in arranging our statute book so that people who need to use it can find their way around it more easily. We need to have better ways of weeding out outdated legislation that is no longer used.

We also have a bad habit in New Zealand of passing big amending Acts, sometimes on several occasions. This has the consequence of rendering incoherent the statute as a whole. It would be better in many instances to start again and re-enact the whole thing rather than adopt a sort of cut and fill approach.

This report contains some quite far-reaching recommendations. It recommends an index to New Zealand statute law so the law can be found. It recommends a programme of weeding out statutes that are out-of-date. It recommends a systematic programme for revising statutes in a way to ensure that they are user-friendly. It recommends that the historical statutes that are in danger of self-destructing be saved.

The New Zealand statute book is perhaps the most important part of New Zealand's legal infrastructure. We did a far better job 100 years ago of arranging our statute book, revising it and keeping it up-to-date than we do now. It is time to recapture the best of our old traditions and pay attention to something that really does matter.

Sir Geoffrey Palmer

President

ACKNOWLEDGEMENTS

This project has been undertaken by the Law Commission in conjunction with the Parliamentary Counsel Office. Throughout the project's life both bodies have worked in close and fruitful collaboration. While the views in this report are presented as those of the Law Commission, they have been arrived at only after very substantial input from the Parliamentary Counsel Office. The Parliamentary Counsel Office supports the recommendations in this report. The Commission expresses its considerable gratitude for this assistance.

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We also thank Ross Carter, of the Parliamentary Counsel Office, who generously allowed us access to his excellent, currently unpublished historical research on indexing, reprinting and revision in New Zealand. This historical material featured more prominently in our 2007 issues paper, but also informed this report.

The Commissioners responsible for this reference were John Burrows and Geoffrey Palmer assisted by Zoë Prebble, Legal and Policy Adviser. George Tanner, Commissioner, and Geoff Lawn, Senior Consultant, have also provided valuable input.

Presentation of New Zealand Statute Law

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Summary

1 This report deals with access to our most important form of law, Acts of Parliament.

2 The state has an obligation to make law accessible to citizens. People have to obey the law; ignorance of it is no excuse. So they need to be able to find it and understand it. They will not respect the law if they cannot. Moreover, law which is not accessible is expensive in terms of both time and money.

3 There are three aspects of accessibility. First the law should be publicly available. Secondly it should be navigable. We mean by this that we should know how and where to find the parts of it that we want. Thirdly the law should be clear; it should be as easy to understand as possible given its content. Some parts of our law will inevitably be complex because they have to regulate complicated matters, but the law should not be made harder to understand than it needs to be because of the way it is written or presented. It is important to understand that law is not just for lawyers. Many people who are not legally trained use the law in their jobs (employees of government departments, local authorities, trade unions and so on). Members of Parliament who pass our laws need to be able to understand them. People who wish to make submissions on bills going through Parliament should also be able to understand the bills.

4 New Zealand performs well enough on the first aspect of accessibility – availability. There is a statutory obligation on the state to publish Acts of Parliament in hard copy. Moreover in 2008 the New Zealand Legislation Website went live. It enables everyone to have free online access to all our Acts of Parliament. There is, however, still one availability problem. It is often necessary for lawyers and others to access old Acts, even ones going back to the 19th century. It is often necessary to read them so as to properly understand the origins of modern legislation. These old Acts are not so readily available. They are not on the New Zealand Legislation Website. Though as originally scoped the PAL project did not include historical Acts, the New Zealand Legislation Website could be expanded to include them in the future. Complete sets are not held by many libraries and some of the old volumes are now in a very poor state.

5 In respect of the other two aspects of accessibility, navigability and clarity, significant progress has been made, but there is still room for improvement. It is often very difficult for laypeople, and even for experts, to find their way to the particular piece of law they want and then to understand it when they have found it. Even people with long experience in our statute law can have difficulty. Here are some of the problems.

5.1 There is no order about the statute book. Acts are published as they are passed rather than ordered according to subject matter for instance. Each year's output is bound in annual volumes. Acts are sometimes later reprinted in hard copy to incorporate amendments to them. Reprinting is done by the Parliamentary Counsel Office (PCO) under its reprints policy and according to its reprints programme. Reprinting is helpful, but can only go so far and cannot address the underlying problem of the order of the statute book. There are alphabetical lists of titles, but no proper index. Unless I know where to look, I risk missing important provisions that affect me. The search facility of the New Zealand Legislation Website goes only so far.

5.2 The problem is aggravated by the fact that the law on one topic can be scattered over a large number of different Acts. Sometimes, indeed, law on a particular topic can be hidden in a statute where one would least expect to find it.

5.3 Provisions on the same topic in different Acts can be hard to reconcile with each other. This is perhaps no surprise. Our statutes date back over a hundred years and have been formulated and written by many different people. One of the most difficult tasks of interpretation our courts have to perform is trying to reconcile apparently inconsistent legislation.

5.4 There are some old provisions and Acts that are still in force but that have been forgotten about and are never used. There is a provision hidden away in a 1908 statute which requires contracts for the sale of books to have the price stated in red ink.

5.5 Some older Acts are drafted in a very complicated and wordy style. Sentences can sometimes run to over 200 words. Such legislation is very difficult to read.

5.6 To make matters worse, most Acts are amended from time to time while they are in force. The older an Act is and the more it has been amended, the more difficult it can be to read. Sometimes the amendments are in a different style from the original and sometimes they do not fit well into the scheme of the Act. All of that affects comprehensibility.

6 In a complex modern society one can never expect all law to be simple, nor to expect all lay people to be able to understand it without legal assistance. Sometimes even Acts that look simple turn out not to be in particular cases. But our law could be a great deal easier to find and easier to understand than it currently is. It is possible to do something about this and the Law Commission strongly believes that something must be done. In this report we propose reform as follows.

HISTORICAL ACTS

7 Just because an Act has been repealed does not mean to say it will no longer be used. Repealed Acts are often used. They may be referred to by historians. They are part of our social history. But they are also used by lawyers and judges – and frequently. Sometimes an old repealed Act may still be relevant because someone acquired a right under it when it was in force. For example, a book written several decades ago may still be governed by one of the old Copyright Acts which preceded the present one of 1994. Moreover it is often helpful to

look at the origins of a piece of legislation so as better to understand the modern version. It is surprising how often old Acts are quoted in court and how often courts cite them in their judgments. This report gives many examples.

8 Yet access to some of these old statutes is problematic. Many libraries do not carry complete sets of them, and even when they do there are some particular volumes that have got into a very bad state. In the late 19th century the Acts were printed on a type of paper which has deteriorated very badly, to the point that pages can shatter when they are touched or turned. Our librarians call them "the shattering statutes". The volumes most at risk have now been captured on microfilm by the National Library, but they are still not readily accessible. This report recommends that the old statutes be digitally captured and made accessible on a website. This is the best way to ensure their preservation and accessibility. Overseas jurisdictions are doing exactly this, and their experience suggests that it is not as expensive as one might think. A business case would need to be prepared, but our provisional estimate is that it should be possible to deal with all our 19th century statutes for less than $100,000. We recommend that this work be done as soon as possible.

INDEX

9 We also recommend that a subject index of New Zealand statutes should be created. One private firm does publish an index, but we believe it is the state's responsibility to produce one which is as detailed and comprehensive as possible. It used to do so, but the last time was in 1931. We think the desirability of an index is so obvious that it goes without saying. Almost every other form of large periodical publication, such as an encyclopaedia, has an index. It is remarkable that one does not exist for something as important as our statute law.

10 Certainly the New Zealand Legislation Website has a search facility, but this is not the same thing. Indexes can do things that a search facility cannot do. A search can only find items in the text that it is asked by the user to find. An index relates instead to concepts. It can take the user beyond the words in the text and identify synonyms that do not appear on the face of the Acts, and can also reveal content that is implicit rather than explicit. Moreover, an index can "think" for the user by referring to categorisations of topics that the user would have neglected if left to his or her own devices. We therefore recommend the production of an index. It should be as detailed as possible. It should be addressed to as wide an audience as possible: after all the whole point of our report is that the law should be accessible to a wide audience. Thus, in addition to the language actually used in Acts of Parliament, one should expect to find popular synonyms for those expressions: "divorce" as well as "dissolution of marriage" and "suppression order" as well as "order prohibiting publication."

11 We think an index should be available both in electronic form and in hard copy. Both have their respective advantages: electronic indexes can create hyperlinks to the text, whereas hard copy indexes provide a greater facility to allow a person to compare a number of entries at once. Since both have their advantages, both should be available.

12 There is a question of who should prepare the index. Indexing is a highly specialised task, and legal indexing is more specialised again. Indexing statutes requires experience and expertise. We are informed by indexing experts that legal indexes cannot be satisfactorily created by computer. They need to have

manual input: there is no substitute for the human mind in creating them. Careful consideration needs to be given as to who should prepare the index for New Zealand. It could be PCO, or the job could be contracted out to an indexing expert in New Zealand or abroad. Moreover, once the index has been produced it will need to be updated, the electronic version continuously, and the hard copy version every two years or so. This updating is a task which we think should be entrusted to the PCO, although contracting out is again a possibility.

REVISION

13 We think it is high time that there was a programme of systematic revision of the Acts in our statute book to get them into a more coherent state. This was last done in 1908, exactly 100 years ago. At that time a small commission assisted by the Law Draftsman went systematically through all our statutes, over 800 of them, and reduced them to an orderly 208. All of the new Acts were enacted together in 1908 and replaced what had gone before.

14 Today we have more statutes. There are over 1,100 of them, and they are in a more disorderly state than they were in 1908. But if the work could be done 100 years ago without the aid of computers, or indeed any modern technology, it can be done now. If it is not, the present state of our statute book will get progressively worse. Other jurisdictions have revision programmes, Canada perhaps being the best example. A programme of revision could accomplish the following things:

- It could remove dead wood by repealing Acts that are obsolete.
- It could draw together into one Act provisions on the same subject that are currently spread over different Acts. There are a lot of examples – our Acts about legislation for example, our contract statutes, our statutes about schools, our statutes relating to banking and cheques, and our statutes relating to social security benefits.
- Inconsistency and overlap could be substantially reduced.
- Provisions that are currently hidden in an inappropriate Act could be relocated more logically.
- Conversely, long Acts which contain a variety of subject matter could be divided into a number of separate, more coherent, Acts.
- Acts which have got into a bad state because of continuous amendment could be redrafted and made clearer and more coherent.
- Expression could be modernised and made plainer and there could be more consistency of style.

15 The whole point is that revision does not change the substance of the law, only its presentation. It is about access to the law and about understanding it. Sometimes the process is called consolidation, but we have avoided using that word because it has been used in different senses over the years.

16 The question is how revision should be undertaken. The PCO are appropriately placed to do it. In carrying out revisions, the PCO would also need to involve the departments responsible for the administration of Acts that are being revised. It would be unrealistic to expect all the statutes to be revised in one exercise as happened in 1908: it would take too long. We therefore recommend a staged process, under which every three years the PCO would put forward a programme nominating the statutes to be revised during that three year period. This period would coincide with the triennial electoral cycle. The PCO would report on its

progress annually. A programme of this sort would ensure that regular progress is made, rather than waiting a long time for something to emerge. When revising Acts, the PCO's task would be to make the law easier to find and to understand. If it formed the view that in one particular area policy needed to be changed, that would cease to be part of the revision process and new legislation and new policy formulation would be required.

17 The next question is how revision bills would be enacted. If they were to be treated like any other bills before Parliament, they would take a very long time to be enacted: they would inevitably take second place to matters of immediate political concern. Moreover, if they were subjected to the ordinary Parliamentary process there would be a risk that policy would be re-litigated, and revision is not about revisiting policy.

18 What we need is a special process which ensures that revision bills are subject to proper scrutiny and ultimate Parliamentary control whilst still being able to be passed more expeditiously than other legislation. Other jurisdictions such as Canada and the United Kingdom have devised fast-track procedures for such bills. As we have said, revision bills do not change anything of substance: they simply put the existing substance in a more accessible form.

19 So what we propose is a process of the following kind. First, when a draft revision bill has been completed, it should be examined by a committee of eminent legal experts. We suggest that they might be the Chief Parliamentary Counsel, the Solicitor-General, the President of the Law Commission and a retired Judge appointed by the Attorney-General. Their task would be to certify that the bill did not change the substance of the law, but simply presented it in a more accessible form. The bill thus certified would be tabled in Parliament, and would stand referred to a special select committee. The task of that select committee would be to ensure that the draft did not change the law and was clearly expressed and that the revision powers had been properly used. If the committee recommended that the bill be passed, it would be reported back to the House, and would be deemed to have received its third reading unless within 20 sitting days the House passed a negative resolution. Such a resolution could be moved by any member.

20 That process, we believe, would achieve the dual functions of ensuring that the process is relatively speedy and efficient, yet that Parliament has proper opportunity to control the outcome.

THE NEW ZEALAND LEGISLATION WEBSITE AND HARD COPY

21 The New Zealand Legislation Website went live at the beginning of 2008. It makes legislation available electronically free of charge from a database owned and maintained by the Crown. Access to an Act is available on the website very soon after it is enacted. The website also provides access to legislation with amendments incorporated as soon as possible after the amendments are passed. This report also outlines some of the website's other advantages. Currently the Acts on the website are not "official": there is a deal of careful checking to be done before that happens. When that job is done the Acts on the website will be made official. The checking process is called "officialisation". There is currently a statutory obligation to publish Acts in hard copy. The Law Commission considers that there should also be an obligation on the state to publish legislation in electronic form.

22 However the Law Commission believes that despite the undoubted benefits the website brings, there will remain an important place for Acts published in hard copy. Some readers have, and always will have, a personal preference for hard copy. Hard copy does some things better for all readers. It is easier to gain an appreciation of the overall scheme of an Act if one can turn physical pages; research also shows there are cognitive advantages in reading from a printed page. While no doubt printing off one's own copy of an Act from the website will often be an answer for some people, it will not be so for everyone in all circumstances. So the Law Commission is of the view that publication of Acts of Parliament in hard copy should continue as now.

23 The reprinting by the PCO of Acts incorporating amendments has been an important feature of our system for a long time. For a number of years reprinted Acts were issued in a series of bound volumes. A private firm Brookers still does that, but the PCO for very good reason now publishes reprinted Acts in individual pamphlets, rather than binding them in volumes.

24 The Law Commission believes that this reprinting service should continue so long as there is viable demand for it. We also believe that PCO should have greater powers to make editorial changes when reprinting: in other words to correct obvious errors like spelling mistakes. The trouble is, however, that reprints in hard copy get out-of-date. In this regard the New Zealand Legislation Website has the edge. It is always right up-to-date. So users of hard copy reprints will continually have to refer to the website, or annual volumes of statutes, to check what amendments there have been since the reprint. However, in this report we draw attention to a new form of technology which may provide another solution to those who prefer hard copy: print on demand. New technology now renders it possible for commercial printers to print from the website up-to-date copies of Acts, or indeed bound volumes of Acts, on a one-off basis. Thus, a person could ask to purchase a customised volume of up-to-the-minute Acts on a particular subject1. Customers would have to pay more for this, but we believe there will be organisations prepared to pay extra for this innovative and useful service.

A NEW LEGISLATION ACT

25 The Law Commission believes that legislation will be required to enact the new process for passing revision bills, and also to spell out the new duties to make legislation available electronically, and to provide for electronic legislation to be official. But in addition to this we think it would be useful to bring together in one statute not just these new provisions, but all of those relating to Acts of Parliament. They include the Acts and Regulations Publication Act 1989, the Regulations (Disallowance) Act 1989 and the Interpretation Act 1999. The statute constituting the Parliamentary Counsel Office (the Statutes Drafting and Compilation Act 1920) is currently being reviewed: once that review has been completed and a new statute has been enacted in replacement for the current one, that could also be added to this new composite piece of legislation. Then all the provisions about Acts of Parliament would be in one place. The Appendix to this report contains a draft Legislation Bill. The bill has been produced principally as an example of how the proposed revision powers would be exercised to produce a revision of the Acts relating to legislation and to give effect to other recommendations in this report that require legislation.

CODIFICATION

26 We have also considered the question of codification, that is to say a process whereby all our statutes would be combined into one single coherent code which could be arranged in logical order according to subject matter. Every statute would become an integral part of this single code, and any later amendment to the statute would also find its way into the appropriate place in the code. In the United States they have codes of this kind. Such a code would of course not be a truly comprehensive code of the kind that exists in Europe. It would simply consist of a bringing together of all our Acts of Parliament.

27 The Law Commission, while it agrees that this notion has attraction, thinks it is too early to embark on such a venture. It will be very difficult to achieve before the process of revision is completed. In this report we thus recommend that when the process of revision has been completed the possibility of codification should be revisited.

MISCELLANEOUS

28 In the course of this report we also cover a number of other matters. For example, we recommend that if proposed amendments to an Act are substantial and will extensively change the principal Act, it is preferable to repeal the principal Act and start again, rather than to amend it. Long and detailed amendments have been responsible for making many Acts much less coherent and readable than they should be. They lead to artificiality in numbering sections and part headings.

29 The report also expresses concern about amendments to Acts that are not textual and therefore do not become part of the principal Act. When the principal Act is reprinted these amendments have to be separately printed at the end of it. They are often called "skeletons". They can all too easily be overlooked, and there are instances of their being forgotten altogether. We recommend that non-textual amendment be resorted to only when absolutely necessary.

CONCLUSION

30 So the thrust of this report is simply that we should do everything possible to make our statute law more orderly, more understandable and more readable. Law exists for the public. The public interest should be the prime consideration at all times. Our Acts are now much more available – they can be viewed, free, on the New Zealand Legislation Website. It is very important to make the most of this availability, and to ensure that the Acts can be easily found, navigated and understood. Acts of Parliament are some of our most important documents. It is essential that they be accessible. Taking the specific actions that we recommend in this report will improve the accessibility of Acts in New Zealand.

Summary of recommendations

CHAPTER 2	R1	For the foreseeable future, hard copy versions of Acts should continue to be produced and made available at a reasonable cost to the public.
CHAPTER 4	R2	A full collection of historical New Zealand Acts, including the "shattering statutes", should be captured digitally as soon as possible and made publicly available online.
	R3	In the short to medium term, the historical Acts should be captured in PDF format using Optical Character Recognition (OCR), and made available on a standalone website via a link from the New Zealand Legislation Website.
	R4	In the longer term, consideration should be given to capturing the historical Acts in a format that will enable their full integration into the New Zealand Legislation Website so that the search and other features of that website can be used in respect of historical as well as current Acts.
CHAPTER 5	R5	The government should arrange for an index to New Zealand's Acts to be produced without delay.
	R6	The index should be available in hard copy and electronically.
	R7	The respective costs and benefits of having the PCO produce an index, or tendering and contracting the task out to a commercial indexer, should be explored.
	R8	The index should be continually updated in electronic form. A hard copy version should be produced at least once every two years. Hard copies should also be available via print on demand, but with users meeting the higher production costs associated with this mode of delivery.
	R9	If a commercial indexer prepares the original index, the responsibility for the updating function should be carefully managed. Our recommendation is that the PCO should be responsible for updating the index.
CHAPTER 6	R10	The current system of the PCO reprinting individual statutes in hard copy should continue for the foreseeable future.
	R11	Reprinted statutes should be available on a print on demand basis without state subsidisation for those who want up-to-date versions of Acts, or who want volumes of Acts on a particular topic.

R12 The system of historical notes to sections should continue as it is now. We do not recommend a return to the use of square brackets.

R13 Particular steps should be taken to ensure that skeleton sections, for example, transitional provisions and purpose provisions, are not lost in the reprinting process.

R14 When reprinting statutes, in both electronic and hard copy formats, there should be enhanced powers to correct errors and make other editorial changes as outlined in this chapter.

CHAPTER 7

R15 The PCO should undertake a triennial programme of statute revision, the aim of which is to make the statutes more accessible without changing their substance.

R16 The PCO should have statutory powers to alter the wording, order and placement of the provisions subject to revision.

R17 When a revision is complete it should be certified by a committee comprising the Chief Parliamentary Counsel, the Solicitor-General, the President of the Law Commission and and a retired judge appointed by the Attorney-General, as changing only the presentation of the law, and not its meaning or spirit.

R18 The revision bill, once certified, should be passed by the streamlined Parliamentary process described in this chapter.

R19 If a bill involves a change of substance or policy it would be subject to the normal parliamentary process.

R20 If in the course of the process of revision provisions are found that are obsolete and thus no longer required, they should be proposed for repeal through the medium of an omnibus Statutes (Repeal) Bill.

R21 Those responsible for the preparation of legislation should note that it is desirable that, if a proposal for amending an Act makes substantial and far-reaching changes to the Act, the Act should generally be repealed and completely replaced.

CHAPTER 8

R22 The prospect of codification should be considered at such time as a programme of revision has been completed or nearly completed.

CHAPTER 9

R23 There should be a new Legislation Act combining the provisions of the Interpretation Act 1999, Acts and Regulations Publication Act 1989, Regulations (Disallowance) Act 1989, and Statutes Drafting and Compilation Act 1920 (or its modern equivalent), and containing new provisions to give effect to the recommendations contained in this report. A draft bill of this kind is appended to this report. (This draft bill is indicative only).

Chapter 1
Access to legislation

IN THIS CHAPTER, WE CONSIDER

- the nature and extent of the state's obligation to ensure that Acts of Parliament are accessible to its citizens; and
- what is required to fulfil this obligation, and ensure that Acts are available, navigable and clear.

THE OBLIGATION

The scope of this report[1]

1.1 It is a fundamental precept of any legal system that the law must be accessible to the public. Ignorance of the law is no excuse because everyone is presumed to know the law. That presumption would be insupportable if the law were not available and accessible to all. The state also has an interest in the law's accessibility. It needs the law to be effective, and it cannot be if the public do not know what it is. Lack of availability also results in there being no check against disregard of the laws by the law enforcers themselves.

1.2 The law of New Zealand, like the law of England, derives from more than one source. The common law is law that has been built up by the Judges in the process of deciding cases. New Zealand inherited the English common law and has developed it in its own way. Many important areas of law, for example, much of the law of contract and tort, remain common law. Non-lawyers who are not trained in reading court judgments must rely substantially on the expositions of text writers, and on the advice of lawyers, to know the common law. Legislation, that is to say Acts of Parliament and the various forms of delegated legislation made under the authority of Acts of Parliament, is the other main source of law in New Zealand. It has long since outstripped the common law in importance. It is the modern instrument of law reform. It can do everything the common law can do and much more besides. Parliament regularly passes about one hundred Acts of Parliament in a year. Routinely, three or four volumes of Acts each comprising anywhere between 700 and 800 pages are published for

1 Geoffrey Palmer's occasional paper "Law Reform and the Law Commission After 20 Years – We Need to Try a Little Harder" (occasional paper no 18, New Zealand Centre for Public Law, Victoria University of Wellington, March 2006), initially delivered as a lecture to the New Zealand Centre for Public Law, Wellington, 30 March 2006, led to the reference for this Law Commission project.

each year. In 2005 the number of pages totalled 2,062; in 2006, there were a total of 3,308 pages. In 2007 there were a total of 5,083 pages spanning seven volumes – four volumes and 2,855 pages were taken up by the Income Tax Act 2007. There are often well over three hundred sets of regulations a year.

1.3 All of these forms of law – common law, Acts of Parliament and delegated legislation – raise questions of accessibility. This report is concerned only with Acts of Parliament. This limitation is based solely on practical considerations of time rather than strict logic. We acknowledge the view of several submitters that the project should extend beyond Acts of Parliament to also include other sources of law, such as delegated legislation, other written sources such as international treaties, and the common law. However, including them in this project would be too great an initial undertaking. Full study of the accessibility of the common law and delegated legislation must await a future time.

What does accessibility mean?

1.4 When we say the law must be accessible, what do we mean? The term has at least three relevant meanings in this context.

1.5 First, it can refer to availability to the public. In other words, the government must promulgate Acts. In the words of American jurist Lon Fuller, a failure to publicise, or at least make available to the affected party, the rules he or she is expected to observe, is one of several ways in which an attempt to create and maintain a legal system can miscarry.[2] As long ago as 1651, Hobbes said:[3]

> To rule by Words, requires that such Words be manifestly made known; for else they are no Lawes: For to the nature of Lawes belongeth a sufficient, and clear Promulgation, such as may take away the excuse of Ignorance…

1.6 This obligation requires, in relation to hard copy, that Acts of Parliament be printed and made available for purchase at a reasonable cost, and viewable in places like public libraries. In the modern environment it also requires that Acts be electronically accessible. We shall call this type of accessibility **availability**.

1.7 The second meaning of accessibility involves users being able to find the relevant law without unnecessary difficulty. This includes the ability to know that a relevant piece of legislation exists in the first place, knowing where to look for it, and being sure that one has found all the relevant law on the subject. If the law on a subject is scattered throughout several different Acts, that can impede accessibility. We shall call this second meaning of accessibility **navigability**.

2 Lon L Fuller *The Morality of Law* (Revised ed 1969, Yale University Press, New Haven and London) 39.

3 Thomas Hobbes *Leviathan* (Printed for Andrew Crooke, London, 1651) Ch XXXI Of the Kingdome of God by Nature, available via Project Gutenberg, Vancouver, 2002 http://www.gutenberg.org/wiki/Main_Page (accessed 15 September 2008). For further useful discussion, see Timothy Arnold-Moore *Public Access to Legislation and the Democratic Process* (paper for the Australian Electronic Governance Conference, Centre for Public Policy, University of Melbourne, 2004).

1.8 The third sense of accessibility involves the law, once found, being understandable to the user. If the law is expressed or presented in an unnecessarily complicated or obscure way, the reader is unable to know the full extent of his or her rights and obligations. We shall call this meaning **clarity**. Lon Fuller regarded "a failure to make rules understandable" as another way in which the attempt to make law might miscarry.[4]

1.9 Lord Oliver of Aylmerton once said:[5]

> it is … vitally important that legislation should be expressed in language that can clearly be understood and … in a form that makes it readily accessible. Edmund Burke observed that bad laws are the worst form of tyranny. But, equally, well-intentioned laws that are badly drafted or not readily accessible are also a form of tyranny.

1.10 Before proceeding to examine how the state in New Zealand satisfies its obligation to make the law accessible in these three senses, there remains a further preliminary question.

Accessible to whom?

1.11 It seems once to have been supposed that law was the preserve of lawyers and Judges, and that legislation was drafted with them as the primary audience. It is now much better understood that Acts of Parliament (and regulations too) are consulted and used by a large number of people who are not lawyers and have no legal training. Ministers of the Crown develop and advance new legislation; Members of Parliament deal with legislation as it moves through the House of Representatives. These roles are greatly aided when legislation is drafted clearly and understandably. As noted by the House of Lords Select Committee on the Constitution:[6]

> The scrutiny of legislation is fundamental to the work of Parliament. Parliament has to assent to bills if they are to become the law of the land. Acts of Parliament impinge upon citizens in all dimensions of their daily life. They prescribe what citizens are required to do and what they are prohibited from doing. They stipulate penalties, which may be severe, for failure to comply. They can have a significant impact not only on behaviour but also on popular attitudes. Subjecting those measures to rigorous scrutiny is an essential responsibility of both Houses of Parliament if bad law is to be avoided and the technical quality of all legislation improved. Parliament has a vital role in assuring itself that a bill is, in principle, desirable and that its provisions are fit for purpose. If Parliament gets it wrong, the impact on citizens can on occasion be disastrous; and history has shown examples of legislation that has proved clearly unfit for purpose.

This function cannot be properly performed if bills are not clear.

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4 Fuller, above, n 2.

5 Lord Oliver of Aylmerton "A Judicial View of Modern Legislation" (1993) 14 Stat LR 1, 2. See also Parliamentary Counsel Office *Public Access to Legislation, A Discussion Paper for Public Comment* (Wellington, 1998) 6-8.

6 House of Lords Select Committee on the Constitution *Parliament and the Legislative Process* (14th Report of Session 2003-04, House of Lords, London, 2004,) Vol 1, 8. Available at http://www.publications.parliament.uk/pa/ld200304/ldselect/ldconst/173/17302.htm (accessed 16 September 2008).

1.12 Many other people also refer to legislation in their jobs. People who work in the registries of universities and other educational institutions make constant reference to education legislation; employers and trade union officials need to be well versed in employment legislation; the staff of many government departments, many of whom are not legally trained, work closely with the legislation that their departments administer; the staff of local authorities need to access the large quantity of local government legislation;[7] and company officers need to consult company and financial reporting legislation. At other times ordinary people refer to Acts of Parliament to find the answers to problems that affect them in their personal lives: difficulties with a neighbour may lead to them consulting the Fencing Act 1978; domestic difficulties may lead to them consulting our family and relationship legislation. We received several submissions from community law centres and public librarians emphasising the need for ordinary people to be able to access and understand the law.[8] Legislation Direct maintains a list of much-accessed legislation that it calls its "best-seller" list. The best-sellers are not "lawyers' law".[9] In addition, the New Zealand Legislation Website, which is explained in more detail in the next chapter, each month receives an average of over 30,000 unique visitors; over 1.8 million hits; and almost 1.2 million page views of legislation.

1.13 Moreover, New Zealand has a democratic method of making laws. Almost all bills passing through Parliament are referred to a select committee where members of the public can make submissions. If they are to make those submissions effectively, they need to be able to understand not only the bill with which they are concerned, but also other legislation that it amends or in some way affects.[10]

1.14 New Zealand has also made an international commitment to accessibility with regard to people with disabilities. Accessibility is an underlying principle of the United Nations Convention on the Rights of Persons with Disabilities, and the particular focus of Article 9.[11] The convention defines accessibility as including accessibility to information, for instance, legislation. Information, for people with disabilities just as for any other citizen, is a cornerstone of other activity and participation in society. It is important to remember in this context that

7 For instance, the Local Government Act 2002, Local Government Official Information and Meetings Act 1987, Local Government (Rating) Act 2002, and Local Electoral Act 2001.

8 Louise Darroch, Mangere Community Law Centre (submission, 12 November 2007); Leslie Goodliffe, Digital Services and Reference Librarian, Tauranga City Libraries (email submission, 12 November 2007); Anna Gillon, Whitireia Community Law Centre (submission, 20 November 2007).

9 In the year ending 31 March 2008, some of the highest selling Acts were the Employment Relations Act 2000 and the Holidays Act 2003; regulations such as the Education (Early Childhood Centres) Regulations 1998 were also in big demand.

10 There is an argument for "as if" reprints: that is to say, publishing the principal Act with the bill's projected amendments inserted in it to show how the Act will eventually look when the amendments are passed.

11 The convention was adopted by the United Nations General Assembly in December 2006 and signed by New Zealand on 30 March 2007. The Disability (United Nations Convention on the Rights of Persons with Disabilities) Act 2008 came into effect in September 2008 and will enable ratification of the convention.

accessibility means more than bare availability – just making information available in a library or on a website does not mean it will necessarily be accessible to all New Zealanders.[12]

1.15 It can therefore fairly be said that the audience for legislation extends well beyond a narrow legal audience. This is not to say, of course, that all readers will be instantly able to grasp the intricacies of every piece of legislation. Some Acts are of a technical nature with which they will need legal assistance. Our property legislation, for example, is likely to use technical terms like "estate in land", and "easement". There may also be other legislation in the light of which the Act in question should be read, the New Zealand Bill of Rights Act 1990 and the Interpretation Act 1999 being prime examples. There may also be court decisions interpreting the Act's provisions. Often an Act will not provide a lay reader with a clear answer to his or her problems. The reader will then need to seek legal advice. When it is said, therefore, that legislation should be accessible to ordinary people, we mean that on reading it they should be able to gain a general understanding of their rights and obligations, while still acknowledging that they may sometimes need further legal assistance to more fully understand and pursue those rights and obligations.[13] We also note here that it would be useful to educate young people about legal matters as part of the school curriculum.[14] This would help build better levels of understanding in the community about people's legal rights and obligations, how to find the law and better enable people to be informed and participatory members of a democratic society.[15]

THE FULFILMENT OF THE OBLIGATION

Availability

1.16 There is a statutory obligation to make legislation available. The Acts and Regulations Publication Act 1989 provides that the Chief Parliamentary Counsel, under the control of the Attorney-General, must arrange for the printing and publication of copies of every Act enacted by Parliament.[16] The Attorney-General may from time to time give directions as to the form in which Acts are to be printed and published.[17] The Attorney-General must also from time to time, by notice in the *Gazette*, designate places where copies of Acts are available for purchase by members of the public;[18] and the Chief Parliamentary Counsel,

12 Paul Dickey, Office of Disability Issues (submission, 13 November 2007).

13 In *R v Royal* (1993) 10 CRNZ 4 (HC), Penlington J noted that a person with no legal training could not necessarily mount a sound defence on his own behalf even if accorded access to statutes and precedents in a law library. Nonetheless, this was not a breach of the accused's right to "legal assistance" under section 24(f) of the New Zealand Bill of Rights Act 1990 provided that the accused had access to a lawyer.

14 The new curriculum, finalised in 2007, does touch on aspects of civics and citizenship, but this tends to be expressed as high level underlying themes rather than explicit content.

15 This was a recommendation of the Constitutional Inquiry Committee, chaired by Hon. Peter Dunne, in 2005 (Constitutional Arrangements Committee "Inquiry to Review New Zealand's Existing Constitutional Arrangements" 10 August 2005 AJHR I.24A).

16 Acts and Regulations Publication Act 1989, s 4.

17 Ibid, s 7.

18 Ibid, s 9.

under the control of the Attorney-General, must make copies of the Act available for purchase at those places.[19] The long title of the Act states its purpose as follows. It is an Act:[20]

> (g) to provide for the printing and publication of copies of Acts of Parliament and statutory regulations; and
>
> (h) to ensure that copies of Acts of Parliament and statutory regulations are available to the public….

1.17 There is a prior question. Before an Act of Parliament can be said to be available, the public need to know that it exists. Every week when Parliament is in session an issue of the *Parliamentary Bulletin* is published by the authority of Parliament. It contains a section entitled "The progress of legislation" that tracks the progress of bills through all their stages and shows the date of assent, that being the date on which the bill becomes an Act of Parliament. "The progress of legislation" is available on the Parliament website,[21] and as part of the *Bulletin*, which is available from the Legislation Direct website[22] and from selected retail outlets. Many Acts do not come into force until some time after their enactment, and some contain provisions specifying that they come into force only upon the making of an order in council. Where an Act contains such a provision, a further search can be required to determine whether, and if so when, the order in council was made. This information about the making of an order is published in the *Gazette* and will also be published on the websites referred to below.

1.18 When an Act of Parliament has been enacted, it is printed individually in hard copy and is available by purchase at Bennetts Government Bookshop and other key outlets.[23] Legislation Direct also publishes a list, which is updated weekly and available via the PCO website.[24] Many organisations, particularly libraries, subscribe to these copies of the Acts. They are available a few days after enactment, although if the Act is a particularly long one the publication process may take a little longer. After the end of each calendar year, all the Acts passed in that year are bound and published in hardcover volumes. They appear in those volumes generally in the order in which they were passed.[25] The volumes are available for purchase some four to six months after the expiry of the calendar year. The fact that there is now no copyright in Acts of Parliament and delegated legislation is another factor aiding accessibility. Copies can be made and published by anyone.[26]

1.19 Electronic databases of New Zealand Acts are now available, both on CD ROM and through a number of websites. Some are provided by private firms rather than the state. They are unofficial versions of the New Zealand Acts. These commercially available electronic packages are searchable but must be paid for.

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19 Ibid, s 10.

20 Ibid, long title.

21 New Zealand Parliament website http://www.parliament.nz (accessed 16 September 2008).

22 Legislation Direct http://www.legislationdirect.co.nz/ (accessed 15 September 2008).

23 A list of these outlets is available on the PCO website: http://www.pco.parliament.govt.nz/legislation/retailoutlets.shtml (accessed 15 September 2008).

24 PCO website http://www.pco.parliament.govt.nz/ (accessed 15 September 2008).

25 Sometimes a very large Act is published in a separate volume or volumes – for example the Income Tax Act 2007.

26 Copyright Act 1994, s 27.

This puts them out of reach of most members of the public. There is now free electronic access provided by the state. The PCO's Public Access to Legislation ("PAL") Project, designed to improve the way in which New Zealand legislation is made available to the public, was completed in January 2008.[27] It has involved the implementation of a new XML-based drafting and publishing system within the PCO, and the provision of the New Zealand Legislation Website.[28] The new website provides free access to Acts, regulations, bills, and Supplementary Order Papers and went live on 16 January 2008. The legislation on the website is not official. The PCO has now begun a process of "officialising" the legislation, which involves detailed checking to make sure the electronic versions of legislation on the website are accurate. It is expected to take around three years. When that process has been completed, it is proposed that the Acts on the website will acquire official status. This will involve an Act of Parliament.[29]

1.20 Full discussion of the New Zealand Legislation Website is reserved for the following chapter.[30]

Navigability

1.21 It is not enough that Acts be available to a user. The user should be able to find the relevant provisions of those Acts with as little difficulty as possible. In New Zealand the law on one topic is sometimes scattered over several Acts. It is all too easy to fail to locate all relevant provisions. Currently New Zealand does not have an official subject index of legislation. However, each year, the PCO publishes a volume entitled *Tables of New Zealand Acts and Ordinances, and Statutory Regulations, and Deemed Regulations in Force*. It lists all Acts (and regulations) in force in New Zealand in alphabetical order of titles. It is a table rather than an index, although there is a certain amount of cross-referencing. Previously, an electronic version of the Tables was also available on the Legislation Direct website, and could also be reached via the PCO website. From 31 March 2008, the PCO withdrew this electronic version[31] as its functions had been superseded by those of the New Zealand Legislation Website. The browse feature of the New Zealand Legislation Website produces alphabetical listings of legislation in force, by specified type, that is, public, local, private, provincial or imperial Acts. The website is continuously updated and the lists generated from the website link directly to the relevant legislation. One of the commercial publishers, LexisNexis, does publish a subject index. As we shall see, the absence of a comprehensive official subject index can lead to difficulty.

27 Information on the history of the PAL project can be found on the PCO website http://www.pco.parliament.govt.nz/ (accessed 15 September 2008).

28 New Zealand Legislation website http://www.legislation.govt.nz/ (accessed 15 September 2008).

29 Up-to-date information on the officialisation process can be found on the PCO website http://www.pco.parliament.govt.nz/ and the New Zealand Legislation website http://www.legislation.govt.nz/ (accessed 15 September 2008).

30 See Chapter 2: The New Zealand Legislation Website and Legislation System.

31 The exception to this is that the online list of deemed regulations (that was previously linked to by the online version of the Tables) continues to be available on the PCO website.

1.22 The process of amendment can also lead to problems of navigation. Acts of Parliament are amended regularly. Indeed, in most sessions of Parliament, the number of amending Acts greatly exceeds the number of principal Acts. In 2005, for example, there were 126 Acts passed. Of these, if one excludes the Imprest Supply and Appropriation Acts, only 14 were principal Acts. The great majority of amendment in New Zealand is what is known as textual amendment, which makes an alteration to the text of the principal Act. New sections are added, existing sections are altered or replaced (unlike "referential" amendments, where the amendment is a separate Act that does not alter the text of the principal Act.)[32] Under the system of textual amendment, amending Acts often make little sense when read on their own; the reader needs the principal Act to hand also to see how the amendments take their place in the structure of the whole. It is of critical importance when using an Act of Parliament to ensure that one has located and understood the relevance of all subsequent amendments to it. The publishing firm Brookers assists in this process by visiting subscribers twice a year and annotating each principal Act by a process of striking out amended or repealed provisions with a red pen, and inserting slips of paper to show the amended version. Not all owners of Acts subscribe to this service. Even some libraries do not. Users of unannotated Acts therefore need to check later Acts to see if there are amendments to the principal Act they are consulting. Even where Acts are annotated, an annotation may be out-of-date by the time it is consulted. The inexperienced can fall into serious difficulty, as can the experienced.

1.23 Much amended Acts may be reprinted (or compiled) by the PCO, and published as a reprint incorporating amendments made up to the date of the reprint. This practice derives from section 5 of the Statutes Drafting and Compilation Act 1920, which provides that there will be a Compilation Department of the PCO and that one of the duties of the officers of that Department will be:

> (a) as and when directed by the Prime Minister or the Attorney-General, to compile, with their amendments, statutes, amendments whereof have been enacted, and to supervise the printing of such compilations.

1.24 The Acts and Regulations Publication Act 1989 imposes a duty to publish those compilations or reprints.[33] At earlier points in our history, there were complete reprints of all Acts, which were published in a series of reprint volumes.[34] In 1979, another process was begun of publishing reprinted Acts in a series of bound volumes, but that practice has now been discontinued. Reprints of much-amended and much-used Acts are now published individually. The number of reprints, and the volume of reprinted pages, produced each year has significantly increased since the Reprint Series was discontinued. There are now about 12,000 pages of reprints produced each year, which is about a 1,200 % increase from the number of pages of reprints that were produced before the bound volumes were discontinued. This increase is also the result of greater resources being put into reprinting.[35] The series of bound reprint volumes, begun in 1979, numbers 42 volumes and those volumes still contain the most up-to-date reprints of many

32 For a discussion of referential amendment, see: David Renton "The Preparation of Legislation: Report of a Committee Appointed by the Lord President of the Council" (HMSO, London, 1975) Cmnd 6053.

33 Acts and Regulations Publication Act 1989, s 4(3)(c).

34 This happened in 1931 and 1957.

35 We note that fewer reprints will be produced in 2008 because the Reprints Unit has been focused on introducing the new Legislation System and on officialisation.

Acts of Parliament. Many of them have been amended after having been published in the volumes and Brookers annotate those volumes for their subscribers. Brookers also now provide a bound-volume reprint series.

1.25 However, now that the New Zealand Legislation Website is online, the primary focus of the PCO Reprints Unit is the officialisation of the database of legislation that underpins the website.[36] The Reprints Unit is working to ensure that the entire database is progressively officialised, which is predicted to take approximately three years.[37] The Reprints Unit still intends to produce some hard copy reprints during the officialisation period, and to integrate the annual reprinting programme with the officialisation programme as far as possible. However, it will be important to balance resources for reprinting against those needed for officialisation. A consequence is likely to be that fewer hard copy reprints will be produced during that period.

1.26 The New Zealand Legislation Website provides up-to-date "electronic reprints" continuously. The timeframes for uploading new legislation onto the site are very quick. The PCO aims to load new Acts within five working days after Royal assent, new Regulations the day after notification in the *Gazette*, and bills the day after they become available in the House of Representatives. Current Acts and Regulations are updated with amendments as soon as possible after the amendments are enacted or made. Amendments are consolidated within three weeks.[38] If an amendment has been enacted or made, but not yet incorporated into the principal enactment, an alert message will link from the principal enactment to the amending legislation. The PCO's aim is to make the alert message available within five working days of the publication of the amending legislation on the website. Thus there is now available, in electronic form, the up-to-date version of each Act with amendments incorporated directly into the text. Electronic Acts to that extent have an advantage over the hard copy system.

Clarity

1.27 New Zealand has no statutory obligation to make Acts of Parliament understandable. Some overseas jurisdictions do. Thus, the Indiana Constitution, Article 4, Section 20 states:

> every Act … shall be plainly worded avoiding as far as practicable the use of technical terms.

1.28 The Queensland Legislative Standards Act 1992[39] requires, in determining whether legislation complies with fundamental legislative principles, an assessment of whether the legislation is unambiguous and drafted in a sufficiently clear and precise way.

36 Officialisation is discussed in greater detail in Chapter 2: The New Zealand Legislation Website and Legislation System.

37 PCO Annual Reprints Survey http://www.pco.parliament.govt.nz/legislation/reprints.shtml (accessed 15 September 2008).

38 PCO "More about the New Zealand Legislation Website" http://www.pco.parliament.govt.nz/pal/legislationinfo.shtml (accessed 15 September 2008).

39 Queensland Legislative Standards Act 1992, s 4(3)(k).

1.29 In New Zealand there is no equivalent statutory requirement. However the Law Commission Act 1985 provides that one of the functions of the Commission is: [40]

> to advise the Minister of Justice and the responsible Minister on ways in which the law of New Zealand can be made as understandable and accessible as is practicable.

1.30 The Act provides also that in making recommendations the Commission must:[41]

> have regard to the desirability of simplifying the expression and content of the law, as far as that is practicable.

1.31 In furtherance of this function, the Law Commission has published manuals and reports on plain drafting[42] and legislative format.[43] The PCO, which drafts nearly all of the legislation in New Zealand, takes very seriously the need for legislation to be as understandable as possible. Its Vision Statement currently provides that it is committed to a number of objectives, including:[44]

> to improve access to legislation by ensuring … that legislation is drafted as clearly and simply as possible.

1.32 In the past, New Zealand Acts were often drafted in a way that made comprehension difficult for lawyers, let alone lay persons. Long sentences were common, and the language was often tortured and obscure. Archaisms abounded. Moreover the structure of many Acts was illogical and untidy.

1.33 In recent times, these defects have been substantially eliminated.

Format

1.34 Since 2000, Acts have been published in a much more user-friendly format. The type face has been changed; section headings stand out above the body of the section; there is better use of margins and numbering so that sections, subsections and paragraphs stand out more clearly; and running heads make it easier to find one's way through the Act. The new format, which was adopted after much research and consultation, is much more user-friendly than used to be the case.

Structure

1.35 Acts are, for the most part, now drafted with a logical theme and structure, with procedural and other matters of detail being relegated to schedules.

40 Law Commission Act 1985, s 5(1)(d).

41 Ibid, s 5(2)(b).

42 New Zealand Law Commission *Legislation Manual: Structure and Style* (NZLC R35, Wellington, 1996).

43 New Zealand Law Commission *The Format of Legislation* (NZLC R27, Wellington, 1993).

44 PCO "Vision Statement" http://www.pco.parliament.govt.nz/corporatefile/vision.shtml (accessed 15 September 2008).

Language

1.36 Archaisms (such as "shall", "heretofore" and "aforesaid") are no longer used and drafting is in plain English with short sentences, using no more words than necessary. Particularly in the case of Acts most likely to be read by a popular audience, the language is much more straightforward than used to be the case.

Aids to understanding

1.37 Modern Acts also contain aids to understanding. Some longer Acts begin with an overview part that summarises for the reader the overall content of the Act. Some Acts use examples, flow charts and diagrams. A few present information in the form of charts rather than narrative paragraphs.

1.38 There have been significant advances in plain drafting, and modern Acts are generally superior to their predecessors. However, despite these advances, in the New Zealand statute book there remain many older Acts that are drafted in a much less accessible style. When they are amended in modern times, the resultant mix of old and new can read rather strangely.

CONCLUSION

1.39 These, then, are the ways in which the state in New Zealand currently fulfils its obligation to make Acts accessible to the public. But there are still problems. Later chapters will isolate these problems and consider what could be done to improve matters.

Chapter 2

The New Zealand Legislation Website and Legislation System

IN THIS CHAPTER, WE

- set out the scope, objectives and technical specifications of the PCO's now completed Public Access to Legislation (PAL) project;
- describe the officialisation process of the New Zealand Legislation Website that is now being undertaken and the legislation that will eventually need to be passed, to make the website an official source of New Zealand legislation;
- discuss the searching capability and user interface of the New Zealand Legislation Website;
- consider the future possibilities of the Legislation System; and
- consider the comparative advantages and disadvantages of hard copy and electronic access to Acts.

2.1 The state has an obligation to make statute law available. In the modern context, it would be untenable to suggest that the best way to meet this obligation is solely through the use of paper resources. Electronic technology has progressed a great deal. We live in a computer age. Electronic technology in general, and the internet in particular, offer powerful new means of immeasurably improving access to legislation. Many comparable jurisdictions have taken advantage of electronic technology for this purpose. With the completion of the Public Access to Legislation (PAL) project, as the project's name suggests, New Zealand has caught up with these other jurisdictions in harnessing the potential of electronic technology to give citizens greater access to legislation.

COMPLETION OF THE PAL PROJECT

2.2 The completion of the PAL project is a great advance for accessibility of legislation. The project was undertaken by the Parliamentary Counsel Office, in collaboration with the Office of the Clerk and the Tax Drafting Unit of the Inland Revenue Department.[45] The project was completed in January 2008; the New Zealand Legislation Website went live on 16 January 2008. The project involved the implementation of a new XML-based fully-integrated drafting, printing, publishing and reprinting system within the PCO, referred to as the "Legislation System",[46] and the provision of the New Zealand Legislation Website.[47] The new website provides free access to legislation, delivering access to legislation in both HTML and PDF formats.

2.3 As will be explained in this chapter, the PAL project has resulted in the statute book being captured in a state-owned digital database.[48] This opens up a range of new possibilities for utilising technology to improve access to that data. Electronic data can be searched and ordered by powerful search engines, and manipulated in ways that print information cannot. This electronic technology is constantly improving.

2.4 The Legislation System has been completed as a result of a large government investment of time, effort and expense. It is important to continue to build on this initial investment. The Legislation System will provide a platform upon which can be built further initiatives to improve access to legislation.

SCOPE OF THE PAL PROJECT

2.5 The PAL project covered the legislation that the PCO is responsible for drafting or publishing. It included bills, Acts, statutory regulations, and Supplementary Order Papers (SOPs). The project was not scoped to provide access to deemed regulations, bylaws, Hansard, or international treaties or conventions.[49] For the rest of this chapter, the term "legislation" refers to legislation that was within the scope of the PAL project, and now constitutes the New Zealand Legislation Website.[50]

OBJECTIVES OF THE PAL PROJECT

2.6 The PAL project was designed to improve the way in which New Zealand legislation is made available to the public. The aim of the project was to provide public access to up-to-date legislation in both printed and electronic form. The project has culminated in the New Zealand Legislation Website, which provides free access to electronic versions of legislation. The project also implemented a new XML-based drafting, printing, publishing and reprinting system.

45 Unisys New Zealand Limited (Unisys) was the PCO's implementation partner for the project.

46 Our 2007 issues paper referred to this as the "PAL system". Now that the PAL project has been completed, the PCO refers to this as the "Legislation System" and we adopt that terminology here.

47 Our 2007 issues paper referred to this website as the "PAL Website". Now the website has been launched as the "New Zealand Legislation Website" and the PAL project has ended, so we will refer to it by this name.

48 In this paper the term "statute book" is used to refer to the existing body of statute law currently in force.

49 However, it should be noted that many treaties and conventions are included as schedules to in force Acts and, as such, will form part of the Legislation System database.

50 We note that it would be possible to expand the Legislation System to include other sources in the future.

2.7 The objectives of the PAL project included making legislation available electronically and in printed form from a database owned and maintained by the Crown; providing this access as soon as possible after enactment; and providing the electronic access free of charge.[51]

2.8 The new Legislation System is intended to make new legislation available to the public almost immediately after it is passed or made. Amendments are expected to be incorporated before they commence, unless there is a very short time between the passage or making of the legislation and its commencement and also depending to some extent on the length of the legislation. The Legislation System will not automatically incorporate amendments into existing legislation. Initially, the job of maintaining the database by incorporating amendments is being undertaken by Brookers under contract to the PCO, while the PCO Reprints Unit officialises the database.[52] This is an interim arrangement only. Once the database is officialised, it will be maintained by the Reprints Unit.

TECHNICAL SPECIFICATIONS OF PAL

2.9 A key objective of the PAL project was to fulfil "the state's … responsibility to ensure effective public access to the law in a complete, authoritative, and timely manner, and in a range of formats that make it accessible to all citizens".[53] A fundamental decision in the development of the Legislation System and New Zealand Legislation Website was to select the most appropriate technical platform upon which to construct the Legislation System database. The PCO made the decision to adopt XML (Extensible Markup Language) as the platform for the Legislation System. XML is a subset of SGML (Standard Generalised Markup Language). Both are international standards that provide a mechanism for managing arbitrary markup in documents.[54] XML is now the dominant standard and was designed particularly for website applications. Legislation has a number of features that are particularly well-suited for the use of XML as a platform for its creation, management and delivery: it has a long lifespan, is subject to change, and is regularly structured and consistently formatted. It can be re-used and published in multiple formats such as in print and on a website. More detail on the technical specifications is contained in the Law Commission's 2007 issues paper on this subject.[55]

GOVERNMENT-OWNED LEGISLATION DATABASE

2.10 The PAL project involved the acquisition by the state of a comprehensive database of New Zealand legislation. In 1989, the Government Printing Office ("GPO") was sold.[56] A consequence of the sale was that the New Zealand government did not own a comprehensive electronic database of legislation.

51 PCO "Introduction to the Public Access to Legislation (PAL) Project" http://www.pco.parliament.govt.nz/pal/palintro.shtml (accessed 15 September 2008).

52 Officialisation is discussed in greater detail below at paras 2.15-2.17.

53 Geoff Lawn "Improving Public Access to Legislation: the New Zealand Experience" (Positioning for the Future Legal Information Symposium 2004, University of Auckland, Auckland, New Zealand, 22-24 July 2004).

54 Timothy Arnold-Moore "Computerisation of Law Resources: XML and Legislation" [2003] Comp L Res 29 http://www.austlii.edu.au/au/other/CompLRes/2003/29.html (accessed 15 September 2008 2008).

55 New Zealand Law Commission *Presentation of New Zealand Statute Law* (NZLC IP 2, Wellington, 2007), Chapter 2: The PAL Project, paras 45 – 50.

56 The sale decision was announced prior to the 1988 Budget. An agreement for the sale of the Government Printing Office to Rank Group, a New Zealand publicly-listed investment company, was entered into on 24 January 1990. See Treasury "New Zealand Government Asset Sales as at 30 September 1999" http://www.treasury.govt.nz/government/assets/saleshistory (accessed 15 September 2008).

The sale of the GPO was conditional on the Crown entering into contracts with the purchaser for parliamentary printing, and included transfer of ownership of the GPO's collection of legislative data. After the government's collection of legislative data was sold with the GPO, it was left to the private sector to develop comprehensive databases of New Zealand legislation. Status Publishing (now a part of LexisNexis) and Brookers (part of the Thomson Corporation) both invested in the back-capture of New Zealand Acts and statutory regulations, and produced their own commercially available databases of legislation.[57]

2.11 An important component of the PAL project was to acquire from a private sector publisher, Brookers, an electronic database of New Zealand legislation, and a set of legislative Document Type Definitions.[58] This is the data that forms the basis of the Legislation System.

OFFICIALISING THE LEGISLATION DATABASE

2.12 Under the current law, the only copies of New Zealand legislation that have official status are those that are printed or published under the authority of the New Zealand Government, as provided by sections 16C and 16D of the Acts and Regulations Publication Act 1989.[59] Official status in this context means that the copies of legislation can be produced in court as evidence of their contents without further proof. This applies to Acts as originally passed and to reprints. No electronic versions of New Zealand legislation have official status.

2.13 The launch of the New Zealand Legislation Website in January 2008 has not altered this state of affairs. None of the electronic versions of legislation on the website, or copies of legislation printed from the website, have official status. However, an important objective of the PAL project was that the New Zealand Legislation Website will eventually provide access to *official* versions of New Zealand legislation.

2.14 The purchased database of legislation is now available via the New Zealand Legislation Website. However, that database was produced not by the PCO, but by a commercial publisher. This is not to say that the database is not of a high standard of accuracy. Both the LexisNexis and Brookers databases are of sufficiently high standard for the PCO to use them in its work of drafting legislation. However, the purchased database was produced by a non-official agency for a commercial rather than official purpose. The database has not undergone the same checking process that the PCO employs, under the authority of the New Zealand Government, when printing and publishing hard copies of New Zealand legislation and legislative reprints. Official versions of legislation must adhere to strict formatting specifications and the content must be accurate.

57 Lawn "Improving Public Access to Legislation: the New Zealand Experience" above, n 53, s 3.

58 Geoff Lawn "Improving Public Access to Legislation: the New Zealand Experience (So Far)" (Law via the Internet 2003, 5th Conference on Computerisation of Law via the Internet, University of Technology, Sydney and University of New South Wales, Sydney, Australia, 26-28 November 2003) s 6.

59 These sections were inserted into the Acts and Regulations Publication Act 1989 by the Evidence Act 2006, s 216 and sch 2, when it came into effect by order in council on 1 August 2007, SR 2007/190.

The "officialisation" process

2.15 Extensive quality assurance processes are necessary before the database that the PCO acquired from Brookers as part of the PAL project can be made available as an official version of New Zealand legislation. The PCO uses the term "officialisation" to describe this quality assurance process. Officialisation includes the exercise of the powers conferred by section 17C of the Acts and Regulations Publication Act 1989. That section authorises PCO compilers to make certain editorial changes to a reprinted enactment, such as changes to punctuation and layout, so that it can be reprinted in a format and style consistent with current legislative drafting practice.

2.16 The officialisation process began after the New Zealand Legislation Website went live. Officialisation is being carried out by the PCO Reprints Unit. At this stage, the PCO is not able to provide an exact date for when officialisation will be completed, but current estimates are that it will take around three years.

2.17 It is important to note here that the PCO uses the term officialisation in a specialised sense in relation to the Legislation System database: "officialisation" is a different concept from "becoming an official source of legislation". The former necessarily precedes the latter. The New Zealand Legislation Website will become an official source of New Zealand legislation only once legislation to that effect is passed. Officialisation encompasses the quality assurance steps that must be taken to ensure that the website is suitable to become an official legislation source, so that legislation to make it an official source can be promoted and passed.

Legislation with "semi-official" status

2.18 The New Zealand Legislation Website will not be official in the sense set out above until legislation is passed to make it an official legislative source. However, even before the passage of such legislation, certain enactments on the website will be able to be regarded as having a sort of "semi-official" status. Two types of enactment will fall into this category. The first category includes those Acts and statutory regulations that are enacted or made after the New Zealand Legislation Website was launched. Such legislation will have been drafted and published using the new Legislation System, rather than having been acquired from Brookers. The same electronic source file will be used to produce both the official printed copies of these Acts and statutory regulations and the unofficial electronic versions on the New Zealand Legislation Website. This means there will be no differences in the content or layout of the electronic versions and the official printed versions. The only difference will be that the official printed versions have official status under the Acts and Regulations Publication Act 1989. The second category of semi-official legislation will include those Acts and statutory regulations that have been acquired from Brookers and that have since been officialised by the PCO Reprints Unit. See, for example, the Wills Act 2007 (2007, No 36) and Succession (Homicide) Act 2007 (2007, No 95).

2.19 "Semi-official" enactments will be visually distinguishable from the other unofficial enactments on the New Zealand Legislation Website because they will have the New Zealand Coat of Arms, or Crest, on the front page. The Coat of

Arms appears only in the whole HTML version and the PDF version. Legislation acquired from Brookers and not yet officialised will not bear the Coat of Arms. The database will become officialised Act by Act, and regulation by regulation. The officialisation programme is currently in the exploratory stages. The 2007 Acts, with the exception of the Income Tax Act 2007, have been officialised and the Reprints Unit is now determining which Acts to focus on next.

2.20 The PCO intends, at some time in the future, to promote legislation to make the New Zealand Legislation Website an official source of New Zealand legislation. This will be appropriate only once the entire database has been officialised. The draft Legislation Bill appended to this report suggests a set of appropriate provisions to make the website an official source of New Zealand legislation.

The PCO's Printing and Reprinting Programme under the Legislation System

2.21 Now that the New Zealand Legislation website has been launched, the PCO will for the foreseeable future continue to publish official printed reprints of legislation in accordance with the PCO's annual reprinting programme. This programme will be co-ordinated with the PCO's programme for officialising the New Zealand Legislation Website.

2.22 Unofficial "electronic reprints" of Acts and statutory regulations are also available on the New Zealand Legislation Website, because all current principal Acts and principal statutory regulations on the website are kept up-to-date with amendments incorporated in them.

BROWSING AND SEARCHING CAPABILITY OF THE NEW ZEALAND LEGISLATION WEBSITE

2.23 Users of the New Zealand Legislation Website can access legislation electronically both by browsing and by searching. It is possible to browse legislation alphabetically by title, or by legislation type. For instance, a user wishing to find a particular bill can choose to browse government, local, private or members' bills. The user can further limit the number of bills browsed by choosing to view only current bills, or bills enacted in a nominated year, or bills terminated in a nominated year.

2.24 Legislation is also searchable. Users who do not know the title of the legislative instrument that they are looking for may prefer this mode of locating provisions. The collection of legislation on the website can be searched for words appearing in various search fields. The guided search fields include content, title, year (introduced, made, enacted) and version. The version field is mandatory, so users are required to specify whether they seek a current, as made, or terminated version of an instrument. The advanced search fields include the guided search fields already listed, as well as section or clause number and type of Act or bill. Search results specify what version of an Act, regulation or bill has been found.

The user interface of the New Zealand legislation website

2.25 Users are able to use the search and browse features of the New Zealand Legislation Website described above by navigating through a series of screens within the website. The first point of contact for users of the website is its homepage,[60] from which users can proceed to a number of other pages by clicking

60 New Zealand Legislation Website Homepage http://www.legislation.govt.nz/ (accessed 15 September 2008).

on hyperlinks. Users who wish to search the collection of legislation on the website have a choice of quick, guided or advanced searches. As the names suggest, "quick searches" are the most simple of the three search modes, and "guided" and "advanced" searches are more tailored and specific.

Accessing versions of legislation by date

2.26 An important aim of the PAL project was to provide public access to up-to-date official legislation in both printed and electronic form. An up-to-date compilation of the statute book is available online via the New Zealand Legislation Website. The initial load of data in the Legislation System generally comprised the Acts and statutory regulations that were in force when the website went live, as well as bills and SOPs before the House at that time. On that date, the website contained only a limited amount of historical material.[61] The collection will grow from there as new Acts, regulations, bills, and SOPs are added, and as principal Acts and regulations are updated by amendments. Each time amendments are incorporated into a principal enactment, the Legislation System generates a new version, or electronic reprint, which is accessible on the website.

2.27 The Legislation System database as currently designed assumes that no material will ever be removed. Material that is repealed or revoked will be retained in the database, as will all versions of electronic reprints. Bills and SOPs will also be retained even after they are enacted or withdrawn. This means that the Legislation System will contain a complete record of the Acts that comprise the statute book, as well as regulations and bills and SOPs, for each point in time from the go live date onward. The PAL project did not include back-capture of repealed or revoked Acts and regulations. But it will build up a historical dimension over time as a series of new versions build up, and the older versions are retained on the site.

2.28 Users of the New Zealand Legislation Website can access all versions of legislation within the website. They are not limited to viewing only the current version of an item of legislation. However, the website does not provide the ability to search versions of legislation by date. It is not possible to enter in a date and then get a version of legislation that is, or was, or will be, current at that date. The version of a particular item of legislation at a particular point in time is only available by browsing the versions of that item on the New Zealand Legislation Website and finding one that straddles the required date.[62]

61 The website went live on 16 January 2008, but 4 September 2007 was the cut-off date for historical material – superseded versions of Acts and Regulations before 4 September 2007 are not included on the website. See New Zealand Legislation Website "About: What is on this website?" http://www.legislation.govt.nz/about.aspx#whatisprovided (accessed 15 September 2008).

62 For example, the Judicature Act 1908, of which at the time of publication six versions plus the current version are available. The Tasmanian EnAct website is more sophisticated in this respect as it allows true point in time searching: "Tasmanian Legislation – Tasmania's Consolidated Legislation Online" http://www.thelaw.tas.gov.au/index.w3p (accessed 15 September 2008).

POSSIBILITIES FOR BUILDING ON THE NEW ZEALAND LEGISLATION WEBSITE

2.29 The completion of the PAL project was a significant advance for accessibility of legislation. The launch of the New Zealand Legislation Website and the Legislation System underlying it are a result of a large government investment of time, effort and expense. Having made this initial investment, it is important to make the most of the Legislation System, and the website, as a platform for further initiatives to improve access to legislation. It is important to build on the possibilities that it opens up to us.

2.30 Some potential future developments of the Legislation System and New Zealand Legislation Website might include:

- Automatic consolidation;[63]
- Partial automatic consolidation;[64]
- Point in time searching;[65]
- Presentation of relevant provisions under subject matter headings (various, depending on what the user wants) rather than whole Acts in alphabetical or chronological order;
- An electronic subject matter index, with links to the legislation in the database;
- An enhanced collection of legislative material including Hansard, international treaties, the *New Zealand Gazette* and so on;[66]
- Interactive forms, allowing users to download and fill in forms directly from the New Zealand Legislation Website;
- A register of legislative instruments (including deemed regulations) along the lines of the Australian Capital Territory's Legislation Register or the Federal Register of Legislative Instruments (FRLI) in Australia, which also includes the electronic notification of the making of legislative instruments, or "e-gazetting";[67]
- "As if enacted" versions of Acts showing how they will be affected by bills before the House (there is the facility to do this in the Legislation System at present, but it will be done only on a selective basis and these versions are not routinely published on the website); and
- Versions of bills showing how they would be affected by amendments proposed in SOPs. This could include the effect not only of government SOPs but also members' SOPs.[68]

63 This is a feature of the EnAct system in Tasmania: ibid.

64 This is a feature of the Irosoft system in Canada, which has provided for the automation of most of the manual review and consolidation operations of the federal statutes. See http://www.irosoft.com/en/realisation/gestiondocumentaire/projetagil.htm (accessed 15 September April 2008).

65 This is a feature of the EnAct system in Tasmania. See http://www.thelaw.tas.gov.au/about/enact.w3p (accessed 15 September 2008).

66 The Westlaw Graphical Statutes service provides access to an enhanced collection of this kind in the United States. It charts legislative changes and links related documents in an easy to read display. It has links to current and prior versions of Acts; future text of an Act not yet in effect; relevant legislative history materials, such as bill drafts, reports, journals, and the Congressional Record; and case law. See http://west.thomson.com/documentation/westlaw/wlawdoc/wlres/graphst.pdf (accessed 15 September 2008).

67 ACT Legislation Register http://www.legislation.act.gov.au (accessed 15 September 2008); Federal Legislative Instruments Database Home Page http://frli.law.gov.au/ (accessed 15 September 2008).

68 The feasibility of providing this in any jurisdiction is vastly improved by automating the consolidation process. This would allow every possible "as if enacted" version and every possible combination of proposed SOP to be compiled either on demand or pre-prepared without requiring any additional work for the PCO.

2.31 We note that the last two of these options have considerable resource implications for the PCO because neither is automatic under the Legislation System.

HARD COPY AND ELECTRONIC ACCESS TO ACTS

2.32 With the availability of legislation on the New Zealand Legislation Website, questions may arise about the necessity to continue publishing Acts in hard copy. In one of the Canadian provinces, New Brunswick, electronic publication is now the norm.[69] In that province, hard copies of legislation are available only on a print on demand basis: small orders are printed by the Legislative Services Branch of the Office of the Attorney General, but another department prints large orders. Bound annual volumes are no longer printed for public use, but hard copies are deposited with Library of Parliament (Canada) and the New Brunswick Legislative Assembly for archival purposes. The publication of loose-leaf Acts has ceased also. There has apparently been little critical comment, other than from librarians. The main driver of these publication decisions has been financial.

Advantages of electronic publication

2.33 There is no doubt that electronic publication has advantages over hard copy.

- Access in electronic form via the New Zealand Legislation Website is free. Hard copy must be paid for, except when used in public libraries.
- Production costs involved in electronic Acts are less than hard copy.
- The electronic version can be promptly and regularly updated. The New Zealand Legislation Website will always contain the current versions of Acts, up-to-date with the latest amendments. Hard copy takes longer, and is more cumbersome, to annotate. Hard copy rapidly becomes out-of-date.
- Electronic Acts can be accessed on a laptop or personal computer from anywhere, even at home. Hard copy requires access to a library, unless the user owns or has borrowed, and is prepared to transport, a number of volumes.

Advantages of hard copy

2.34 However, hard copy will always retain its own advantages over electronic versions.

- Many users find it more difficult or uncomfortable to read from a screen than from the printed page, particularly when long tracts of text are involved. The rate of fatigue reading from a screen is higher than reading from paper.
- Legal material requires high cognitive input from the reader. Legal prose is dense with meaning. Research shows that there are cognitive advantages in reading material from a printed page.
- Context is vitally important in understanding and interpreting Acts. It is now well-accepted that one must interpret a provision of an Act in the light of the "scheme" of the Act as a whole. It is easier for most of us to gain an appreciation of that scheme if we can turn printed pages, rather than read one page at a time on screen. There can be a lack of context and perspective about the latter. Moreover, many Acts contain internal cross-references, and

69 Judith Keating QC "Electronic Publication of New Brunswick Legislation, Yesterday, Today and Tomorrow" (conference paper, Commonwealth Association of Legislative Counsel, London, September 2005) http://www.opc.gov.au/calc/docs/Article_KeatingQC_NewBrunswick_2007.pdf (accessed 15 September 2008).

definition sections, which require constant travel from one section to another. While modern technology allows for greater speed, and for showing multiple pages on screen, many readers find that turning pages is much easier than scrolling them. Even if cross-references and definitions are hyperlinked, it is not always easy for users to jump back and forth using hyperlinks.

- It goes without saying that if the user is in a place where there is no access to a computer, for example in a meeting, then he or she has no access to the electronic Acts.
- For many, a hard copy index is more helpful than an electronic index or search engine.[70]
- Some users are more likely to miss provisions in electronic form than in hard copy.[71]

Feedback from submitters

2.35 A number of submitters agreed that hard copy has these advantages and affirmed that "both electronic and hard copy are needed".[72] Several submitters agreed that they found it easier to read Acts in up-to-date hard copy than on a computer screen.[73] The New Zealand Law Librarians' Association said that:[74]

> Complex questions can require the simultaneous use of a number of statutes, or seeing specific ones readily in their entirety spanning a period of time, in order to get the full sense of their history trails, developments, relationships with each other, meaning, interpretation and structure. An online version does not satisfy that need: using hardcopy is the only practical method.

2.36 In a similar vein, the NZQA Chief Legal Adviser submitted that:[75]

> When one has to look at multiple provisions within an Act and across a number of Acts, and in the absence of multiple computer screens to see the multiple provisions in one snapshot, it is easier to use hard copy. One could print off all the provisions to compare them together, but even with that, being able to do multiple checks of other provisions for context, and for multiple checks of other provisions that affect the provisions being looked at, it is easier using hard copy.
>
> There might well be a point where the technology can find a good substitute for a reader's interleaved fingers in hard copy statute books, or for having in front of the reader piles of statutes opened at particular pages with other pages clearly marked, but from my experience I do not see that we are at that point yet.
>
> Clearly the electronic versions are far superior in so many ways, but there are the odd practical issues like those mentioned above where hard copy still has a benefit.

70 See Chapter 5: Indexing, para 5.55.

71 See para 2.36 below.

72 New Zealand Law Librarians' Association (submission, 20 December 2007) 4. Also paraphrased by Auckland District Law Society Library Committee (submission, 3 December 2007).

73 New Zealand Law Librarians' Association (submission, 20 December 2007); Auckland District Law Society Library Committee (submission, 3 December 2007); Wellington District Law Society Public Law Committee (Submission, 19 November 2007); Allan Bracegirdle (submission, 10 November 2007); Dr Jan White, Chief Executive, ACC (submission 26 October 2007); Chief Legal Adviser, NZQA (submission 23 October 2007).

74 New Zealand Law Librarians' Association (submission, 20 December 2007) 4.

75 Chief Legal Adviser, NZQA (submission 23 October 2007) 1.

2.37 A corollary of this, also noted by submitters, was that it is easier to miss provisions in an electronic document than in hard copy. The Wellington District Law Society Public Law Committee said that:[76]

> Committee members can recite examples of errors made by junior lawyers as a result of using electronic versions of Acts to locate a particular statutory provision, and then missing other relevant provisions. In the Committee's view, the importance of reading a hard copy of a statute to gain a proper understanding of the relevant statutory scheme cannot be overstated. The variance in age of Committee members made no difference to their views on this issue.

2.38 Several submissions were from librarians at public libraries and from community law centres. They emphasised that electronic access via the New Zealand Legislation Website does not necessarily mean that all New Zealanders can in fact access legislation. The point was made that the New Zealand Legislation Website should be accessible free at public libraries as people of low income are less likely than others to have internet access. Speakers of English as a second language are also likely to be in a disadvantaged position regarding understanding and accessing legislation and the website itself. The Mangere Community Law Centre suggested that the New Zealand Legislation Website should include translations of at least some headings, search fields and instructions.

Why not just print if off?

2.39 It can be argued that the advantages of hard copy can be obtained by the simple expedient of the user just printing off the electronic Act. This is commonly done. But, as suggested by the submitters above, it is not a full substitute for having hard copy volumes available:

- If an Act is a long one (and some are very long: the Local Government Act 2002 is 492 pages, and the Income Tax Act 2007 is 2,855 pages) not many users will do more than print off the few pages that they think are relevant to them. This can be at the expense of an overall appreciation of the scheme of the Act.
- Many Acts, to be properly understood, require reference to other Acts, both current and historical. A careful reading can require constant reference from one Act to another. It can be tiresome and costly to print out all relevant legislation. Most readers find it easier to have several books open on the table in front of them, turning pages.
- Computer-printed material has a quality of impermanence. It is untidy and often impractical to store. As a consequence, the Act may have to be printed off again. Users can of course adopt their own storage solutions when dealing with computer-printed material, such as using loose-leaf binders and storing material according to a filing system, for instance, alphabetically by Act title. But these are more labour intensive for users than a bound volume that can be easily shelved. Bound hard copy is there to be consulted for all time – however, the corollary is that hard copy is likely to become out-of-date and unreliable.[77]

76 Wellington District Law Society Public Law Committee (Submission, 19 November 2007) para 6.

77 See above, para 2.32.

CONCLUSIONS REGARDING HARD COPY AND ELECTRONIC ACCESS

2.40 No doubt individual users will continue to have their preferences. Some less experienced in computer use will continue to be less confident in that medium and will prefer hard copy. Others, whose use of computers is all-embracing, will do most of their Act reading online. As familiarity grows, even the presently inexperienced will no doubt increasingly gain confidence in the electronic tools. The New Zealand Legislation Website is now online and its capabilities will continue to be enhanced over time. It seems likely that, as this happens, subscriptions to the hard copy Acts will fall. It would be surprising if they did not. It has happened in Australia. Yet we believe that there remains a place for both media, not just because of the personal preferences of readers but also because hard copy will continue to be able to do some things better than the electronic versions. The purchase figures for the PCO "best-seller" Acts show that there is currently a respectable demand for hard copy versions. As noted in our chapter on indexing, the American legal publishing company Thomson West reports a high demand for its hard copy version of the federal United States Code and the index to it.[78]

2.41 The Law Commission's recommendation is that hard copy should remain available. A democratic government should respond to the needs of the people rather than insisting that they acquire new habits. However, the issue in the electronic age is how hard copy is to be delivered. We shall say more about this in the chapter on reprinting,[79] but our conclusion inevitably involves a measure of compromise, to get the best of both worlds.

2.42 We believe that all new Acts, including amending Acts, should be printed, published, and sold at a reasonable price as at present. The annual bound volume service should also continue. This will ensure that libraries, including libraries overseas, will continue to have a permanent record of New Zealand's legislative output. It will remain as a complete historical record. The ready availability of this material on the shelves for browsing also makes users immediately aware of recent changes to the law.

2.43 However, the publication of reprints incorporating amendments is a different issue. In Chapter 6 we consider this issue, setting out the various alternative modes of hard copy reprinting, and making a final recommendation.[80]

RECOMMENDATION

R1 For the foreseeable future, hard copy versions of Acts should continue to be produced and made available at a reasonable cost to the public.

78 Chapter 5: Indexing, para 5.43.

79 Chapter 6: Reprinting.

80 See Chapter 6: Reprinting, paras 6.43-6.48.

Chapter 3

Current problems with accessing statute law

IN THIS CHAPTER, WE

- identify and discuss a range of current problems with the statute book.

3.1 The state currently does a great deal to make statute law accessible. Chapter 1 of this report sets out the state's obligations to make statute law available, navigable and understandable, and the practices and processes that are currently in place by which the PCO addresses these obligations. The PCO oversees the printing of Acts, and has an annual reprint programme, which is directly relevant to the obligation to make Acts of Parliament available. Chapter 2 discussed the Public Access to Legislation (PAL) project that the PCO completed in January 2008. On January 16 2008, the New Zealand Legislation Website went live, greatly improving the availability and navigability of the New Zealand Acts. In addition, recent years have seen a significant move towards plain language drafting of legislation; legislation has become more understandable as a result.

3.2 However, despite the work that the PCO currently does to ensure that Acts are available, navigable and understandable, a number of accessibility problems remain. New Zealand Acts are less accessible than they should be. This chapter will set out several key accessibility problems. They are problems that need to be addressed.

ORDER OF THE STATUTE BOOK

3.3 The order in which a set of documents, for instance, a set of Acts, is arranged directly impacts on its navigability. In general, a set of documents is easier to navigate if it is arranged according to a coherent, logical order. If the documents are ordered logically, then users can follow that logic to locate within the larger set the particular information that they seek. At present, the New Zealand statute book is not arranged so as to facilitate navigability.

Chronological ordering of Acts and reprinted Acts

3.4 In common with many other jurisdictions, New Zealand's Acts of Parliament are ordered chronologically. When Acts of Parliament are enacted, they are printed individually in hard copy, generally in the order in which they are passed, and are available a few days after enactment.[81] After the end of each calendar year, all the Acts passed in that year are bound and published in hardcover volumes. They appear in those annual volumes in the order in which they were passed. The chronological ordering of the annual volumes of the statute book can help users to locate particular Acts if they already know roughly what Acts they are looking for and when they were enacted. However, in many circumstances, users will not know what Act they are looking for or when it may have been passed. In these circumstances, chronological ordering does little to promote navigability.

3.5 Parliament decides when to pass any particular Act. There is a range of political reasons why one Act may be promoted and passed before another. However, these political reasons tend to be far removed from questions of how Acts should be arranged within the statute book so as to best facilitate its navigability. The location of any particular Act within the statute book and relative to other Acts correlates solely with the time at which Parliament decided to pass it. The statute book has evolved in this way since 1841. Current problems with accessibility are the result of legislative practice that has remained largely unchanged. The statute book is not ordered according to subject area. Acts covering similar subjects can be in separate volumes if they were passed in different years. This makes it difficult to navigate the statute book – a user looking for the Acts on a particular topic receives insufficient clues from the layout of the statute book about where to look.

3.6 Reprinted Acts are no more navigable.[82] Reprints are now published only in pamphlet form, which has greatly increased the number, and number of pages, of reprints produced each year. The pamphlet format replaces the bound *Reprinted Statutes of New Zealand* series, which was published from 1979 until it was discontinued in 2003.[83] Its volumes still contain the most up-to-date reprints of many Acts of Parliament.[84] Brookers also now provides the *Bound Reprinted Statutes* series.[85] The reprinted Acts within the *Reprinted Statutes of New Zealand* and *Bound Reprinted Statutes* are generally arranged in no apparent order. The Acts within each volume are ordered alphabetically by short title, but the Acts within each volume often have little to do with each other. Many Acts are reprinted simply because they are much amended and are in common use. Some have been reprinted simply to "retire" some of the old annual volumes.

81 However, if an Act is particularly large, the publication process may take a little longer. Since large Acts can take longer to print and publish than smaller Acts, smaller Acts that are passed later than a larger Act may occasionally be printed earlier.

82 When an Act has been much amended it is often reprinted by the PCO, the reprint incorporating up-to-date amendments. See Chapter 1: Access to Legislation, para 1.23.

83 The last volume in the series is volume 42. See Chapter 6: Reprinting, para 6.15.

84 Many of these reprinted Acts have been amended after having been published in the volumes and Brookers annotates those volumes for their subscribers.

85 The first volume of the *Bound Reprinted Statutes* series was published in 2005 and includes statutes reprinted as at 2002 and 2003.

In this regard, reprints do not improve navigability, but they do ensure that the principal Act and all the amendments are in one place, which is a considerable advantage to users.

3.7 It should be noted, however, that there are a few volumes of the reprint series that are "of a kind", collecting together several Acts that relate to a single area. For instance, volume 36 of the *Reprinted Statutes of New Zealand* contains only conservation and environmental Acts.[86] Volume 30 comprises Acts that deal with the incorporation of certain imperial enactments into New Zealand law,[87] and the imperial enactments themselves.[88] Volume 41 contains reprints of criminal legislation,[89] and was well-received in some quarters at the time of its publication. Reprints of a single long Act, such as the Local Government Act 1974[90] or the Income Tax Act 1976,[91] sometimes comprise an entire volume of the *Reprinted Statutes*. But aside from these notable exceptions, the *Reprinted Statutes* simply grouped together whichever Acts were reprinted during the same period. Since the demise of the bound volume reprints, Acts are reprinted individually according to need. There is no coherence in terms of subject matter in this system either.

Current aids to navigation of the statute book

3.8 The current lack of order of the statute book itself need not limit its navigability if it were supplemented by sufficiently instructive aids to navigation. An aid to navigation, such as an index, can allow users to navigate the statute book by imposing onto it an external logic – the structure of the index can, at least in part, make up for the lack of structure of the statute book itself. There is no official subject index to the New Zealand statute book. However, there are at present several other aids to its navigation.

3.9 The first such aid is the *Tables of New Zealand Acts and Ordinances, and Statutory Regulations, and Deemed Regulations in Force*, which the PCO publishes annually. It lists all Acts (and regulations) in force in New Zealand in alphabetical order

86 It collected together: the Conservation Act 1987; Conservation Law Reform Act 1987; Environment Act 1986; Harbours Act 1950; Māori Purposes (Lake Rotoaira) Act 1959; Marine Farming Act 1971; Marine Reserves Act 1971; National Parks Act 1980; New Zealand Walkways Act 1990; Reserves Act 1977; Soil Conservation and Rivers Control Act 1941; Waimakariri-Ashley Water Supply Act 1961; and Wildlife Act 1955.

87 Part I of the volume comprises: the Imperial Laws Application Act 1988; Provincial Ordinances Act 1892; and Statutes Repeal Act 1907.

88 Part II of the volume comprises: the imperial Acts in force in New Zealand, including important constitutional statutes such as: the Act of Settlement 1700; Bill of Rights 1688; Magna Carta 1297; and Statute of Marlborough 1267. It also includes the imperial subordinate legislation in force in New Zealand. Part III comprises the provincial Acts and ordinances in force.

89 It contains: the Abolition of the Death Penalty Act 1989; Aviation Crimes Act 1972; Costs in Criminal Cases Act 1967; Crimes Act 1961; Crimes (Internationally Protected Persons, United Nations and Associated Personnel, and Hostages) Act 1980; Crimes of Torture Act 1989; Criminal Justice Act 1985; Homosexual Law Reform Act 1986; International Terrorism (Emergency Powers) Act 1987; International War Crimes Tribunals Act 1995; Mutual Assistance in Criminal Matters Act 1992; Summary Proceedings Act 1957; and Victims of Offences Act 1987.

90 RS vol 20; and RS vol 25. These were both superseded by more recent reprints of the Local Government Act 1974. Most of that Act has now been repealed and replaced by the Local Government Act 2002.

91 RS vol 12.

of titles. A list of deemed regulations is now also included. The printed Tables also indicate which volumes of the New Zealand Statutes and Statutory Regulations series have become obsolete.

3.10 Previously a less comprehensive, electronic version of the Tables was also available on the Legislation Direct website, and could also be reached via the PCO website. It was updated at least six-monthly, generally quarterly. From 31 March 2008, the PCO withdrew this electronic version as its functions had been superseded by those of the New Zealand Legislation Website. The browse feature of the New Zealand Legislation Website produces alphabetical listings of legislation in force, by specified type, that is, public, local, private, provincial or imperial Acts. It is also continuously updated, unlike the Tables which have usually been updated four times a year. The lists generated from the New Zealand Legislation Website link directly to the relevant legislation, while the electronic version of the Tables did not provide live links. The Tables did link to the list of deemed regulations on the PCO website; this list continues to be available.

3.11 It is a difficult task to begin to navigate the New Zealand Acts without the aid of the Tables, or the alphabetical lists of Acts on the New Zealand Legislation Website. Yet, while the Tables contain a certain amount of cross-referencing, they are tables rather than indexes. The alphabetical list of titles of Acts can be of some assistance in finding provisions relating to particular subject areas, but generally only when Acts have titles that directly and intuitively refer to their subject matter. In practice, Acts' titles seldom give a comprehensive or fail-safe indication of their contents. A navigation tool based solely on Act title is of limited utility.

3.12 The bulk of the information available in the Tables is now available from the New Zealand Legislation Website. In response to this, the PCO in 2008 conducted an online survey to gauge future demand for the printed version of the Tables.[92] The PCO has determined that it will continue publishing the Tables in printed form for the foreseeable future. This will be reviewed once the legislation on the New Zealand Legislation Website has been made an official source of legislation. The PCO is also considering making a PDF version of the Tables available on this website.[93]

3.13 Commercial publishers LexisNexis and Brookers both produce Wall Charts to the Acts, a second kind of navigation aid. These are tables rather than indexes. They list Acts alphabetically by name and specify in which annual or reprint volume of Acts the most recent version of each Act is to be found. They are a useful quick reference for users who know, or can make an educated guess as to, the name of the Act they are looking for. However, similarly to the PCO-produced *Tables of New Zealand Acts and Ordinances, and Statutory Regulations, and Deemed Regulations in Force*, the Wall Charts will not help users to find Acts whose titles do not directly refer to the subject matter sought.

92 The closing date for responding to the survey was 28 March 2008. PCO Website http://www.pco.parliament.govt.nz/legislation/tables.shtml (accessed 15 September 2008).

93 Parliamentary Counsel Office Website "Survey of Users of the Tables" http://www.pco.parliament.govt.nz/legislation/tablesurveyresults.shtml (accessed 15 September 2008).

3.14 The commercial publisher LexisNexis produces an "unofficial" subject index. However, there is no state-produced, comprehensive and official subject index and this absence can lead to difficulty. The presence of a commercially available index does not release the state from its obligation to make statute law accessible and navigable. The electronic search functions of the New Zealand Legislation Website provide a significant new free navigation tool for the electronic versions of Acts. However, electronic searching alone is not a substitute for a comprehensive subject index.[94]

3.15 The current set of aids to navigation of the statute book is useful in some circumstances. However, alone they are insufficient to overcome the navigation difficulties caused by the arrangement and order of the statute book. The current aids to navigation fall short of completely addressing these problems.

Laws on one topic can be scattered

3.16 There are currently over 1,100 Acts in force in New Zealand. These are spread across more than 80 annual volumes of Acts and 30 volumes of the *Reprinted Statutes* that contain "live" Acts.[95] There are another 25 volumes of Brookers' *Bound Reprinted Statutes*, many of which include the most up-to-date versions of some Acts. The "live" Acts of New Zealand are spread amongst approximately 130 separate volumes. The contents of these volumes are now available on the New Zealand Legislation Website. The law on any particular topic could be located anywhere amongst all these Acts. Often the law relating to a subject is not neatly encapsulated within a single Act, but rather is contained within several Acts including amendment Acts. Such related Acts will not necessarily have all been passed in the same year. Their enactment dates are likely to span many years. This means that the law on a particular subject may span many separate volumes of the statute book. Examples of the law on a subject being scattered across numerous different Acts can be found in the law of banking,[96] the statutory requirements for Acts and regulations,[97] and the law on coastal

94 See Chapter 2: The New Zealand Legislation Website and Legislation System, para 2.33.

95 A number of older volumes of the New Zealand Statutes have become obsolete (except for public Acts of a local or private nature and local and private Acts). These obsolete volumes include: all the official volumes containing the provincial Acts and ordinances published under the authority of the councils of the various provinces (the provincial Acts and ordinances were reprinted in RS Vol 30); a volume entitled "Enactments of the Imperial Parliament" that was prepared and edited by the commissioners appointed under the Revision of Statutes Act 1879 and published by the government printer in 1881 (imperial Acts and imperial subordinate legislation declared to be in force in New Zealand are reprinted in RS Vol 30); all the annual volumes of statutes before 1981 (including the 1931 and 1957 reprint volumes); RS vols 2, 3, 4, 12, 13, 14, 19, 20, 25, 19-1, 19-2; New Zealand Statutes 1983 and 1987, Vol 3.

96 The law on banking spans the Reserve Bank of New Zealand Act 1989; Bills of Exchange Act 1908; Cheques Act 1960; and Banking Act Repeal Act 1995.

97 The law on this topic is contained in the Constitution Act 1986; Acts and Regulations Publication Act 1989; Regulations (Disallowance) Act 1989 and Interpretation Act 1999.

property,[98] education,[99] and local government.[100] Moreover, in some of these areas of law where there are separate Acts with different titles, the boundaries between their areas of application are not clearly demarcated, and are certainly not indicated by their titles.

3.17 This sprawl can lead to difficulty. There is a big risk that a person who is not thoroughly familiar with our statute law will fail to find some of the provisions that affect him or her. There is no way for a person to be sure that he or she has found all of the Acts that are relevant to his or her position; even after he or she has located several, there may still be others to be found. For example, the buyer of a faulty car on hire purchase might locate the Consumer Guarantees Act 1993 and form the impression that his or her remedy lies there, without taking into account the Personal Property Securities Act 1999, Motor Vehicle Sales Act 2003, and Disputes Tribunals Act 1988. The Fair Trading Act 1986 might also be of assistance. Such a person would form an incomplete, misleading impression of the law as it relates to him or her. His or her access to the statute law in such an instance is partial and dangerous. As will be discussed in a later chapter,[101] a programme of revision could gather together Acts and provisions on similar subject matter.

Hidden provisions

3.18 To complicate matters further, some provisions are located within Acts where one would never think to look for them. For example, section 92 of the Judicature Act 1908 sets out a basic rule of contract law; section 105 of the Copyright Act 1994 is a privacy, rather than a copyright, provision; and the law governing the sale of books in instalments is in the Mercantile Law Act 1908. A person seeking to find the law on court orders for suppression of name would struggle too: it is contained in the Criminal Justice Act 1985, and since the Act does not actually use the popular term "suppression order" even the search engine of the New Zealand Legislation Website will not provide an answer.

98 The law on coastal property is contained in a large number of Acts, including the Foreshore and Seabed Act 2004; Marine Reserves Act 1971; Territorial Sea, Contiguous Zone, and Exclusive Economic Zone Act 1977; Deeds Registration Act 1908; Foreshore and Seabed Endowment Revesting Act 1991 (although this Act was repealed by section 30(1) of the Foreshore and Seabed Act 2004, section 30(2) provides that it continues to have effect in respect of any area to which it applied immediately before 25 November 2004 that is not included in the public foreshore and seabed); Resource Management Act 1991; and various local harbour Acts: Auckland Harbour Act 1874; Auckland Harbour Bridge Authority Dissolution Act 1983; Auckland Harbour Foreshore Grant Act 1875; Harbour Boards Dry Land Endowment Revesting Act 1991; Okarito Harbour Act 1932-33; Timaru Harbour Board Act 1876; Wanganui Harbour and River Conservators Board Act 1876; Harbour Reclaimed Lands Sale and Leasing Ordinance 1868; Otago Harbour Trust Leasing Ordinance 1862; Napier Harbour Board Act 1874; Napier Harbour Board Act 1876; Oamaru Harbour Board Land Act 1874; and Thames Harbour Act 1936.

99 For example, the Education Law Amendment Act 1933; Education Act 1964; Education Act 1989; Education Lands Act 1949; Industry Training Act 1992; Modern Apprenticeship Training Act 2000; New Zealand Council for Education Research Act 1972; New Zealand Library Association Act 1939; Pacific Islands Polynesian Education Foundation Act 1972; Private Schools Conditional Integration Act 1975; and Education Standards Act 2001.

100 Local Government Act 1974; Local Government Official Information and Meetings Act 1987; Local Electoral Act 2001; Local Government Act 2002; and Local Government (Rating) Act 2002.

101 See Chapter 7: Revisions.

3.19 Several submitters noted that amendment Acts containing substantive provisions, rather than just textual amendments, can also give rise to "hidden" provisions. These amendment Acts are not listed separately in their own right in the various tables, even though they can be considered in effect independent statutes. An example of this is the Legislature Amendment Act 1992. This Act provides protections for persons publishing parliamentary papers under the authority of Parliament and persons publishing copies of such papers. The Act does not amend the Legislature Act 1908 as such and the title gives no guidance as to the Act's content. Further examples are the Judicature Amendment Act 1972, the Misuse of Drugs Amendment Act 2005 which is a mixture of textual amendments and stand-alone provisions, and operational provisions such as section 38 of the Health Amendment Act 1993, which become important when defending certain legal claims. As noted by one submitter:

> Amendments that include stand-alone provisions can reduce accessibility. Users tend to rely on the principal Act for substantive provisions, particularly where there are reprint versions in either hard copy or electronic format. It is easy to forget that provisions may stand outside the principal Act, and the title of the amendment Act may offer no guidance as to the substance of those provisions.

3.20 "Hidden" provisions of any kind heighten the difficulties just discussed that users can face when trying to locate not just some, but all, of the provisions relating to a particular subject area. The presence of these hidden provisions increases the likelihood that a user of the statute book will fail to locate some of the relevant provisions that are scattered across its volumes. The hidden provisions also illustrate the limitations of navigation tools such as the *Tables of New Zealand Acts and Ordinances, and Statutory Regulations, and Deemed Regulations in Force* and Wall Charts of Act names. Hidden provisions will not be located through the use of any navigation tool that relies wholly on Act titles.

"Comprehensive" reforms that do not completely replace existing Acts

3.21 Another navigability problem that results from the structure of the statute book springs from the use of modern, apparently comprehensive, reforming Acts that in fact do not entirely replace their predecessors. The modern Acts give the impression of reforming or restating the law on a particular topic and of replacing their predecessors, but in reality, small portions of the earlier Acts linger on in the gaps. For instance, the Education Act 1989 does not entirely repeal the Education Act 1964; the Public Finance Act 1989 preserved for twelve years Part 2 of the Public Finance Act 1977, which set out the powers of the Audit Office; the Local Government Act 2002 preserves a small segment of the Local Government Act 1974; the Fisheries Act 1996 preserves a number of provisions of the Fisheries Act 1983; and the Customs and Excise Act 1996 does not touch the Customs Law Act 1908. It is easy for an inexperienced user to miss these small survivors – they may not be hidden in the same sense as the hidden provisions just discussed, but they are liable to be overlooked.

3.22 Due to the large number of Acts in force and the fact that they are scattered across the statute book, and also due to the presence of hidden or easily overlooked provisions, a lay Act user, and sometimes a lawyer too, can fail to locate provisions that bear on his or her problem. This is a real accessibility issue. The absence of an index is critical.

PLAIN ENGLISH DRAFTING

Older Acts

3.23 As discussed earlier, clarity is one of the requirements for accessibility.[102] Acts that are not understandable and clear will not be accessible. A current obstacle to accessibility in New Zealand is that Acts were often drafted in a way that makes comprehension difficult for lawyers, let alone lay persons. Significant efforts have been made by the PCO in co-operation with the Law Commission in recent years to improve the clarity of New Zealand statutory drafting. The Law Commission has published manuals and reports on plain language drafting[103] and the use of clear legislative format.[104] The PCO has also made significant efforts in this area. The PCO and the IRD (which drafts tax legislation) take very seriously the need to draft legislation so that it is clear and understandable and their practice now is to draft clearly, in plain language. In recent times, defective drafting that makes Acts difficult to understand has been substantially eliminated. Modern Acts are drafted in plain English, and are much clearer because of it.

3.24 Many older Acts are much more difficult to read. Some older Acts may have amendments in modern style, which may themselves be understandable, but the remaining older provisions remain quite unclear. The Charitable Trusts Act 1957 is an example of this. It is drafted in the style of 50 years ago and is a reminder of how vastly legislative drafting has improved in the years since then. This 50-year old Act is not heavily amended,[105] so it is almost entirely drafted in an outmoded style. It is not an easy Act to understand. It uses long sentences, and many of its sections are very long. Its language is obscure, archaic and convoluted. Consider for instance section 3 of the Act, which concerns the vesting of property in trustees or their successors:

> (1) Where any real or personal property has been or is hereafter acquired by or on behalf of any religious denomination, congregation, or society, or any body of persons associated for any charitable purpose, and the conveyance or other assurance of that property has been or is taken to or in favour of trustees to be from time to time appointed, or any parties named in the conveyance or other assurance, or subject to any trust for any such denomination or congregation or society or body of persons, or for the individuals comprising the same, the conveyance or other assurance shall not only vest the property thereby conveyed or otherwise assured in the parties named therein, but shall also effectually vest the same in their successors in office for the time being and the continuing trustees (if any) jointly, or if there are no such continuing trustees, then in their successors in office for the time being chosen and appointed in the manner provided or referred to in the conveyance or other assurance, or in any separate deed or instrument, declaring the trusts thereof; or if no mode of appointment is therein provided or referred to, or if the power of appointment has lapsed, then in such manner as may be agreed upon by such denomination or by a body constituted to represent them, or by such congregation, society, or body of persons.

102 See Chapter 1: Access to Legislation, para 1.8.

103 New Zealand Law Commission *Legislation Manual: Structure and Style* (NZLC R35, Wellington, 1996).

104 New Zealand Law Commission *The Format of Legislation* (NZLC R27, Wellington, 1993).

105 In fact, the most recent reprint of the Act was in 1979. The Act has been amended since that reprint.

(2) The said property shall be so vested without any conveyance or other assurance whatsoever upon the same trusts and with and under and subject to the same powers and provisions as are contained or referred to in the conveyance or other assurance, or in any separate deed or instrument upon which the property is held so far as the same may at the time of vesting be subsisting and still capable of taking effect, anything in the conveyance or other assurance or in any separate deed or instrument to the contrary notwithstanding.

(3) Nothing in this section shall restrict the effect of any appointment of new trustees or of any conveyance or other assurance or vesting of any property.

3.25 The Joint Family Homes Act 1964 is only slightly more recent and its clarity is similarly marred by its outdated drafting style. Section 4 of the Act concerns the settlement of additional land adjacent to the land of the joint family home:[106]

(1) [In any case where the husband and wife on whom land is settled as a joint family home are the registered proprietors, or either of them is the registered proprietor, of additional land contiguous to the joint family home, and the husband and wife or either of them could, on the cancellation of the settlement, resettle under this Act the land originally settled together with the additional land, that additional land may be settled as part of the joint family home without any cancellation of the original settlement.

(1A) For the purposes of subsection (1) of this section, in determining whether on the cancellation of the settlement the land originally settled together with the additional land could be resettled under this Act, the registered proprietors or registered proprietor of the additional land shall be deemed to be the settlors or, as the case may require, the settlor, of the original settlement.]

(2) In any such case, all the provisions of this Act that would have applied on the resettlement of all the land under this Act shall apply on the settlement of the additional land as part of the existing joint family home, except that for the purposes of the second proviso to paragraph (d) of subsection (2) of section 9 of this Act,–

(a) That additional land shall be deemed to have been settled by a separate settlement:

(b) The date of the settlement shall, in respect of that additional land and any relative shares which are deemed to be included in the settlement, be the date on which that additional land was actually settled.

(3) [In any case where the land settled as a joint family home comprises or includes a leasehold interest in a flat, if the [[husband and wife on whom the land is settled as a joint family home are the registered proprietors, or either of them is the registered proprietor]] of an undivided share in the land which is the site of or appurtenant to the flat but is not included in the settlement, and if on the cancellation of the settlement the [[husband and wife or either of them]] could have resettled under this Act the land originally settled together with the said undivided share in the land, that share shall, for the purposes of subsections (1) and (2) of this section, be deemed to be additional land contiguous to the joint family home.]

106 While section 4 was somewhat amended by the Joint Family Homes Amendment Act 1974, these amendments are themselves now over 30 years old. The Law Commission has recommended that this Act be repealed and not replaced: New Zealand Law Commission *The Future of the Joint Family Homes Act* (NZLC R77, Wellington, 2001) para 22.

> (4) [For the purposes of subsection (3) of this section, in determining whether on the cancellation of the settlement the land to which that subsection applies together with the undivided share in the land could be resettled under this Act, the registered proprietors or registered proprietor of the undivided share in the land shall be deemed to be the settlors or, as the case may require, the settlor, of the original settlement.]

3.26 Many more of these old Acts, or old provisions within partially modernised Acts, remain today. They are still drafted in the older styles and as a result can be very difficult to understand. Furthermore, when old Acts like this are amended, they are amended by textual amendment in modern style. This results in a mixture of old and new drafting styles across the Act, which can be awkward.

3.27 One submitter questioned whether this is a very serious issue, saying that:

> Of the issues raised, variation in style is of least concern. It is a difficult issue to address as developments in style are ongoing. There will always be differences in style unless there is regular, across the board updating of the complete statute book. This issue in itself would not merit any of the changes proposed by the paper.

However, the Law Commission does regard this as a significant issue. It is true that developments in style are ongoing. But the last comprehensive revision of the statute book was done in 1908. This means there is currently 100 years' worth of stylistic drafting history captured within the statute book – if Imperial Acts are included, the span is much longer. Reprint powers can and do assist here. Whether or not it is possible to ensure constant and ongoing stylistic consistency across all Acts, it is certainly possible to do better than is being done now. As will be discussed further in Chapter 7, a systematic programme of revision could go even further, seeing the drafting updated, and ensuring that the entire statute book, not only the more modern Acts, is understandable and accessible.

Modern Acts

3.28 As noted above, a number of submitters considered that a number of features of modern Acts can also give rise to difficulties of understanding. Several considered that the parliamentary practice of debating bills on a part-by-part basis at the committee of the whole House stage compromises good structure in a statute. There are political incentives to include as few parts as possible within a bill so as to lessen the time needed for debate, even though good legislative design often requires a greater number of parts. As noted by a submitter:

> Government bills are frequently drafted in only two parts or in very large parts with numerous subparts. This response to the House's procedures does little to assist accessibility.

The Law Commission entirely agrees with these sentiments.[107]

MUCH AMENDED OLDER ACTS

3.29 Another accessibility problem relates to certain old Acts that have been much amended over a long period. The Social Security Act 1964 is one such Act. It has been amended by over 70 separate amendment Acts, in the 44 years since

107 The Legislation Advisory Committee has also made this point: Legislation Advisory Committee *Submission from the Legislation Advisory Committee to the Standing Orders Committee* (Wellington, October 2006) para 96.

its enactment. The first amendment Act was passed two years after the primary Act was passed. It has been amended almost annually since then, sometimes with as many as six amending Acts passed in a single year.[108] Some 200 Acts and regulations have consequentially amended the Act. Acts like the Social Security Act 1964 sometimes are so heavily amended that they are covered with tissue paper update inserts – the volume can become difficult to close. The PCO includes such heavily amended Acts in its reprint programme. The Social Security Act 1964 has been reprinted a number of times, with the most recent reprint in 2005.

3.30 Reprinting tidies the appearance of heavily amended Acts. However it fails to fully address deeper problems that arise. An Act such as the Social Security Act 1964 now has a mixture of provisions, some dating back to the original Act itself, and other provisions inserted or amended at various other times during the years that followed. That Act is now a combination of more than 40 years' worth of legislative drafting styles. Modern provisions sit alongside much older provisions. Reprinting them tidily alongside one another makes them easier to read, but that new clarity only highlights the underlying flaws and inconsistencies in the style of the Act itself. This very problem was noted in the recent case of *Arbuthnot v Chief Executive of the Department of Work and Income*.[109] Justice Blanchard, giving for the Supreme Court the reasons for its judgment on 19 July 2007, said:[110]

> The words ["determinations" and "decisions"] seem to have been used [in the Social Security Act's appeal provisions] interchangeably, probably as a product of numerous amendments over the years to a statute enacted over 40 years ago which is starting to show its age.

3.31 Aside from matters of drafting style and language, heavily amended older Acts are prone to structural problems and incoherence. The structure of an old Act that has been repeatedly amended and altered over time is often much worse than that of a new Act. When preparing each new amendment to an old Act, drafters are constrained by the Act's existing structure, no matter how sprawling or outmoded that structure has become. With each new amendment, space is found within the principal Act for new provisions. The more extensive the amendment, the more difficult it is likely to become to integrate it cleanly into an Act's existing framework. This problem is cumulative, compounded by each additional amendment. Adding or amending provisions in batches over a long period of time is an ad hoc approach to legislative design. At no point does the drafter have the opportunity to look at the Act as a whole and plan the best way to structure it to give effect to its purposes. Heavily amended Acts are often reprinted, but reprinting can make the untidiness of Acts even more apparent by heightening the contrast between old and new styles of drafting, and any loss of coherence of the scheme of the Act.

3.32 In light of these considerations, even if the content of wide-ranging amendments is desirable, good legislative design is often not best served by introducing wide-ranging amendments to an Act. It can also create problems of interpretation. The modern approach of interpreting an Act in accordance with its "scheme" can be frustrated if the "scheme" has been corrupted over the years by a process of

108 For instance, there were six Acts passed in 1996, four in 1997 and five in 1998.

109 *Arbuthnot v Chief Executive of the Department of Work and Income* [2007] NZSC 55.

110 Ibid, para 23.

continual amendment. It can be better not to amend, but to begin again from scratch and redraft the whole Act. This may also help to ensure that savings and transitional issues are given proper attention. The downside is that section numbers with which practitioners have become familiar will change, and some relearning must occur. That is a small price to pay. It happens now when well-known Acts are re-enacted with amendment: the Income Tax Acts, for example.

3.33 In practice, piecemeal reform is often preferred to wholesale redrafting and re-enactment in the interests of a number of considerations other than quality of legislative design. There can be difficulties with "beginning again": considering an Act and its scheme in its entirety may re-open controversial issues; it also requires more work and more House time than simply passing discrete, ad hoc amendments. Arguments for piecemeal reform frequently draw on such factors.

3.34 However, the approach of "beginning again" has been taken successfully with a number of recent Acts. The Weathertight Homes Resolution Services Act 2006 is a good example. Rather than simply amending the 2002 Act of the same name, it repealed it in total and enacted a new Act in its place. The result of this was a new and coherent Act, which was designed as a whole Act rather than an awkward conjoined product of a process of significant amendment.

3.35 Tax law is an example of the approach of successfully redrafting Acts from scratch rather than heavily amending them for long periods of time. The Income Tax Act 2007 is 2,855 pages, covering 4 volumes of the 2007 annual Acts. It replaced the Income Tax Act 2004, which replaced the Income Tax Act 1994, which itself had replaced the Income Tax Act 1976. Due to this approach, although tax law is generally subject to annual amending Acts, the principal Acts retain a carefully designed structure and are fairly consistent in style throughout. It should be noted that the redrafting of income tax legislation took 12 years and considerable resources. Furthermore, tax law is a specialised area of law and is drafted by the Inland Revenue Department rather than the PCO. Nonetheless, it provides a good general illustration of how redrafting can ensure better legislative structure, design and coherence of style than the practice of large, cumulative amendments carried out over long periods of time.

OBSOLETE AND REDUNDANT ACTS AND ACTS IN NEED OF UPDATING

3.36 A further problem with the current state of the New Zealand statute book is that a number of redundant Acts and provisions remain in force and needlessly clutter the law. Some old Acts still appear in the annual tables but are totally obsolete. For example, the New Zealand Institute of Journalists Act 1895 and the District Railways Purchasing Act 1885 both remain in force, and are both completely disused and unusable today. A more unusual example of this phenomenon is the Hawkes Bay Earthquake Act 1931. This Act still exists, but has not been reprinted since 1931 – it was not even included in the supposedly comprehensive 1957 reprint. There is nothing to be gained from the continued presence of these obsolete Acts and provisions. They add clutter, but no value, to the statute book. Repealing them would be helpful. An accessible, navigable and clear statute book should have no "dead wood".

3.37 In addition to clearly obsolete Acts, there are also a number of Acts that may not be obsolete, but at least need examination to see whether they should be retained or updated. Among them are Acts such as the Tourist and Health Resorts Control Act 1908, the Military Manoeuvres Act 1915, the Mortgagees and Lessees

Rehabilitation Act 1936, the Rent Restriction Act 1924, and the Patriotic and Canteen Funds Act 1947. These old Acts have not been revisited for many years. Closer examination might reveal that they are redundant and should be repealed, or perhaps instead that they are still useful, but in need of modernisation. A systematic revision of the statute book would allow such Acts to be properly assessed so that they can be left alone, amended or repealed as is appropriate in the circumstances.

INCONSISTENCIES BETWEEN ACTS

3.38 A final matter for concern regarding the current state of the New Zealand statute book is that a number of provisions are inconsistent, or at least incompatible, with one another. Given the number of Acts we have, it is highly likely that situations will arise where a particular set of facts will interact with two different Acts, and raise questions as to how these Acts are to be reconciled. A number of different interpretation approaches can be adopted in order to reconcile two or more Acts that on their faces are in conflict. For instance, one provision may simply be applied to the exclusion of the other. On the other hand, it may be possible to apply both provisions. Another approach is to accord a narrow interpretation to one provision or the other. On any occasion where Acts are in conflict, there are generally several ways of reconciling the inconsistent provisions. It is seldom immediately evident on the Acts' faces which approach should apply.

3.39 There are many cases in which the relationship between two Acts has been the central issue. In such cases, it falls to the Courts to decide what approach should be taken in order to reconcile conflicting provisions. In *Registrar-General of Land v New Zealand Law Society*[111] the Court of Appeal had to interpret and apply apparently conflicting provisions in the Land Transfer Act 1952 and Law Practitioners Act 1982. In *Royal Forest and Bird Protection Society of New Zealand Inc v Minister of Conservation*[112] the High Court considered how to square provisions in the Wildlife Act 1953 with those in the Coal Mines Act 1979. *Waikato Regional Council v Electricity Corporation of New Zealand Limited*[113] concerned a conflict between the Valuation of Land Act 1951 and Rating Powers Act 1988. In *R v Allison*[114] the Court of Appeal reconciled conflicting provisions within the Bail Act 2000 and Penal Institutions Act 1954. A recent example is *National Beekeepers Association of New Zealand v Chief Executive of Ministry of Agriculture and Fisheries*[115] where the relationship between the Biosecurity Act 1993 and the Hazardous Substances and New Organisms Act 1996 caused difficulty. There is also the related but less common issue of internal conflicts between provisions within the same Act, as raised in the Court of Appeal in the case of *R v Pora*.[116]

111 *NZ Law Society v Registrar General of Land* [2001] 2 NZLR 745 (CA).

112 *Royal Forest and Bird Protection Society of New Zealand Inc v Minister of Conservation* (13 December 2005) HC WN CIV 2005 485 2419 McKenzie J.

113 *Waikato Regional Council v Electricity Corporation of New Zealand Limited* (19 December 2005) CA 246/04 Glazebrook, William Young and Panckhurst JJ.

114 *R v Allison* [2002] 1 NZLR 679 (CA).

115 *National Beekeepers Association of New Zealand v Chief Executive of Ministry of Agriculture and Fisheries* [2007] NZCA 556 (CA).

116 In *R v Pora* [2001] 2 NZLR 37 (CA), sections 4 and 80 of the Criminal Justice Act 1985 were in conflict. This conflict was due to section 80 having been amended by the Criminal Justice Amendment Act (No 2) 1999, s 2(4).

3.40 These relationships between Acts and provisions within Acts cause difficulty both to lay persons and lawyers. When presented with two provisions that on their faces are inconsistent with each other, it can be difficult for lay persons and lawyers alike to predict how a Court would decide to interpret them and resolve the apparent conflict. To a large extent, some degree of overlap between Acts is inevitable. Provisions that appear to be consistent when initially drafted may turn out to be difficult to reconcile in new, unforeseen circumstances. It is the nature of statute law, and the unpredictability of human behaviour, that inconsistencies between provisions can never be completely eliminated.

3.41 However, a programme of revision should help to identify the more obvious inconsistencies between Acts and allow these to be addressed through redrafting or amendment. It may be possible to eliminate inconsistency between Acts by a relatively small amendment that just removes the conflict without necessarily having to rewrite and re-enact either or both of the conflicting provisions. For instance, the addition of provisions such as "This Act is subject to the [x] Act" or "if there is any conflict between the provisions of this Act and the [x] Act, the [x] Act prevails" may be sufficient. Even if more involved redrafting is necessary, a revision exercise would be valuable in addressing instances of conflict.

SUMMARY

3.42 As has been discussed, much has been done in recent years to make Acts accessible. However, a number of problems remain and New Zealand Acts are less accessible than they should be. Much of this is attributable to the way in which Acts are ordered, and the lack of sufficient external aids to improve their navigability. The chronological ordering of the Acts is unhelpful for navigation. Though there are some current navigation aids to the statute book, at present there is no state-produced subject index. We consider that the provision of this much needed navigation aid is an important state obligation. A good subject index would also alleviate the navigation problems that stem from the scattering of similar legislative provisions across disparate annual volumes and the presence of "hidden" provisions within Acts whose titles do not allude to them. We shall develop this view in a later chapter.[117]

3.43 A systematic revision programme could address other current problems with the statute book. The revision process would provide an opportunity to tidy up much amended older Acts and to update their language and drafting style. Obsolete and redundant provisions and Acts could be excised from the statute book and inconsistencies addressed.[118] Chapters 5 to 9 of this report set out a range of possible approaches that could be taken to achieve this end. A special problem, which warrants consideration in a separate chapter, is the current lack of accessibility of repealed historical Acts. The following chapter will address this matter.

117 See Chapter 5: Indexing.

118 See Chapter 7: Revisions, para 7.15.

Chapter 4

Preservation of historical Acts

IN THIS CHAPTER, WE

- consider the importance of historical Acts, both as historical documents and as documents that have ongoing legal effect or relevance; and
- recommend that a full collection of historical New Zealand Acts, including the disintegrating statutes, should be captured digitally as soon as possible and made publicly available online.

THE IMPORTANCE OF PRESERVING HISTORICAL ACTS

4.1 This report has so far focussed on access to Acts that are currently in force: in other words, the current statute book. That is also the chief focus of the New Zealand Legislation Website. The website will build up a collection of "historical" legislation as, over time, legislation that was in effect at 4 September 2007[119] is repealed or amended and the older versions are retained on the system. However, the PAL project was not scoped or funded to include the historical back-capture of legislation that was no longer in force when the website went live. The website will acquire a historical dimension over time, but that historical dimension generally will extend no further back in time than 4 September 2007. The PCO is not currently funded to undertake a project to back-capture historical legislation.

4.2 Legislation that is currently in force is binding. It affects citizens' legal rights and obligations. This makes it important that citizens have access to it. However, it is not only current Acts that are important and should be accessible. Repealed historical Acts are not legally binding with regard to events that take place after their repeal. However, savings and transitional provisions can preserve the legal effect of a repealed Act with respect to events that took place in the past, before

119 This is the date as at which the legislation database acquired from Brookers as part of the PAL project was converted to the Legislation System.

its repeal.[120] As was noted by a submitter, the importance of savings and transitional provisions can often be overlooked, which is a problem for accessibility.[121] Such provisions are the bridges from the past regime to the new regime. Sometimes, through savings provisions, a modern regime is linked to those as far back as the 1800s.[122] Some exemptions, rights or privileges can be saved through successive changes to regimes, but to research them can take considerable time. The submission suggested that it would help if the New Zealand Legislation Website would at some stage make these elements more transparent: for example, by reminders or cross-references in substantive provisions for taking into account transition matters and for history carried forward.

4.3 Historical Acts are also significant in a number of other senses. New Zealand Acts, commencing with the ordinances of 1841, are an important historical source in annual volume form. They record Parliament's legislative output on a year-by-year basis and reveal the legal, economic and socio-political life of New Zealand as a colony and emerging nation. The New Zealand Acts are useful for a broad spectrum of researchers, including those involved in the sciences, arts and humanities, social sciences, and engineering, as well as law itself. They are important reference material for Treaty of Waitangi research, historians, working lawyers, judges and law librarians. They are a part of our general and legal heritage.

4.4 In addition to this historical interest, repealed Acts are of real legal significance today. Modern Acts do not exist in a temporal vacuum. In New Zealand, as in most jurisdictions, more than half of all legislation passed is purely amending. Of the remaining substantive law, the majority includes some consequential amendments.[123] Almost all Acts passed in New Zealand repeal, amend or otherwise interact with existing legislation. Creating a statute book is an incremental and cumulative enterprise.

4.5 The cumulative nature of the statute book means that historical provisions have an impact in relation to statutory interpretation. Historical Acts are the foundation of today's statute book. When interpreting ambiguous Acts,

120 Copyright law provides examples of this. The Copyright 1994 came into force on 1 January 1995 repealing the Copyright Act 1962 and its amendments. The Copyright Act 1913 was another predecessor to the 1994 Act. However, the 1994 Act contains substantial transitional provisions (s 235 and sch 1). As such, these earlier Acts remain in effect with respect to some copyrighted works. Copyright generally extends for the life of the author, and then for 50 years after the author's death (Copyright Act 1994, s 22(1)). A work that was published in the past, when an earlier Copyright Act was in force, may still be under copyright today – the earlier Act that was in force at the time of publication is the one that has legal effect with respect to that work.

Accident compensation is another example. The Accident Compensation Act 1982 was repealed by section 179(1) of the Accident Rehabilitation and Compensation Insurance Act 1992, but sections 135 to 154 and 179(3), (4) and (5) of the 1992 Act contained transitional provisions which continued some of the effect of the 1982 Act. The 1992 Act was in turn repealed by section 417(1) of the Accident Insurance Act 1998, which was itself later repealed by section 339(1) of the Injury Prevention, Rehabilitation, and Compensation Act 2001. Parts 10 and 11 of the 2001 Act contain transitional provisions.

121 Chief Legal Adviser, NZQA (submission, 24 October 2007) para (4).

122 For instance, this is the case regarding mental health issues, particularly where there are statutory defences available for care provided in certain eras, but not in others.

123 Tim Arnold-Moore "About Time: Legislation's Forgotten Dimension" (TeraText™ Database System, White Paper Series, 2002) 1.

courts look at the whole context, including the historical one. Often, one cannot understand a current Act, or its purpose, properly without knowing its historical origins. A provision's meaning may be better understood in light of the context in which it originally appeared.[124] As Patrick Nerhot has put it, "[t]he statement of a present cannot be made without evoking a historical past".[125] Lord Hoffmann, in *Goodes v East Sussex CC,* similarly said:[126]

> It seems to me quite impossible, in construing the 1959 Act, to shut one's eyes to the fact that it was not a code which sprang fully formed from the legislative head but was built upon centuries of highway law. The provisions of the Act itself invited reference to the earlier law and in some cases were unintelligible without them.

4.6 There are many examples of the New Zealand courts looking to historical Acts in order to interpret modern provisions. In some instances, a particular word or phrase that appears in a modern provision can be better understood by tracing its use right back to its origin in the first enactment of the provision. Differences in wording and the reasons for those differences can be significant. In *Registrar-General of Land v NZ Law Society*,[127] the Court of Appeal traced the law on whether conveyancing can be carried out by anyone other than a barrister or a solicitor back to the original Conveyancing Ordinance 1842.[128] That historical discussion comprised almost half of the judgment.[129] The decision in *Rodney District Council v Attorney-General*[130] turned on the meaning of the expression "separate property". The Privy Council traced the legislative history of the rating and land valuation provisions,[131] explaining its approach as follows:[132]

> The true meaning of the expression "separate property" cannot be properly understood without examining the factual context in which those words were first enacted. It requires to be read in light of the historical background.

4.7 The usefulness of tracing the legislative history of a provision or Act is not limited to any one area of the law, and the courts have used this approach in deciding cases on a wide range of topics. Legislative history has been discussed

124 JF Burrows *Statute Law in New Zealand* (3 ed, LexisNexis, Wellington, 2003) 172.

125 Patrick Nerhot, in Patrick Nerhot and Ian Fraser *Law, Writing, Meaning: An Essay in Legal Hermeneutics* (Edinburgh University Press, Edinburgh, 1992) 25.

126 *Goodes v East Sussex County Council* [2000] 3 All ER 603, 607 (HL) Lord Hoffmann.

127 *Registrar-General of Land v NZ Law Society* [2001] 2 NZLR 745 (CA).

128 The modern provisions were sections 64 and 65 of the Law Practitioners Act 1982. The historical statutes discussed, and in several instances also quoted, in the judgment included: the Conveyancing Ordinance 1842; Law Practitioners Act 1861; Land Transfer Act 1870; Law Practitioners Act 1882; Land Transfer Act 1885; Land Transfer Act 1908; Law Practitioners Act 1908; Land Transfer Act 1915; Land Transfer (Compulsory Registration of Titles) Act 1924; Law Practitioners Act 1955; Law Practitioners Amendment Act 1962.

129 The legislative history discussion spans paras 16-34 of the 41-paragraph judgment.

130 *Rodney District Council v Attorney-General* [2003] 3 NZLR 721 (PC).

131 The court reviewed the historical background to the practice of using land as a source of taxation. The historical statutes discussed included: the Lands Valuation (Scotland) Act 1854; Valuation and Rating (Scotland) Act 1956; Municipal Corporations Act 1867; Land Transfer Act 1870; Ratings Act 1882; Rating Act 1894; and Government Valuation of Land Act 1896.

132 *Rodney District Council v Attorney-General*, above, n 130, para 23, lines 10-14.

in the context of such diverse areas of law as barristerial immunity,[133] criminal law,[134] tax law,[135] imposition of rates on land;[136] Māori land rights,[137] registration of property and personal security in ships;[138] intellectual property,[139] and liquor licensing laws.[140]

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133 In *Lai v Chamberlains* [2007] 2 NZLR 7 (SC) Elias CJ, Gault and Keith JJ, in a judgment delivered by Elias CJ, traced the law regarding barristerial immunity back to the Supreme Court Ordinances of 1841 and 1844. The judgment also considered the Law Practitioners Acts of 1854, 1858 and 1861. Tipping J, in his dissenting judgment, was similarly interested in the legislative history, and discussed the Law Practitioners Acts of 1861, 1882, 1908, 1931 and 1955.

134 In *R v Cargill* [1995] 3 NZLR 263 (CA) the legislative history of the crime of extortion, under the Crimes Act 1961, section 238, was traced back to English statute 10 and 11 Vict c66 (1847); the Larceny Act of 1861 (24 and 25 Vict c96); the draft Criminal Code (Indictable Offences) Bill attached to the Report of the Royal Commission of Inquiry into the Law Relating to Indictable Offences (1879) and the Criminal Code Act 1893.

135 In the *Commissioner of Inland Revenue v Medical Council of New Zealand* (1997) 18 NZTC 13,088 (CA) the Court had to decide whether, for tax purposes, the Medical Council of New Zealand qualified as a "public authority" under section 61(2) of the Income Tax Act 1976, and was an institution established exclusively for charitable purposes. The judgment of Keith J traced historical medical practitioners legislation, discussing historical Acts including: an 1849 ordinance of the Province of New Munster; provincial legislation establishing medical boards enacted by the Wellington and Otago Provincial Councils in 1854 and 1864 respectively; the United Kingdom Medical Act of 1858; the Medical Practitioners Act 1867; Medical Practitioners Act 1914; Medical Practitioners Act 1950; and Medical Practitioners Act 1968.

136 In *Royal New Zealand Foundation for the Blind v Auckland City Council* [2008] 1 NZLR 141 (SC), the Supreme Court had to decide whether a section of land owned by the foundation was non-rateable. The Court set out the legislative history and context of the expression "endowment", referring to a number of historical Acts, including: the Charitable Trusts Act 1863 (UK); Rating Act 1876; Education Act 1877; Rating Act 1882 (No 32); Auckland City Empowering Act 1913; Finance (No 4) Act 1931; New Zealand Institute for the Blind Rating Exemption Act 1935; Education Amendment Act 1949; New Zealand Foundation for the Blind Act 1955; Royal New Zealand Foundation for the Blind Act 1963; and Rating Act 1967.

137 In *Ngati Apa v Attorney-General* [2003] 3 NZLR 643 (CA) the Court considered a range of historical Acts in deciding the issue of whether historical legislation had extinguished any Māori customary property in the seabed and foreshore. The historical Acts canvassed included: the Land Claims Ordinance 1841; Imperial Waste Lands Act 1842; New Zealand Constitution Act 1852; English Laws Act 1858; Cornwall Submarine Mines Act 1858 (UK); Native Rights Act 1865; Crown Grants Acts 1866, 1883 and 1908; Public Reserves Management Act 1867; Gold Fields Act Amendment Act 1868; Shortland Beach Act 1869; Native Lands Acts 1862, 1865, 1873, 1894, 1909 and 1931; Thames Harbour Board Act 1876; Land Acts 1877 and 1948; Harbours Acts 1878, 1950 and 1955; Picton Recreation Reserves Act 1896; Havelock Harbour Act 1905; Native Lands Acts 1909 and 1931; Reserves and Other Lands Disposal and Public Bodies Empowering Acts, 1907, 1910 and 1915; Coal Mines Act 1925; Mining Act 1926; Māori Affairs Act 1953; Marlborough Harbour Amendment Acts 1960 and 1977; and Reserves and Other Lands Disposal Act 1973.

138 In the recent case *Keybank National Association v The Ship "Blaze"* [2007] 2 NZLR 271 (HC), Baragwanath J traced the legislative history of ship registration back almost 350 years to the Navigation Act 1660 (UK). He also discussed the Merchant Shipping Act 1894 (UK); Shipping and Seamen Act 1952 and Maritime Transport Act 1994. It is true that the oldest of the Acts considered in this case were United Kingdom Acts rather than Acts passed in New Zealand. However, the case illustrates the usefulness of historical Acts, whether passed in New Zealand or the United Kingdom, when interpreting modern statutes.

139 In *Pacific Coilcoaters Ltd v Interpress Associates Ltd* [1998] 2 NZLR 19 (CA), Richardson P and Henry J, in a judgment delivered by Henry J, discussed the legislative history of protection for pre-grant patent infringements. They discussed the New Zealand Patents Acts 1860 and 1870; and the Patents, Designs and Trademarks Act 1889. They said the legislative history confirmed what they considered to be the true position in the case. Thomas J's judgment similarly drew on historical Acts, including the Patents, Designs and Trademarks Acts 1889, 1911 and 1921-22. Keith J also considered historical provisions, including the New Zealand Patents Act 1870; and the Patents, Designs and Trademarks Act 1889.

140 In *Attorney-General v Daemar* [1980] 2 NZLR 89 (CA) the term "liquor" as used in section 2 of the Sale of Liquor Act 1962 was interpreted in light of the term's legislative history. Historical Acts that were considered by the Court included the Licensing Act 1908 and the Licensing Amendment Act 1948.

4.8 Historical Acts also place the Treaty of Waitangi in a broader context, and are a central resource for the Waitangi Tribunal.[141] Furthermore, working lawyers often need to consult old legislation.

4.9 For Parliamentarians considering legislative change, it can be immensely useful to consult Acts that have gone before. It is equally useful for parliamentary counsel to be able to do this. Historical Acts are useful in tracking trends and changes in drafting style and format. Comparing a new provision with its predecessors can allow insights into the best ways of expressing something. This is not always the modern way, although it often is. Tracking legislative drafting style through the statute book is useful to, among others, parliamentary counsel, members of Parliament, academics and historians. Good drafting is an important aim and there is always room for progress. It is important to be able to learn from the experience, mistakes and successes of the past. We need access to historical Acts to be able to learn from them.

DISINTEGRATION OF HISTORICAL ACTS

4.10 For a number of years the New Zealand Law Librarians' Association ("NZLLA") has been concerned about the deterioration of the early volumes of New Zealand Acts.[142] In 2006, it commissioned Michael Rubacki to prepare a background paper on this issue.[143] The Rubacki paper points out that the volumes from the late nineteenth and early twentieth centuries are deteriorating. The Acts were printed on acid paper that has deteriorated, becoming brittle. The deterioration is irreversible. Pages in many collections have degraded to the point that they tend to crumble or shatter upon handling.[144] If they are not preserved, they will be lost.

4.11 Access to bound volumes of historical Acts is becoming increasingly restricted. There are two problems here: threatened and actual unavailability. The problem of threatened unavailability is that as the volumes deteriorate, many library collections are now, or may soon be, incomplete. The threat is that eventually these volumes may not exist to be accessed. This threatened unavailability gives rise to actual unavailability. Volumes that do exist, but are at risk of deterioration if they are handled, are actually unavailable to the public. The public is less likely to be granted physical access to the fragile volumes due to the risk of damage to them upon handling. Libraries are beginning to decide not to grant public access to fragile Acts in order to manage the risk of historical Acts being destroyed.

141 Richard Moorsom, Acting Chief Historian, Waitangi Tribunal, to Ann Parsonson, Member of the Waitangi Tribunal, Letter, used with permission by NZLLA in *Support for NZLLA's Rubacki Report* http://www.nzlla.org.nz/documents/Rubacki%20report_support.pdf (accessed 15 September 2008).

142 Helga Arlington "Foreword" in Michael Rubacki *New Zealand Historical Legislation: Electronic Capture, Preservation and Publication* (Background paper and map for a scoping study, New Zealand Law Librarians' Association, March 2006) 3 www.nzlla.org.nz/publications.cfm (accessed 15 September 2008).

143 Rubacki, ibid.

144 Helga Arlington, Auckland District Law Society Librarian "Acid Paper 'Time Bomb' Threatens NZ Statutes" 6 Law News 20 February 2004 www.nzlla.org.nz/publications.cfm (accessed 15 September 2008).

4.12 The historical volumes have not been comprehensively digitized or captured electronically, although some work to this end has been done by commercial publishers.[145] The Rubacki paper urged that steps be taken to preserve historical Acts so that they form a comprehensive and permanent collection. Deteriorating Acts are the first priority, but ideally the entire New Zealand statute book would eventually be preserved. The Rubacki paper suggested the best way to do this was electronically, as an adjunct to the New Zealand Legislation Website and new Legislation System.[146]

TWO ISSUES: PRESERVATION AND ACCESS

4.13 Historical Acts are legally and historically significant, which gives rise to two key issues. First, these significant Acts must be preserved. They must not be lost forever because of paper deterioration. The second issue builds upon the first: once preserved, Acts must also be accessible. The reasons that make historical Acts worth preserving also make it necessary that they are accessible.

4.14 The PCO is responsible for the current statute book and the New Zealand Legislation Website provides online access to current Acts. However, the PCO's responsibility does not extend to preserving or providing access to historical Acts, which consequently are not available on the New Zealand Legislation Website, and unlike current Acts are not required by the Acts and Regulations Publication Act 1989 to be made publicly available.

The National Library of New Zealand: the preservation issue

4.15 The National Library of New Zealand has a statutory responsibility to collect, preserve and protect documents, particularly those relating to New Zealand, and to make them accessible for all the people of New Zealand, in a manner consistent with their status as documentary heritage and taonga.[147] This duty includes collecting, preserving and protecting historical New Zealand Acts, but clearly extends much wider than that. Legislation is but one component of the National Library's entire collection, which covers a wide range of subject areas and document formats.

4.16 The National Library is aware of the problem of deteriorating volumes of historical Acts. It considers that the volumes from 1888 to 1894 are the worst affected by the acid paper. In 2006, it agreed to microfilm those volumes, and to make the microfilm available for sale.[148] This microfilming work of the statutes for 1888-1894 was completed by the middle of 2008. The 2-film set of microfilms can be accessed at the Alexander Turnbull Library in Wellington (part of the National Library) and purchased from the National Library's Copying and Digital Section. It can also be borrowed by other libraries via interloan. This National Library initiative addresses the preservation issue in respect of those volumes.

145 LexisNexis *New Zealand Statutes as Passed 1842–1999.* (Electronic database). The National Library has also microfilmed some material – see para 4.19 below.

146 Rubacki, above, n 142, 7.

147 National Library of New Zealand (Te Puna Mataurangа o Aotearoa) Act 2003, s 7(a).

148 Penny Carnaby, National Librarian and CEO, National Library of New Zealand and Geoff Lawn, Deputy Chief Parliamentary Counsel, Parliamentary Counsel Office, to Sir Geoffrey Palmer, President, Law Commission "New Zealand Historical Legislation" (22 September 2006) Letter.

Microfilm is the standard medium used for long-term preservation.[149] The Acts that are deteriorating are doing so rapidly. Capturing them on microfilm prevents them from being lost altogether.[150] Microfilm produced today has a life expectancy of 500 years if stored according to particular standards.[151] It is a "mature" technology that is unlikely to become obsolete in the short to medium term. It is a high quality, intermediate storage medium that remains at all times available for further processing in digital systems.[152]

4.17 However, the NZLLA has concerns that the years at risk may extend wider than the volumes 1888-94 that the National Library has microfilmed.[153] If this is correct, then the National Library's solution does not go far enough in addressing the preservation issue.[154]

Possible concerns about digitization and preservation

4.18 It is worth noting that there is a deal of concern in some quarters about the life expectancy of digital storage formats. Some commentators suggest that a nagging question remains as to whether information stored digitally will be accessible in the future.[155] They say that digital preservation presents a new arena of preservation concerns,[156] and point to the possibility that digital formats may turn out to be "even more ephemeral than newsprint".[157] A key worry relates to the dangers of technical obsolescence at both the hardware and software level.[158]

149 Jane Westenfeld (March 2001) 3:2 "Preserving Our History" *@ the Library: The Newsletter of Pelletier Library*, 1.

150 Helga Arlington, President, NZLLA, to Sir Geoffrey Palmer, President, Law Commission "New Zealand Historical Legislation" (6 October 2007) Letter.

151 Steve Dalton "Microfilm and Microfiche" (Northeast Document Conservation Center, Andover, Massachusetts, 2004) http://www.nedcc.org/resources/leaflets/6Reformatting/01MicrofilmAndMicrofiche.php (accessed 17 September 2008); Archival Backup and Disaster Recovery Committee, Property Records Industry Association "Progress Report # 1" 2005 http://www.pria.us/archivalcomm/ABDR_PRIAmembershipProgressReport062705.pdf (accessed 16 September 2008).

152 European Commission on Preservation and Access "Digitization as a Means of Preservation?" (Amsterdam, 1997) http://www.clir.org/pubs/reports/digpres/digpres.html (accessed 17 September 2008).

153 In the Auckland District Law Society library, the volumes for years 1888-1894 are unavailable. Copies that are extremely fragile are held in storage, but they are unusable for anything but reading and are incomplete for that. The years 1895-1899 are useable, but are noticeably darkening.

154 Arlington, above, n 150.

155 Westenfeld, above, n 149; Deanna B Marcum "The Preservation of Digital Information" (1996) 22 Journal of Academic Librarianship 451.

156 Katherine M Wisser (ed) *Guidelines for Digitization* (2007 revised edition, North Carolina ECHO: Exploring Cultural Heritage Online), Ch 6: Digital Preservation http://www.ncecho.org/guide/toc.html (accessed 17 September 2008).

157 Karin Wittenborg "A Librarian Looks at Preservation" ("Do We Want to Keep Our Newspapers?" Conference, University of London, 12-13 March 2001).

158 Commentators draw on examples to illustrate these dangers. For instance, a potentially catastrophic loss of data from the 1960 United States Census occurred when vast amounts of the data were "held hostage to a long-obsolete tape drive". Kelly Russell "Digital Preservation: Ensuring Access to Digital Materials into the Future" (June 1999) http://www.leeds.ac.uk/cedars/Chapter.htm (accessed 17 September 2008).

See also: Panos Constantopoulos, Martin Doerr and Meropi Petraki, "Reliability modelling for long-term digital preservation" (9th DELOS Network of Excellence thematic workshop "Digital Repositories: Interoperability and Common Services", Foundation for Research and Technology – Hellas (FORTH), Heraklion, Crete 11-13 May, 2005) http://www.ics.forth.gr/isl/publications/paperlink/Reliability%20modelling.pdf (accessed 17 September 2008); Wisser, above, n 156.

Other commentators have noted that the true costs of digital storage over the long term are higher than many people might realise. Without long-term planning, they warn that digitization projects can come to behave like "digital black holes".[159] Some prefer microfilm, as a tried and true preservation method, to "untested" digital strategies.[160] It is not only the legal community that is resistant to digital storage formats. Preservation of digital artefacts, like preservation of paper ones, requires an understanding of the characteristics of the media and what techniques are necessary to ensure continued availability.

4.19 The longevity of the data in the Legislation System is a matter to which the PCO and its advisers have given careful thought.[161] Using an open standard such as XML and continually migrating data onto newer media are important ways of ensuring that digital information remains available. The PCO adopted XML as the technical platform for the Legislation System because it will ensure that the legislative data does not become trapped in proprietary software and publishing systems, and thus further ensure the longevity of the system's legislative data. That is, the preservation issue with respect to the system's data is adequately dealt with. This would also be the case for any historical legislative data that might come to be part of the Legislation System.

The National Library: the access issue

4.20 Both access and preservation are part of the National Library's statutory brief, and it is addressing both issues. In relation to access, as set out above, it has microfilmed the volumes of statutes for 1888-1894. As well as preserving the Acts, this is an improvement in access to the historical Acts. Preservation is after all a necessary precondition for access.

4.21 The microfilm preserves the deteriorating Acts, but their accessibility is still very limited. The microfilm is only available in Wellington, unless other libraries purchase copies or obtain access via interloan. Further, microfilm is not a very practical access method for those working in the law. It cannot be thumbed

159 Jonas Palm, Director, Head of Preservation, Riksarkivet/National Archives, Stockholm, Sweden *The Digital Black Hole* (2006) http://www.tape-online.net/docs/Palm_Black_Hole.pdf (accessed 17 September 2008): "Scanned information, which in the analog world could be accessed simply by the use of our eyes, is suddenly stored in an environment where it is only retrievable through the use of technology, which constitutes a constant cost factor. The more information is converted, the more the costs for accessing it go up. The digital black hole has got its firm grip on the project. It will go on swallowing either money or information: the funding must be continued or the input will have been wasted. If funding starts to fade, the information may still be retrieved but after a while it will no longer be accessible due to corrupted files, or obsolete files or technology. Then the digital information is lost forever in the black hole".

160 Westenfeld, above, n 149; Marcum, above, n 155; ECPA, above, n 152; Heritage Microfilm "Film or Scan?" http://www.heritagemicrofilm.com/FilmOrScan.aspx (accessed 17 September 2008); Dalton, above, n 151; Margaret Dent "Putting the Eighteenth Century Online" (March 2005) XV *National Library of Australia News* http://www.nla.gov.au/pub/nlanews/2005/mar05/article3.html (accessed 17 September 2008); Centre for Microfilming and Conservation, Helsinki University Library "A Nordic Digital Newspaper Library" (2002) http://www.minervaeurope.org/goodpract/nordiclibrary.rtf (accessed 17 September 2008); Russell, above, n 158, referring to S Chapman, P Conway and A Kenney "Digital Imaging and Preservation Microfilm: The Future of the Hybrid Approach for the Preservation of Brittle Books" (Council On Library and Information Resources, Washington DC, February 1999); Colin Webb "Australian Cooperative Digitization Project 1840-45 – An Update" (1999) http://www.nla.gov.au/nla/staffpaper/cwebb8.html (accessed 17 September 2008).

161 See New Zealand Law Commission *Presentation of New Zealand Statute Law* (NZLC IP2, Wellington, 2007), "Data Longevity", paras 45-47.

through as can the pages of a book. A microfilm reader or printer is needed to read the documents. Microfilm readers do not tend to be found outside of libraries, whereas desktop computers are common in offices, schools and homes. Microfilm cannot be electronically searched, and the indexes to the volumes of statutes are not collected in one place at the start of the microfilms, but (as with the printed volumes) appear only at the points on the film where each separate volume begins. This means that it is very hard to find particular statutes on the microfilms. The National Library has previously indicated that if access to historical Acts cannot be provided as part of the New Zealand Legislation Website, it will make at least the microfilmed Acts available on a documentary heritage website.[162] This would be in line with its statutory responsibility to ensure the accessibility of documentary heritage.

4.22 Access to historical Acts as part of a National Library documentary heritage website would be better than no electronic access. However, historical Acts are not only part of our history or "documentary heritage", on a par with newspaper archives; they are also part of the working law of the country. As has been discussed above, they are useful as legal precedents and also for legal research, statutory interpretation and tracking the development of laws and legal concepts.[163]

4.23 Accessibility is aided by organising sources logically and intuitively. An obvious way to achieve this is for similar sources to be located in the same place. Organising sources this way is useful for any researcher, whether their focus is purely historical, purely legal, or some mixture of the two. Documentary historical sources share a number of similarities. The question is: which are the most important similarities when it comes to grouping sources for accessibility purposes? In our view, historical Acts share more, and more fundamental, commonalities with Acts that are now in force than they do with other non-legal documentary heritage sources, such as newspapers, books, letters, maps, and so on.

4.24 The National Library's focus is necessarily wider than solely legal. If the National Library were to take on the role of providing access to historical legislation via its documentary heritage website, then historical Acts would be one archived source alongside many others. The documentary heritage website would necessarily lack a specifically legal focus on searching and display of legislation. The New Zealand Legislation Website, on the other hand, is a new access and search vehicle that is purpose-designed specifically for Acts.[164] It has revolutionised the way in which the current New Zealand statute book is made available to the public. Providing access to historical statutes via a dedicated legislation website would be more appropriate than grouping them within the National Library's documentary heritage website. Historical Acts form the background to, and are a part of, today's law. As such, they should be accessible and searchable alongside contemporary Acts as part of the New Zealand Legislation Website. This would allow the courts, legal profession, academics, students, parliamentarians and members of the public to access and search historical Acts alongside the present day statute book.

162 Ibid.

163 See paras 4.5-4.9 above.

164 Rubacki, above, n 142, 7.

4.25 As we have seen, the New Zealand Legislation Website does not cover historical Acts at present. The new Legislation System's technology represents a substantial investment by the taxpayer in public access to legislation. The website is a vehicle built especially for Acts.[165] Having made that investment, it makes sense to make the best possible use of it.

4.26 Housing the "shattering" historical Acts on the National Library's documentary heritage website would not signify their special place in the history of, and continuing effects and influences on, the current statute book. We consider that the wider collection of historical Acts, not just the "shattering" Acts, should be electronically captured and made publically available through the New Zealand Legislation Website.

PROVIDING ELECTRONIC ACCESS TO HISTORICAL ACTS

4.27 Historical Acts should be electronically accessible. In our 2007 issues paper, we suggested that this should be done by extending the New Zealand Legislation Website to incorporate historical Acts. Ideally, all historical and current Acts would be presented together in the same format, on the same website. This would involve capturing the material in XML format, which is the format on which the Legislation System that sits behind the New Zealand Legislation Website is based. Capturing the historical data in this format would be a complex and expensive undertaking,[166] but we remain of the view that it is the most ideal long term solution.

4.28 The Rubacki paper, commissioned by the NZLLA, envisaged the scope of such an extension to the new Legislation System as follows: [167]

> Ideally, the entire New Zealand statute book, consisting of the annual volumes and the 1908 consolidation, major reprints of 1931 and 1957 and even subsequent individual reprints, should be captured, preserved and published online …. However, it is necessary for reasons of sheer scale and cost to approach this work incrementally and on a priority basis. The most compelling material to be targeted is the nineteenth century statutes as enacted but with the aim of eventually adding the statutes made between then and the go live date of the [New Zealand Legislation Website], so as to preserve and provide access to the entire New Zealand statute book. The 1908 consolidation also merits early inclusion.

4.29 As in the 2007 issues paper, the Law Commission agrees with these priorities articulated in the Rubacki paper. The discussion in the issues paper of making historical Acts available online received much support from submitters. Most submitters who responded to our question about how regularly they refer to repealed Acts said that they do so often or regularly. Their feedback was that the expense of making historical Acts available online was justified. A submitter who is a reference librarian at a provincial public library estimated that between 10 and 20 per cent of queries received by the library about legislation end up

165 Ibid.

166 The degree of compatibility between the format of historical Acts and the new Legislation System's DTDs has not been assessed at this point. However, drafting styles and conventions have changed a great deal during New Zealand's legislative history. It is likely that historical Acts would not cohere neatly with the Legislation System's existing DTDs. The greater the degree of modification that would need to be made to the Legislation System's existing DTDs and publishing standards, the higher the cost would be of integrating the additional data into the website in this way. See also Rubacki, above, n 142, 14.

167 Ibid, 9.

being about repealed Acts or provisions.[168] All submitters who addressed the question of whether repealed Acts should be available online said that they should. Many submitters said this was urgent and important, particularly with regard to the volumes of Acts that are "shattering".

4.30 However, having more closely investigated the approaches of other jurisdictions to digitizing and capturing historical Acts, our view now is that it may be more achievable and cost-effective in the shorter term to capture historical Acts in PDF format, using Optical Character Recognition (OCR) scanning, rather than to capture them in the XML format. Given that the historical Acts would be in a different format to the existing content of the website, the historical Acts would either make up a separate part of the existing website, or could be presented as a separate website available via a link from the New Zealand Legislation Website.

4.31 The fact that the "shattering" statutes have now been preserved on microfilm by the National Library will be of assistance. It is possible to produce scans now from the microfilms, rather than needing to scan the fragile originals. Scanning the microfilms would be less costly and time-consuming. The National Library has indicated that it would be happy to lend duplicates of the master microfilms for digitization purposes.

Back-capture of historical Acts in other jurisdictions

4.32 A programme of back-capture of New Zealand historical Acts would not be without overseas precedent. We are aware of a number of other jurisdictions in which parliamentary counsel offices are completing or have completed significant back-capture projects to make historical legislation available electronically. In New Zealand, this would involve the back-capture of a large volume of historical material. However, our research indicates that this need not be prohibitively expensive. Other jurisdictions have found that scanning repealed legislation and making it available online in PDF format is a relatively cost-effective means of ensuring continued access. PDFs that are produced using OCR scanning are particularly useful because they are not just photographs of the original scanned documents, but also have the actual text data embedded within the document so that the images are searchable.

Australia

4.33 In Australia, back-capture projects are in progress in Victoria and Western Australia. New South Wales completed a partial back-capture project a few years ago and now plans to complete the exercise.

4.34 The Office of the Victorian Chief Parliamentary Counsel (OVCPC) has almost completed a project to back-capture and make available online electronic copies of all Victorian Acts from 1851 onwards. The Victorian state library had already captured Acts from 1851 to 1958 on microfilm. The OVCPC engaged a company in Victoria to scan, OCR, and convert to PDF both the microfilmed collection of Acts and the remaining Acts (1959-1995) available only in hard copy.

168 Leslie Goodliffe, Digital Services and Reference Librarian, Tauranga City Libraries (submission, 12 November 2007).

The OVCPC will make the collection of PDFs available online, probably by way of links from its legislation website to a separate website. The material is expected to be available on the website before the end of 2008.

4.35 The project has been undertaken in two stages: first, the scanning of the microfilm; and secondly, scanning the hard copy Acts. Around 50,000 pages of microfilmed material had to be scanned, and around 45,000 pages of hard copy were scanned. The hard copy scanning was done by sacrificing bound volumes: that is, by cutting up a set of bound volumes so that the individual pages could be accessed and scanned more easily. The process would have been much more labour-intensive, and the cost much higher, if the scanning had to be done without cutting up the bound volumes as it is more difficult to deal with books than with individual sheets of paper that can be scanned using a sheet-feeder.

4.36 The Victorian PDFs are produced using an OCR process. The PDF is known as a dual layer PDF. The image is unaltered, but behind the image is the actual text that has been captured by the OCR. This kind of dual layer PDF allows users to search for text within the PDF. However, the accuracy of using OCR without manual correction is variable. Some elements of Act formatting, particularly with older Acts, can be difficult for the OCR software to recognise. For instance, side notes are often not accurately captured by OCR scanning. Parts of a PDF image that were not accurately captured by the OCR process will not be searchable.

4.37 The Western Australian Parliamentary Counsel's Office (WAPCO) is also currently back-capturing all historical Acts passed by the Western Australian Parliament since 1832. The collection consists of nearly 9,000 individual Acts, with a total page count estimated to be nearly 100,000.

4.38 The back-capture is being done by the staff of the WAPCO. As in Victoria, bound volumes are cut up so that individual pages can be scanned and OCRed. Some manual checking is undertaken to pick up mis-scanned words and non-standard text blocks within the document that are incorrectly grouped together. If these errors are not corrected, searches of the PDF will produce incorrect search results. An example is side notes to sections, which the scanner may take to be part of the line of text to which they are immediately adjacent, rather than being taken as a separate block. During the checking process, these errors are corrected and final PDFs of the documents created.

4.39 The collection of back-captured Acts is being progressively added to the Western Australian legislation website as the back-capture work proceeds.[169] Already, back-captured Acts as originally enacted for the period 1979 to 1999 are available.

4.40 The New South Wales Parliamentary Counsel's Office (NSWPCO) has back-captured in PDF form NSW Acts and Statutory Regulations that were enacted or made between 1990 and 2000. These enactments are included in the "as made" collection on the NSW legislation website. The PDFs were also produced using an OCR process, so are searchable. They were produced from much more recent bound volumes than was the case with the early Victorian PDFs, so the NSW PDFs are much cleaner looking. However, while the

169 Western Australian Legislation Website www.slp.wa.gov.au/legislation/statutes.nsf/default.html (accessed 17 September 2008).

Victorian PDFs have some small background marks due to the condition of the scanned originals, they are still very readable and useable. Planning is now underway to complete the back-capture of NSW Acts back to 1824. The NSWPCO has also published a collection of historical versions of selected titles that are currently in force, such as the Crimes Act 1900, and is gradually adding to this collection.

United Kingdom

4.41 There have been some interesting developments in electronic access to historical statutes in the United Kingdom. The Office of Public Sector Information (OPSI) now makes available via its website PDF versions of some older UK Acts. In 2007, OPSI used funding from the Public Access Scheme to back-capture PDFs of Acts to 1800, where the Act is wholly or substantially in force.[170] OPSI has two collections in which older Acts can be found: the "original" collection;[171] and the "revised" collection.[172]

4.42 The "original" collection comprises legislation in its original format as enacted, that is, not incorporating revisions or amendments. It includes all UK Parliament Public General Acts from 1988 onwards in HTML and PDF. It also includes some, but not all, of the UK Parliament Public General Acts from 1837 to 1987 in PDF.

4.43 The "revised" legislation available on the OPSI website in HTML format is extracted from the UK Statute Law Database (SLD).[173] At present, only revised legislation made or enacted before 1988 is included. The revised text of later legislation can be found on the SLD. The legislation is "revised" in that it is not in the form in which it was enacted, but incorporates subsequent amendments to the text and other effects with annotations. Legislation in this collection dates back to 1267.

4.44 The quality of the PDFs of the Acts in the "original" collection is very good. The PDFs are very clean copies and, like the Victorian, Western Australian, and NSW PDFs, they are searchable. The scans of the older Acts in the "revised" collection, such as the Norman French versions of the early English statutes passed between 1267 and 1706, are not as good. They are in HTML rather than PDF, so do not as closely represent the layout of the originals. Some include a scan of the original in addition to the HTML representation, but these are small and relatively difficult to read onscreen.

170 OPSI *Report on Public Access Scheme Funding 2006/07* (September 2007) 3.

171 OPSI website, "Original Legislation" http://www.opsi.gov.uk/legislation/original.htm (accessed 17 September 2008).

172 OPSI website, "Revised Legislation" http://www.opsi.gov.uk/legislation/revised.htm (accessed 17 September 2008).

173 UK Statute Law Database http://www.statutelaw.gov.uk/Home.aspx (accessed 17 September 2008).

Back-capturing New Zealand historical Acts

4.45 In our view, these jurisdictions, particularly New South Wales, Victoria, and Western Australia, provide good models of how New Zealand historical statutes could be made publicly available online in a useable format relatively quickly and cost-effectively. Providing access to PDF versions of historical statutes, particularly if these were produced using OCR and so were searchable, would address both the preservation and access issues. This would not provide as integrated or complete a solution as incorporating these Acts within the Legislation System in XML. However, we believe that it would be a much less complex and costly exercise. The long term goal should still be to capture this material in XML format and fully integrate the historical Acts into the New Zealand Legislation Website when resources and funding allow. We therefore recommend that historical New Zealand Acts, including the "shattering statutes" (which have now been microfilmed), be captured electronically in PDF and made available via the New Zealand Legislation Website.

New Zealand Government Web Standards and Recommendations

4.46 We acknowledge that providing access in PDF (even if using OCR scanning) would not comply with the New Zealand Government Web Standards and Recommendations (the Web Standards). The Web Standards require that Government documents published on the internet must validate to approved formal grammars listed in standard 3.1 (these listed grammars do not include PDF format). Where that is not possible, a document must be published in the "most accessible format possible".[174] According to standard 4.3, "PDF is not considered an accessible format". The guide to the standard specifies that "use of PDF alone for long documents or documents with specific, complex formatting intended for specialist audiences is strongly discouraged." The rationale for this is that PDF format has some accessibility issues.[175] An exemption from the standard is required if a website is not to comply.

4.47 Making historical legislation available in a format that would comply with the Web Standards would require them to be captured in XML and made available as part of the New Zealand Legislation Website. Although the ideal solution, as discussed above we believe that this would be a complex and costly exercise and be subject to a number of possible technical challenges. If this is the case, then the choice would appear to be between having no electronic access to historical Acts (on the basis that the ideal solution, and one that complies with the Web Standards, is too expensive and risky), or access that is relatively cheap and easy to provide but that does not comply with the Web Standards. On the basis that the case for making historical Acts publicly available online is compelling, our view is that some access now is better than no access now and little likelihood of the resources and funding being available to achieve the ideal solution in the short to medium term. But we hope that those resources and funding can eventually be made available in the long term so that compliance with the Web Standards can be achieved.

174 New Zealand Government Web Standards and Recommendations, Standard 4.2.

175 New Zealand Government Web Standards and Recommendations, Standard 4.3.

Funding required to provide online access to historical Acts

4.48 The PCO is not currently funded to undertake a project to back-capture historical Acts in PDF format and make them available via the New Zealand Legislation Website. Additional funding would be required to undertake such a project. We believe that a business case should be prepared to obtain such funding. To get a preliminary idea of what it might cost, we discussed with the Victorian OCPC its experience with digitizing historical statutes and preparing to make them available on a website. We also discussed with the PCO the options for making historical Acts available via the New Zealand Legislation Website or a standalone website. On this basis, we prepared some general and preliminary estimated costings for making historical Acts available online. The estimated costs take into account two expected major cost areas:

(a) data capture; and

(b) making the historical data available online via a website.

4.49 We stress that our figures are only an estimate, and more work would be required to obtain detailed, robust costings. We also note that there may be differences between New Zealand and Victoria that could influence the accuracy of this estimate. As we have said, a business case will need to be prepared. Nor does the estimate include ongoing website hosting or maintenance and support costs.

4.50 Based on the information we have been able to obtain, we have worked out an estimate to capture the entire collection of 19th century statutes (1842 to 1900) as a first tranche. We restricted our estimate to this material because we think that the back-capture work is probably best undertaken in stages, and also because this material is most in need of preservation and is least accessible to the public. We estimate that this work can be undertaken for less than NZ$100,000 (GST exclusive). This is on the basis that the historical Acts are made publicly available on a standalone website, with a link from the New Zealand Legislation Website. We understand that it would be considerably more expensive to integrate the historical Acts into the New Zealand Legislation Website, even if the Acts are only in PDF format. The standalone website would provide fairly basic access to the collection of historical legislation, allowing users to browse the Acts alphabetically by title and chronologically by year. The collection would also be full-text indexed, so that a simple search function would be available across the whole collection and within individual PDFs. There would be no linking between documents in the collection or between the collection and documents on the New Zealand Legislation Website.

4.51 Additional work and expense would be required to back-capture the remaining historical material (that is, a full collection of 20th century statutes (including the 1931 and 1957 reprints) and the rather smaller amount of 21st century material). But once the basic infrastructure is in place for the 19th century material, the additional marginal costs of adding the remaining material should not be substantial, as long as the infrastructure is designed to be scaleable. The 20th century material is more readily available, the available volumes are in a better condition, and the format of the more recent statutes closer to the modern format. So the scanning of the material is likely to be less time-consuming and labour-intensive than for the 19th century material.

Hard copies

4.52 A side benefit of capturing the historical Acts digitally is that it would then be very easy to produce hard copy versions, for instance, a bound volume collection of this material for libraries. The main costs would be digitally printing or photocopying, and then binding, the historical Acts. This would enable libraries to make copies of the "shattering statutes" available for public use.

CONCLUSION

4.53 The Law Commission recommends that historical New Zealand Acts be made publicly accessible online. The 19th century Acts should be attended to first, because hard copies of these are in much shorter supply. But the exercise should in due course be extended to all repealed Acts up to the present time. We consider that this should be the responsibility of the government. The public benefit of such an exercise is demonstrable; it is part of the state's obligation to make the law accessible. As indicated above, we favour the option of capturing historical Acts in PDF format using OCR, and making these available on a standalone website via a link from the New Zealand Legislation Website. We believe that this solution would provide public access to historical Acts in a useable format relatively quickly and cost-effectively. We also consider that the ideal solution would be to capture the historical Acts and fully integrate them into the New Zealand Legislation Website. But we acknowledge that this would be a much more complex undertaking, and require considerable resources and funding, and is therefore a more long term goal.

RECOMMENDATIONS

R2 A full collection of historical New Zealand Acts, including the "shattering statutes", should be captured digitally as soon as possible and made publicly available online.

R3 In the short to medium term, the historical Acts should be captured in PDF format using Optical Character Recognition (OCR), and made available on a standalone website via a link from the New Zealand Legislation Website.

R4 In the longer term, consideration should be given to capturing the historical Acts in a format that will enable their full integration into the New Zealand Legislation Website so that the search and other features of that website can be used in respect of historical as well as current Acts.

Chapter 5
Indexing

IN THIS CHAPTER, WE

- give an overview of the history of indexes to New Zealand's Acts;
- discuss examples of subject indexes to Acts in other jurisdictions;
- discuss how indexes are produced and who should undertake the task in New Zealand;
- compare and contrast electronic indexes and hard copy-based indexes and consider whether an index should be in hard copy or electronic format or both; and
- recommend the production of a subject index to New Zealand's Acts.

5.1 This chapter and the remaining chapters of this report outline a range of measures for improving the accessibility of the New Zealand statute book.

5.2 This chapter recommends the production of an official, state-produced index to the Acts. Production of an index is a versatile option in terms of how it relates to the other options. On the one hand, production of an official index could be adopted as a stand-alone measure. Producing an index would be a means of facilitating greater accessibility without necessarily requiring a structural overhaul of the statute book itself. However, we believe that an index should be just one step in a wider approach including other options that are set out in later chapters, like reprinting, revision or even codification.

5.3 A good index provides users with an extremely helpful tool for finding applicable Acts and provisions within the statute book. This chapter will begin with a background discussion of the various kinds of indexes that are available, before looking at past New Zealand experiences with indexes to legislation and the experiences of overseas jurisdictions. It will then set out options for production of an index in the future.

WHAT IS AN INDEX?

5.4 An index is an "ordered arrangement of entries … designed to enable users to locate information in a document or specific documents in a collection".[176] The function of an index is to provide users with an efficient means of tracing and finding information within a document or document series.[177]

5.5 An index identifies significant concepts, names and terms that are mentioned or implied in the text of a document, describes them aptly, and indicates the places in the document that they occur.[178] Descriptions in an index are generally arranged in alphabetical order. Other methods of logical ordering are sometimes used. For instance, biographical information in texts is sometimes arranged in chronological order. However, in the context of legislation, alphabetical ordering is standard. Indeed, given the current chronological ordering system of the statute book itself, a chronological indexing order would add little value.

5.6 An index also links related concepts by pointing to concepts that are the same (for instance, "doctors" and "medical practitioners"), or similar ("doctors" and "nurses"), or which qualify one another ("doctors" and "general practitioners" or "specialists"). This ability to show relationships between concepts uniquely defines an index.[179]

5.7 The greater the complexity and detail of a document, and the longer it is, the more difficult it generally is to locate specific material within it, and an index becomes increasingly desirable and necessary.[180] The length, complexity and amount of detail required of an index is a reflection of those factors in the document being indexed. The New Zealand Acts of Parliament constitute a very complex set of documents.

Components of an index[181]

5.8 As indicated above, an index is composed of entries that are arranged logically, usually alphabetically. Each entry consists of two parts: *subject headings*, which describe features of the text that are significant; and *references*, which locate or assist in locating the required information in the text. There are two kinds of subject headings. *Main headings* are based on major concepts or subjects present in the text and are arranged alphabetically. *Subheadings* define particular aspects of a major concept and are arranged in a new alphabetical sequence subordinate to the main heading.[182] They are used, as required,

176 International Organization for Standardization *Information and Documentation: Guidelines for the Content, Organization and Presentation of Indexes* (ISO 999, 1996).

177 The Society of Indexers http://www.indexers.org.uk/index.php?id=234 (accessed 17 September 2008).

178 *The Compact Oxford English Dictionary* (2 ed, Clarendon Press, Oxford, 1991).

179 Australian Government Publishing Service *Style Manual For Authors, Editors and Printers* (5th ed, AGPS, Canberra, 1994) ch 19, para 19.3.

180 Ibid.

181 This section draws heavily on AGPS, above, n 179, paras 19.6-19.16.

182 It is common for indexes to have more than two levels of headings, however. That is, an index can have a level of main headings and more than one level of subheadings: a subheading may have sub-subheadings beneath it, which may in turn be divided into sub-sub-subheadings, and so on.

to indicate the specific aspect of a subject that is being indexed. In the example below "companies" is the main heading and "constitutions" and "winding up" are the subheadings:

companies, 96, 97-8
constitutions, 158
winding up, 106, 148

5.9 Following each heading and subheadings are references, of which there are two kinds: *locators* and *cross-references*.[183] Locators identify the page, section or other division in the document on which the information about the concept is given. Indexes of legislation generally refer to a section or subsection number, or simply to an Act. Cross-references are a less direct mechanism for locating information. They do not lead index users into the text, but rather to other index entries under which locators to the required information can be found.

5.10 Two kinds of cross-references are used in indexing: *see* and *see also* references.[184] *See* references lead from a term not used in the index, and possibly not found in the document, to one which is used as a heading. They direct the user from a non-preferred term to the preferred subject heading or headings. They appear after the rejected heading in the manner of a page reference:

legislation, *see* Acts; subordinate legislation.

5.11 *See also* references lead from one heading in the index to related or more specific subject headings that may be relevant to the enquiry. For instance:

children
See also minors

or

Petrol
See also Unleaded petrol

Types of indexes

5.12 Indexes range from simple lists to very complex tools for locating information. Types of indexes and methods of indexing are varied.[185] Indexes differ in their level of detail. While indexes could occupy any place along the spectrum of included detail, for the purposes of this report we will refer to the classes of index representing either end of the spectrum as, respectively, "title indexes" and "subject indexes".

183 Locators are sometimes referred to as "page references", "section references", "paragraph references" and so on, depending on which part of a document an index refers to. However, the term "locator" is preferred here as it is general enough to encompass all such types of references.

184 Cross-references that are used in indexing should not be confused with "cross-references" that can appear in legislation itself. This latter kind of cross-reference within legislation acts as a locator, referring readers of an Act to another section or provision within the Act, or to another Act altogether.

185 James D Anderson, National Information Standards Organization *Guidelines for Indexes and Related Information Retrieval Devices* (NISO-TR02-1997, Bethesda, Maryland, United States) s 4.

5.13 An example of a simple title index that has been discussed earlier in this report is the *Tables of New Zealand Acts and Ordinances, and Statutory Regulations, and Deemed Regulations in Force*.[186] It lists all Acts (and regulations and deemed regulations) in force in New Zealand in alphabetical order of titles. It is a set of tables rather than an index, although there is a certain amount of cross-referencing. The very simplest title indexes are probably best viewed as tables.

5.14 Subject indexes, rather than title indexes, are the focus of the rest of this chapter. Subject indexes still can vary a great deal in their detail and length but, generally speaking, they provide more useful detail regarding the subject matter of Acts than is contained in a title index or table. A subject index to New Zealand's Acts would provide an effective navigation aid.

What makes a good index?

5.15 A good index is a logical and well-organised list of headings and subheadings pertaining to the subject of the material being indexed. Its aims are to minimise the time and effort required of a reader to find specific material while maximising the reader's search success. The list of topics should be intuitive, so that users are able to find what they need, where they expect to find it. A subject may fall into several categories, and any one of these might initially occur to a user of an index. This means that a good index needs to list the material under each of these categories or headings. For instance, a cookbook that lists a recipe for lemon pie should list the recipe under several headings such as Pies, Lemon, Desserts and Fruit, providing locators or cross-references under each. It would be much harder for some users of the index to find the recipe if it were listed only under Pies.

5.16 Another way of putting this, and relevant in the context of the New Zealand statute book, is to say that a good index will have an appropriate level of detail and complexity with reference to the document or body of documents that it covers. This complexity will be reflected in the number of headings, subheadings, locators and cross-references. The New Zealand statute book is voluminous and complex, and covers a wide range of subject matter. Apart from the subject matter categorisation within individual Acts, and the chronological ordering of the statute book as a whole, the statute book lacks a sophisticated internal logical structure. It is not navigable on its own. A good index would effectively impose a comprehensive and coherent external structure, or a number of structures, onto the statute book, functioning as a map or guide to its otherwise challenging terrain. While hard copy material cannot be located in more than one place, it can be indexed in any number of places.

5.17 A good index is one that is sufficiently detailed to meet users' needs, given the amount of detail in, and the number of subjects covered by, the indexed documents. The complex detail of our statute book cannot be captured by a title index or table. In this context, a good index is a subject index.

186 See Chapter 3: Current Problems with Accessing Statute Law, paras 3.9-3.12.

Current indexes to the New Zealand Acts

Tables of New Zealand Acts and Ordinances, and Statutory Regulations, and Deemed Regulations in Force and Lists of Legislation in Force on the New Zealand Legislation Website

5.18 At present, there is no up-to-date, official index to New Zealand legislation. The closest official document to an index at present is the *Table of New Zealand Public Acts* in the *Tables of New Zealand Acts and Ordinances, and Statutory Regulations, and Deemed Regulations in Force* produced by the PCO.[187] The *Tables* are available in printed form.[188] Previously a less comprehensive, electronic version of the Tables was also available on the Legislation Direct website, and could also be reached via the PCO website.[189] It was updated at least six-monthly, generally quarterly. From 31 March 2008, the PCO withdrew this electronic version as its functions had been superseded by those of the New Zealand Legislation Website. The browse feature of the New Zealand Legislation Website produces alphabetical lists of legislation in force, by specified type, that is, public, local, private, provincial or imperial Acts. It is also continuously updated and links directly to the relevant legislation on the website.

5.19 The electronic alphabetical lists of legislation in force that the New Zealand Legislation Website can produce are continuously up-to-date as the website itself is kept continuously up-to-date. The printed Tables on the other hand are produced annually, so become progressively out-of-date as the time draws nearer for the next edition.[190]

5.20 The tables, and the alphabetical list on the New Zealand Legislation Website, provide an alphabetical list of Act and regulation titles. The Tables contain some additional information about listed Acts,[191] but both are best described as title indexes. As title indexes, they can have their uses, but this depends entirely on whether a provision sought is located within an Act that has an informative and intuitive title. Provisions on a topic are often contained in Acts whose titles give little indication of their content. Many provisions cannot be found by reference to Act title alone.

5.21 Even when a researcher, using the Tables or the alphabetical list on the website, manages to identify an Act by its title as being likely to contain a provision on a particular topic, it is a matter of trial and error to verify this by finding the relevant provisions within the Act. The title index refers users only to an Act as a whole, and not to specific section numbers within the Act. The consistent internal organisation of Acts may sometimes be helpful here, at least to expert users. But even for expert users it may not be a complete answer – and some Acts, particularly older ones, are not well organised in any event. Furthermore, even when researchers succeed in finding a number of provisions on a topic

187 Which also lists deemed regulations.

188 This hard copy version lists principal and amending Acts.

189 The electronic version listed only principal, not amending, Acts.

190 For instance, the 2007 volume is up-to-date to 1 January 2008 and was published early in 2008.

191 They indicate whether Acts have been reprinted and give the relevant reprint volume (if any). They also note any amendments by year and number.

through use of these title indexes, they have no direct means of determining whether other relevant provisions still need to be found. The Tables, and the alphabetical list on the website, were not designed as aids to locating legislative provisions on a particular topic or as tools to facilitate exhaustive searching of the statute book.[192] When applied to those tasks, they are inefficient and likely to give incomplete results.

LexisNexis Index to New Zealand Statutes

5.22 The commercial publisher, LexisNexis, produces a loose-leaf unofficial *Index to the New Zealand Statutes*.[193] It was commenced in 1995. The loose-leaf publication is updated four times a year and is now maintained by a single editor on a part-time basis.[194]

5.23 The index is several hundred pages long and has about 160 main subject headings. The first ten main subject headings are: Accidents; Adoption; Agency; Agriculture; Air law; Airports; Animals; Antarctica; Antiquity; and Arbitration. Each main subject heading has levels of subheadings beneath it. The number of entries under each main subject heading varies – there are 28 pages of entries under the "Criminal Law" heading, and a further ten pages under "Criminal Procedure", while "Antiquity" has about half a page of entries. Reference is assisted by a directory, which cross-refers users from topics to the actual title under which the topic is to be found in the index.

5.24 The LexisNexis *Index to the New Zealand Statutes* lacks official status. The state's obligation to make Acts of Parliament accessible in the sense of being navigable is not discharged by the availability of a commercially-produced subject index. Moreover, commercial publishers are necessarily influenced by commercial considerations. This means that there are no guarantees that a commercially-produced index will continue to be published in the future. With the platform provided by the new Legislation System and New Zealand Legislation Website, it is possible for the state to provide an index with an even greater level of detail.

Historical indexes to the New Zealand Acts

5.25 While there is not at present a comprehensive, state-produced subject index to the New Zealand Acts, there is a considerable history in this country of producing indexes to the Acts. This history was recounted fully in the Law Commission's 2007 issues paper.[195] Briefly summarised, the indexes were Henry Smythies' Analytical Digest (1863), Badger's General Index (1885, 1892), Curnin's Index (1877-1933), the Index to the 1908 Consolidated Statutes, and the Index to the 1931 Reprint. All these indexes contained quite a high level of detail. The 1933 edition of Curnin's Index, for instance, ran to 257 pages, and the most comprehensive of them, the Index to the 1931 Reprint, was 831 pages long. This latter index also contained a high degree of cross-referencing which greatly aided accessibility.

192 JF Burrows *Statute Law in New Zealand* (3 ed, LexisNexis, Wellington, 2003) 101.

193 *Index to the New Zealand Statutes* (LexisNexis, Wellington, 21 August 2008) issue 107.

194 Telephone conversation between the Law Commission and the current editor of *Index to New Zealand Statutes*, LexisNexis (19 April 2007).

195 New Zealand Law Commission *Presentation of New Zealand Statute Law* (NZLC IP2, Wellington, 2007) Chapter 5: Indexing, paras 174-194.

5.26 There has been no proper subject index since Curnin's 1933 edition.

INDEXES TO LEGISLATION IN OVERSEAS JURISDICTIONS

5.27 A number of overseas jurisdictions currently produce, or have recently produced, subject indexes. It is useful in the context of this report to set out the approaches taken by the indexes of several of these jurisdictions, taking particular notice of several examples of particularly good subject indexes. A fuller discussion of these overseas indexes, with examples, is to be found in the 2007 issues paper.[196] We will concentrate particularly on the index that is currently produced in Victoria. Other Australian states have indexes, and there are also commercially produced indexes to other states' legislation and to Commonwealth legislation.[197]

Index to Subject Matter of Victorian Legislation

5.28 The *Index to the Subject Matter of Victorian Legislation* is a general subject guide to Victorian Acts and Statutory Rules that has been published annually since 1999.[198] The index is currently available in hard copy only. It costs Aus$52.50, and fewer than 250 copies are published each year. There has been some thought given to developing an interactive, enquiry-based internet version with hyper-links to the Acts and statutory rules at some time in the future, but this is not currently underway.

Production and maintenance of the Victorian Index

5.29 It took about 18 months of full time work by one compiler to produce the first edition of the index. The index and its supporting database were built up from scratch by reading every principal Act and statutory rule. Compiling the index involved selecting subject headings and assigning them to enactments. This task was made easier by the fact that Victorian legislation was available in electronic form, so it could be searched for common terminology across the entire statute book, and subject headings could be refined depending on the abundance or rarity of their usage.

5.30 The index is maintained and produced by means of a database, developed within the Office of Chief Parliamentary Counsel, whereby a record is created for every principal Act and statutory rule and subject headings are assigned to the record. The database behind the index is updated on an ongoing basis according to the legislative process. As new Acts and Statutory Rules are passed, they are entered into the database and assigned subject headings. Monthly checking processes also ensure the database's accuracy and currency at any given time.

196 New Zealand Law Commission *Presentation of New Zealand Statute Law* (NZLC IP2, Wellington, 2007) Chapter 5: Indexing, paras 196-222.

197 Among these are: BM Wicks *Subject Index to the Acts and Regulations of New South Wales* (LBC Information Services, annual); BM Wicks *Wicks Subject Index to Commonwealth Legislation* (LBC Information Services, annual); *NSW Statutes: Annotations and References* (1824 –) (LBC Information Services), which includes BM Wicks *Subject Index to the Acts and Regulations of New South Wales* (LBC Information Services).

198 Work on the index began in 1998, and the first edition was as at 1 September 1999. Subsequent editions, from 2001 onwards, are as at 1 January.

Layout of the Victorian Index

5.31 The types of subjects that are included in the subject index include the main subjects of any piece of legislation, and other subjects dealt with substantially by the legislation and considered important enough to index, such as subjects of general interest, legal concepts and some statutory bodies and proper nouns. Also indexed are the main occurrences of certain common subjects that appear in a number of different enactments.[199]

5.32 The subject index has about 4,000 subject headings. Victoria has around 1,100 principal enactments (500 Acts and 600 statutory rules). Some enactments may be referred to under only one heading, while others, such as the Crimes Act, will appear under many relevant headings. Locators are to individual enactments rather than, for instance, to section numbers. The index also contains cross-referencing and an alphabetical list of the Acts indexed in the current edition.

Back of the book indexes

5.33 The index itself is very large grained. That is, it gives references only to Act or statutory rule title, and the subject headings themselves are less detailed than in some other indexes. This means that, at first sight, the index does not appear to be very detailed. However, such appearances are deceiving. The index is not intended to be used as a stand-alone navigation aid, but rather in conjunction with the "back of the book" indexes that appear at the end of Acts. The idea is that a user looks up a topic in the subject index to see which Acts deal with it, and can then go to the Acts or statutory rules in question and use the "back of the book" index to get the details of that subject and the section references.

5.34 Since the middle of 2000, "back of the book" indexes have been produced for all new principal Acts and larger statutory rules. "Back of the book" indexes are also gradually being produced retrospectively for principal Acts and statutory rules passed before that time. In effect, this means that the subject index is more useful with respect to navigating Acts passed after the middle of 2000 than Acts passed before that time.

5.35 However, for subject areas that are largely contained in newer legislation, or older legislation that has retrospectively received back of the book indexing, the combination of the subject index and back of the book indexes is a very helpful navigation tool. For instance, a user who is interested in rail safety will find the heading "Railways and rail transport" and a locator reference to the

199 *Index to Subject Matter of Victorian Legislation: As at 1 January 2006* (7 ed, Office of the Chief Parliamentary Counsel, Victoria, 2006) v.

Rail Safety Act 2006 among others. That Act has a comprehensive back of the book index – the Act itself is 266 pages long, and the index is nine pages. An extract from the back of the book index is below:

Director, Public Transport Safety *See* **Safety Director**

Drug assessments

after accidents, irregular incidents	79
blood samples as result of	80
carrying out of	79, 104
destruction of identifying information	81
evidentiary provisions	79, 83-84
refusal to undergo	76
regulations	109
reports	80
urine samples as a result of	80
video recordings	80
Emergency plans	3, 52, 68
Emergency services	3, 52, 69
Employee organisations	
See **Registered employee organisations**	
Energy Safe Victoria	3, 33-34

5.36 It should be noted, however, that although Victorian legislation is available online, the versions of the legislation that are downloadable do not include the "back of the book" indexes.

Other Australian States

5.37 A subject index to Tasmanian Legislation is produced by the Tasmanian Parliamentary Counsel Office. It is available in print and online in PDF format via the Tasmanian Parliamentary Counsel Office website.[200] Also available on the website are alphabetical lists of Tasmanian Acts and statutory rules, and annual lists of legislation passed. The index is 148 pages long and is structured under main headings and up to two levels of subheadings, although the majority of the subject headings have only one level of subheadings. It is cross-referenced, and locators are often to the part or section number, rather than only to Act or statutory rule title.

5.38 A subject index to South Australian Legislation is prepared by the South Australian Office of Parliamentary Counsel. It is available in print and online in PDF format via the South Australian Legislation Website.[201] A fortnightly cumulative update is also available in PDF on the site.[202] The 2007 edition is

200 Office of Parliamentary Counsel, Tasmania "Tables of, and information guides to, Tasmanian legislation" http://www.dpac.tas.gov.au/divisions/opc/publications.html (accessed 17 September 2008).

201 South Australian Legislation Website *Subject Index to Southern Australian Legislation* http://www.legislation.sa.gov.au/Web/Information/Fortnightly%20index/annual%20index2007.pdf (accessed 17 September 2008).

202 South Australian Legislation Website *Update of the 2007 Index to Southern Australian Legislation* (issue 15 of 2008, 14 July 2008) http://www.legislation.sa.gov.au/Web/Information/Fortnightly%20index/fortnightly%20index.pdf (accessed 17 September 2008).

538 pages, and the cumulative update to that edition as at July 2008 was nearly 50 pages. The index lists alphabetically by title Acts of the South Australian Parliament that are in force and Acts that have been repealed or have expired since 31 December 1975. It does not include appropriation Acts or supply Acts. It lists principal Acts and amendments, specifying the year and Act number, and the dates of assent and commencement. It also lists regulations, proclamation notices and other subordinate legislation. It is a detailed title index rather than a subject index, and it does not employ cross-referencing.

5.39 There is also a separate online *Subject Index to South Australian Legislation*. This index was produced and is maintained as part of a collaborative effort by the members of the Australian Law Librarians' Group Incorporated (South Australia Division) (ALLG) and is available online at no cost to users.[203]

5.40 The index has a simple structure. Locator references are to Act title only. Usefully, cross-references and locators in the index are in the form of hyperlinks. This allows users to click on the text of a *see* cross-reference and be redirected to the appropriate heading in the index. Similarly, by clicking on the Act title locators, users will be redirected via hyperlink to the actual legislation on the South Australian Attorney-General's "South Australian Legislation" website.[204] The index is not available in PDF or Word format for download – it is chiefly envisaged as an electronic document to be used online,[205] thus allowing users to capitalise on its hyperlinking facilities.[206]

Iowa subject index

5.41 Many of the states in the United States of America produce indexes to their Acts or state codes. [207] There are also a large number of commercially produced indexes. For reasons of space, we have limited the sample examined in this report to the state of Iowa, which has an impressive subject index, and to the commercially produced and quite remarkable *General Index to the United States Code Annotated*.

203 Australian Law Librarians Group Incorporated *Subject Index to South Australian Legislation* http://www.slsa.sa.gov.au/legislation_index/ (accessed 17 September 2008). The establishment of the index was made possible through a grant from the Law Foundation of South Australia Incorporated.

204 South Australian Legislation www.legislation.sa.gov.au (accessed 17 September 2008).

205 However, it is of course possible for users to cut and paste the index into a word processing document and to thus obtain a printed copy.

206 While the *Subject Index to South Australian Legislation* is accessible only online as an electronic document, we have considered it in this part of the chapter alongside other print based indexes. This is because, despite its "electronic" format, it is still designed and constructed according to the hierarchical model that is used for print-based indexes. It is designed to be browsed rather than electronically searched. See paras 5.81-5.84 of this chapter.

207 To name just two other examples, most of the various codes of the state of Illinois have indexes and in Wisconsin, the staff of the Reviser of Statutes Bureau produce and maintain an index to the Wisconsin Statutes. The Illinois index does not appear to be available online, although the code is: http://www.ilga.gov/legislation/ilcs/ilcs.asp (accessed 16 September 2008). The Wisconsin index can be viewed and searched online: http://www.legis.state.wi.us/rsb/about_the_index.htm (accessed 16 September 2008).

5.42 Like many states in the United States of America, legislation in Iowa is arranged and presented in the form of a "code".[208] The Iowa code is extensively indexed: the tables and index volume of the code includes a "detailed index" and "skeleton index". The code and its indexes are available for purchase in print form and available free of charge electronically via the internet.[209] In printed, published form, the detailed index is over 800, double-columned pages.[210] The skeleton index (a guide to the main headings) is much shorter: about 30 double-columned pages.[211]

United States Code Annotated

5.43 There is a commercially produced subject index to the federal Acts of the United States of America. This is the *General Index of the United States Code Annotated* (USCA). The USCA is an unofficial version of the code and is arranged in the same order (titles and sections) as the official version. Interestingly, the government's version of the United States Code does not sell well; its utility is somewhat limited by the fact that it is generally at least two years out-of-date when it is published. However, there are 13,000 subscribers to the unofficial *United States Code Annotated*. It is Thomson West's biggest selling printed product, even though all Thomson West products are available online. The company's research indicates that two thirds of the people who use the code still start with the printed version.

5.44 The USCA also includes a Popular Name Table in a separate volume. The Table itself spans 1,302 pages.[212] The Table affords "a practical, simple, and effective means of researching the federal laws and the codification of the federal laws in the United States Code Annotated".[213] It is not unlike New Zealand's *Tables of New Zealand Acts and Ordinances, and Statutory Regulations, and Deemed Regulations in Force* in that it lists Acts alphabetically by title. Under each Act title, the *Popular Name Table* specifies where the Act is located within the wider code.

5.45 The *General Index* is very detailed, comprising four volumes and a total of 5,868 double-columned pages. The index has three levels of subheadings, and gives cross-references to other headings, or locators to title and section numbers in the

208 United States style codes are discussed in Chapter 8: Codification.

209 Iowa Legislature "Iowa Code" http://www.legis.state.ia.us/IACODE/ and "Indexes" http://www.legis.state.ia.us/Current/tablesandindex/ (accessed 17 September 2008).

210 The 2003 print copy of the detailed index was 841 pages. The PDF version available on the internet is 1,500 single-columned pages.

211 The 2003 print copy of the skeleton index is 29 pages. The version available on the internet is presented on a single scroll-down screen view.

212 *United States Code Annotated: 2006 Popular Name Table* (Thomson West, Eagan Minnesota, 2006).

213 Ibid, V.

USCA. For instance, there are seven pages of entries for the heading "Animals" and other headings beginning with "Animals". A sample is reproduced below:[214]

ANIMALS
Generally, **7 § 2131 et seq.**
Accidents, aviation, reports, **49 § 41721**
Accounts and accounting
Income tax, disasters, **26 § 451**
Quarantine Inspection User Fee Account **21 § 136a**
Actions and proceedings, health and sanitation, **7 §§ 8312, 8314**
Adjustments, production, **7 § 608 et seq.**
Administration, health and sanitation, **7 §8312**
Age, transportation, **7 § 2143**
Agents and agencies, research, **7 § 2139**
Air mail, **39 § 5402**
Aircraft,
Accidents, **49 § 41721**
Explosives, detection, **49 § 44913**
Hunting, **16 § 743j-l**
Reports, accidents, **49 § 41721**
Standards, **7 §§ 2143, 2145**
Airports and landing fields, explosives, detection, **49 § 44913**
Amphibians, generally, this index
Anesthetic, research, **7 § 2143**
Animal Care Committee, biomedical or behavioural research, **42 § 289d**
Animal enterprise, definitions, **18 § 43**
Animal enterprise, terrorism, **18 § 43**
Apes, great apes, conservation, **16 § 6301 et seq.**
Appeal and review. Health and sanitation, post
Appropriations,
Drugs and medicine,
Minor species, **21 § 393 nt**
New drugs, **21 § 379j-12**
Health and sanitation, **7 § 8316**
Producers, **7 § 1472**
Research, **7 § 2153**

5.46 The USCA and associated index are commercially produced and are unofficial. However, the *General Index* is an extremely helpful navigation tool. The sheer length of, and amount of detail in, the USCA *General Index* is most impressive. Even taking into account the comparatively smaller volume of legislation in New Zealand, there is nothing in this jurisdiction that is on even a remotely similar scale to the USCA general index. It is a remarkable model.

214 Ibid, 305.

United Kingdom Index to the Statutes

5.47 An official index to United Kingdom legislation was produced in that jurisdiction from 1870 until 1991.[215] The most recent edition of the United Kingdom Stationery Office produced *Index to the Statutes* covers the legislation issued during the period 1235 to 31 December 1990. The Stationery Office's website indicates that the index is in suspension for the foreseeable future.[216] Its suspension is believed to be related to the electronic availability of statutes, although it must be noted that in the United Kingdom, the longstanding Halsbury's Statutes has a very good index volume which no doubt serves in the absence of an official version. It is nonetheless useful to consider the pre-1991 index as an example in this report.[217]

5.48 The *Index to the Statutes* spanned two volumes and 2,409 pages. The index was intended to be used in conjunction with the *Chronological Table of the Statutes* (which covers the years 1235 to the present) to navigate the *Public General Acts and Measures and Statutes in Force*. The *Index to the Statutes* was arranged according to alphabetical subject headings. Each main subject heading is followed by a chronological list of Acts in force on that subject. This is followed by a detailed breakdown of the subject according to subheadings, with cross-references, and locator references to the appropriate Acts and section numbers. The entry for "Animals" is eight pages long. There are five subheadings, each with between one and three pages of lower level subheadings and locators beneath it.[218]

UK Statute Law Database

5.49 Another part of the picture regarding navigability of statute law in the United Kingdom is the online UK Statute Law Database (SLD), which went live in December 2006.[219] SLD has official status – it is the official revised edition of the primary legislation of the UK made available online. SLD can be electronically searched, using a basic "quick search" function or an "advanced search" function that allows users to specify a wider range of search fields.

5.50 The database can also be browsed by looking at its two "indexes". There is an alphabetical index by Act title, and a chronological index. These are not subject indexes but title indexes, more in the nature of tables, similar to the New Zealand *Tables of New Zealand Acts and Ordinances, and Statutory Regulations,*

215 *Index to the Statutes: Covering the Legislation in Force on 31 December 1985* (HMSO Publications Centre, London, 1987) preface. Note, the edition cited in this report is not the most recent edition of the index, but rather the 1987 edition.

216 The Stationery Office: Online Bookshop http://www.tsoshop.co.uk/bookstore.asp?FO = 1159966&Action = Book&ProductID = 0118403079&From = SearchResults (accessed 17 September 2008).

217 The most recent edition is *Index to the Statutes: Covering the Legislation in Force on 31 December 1990* (HMSO Publications Centre, London, 1989).

218 The five subheadings are: 1. Prevention of Cruelty; 2. Animal Health; 3. Liability for Damage done by Animals, E&W; 4. Endangered Species; 5. Generally.

219 *UK Statute Law Database* http://www.statutelaw.gov.uk/ (accessed 17 September 2008). The database was launched on 20 December 2006, and is produced by the staff of the Statutory Publication Offices in London and Belfast. The London office is now part of the Ministry of Justice. The Belfast office is the responsibility of the Office of the Legislative Counsel in Northern Ireland within the Office of the First Minister and Deputy First Minister.

and Deemed Regulations in Force. This means that the SLD is not a direct substitute for the discontinued *Index to the Statutes* – it is a database and associated search engine rather than an index.

Index to the Revised Statutes of Canada

5.51 The Revised Statutes of Canada 1985 is made up of eight volumes, a further five volumes of supplements published since 1985, and one volume of appendices. There is also a single-volume index to the Revised Statutes of Canada, published in 1991.[220] While the index is not up-to-date, it is worth briefly mentioning it among the other examples in this chapter. The index is 932 pages long and takes into account the first four volumes of supplements. It has two levels of headings and contains cross-references to other headings and locator references to sections of the Revised Statutes.

THE NEED FOR AN INDEX

5.52 In our 2007 issues paper,[221] we recommended the production of a subject index for New Zealand Acts. The Law Commission remains of that view. The advantages of an index as a navigational tool are undoubted. Other multi-volume collections of material have them: the Laws of New Zealand,[222] the New Zealand Law Reports,[223] works of reference such as encyclopedias, and even *Consumer* magazine. The New Zealand Acts are much more disorganised and difficult to navigate than most other collections of material. The need for an index of Acts is even greater.

5.53 The submissions on the issues paper strongly supported the call for an index. Of the 17 submissions that discussed the need for an index, all supported it, with only one suggesting that it could be deferred until after assessing the experience with the New Zealand Legislation Website. Support came from a diverse range of persons: the Clerk of the House of Representatives; lawyers; community law centres; librarians; and law students. The New Zealand Law Librarians' Association said: "The need for indexing is evidenced by the avidity with which researchers use the indexes in commercial loose-leaf services on particular subjects".[224]

5.54 Some may say that the development of increasingly sophisticated electronic search tools have rendered indexes redundant. The first response to this is to say that there will always be some users who are less practised at computer searches than others. This is particularly true in relation to Act databases, in that they require more familiarity than many others for effective navigation. For such persons an index is a helpful additional tool.

5.55 In addition, we believe that even for most experienced users of search tools, an index will always be able to add another dimension. This is for the following reasons:

- An index enables the reader to view the overall structure and content of our

220 Canadian Legal Information Centre *Revised Statutes of Canada, 1985: English Index* (2 ed, Canada Communication Group, Ottawa, 1991) (prepared for the Statute Review Commission by the Canadian Legal Information Centre).

221 New Zealand Law Commission *Presentation of New Zealand Statute Law* (NZLC IP2, Wellington, 2007).

222 *Laws of New Zealand* (Butterworths, Wellington).

223 *New Zealand Law Reports* (Butterworths, Wellington).

224 New Zealand Law Librarians' Association (submission, 20 December 2007) 6.

Acts in a way that no search can do. It can lay the complexity and the possibilities of the statute book before our eyes. In other words, it provides a map.

- An index goes beyond a search in that a search can only find items in the text – for example, keywords – that it is asked by the user to find. An index relates instead to concepts; it can take the user beyond words in the text: it can identify synonyms that do not appear on the face of the Acts and text that conveys the same meaning in different words; it can also reveal content that is implicit rather than explicit, for example, because of the use of references to other Acts.[225] We shall later discuss the special nature of legal indexes in this regard.[226]
- A search cannot "think" for the user; an index can, by referring to categorisations or topics that the user would have neglected if left to their own devices. The index, which has been prepared by the intervention of a human being skilled in the subject matter, can supplement the ingenuity of the user.
- A search can often provide a plethora of material, much of which is irrelevant to the searcher's inquiry. The process of sifting can waste time. An index provides a much better initial determination of relevance. By the same token, if insufficient keywords are used in a search, material can be missed. A good index with proper cross-referencing can provide a more complete set of results.
- The fact that experts assert that good indexes must be generated manually[227] suggests that the intervention of creative human intelligence can do more than an automated agent.

5.56 So an index will always add value to even the most sophisticated search engine. The Law Commission recommends that one be created for New Zealand Acts.

THE PRODUCTION OF AN INDEX

The special considerations of legal indexing

5.57 Indexing is a specialised field. Within the field of indexing, the indexing of legal materials is a well-known specialization. Statutory indexing, of course, is itself a subset of legal indexing. There is a range of considerations that arise for indexers of any material. However, there is a range of special problems and challenges associated with the indexing of Acts that stem from the specialised ways in which Acts are drafted.[228] These problems also have implications for the capabilities of search tools when applied to Acts. It is important to have a firm understanding of these problems when considering who should create an index to New Zealand's Acts.

5.58 The first problem is that, even when they are plainly and clearly drafted, statutes often contain more information than is clear on their face. That is, the conventions and style of legislative drafting can "hide" information from the

225 See below, paras 5.58-5.61. We note that modern search technology can be given many features of an index if sufficient metadata is included in a database to highlight links between terms and other items of data; that is, if the "thesaurus" of the database itself is sufficiently rich and includes the level of detail that would also be required of the thesaurus of a good subject index. If additional metadata of this kind were added to the Legislation System, an index could also be generated from the metadata.

226 See below, paras 5.57-5.66.

227 Interview with indexing team at Thomson West by Professor Burrows (Eagan, Minnesota, USA, September 2007).

228 Maryann Corbett "Indexing and Searching in Statutory Text" (1992) 84 Law Libr J 759.

point of view of indexing and electronic searching.[229] The use of cross-referencing from within one section to other provisions is an example of this – the words of a cross-referring section do not convey the whole meaning of the section itself.[230] Consider, for instance, section 7A of the Crimes Act 1961, concerning New Zealand's extraterritorial jurisdiction in respect of certain offences with transnational aspects, the first part of which is reproduced below:

> (1) Even if the acts or omissions alleged to constitute the offence occurred wholly outside New Zealand, proceedings may be brought for any offence against this Act committed in the course of carrying out a terrorist act (as defined in section 5(1) of the Terrorism Suppression Act 2002) or an offence against section 98AA, section 98A, section 98C, section 98D, any of sections 100 to 104, section 105(2), section 116, section 117, section 243, section 298A, or section 298B…

5.59 The effect of the subsection is that there is jurisdiction in New Zealand to prosecute a wide range of offences even if they were committed outside of this country.[231] Those offences are spelled out of course in the sections cited. The reader of the section who asks "what is the offence under section 98C?" can easily check the reference and answer the question: smuggling migrants. However, while the offences are central to the meaning and effect of section 7A(1), their nature is not spelled out in the text of the section.

5.60 If not done well, these kinds of connections may not be made in statutory indexes. This means a user searching for "migrants" or "smuggling migrants" in an index would not find a reference to section 7A(1). Furthermore, electronic searching generally fails to fill, or supplement, these kinds of gaps in an index – if "hidden" connections are not made explicit in an index, a user will not necessarily be able to find them through a simple search instead. For instance, a word search on the New Zealand Legislation Website for "smuggling migrants" will not turn up section 7A(1) because those words are not used in the section. The situation would be mitigated to some extent if drafters included a reference to the section heading of a section that is cross-referenced, or a summary of the effect of the section. This is sometimes done, but there is no consistent drafting practice in this respect. It would not always be possible or desirable.

5.61 One reason why indexers can be reluctant to represent these kinds of "hidden connections" in indexes is that the meaning connected with the citation or cross-reference can change. For instance, changes could be made to section 98C so that it covers more than just smuggling migrants. Such amendments can be difficult to pick up in the course of maintaining an index. If they are not picked up, the index becomes wrong in respect of those changes. An indexer of Acts of

229 Ibid, 760.

230 Note that "cross-referencing" is used in a different sense in the context of cross-referencing within legislation than it is used in indexing. Cross-references in legislation direct users to other sections within the same Act or in different Acts (cross-references in an index refer users to headings and subheadings in the index). See also n 184 above.

231 The offences are: terrorists acts, as defined in section 5(1) of the Terrorism Suppression Act 2002; dealing in people under 18 for sexual exploitation, removal of body parts, or engagement in forced labour; participation in an organised criminal group; smuggling migrants; trafficking in people by means of coercion or deception; judicial corruption; bribery of a judicial officer; corruption or bribery of a Minister of the Crown, member of Parliament, law enforcement officer or official; conspiring to defeat justice; corrupting juries or witnesses; money laundering; causing sickness or disease in animals; or contaminating food, crops, water or other products.

Parliament faces a difficult choice: to index in more detail and make the connections such as are in section 7A(1) of the Crimes Act 1961 means that the index will be more useful to users now; however, doing so also brings with it the risk of the index becoming wrong at a later date, and a wrong index will be of less use to those future users.[232] There are two possible solutions to the problem: first, the risk-averse approach is not to make the connections and thus not to risk failing to detect future changes in the course of index maintenance; second, the more ambitious approach of making the connections and optimising the usefulness of the index for current users, while also committing to more rigorous maintenance methods in the future. The Law Commission favours the latter approach.

5.62 Another challenge when indexing Acts is that the meaning of a statutory provision can be apparently clear and unambiguous on its face, yet its real meaning can be different if some word or phrase within it is defined in some other section.[233] Indexers who are unaware of an overarching definition may fail to understand a provision's true effect and may wrongly or incompletely categorise that provision.

5.63 Name and terminology changes can also be problematic. Statute law spans long stretches of time. Terms used change over time. This means that the same institutions or phenomena can be described with different terms in different Acts or statutory provisions depending upon when they were passed. For instance, terms such as "lunatic"[234] and "mentally defective person"[235] that were used in the past are now replaced by concepts such as "mental health".[236] An index needs to keep track of such name changes. (This is also a good example of when searching will be insufficient because the earlier terms have not been directly updated. They might remain un-amended, or "read as if" and so do not show up in a search).

5.64 Another kind of information that can be missing from subject indexes is the popular names of Acts. While Acts have official titles, it is not always these titles by which they are popularly known. One example is the New Zealand Bill of Rights Act 1990, which is very often referred to as simply the Bill of Rights. Another example is the series of Acts that have governed the accident compensation regime in New Zealand. Each has tended to be popularly known as "the ACC Act", and indeed, the original Act was the Accident Compensation Act 1972. However, the official titles of the subsequent Acts have generally been different, for instance, the Accident Rehabilitation and Compensation Insurance Act 1992, Accident Insurance Act 1998, Injury Prevention, Rehabilitation, and Compensation Act 2001, and their amending Acts. It is by this popular name, or some variation on it, that many people are likely to know these Acts now.[237]

232 Corbett, above, n 228, 761.

233 Ibid.

234 The term "lunatic" can be found in many Acts, including: Civil Service Act 1908; Industrial and Provident Societies Act 1908; Lunatics Act 1908; Mental Hospitals Reserves Act 1908; and Presbyterian Church Property Act 1885.

235 Mental Defectives Act 1911.

236 For instance, Mental Health Commission Act 1998.

237 The Popular Name Table included in the *United States Code Annotated* is designed to overcome this problem. See above, para 5.44.

5.65 An even greater problem arises with amending Acts, the effect of which is subsumed into the principal Act. The Land Transport (Street and Illegal Drag Racing) Amendment Bill, commonly known as the "boy racer bill", is an example. Similarly, the Crimes (Substituted Section 59) Amendment Bill received a great deal of media attention during its passage through the legislative process,[238] but was generally referred to as the "anti-smacking bill" rather than by its formal title. Many people knew these bills by their popular names. In practice, controversial bills, of the type that are more likely to acquire a popular title, are often amending bills rather than covering entirely new ground. The popular name of an Act will not necessarily appear anywhere in the Act's text. This means it is useful for an indexer to be familiar with the circumstances of the passage of the law and to know what people call it.[239]

5.66 The common picture that emerges from these problems is that, due to the intricacies of the text of Acts, it is easy to miss out material from an index. Even when carefully attempting to index every important concept, some can be missed if they are not apparent on the face of the Act. The task of indexing Acts can only be accomplished by a specialist.

Adopting or designing a taxonomy or thesaurus

5.67 An essential first step in producing a subject index is to design or adopt a taxonomy or thesaurus of terms or headings around which the index itself will be constructed. The taxonomy or thesaurus will form the skeleton of the index, so taxonomy or thesaurus creation or selection is of critical importance to the success of the index. It will affect the length of the index and whether or not there are linguistic issues with the index.

What is a thesaurus?

5.68 For indexers and searchers, a thesaurus is "an information storage and retrieval tool: a listing of words and phrases authorized for use in an indexing system, together with relationships, variants and synonyms, and aids to navigation through the thesaurus".[240] The formal definition of a thesaurus designed for indexing has two elements. A thesaurus comprises, first, a list of every important term (single-word or multi-word) in a given domain of knowledge; and secondly, a set of related terms for each term in the list.

What is a taxonomy?

5.69 Taxonomy is the science of classification according to a predetermined system, with the resulting catalogue used to provide a conceptual framework for discussion, analysis, or information retrieval. A good taxonomy separates elements of a group (taxon) into subgroups (taxa) that are mutually exclusive, unambiguous and, taken together, include all possibilities. In the context of

238 First as the Crimes (Abolition of Force as a Justification for Child Discipline) Amendment Bill, then renamed the Crimes (Substituted Section 59) Amendment Bill, and then enacted as the Crimes (Substituted Section 59) Amendment Act 2007.

239 Corbett, above, n 228, 764.

240 Jessica Milstead "About Thesauri" (2000) http://www.bayside-indexing.com/Milstead/about.htm (accessed 17 September 2008).

indexing, a taxonomy is a set of permitted terms that recognises relationships among the terms in the set. For the purposes of this report, the two terms should be regarded as meaning the same thing. However, to avoid confusion, the term "thesaurus" will mainly be used for the rest of this chapter.

Elements of a thesaurus

5.70 The list of terms that makes up a thesaurus has a direct impact on the length and level of detail of a resulting index. A good thesaurus is an essential prerequisite for a well-designed subject index to the New Zealand Acts of Parliament. The raw list of terms contains the headings according to which the index will be ordered. But it is the relationships between the terms that dictate the overall shape that the index will take. Term relationships are links between terms that often describe synonyms, near-synonyms, or hierarchical relations. The relationships determine hierarchies of headings, and cross-referencing within the index.

5.71 A good thesaurus will have neither too few nor too many terms. It there are too many terms, the resulting index will be too long, and each term will relate to only a few locator references. It will be difficult to understand the relationships between terms. If there are too few terms, however, each term is likely to have many locator references. A user of such an index will have to work through a large number of locator references to find the ones that are relevant.

Two approaches to selecting a thesaurus

5.72 There are two key approaches that can be taken in selecting a thesaurus. First, a thesaurus can be developed and designed from scratch, or secondly, an existing thesaurus can be adapted or adopted wholesale, for instance, the thesaurus used in an overseas jurisdiction, or the thesaurus of a legal encyclopaedia. Each option has its attractions and costs. To develop a thesaurus from scratch would be a large, time-consuming task.[241] However, the thesaurus could be tailored to the specific characteristics of New Zealand statute law.

5.73 Adopting an existing thesaurus would be quicker and less costly than designing one from scratch. However, any existing thesaurus, particularly one from an overseas jurisdiction, would have to be carefully adapted and tailored to New Zealand's unique situation. Similarly, a general law thesaurus, as opposed to a statute law thesaurus, would have entries for common law as well as statute, and would have to be modified accordingly.

Human indexing and automatic indexing

5.74 We now have an open access electronic version of the New Zealand statute book. Eventually, it is intended that it will become an official source. The new Legislation System and New Zealand Legislation Website will greatly aid the production of a subject index to the statute book, whether in hard copy format,

241 The Law Commission has discussed with the legal publisher Brookers its recently completed case law taxonomy. This taxonomy was developed "from scratch", but informed by a number of existing indexes and case law taxonomies from other jurisdictions: Meeting with Brookers (Law Commission and PCO, Wellington, 5 June 2007).

electronic format, or both, because the compiler will have access to the system's ability to track down occurrences of terms within the statute book. This has been the experience of the Australian state of Victoria. Metadata can be automatically searched and analysed. An indexer can conduct electronic searches to identify frequently used terms within the statute book. This is much easier than requiring a human indexer to read every statute and pick out commonly used terms. However, while electronic technology will be an integral part of the production of a subject index, the complexity and subtlety involved in indexing means that direct human input will be necessary throughout the process. An index cannot be produced wholly automatically and without human involvement.

5.75 We were reinforced in this view by discussions with the indexing team at Thomson West, one of the world's most experienced indexers of statutes. They index the US Code and the statutes of many other jurisdictions both within and outside of the United States of America. They were firm in their assertion that a good index must be produced manually. At present it is not possible for a computer, however well "trained" it might be, to categorise subject matter with the necessary level of accuracy and intuition.[242] Humans are able to analyse concepts within writing in a way that computers cannot yet achieve.[243]

THE TYPE OF INDEX

Audience, scope, and detail

For whom is the index intended?

5.76 The design of an index depends a great deal on its intended audience. A subject index to the New Zealand Acts could be aimed at an "expert audience" of lawyers, judges and other legally qualified persons. Such an index would be helpful to those legal professionals, but arguably would not go very far towards addressing the state's wider obligation to make Acts of Parliament accessible to its citizens.

5.77 It is true that some areas of statute law are highly specialised and, even if well-drafted, have levels of detail that will be difficult for non-lawyers to understand. It might be difficult for non-lawyers to locate such highly specialised provisions within even a well-designed subject index. However, there are a lot of Acts that should be widely accessible to all people, even if they lack legal training. As we have seen, a lot of non-lawyers use Acts. The law, if possible, should be accessible to all who want it. An index for lay users would probably need, through a glossary, to "translate" commonly-used ideas into legal concepts and legal terminology. For example, it would need to advise users that the concept of "divorce" is expressed in the Family Proceedings Act 1980 as the "dissolution of marriage or civil union". If a subject index is to help to facilitate this heightened accessibility, its audience is similarly broad. The Law Commission believes that an index of New Zealand Acts should be accessible to as broad a range of users as possible.

242 Seth Maislin, President of the American Society of Indexer "Notes on Automatic Indexing" http://taxonomist.tripod.com/indexing/autoindex.html (accessed 17 September 2008).

243 Ginger Shields "What are the Main Differences between Human Indexing and Automatic Indexing?" (26 April 2005) http://www.shieldsnetwork.com/LI842_Shields_Automatic_Indexing.pdf (accessed 17 September 2008).

What legislation is to be indexed?

5.78 As has been discussed earlier, the focus of this report is limited to Acts of Parliament rather than including secondary legislation. Whatever the merits of producing an index to statutory regulations at some time in the future, in practical terms, a combined project of producing a subject index to Acts as well as statutory regulations would be too large an undertaking.

5.79 Even having confined the index to Acts, however, questions remain as to which types of Acts should be indexed. Detailed decisions will need to be made, and the Law Commission suggests at this stage that these should be left to further discussion between the Parliamentary Counsel Office, the Law Commission, and the compilers of the index. But the Law Commission's preliminary view is that certain types of Act can be excluded, such as spent Acts, and Acts of temporary application such as Appropriation Acts, Imprest Supply Acts and Subordinate Legislation (Confirmation and Validation) Acts. Generally speaking, however, it believes that transitional provisions should be included: they can have continuing application when historic events are relevant to entitlements, or in litigation.

To what level of detail will material be indexed?

5.80 Clearly, the more detailed the index the more useful it will be. The index of the United States Code is seen by us as a desirable model. It would meet the needs of all users. However, while the needs of users are the prime consideration, deciding the level of detail to which material will be indexed involves an element of trade-off. Budget, time, and ways in which search options can supplement the index are elements to be considered in this process.[244]

Format: hard copy or electronic?

5.81 A further matter is the choice of media in which an index would be presented. There are several choices. An index could be solely electronic, solely hard copy, or available both electronically and in hard copy. Electronic and hard copy indexes operate a little differently. Some of the chief benefits of hard copy indexes, such as ease of browsing, do not translate well to electronic indexes. Nevertheless, the two are in essence the same creatures, and perform the same function. They are constructed in the same way, and require the same skills in their construction. However, an electronic index is not constrained by space in the way a hard copy index is, and it can contain hyperlinks to the text of the relevant statutory provisions.

5.82 The Law Commission's view is that an index should be produced and available in both hard copy and electronic formats. Hard copy indexes have special benefits: they allow users to easily "flick" between pages, and they provide users with an overview of the structure of the statute book. Because of these benefits, we are of the view that a hard copy index should be produced by the state. However, so prevalent is the use of the electronic medium, and such is its

244 Joan Fraser "A Subject Index for Canadian Federal Statutes: A proposal based on the new Index to the United States *Code of Federal regulations*" (1980) 73 Law Libr J 634, 644.

potential to be right up-to-date, that it is important to have an electronic index as well. Both kinds of index would be produced from the same database. We recommend that both kinds of indexes be developed.

5.83 Fortunately, the task of producing a subject index in two different formats could be facilitated by the new Legislation System. It stores legislative data in XML format, a structured information system. This means that the content of the New Zealand Legislation Website database is kept separate from its format or presentation. This can allow the same content to be produced in different formats, such as hard copy or electronically. The metadata content that would help to produce a hard copy index would also facilitate more sophisticated and user-friendly electronic searches.[245] For instance, if metadata included synonyms, an electronic search could steer users to the provisions they seek even if they search under a non-preferred subject heading. In short, the new system of statutes online may facilitate the production of an index in both hard copy and electronic format.

5.84 An advantage of electronic over hard copy sources is that hard copy begins to become out-of-date once it has been printed, whereas an electronic index can be kept continuously up-to-date.[246] This has implications for the production of a hard copy index. We propose that the subject index should be regularly updated in electronic form, and an up-to-date version of the electronic index should be available free of charge on the New Zealand Legislation Website. However, for those who prefer hard copy, we also recommend that revised editions of the hard copy index should be published on a regular basis, say every two years. For those who want more up-to-date versions in print, they should be able to purchase a copy produced using "print on demand" technology. Print on demand is more expensive per unit than traditional large print runs. Users wanting a more up-to-date print on demand copy of an index would pay extra for this service. More will be said about print on demand in the following chapter.[247]

Who should undertake the task?

5.85 The task of producing a subject index to the New Zealand Acts would require time, resources and considerable skill. Indexing is a specialised field, of which legal indexing is an even more specialised subset.

5.86 As we noted in our 2007 issues paper,[248] there are two options regarding who should produce a subject index in New Zealand. The PCO might do it, or it could be contracted out to another organisation, possibly in the private sector. We noted that PCO does not currently undertake any indexing, so lacks expertise in that area at present. Were PCO to undertake the task it would require extra staffing with indexing experience. On the other hand, PCO has greater knowledge than any other organisation or person of the subject matter of New Zealand

245 The Brookers case law taxonomy mentioned above, at n 241, was initially developed as an editorial tool, but has more recently been turned into a search tool for users that can be reached through the Brookers "Briefcase" product.

246 See discussion in Chapter 6: Reprinting, para 6.39.

247 Chapter 6: Reprinting, paras 6.43-6.45.

248 New Zealand Law Commission *Presentation of New Zealand Statute Law* (NZLC IP2, Wellington, 2007).

legislation, and, most importantly, maintains the New Zealand Legislation Website. In our issues paper, we expressed the view that PCO was best placed to undertake the indexing task.

5.87 The alternative approach is to contract out the task to a New Zealand or overseas commercial provider. If this approach were taken, the indexing project would be put out for tender. Some commercial providers are experienced in producing indexes to legislation. An overseas example is Thomson West, one of the largest legal publishers in the world. They index the US codes, and also undertake assignments on contract to prepare indexes of the statute law of other jurisdictions and thus have experience in tailoring an index to the needs and special features of the country in question. Because of the size of their enterprise, they could also possibly perform the task more quickly than could a local organization. For example, Thomson West recently completed an index of the statutes of Trinidad and Tobago in only two months. If the indexing task is contracted out to a New Zealand or overseas provider, there would clearly have to be close collaboration with PCO because of the desirability of integrating the index with the New Zealand Legislation Website.

5.88 Once an index is designed and constructed, it is important to ensure that it remains accurate, current, and internally coherent. Even the best index will soon lose its usefulness and reliability if it becomes out-of-date. The continued quality and usefulness of an index can be achieved by regularly updating the information in accordance with legislative changes and by implementing systems to ensure that this has been done. Once again, there are choices as to who should perform the task. There would seem to be advantages in the organisation that prepared the original index continuing to update it: that way, consistency and coherence are best ensured. If the PCO prepared the index, our strong recommendation is that they should continue to update it.

5.89 If, on the other hand, the original index was prepared by an organisation other than the PCO, either they or the PCO could update it. There would be advantages in the PCO doing so. The PCO publishes all new legislation and integrates that legislation within the Legislation System database. In terms of efficiency and immediacy, it would make a great deal of sense to integrate updating of an index with updating of the database. This is what is done in Victoria. The downside of contracting the work out (particularly to an overseas organisation) is that no local expertise is built up. This makes maintenance of the index more difficult.

5.90 We recognise there might be difficulties around transferring to the PCO the continued right to update an index from the original indexers. Depending on the contract, the original indexers may have intellectual property in the index. Moving the continued right to update the index to the PCO is a matter that would have to be the subject of negotiation.

5.91 Our view is that the PCO should be responsible for continually updating the electronic version of the index, and for making available at a reasonable price hard copy versions of the index. Users will be able to access a continuously up-to-date version electronically, and print off their own up-to-date copies at any time. An updated version of the hard copy index should be produced at least every two years.

CONCLUSIONS AND RECOMMENDATIONS

5.92 New Zealand's statute law is less accessible than it can and should be. In a number of other jurisdictions, navigation of Acts is aided by official subject indexes. Indexes have been produced in New Zealand in the past. Production of an official comprehensive index to the Acts of New Zealand would provide users with a "map" which would greatly enhance their accessibility. We recommend that such an index be produced without delay.

RECOMMENDATIONS

R5 The government should arrange for an index to New Zealand's Acts to be produced without delay.

R6 The index should be available in hard copy and electronically.

R7 The respective costs and benefits of having the PCO produce an index, or tendering and contracting the task out to a commercial indexer, should be explored.

R8 The index should be continually updated in electronic form. A hard copy version should be produced at least once every two years. Hard copies should also be available via print on demand, but with users meeting the higher production costs associated with this mode of delivery.

R9 If a commercial indexer prepares the original index, the responsibility for the updating function should be carefully managed. Our recommendation is that the PCO should be responsible for updating the index.

Chapter 6
Reprinting

IN THIS CHAPTER, WE

- give an overview of the history of reprinting in New Zealand;
- discuss the continuously updated "electronic reprints" that are now available on the New Zealand Legislation Website;
- recommend that hard copy access to reprinted Acts continue;
- discuss the potential of "print on demand" technology to be applied to reprinting Acts;
- recommend some enhancements to the current range of editorial changes that can be made in a reprint; and
- consider two miscellaneous issues regarding the formatting of reprinted Acts.

6.1 As explained in Chapter 1, the PCO Reprints Unit publishes reprints of amended Acts with amendments included. It does this under its reprints policy and according to its annual reprints programme. The Statutes Drafting and Compilation Act 1920 refers to these reprinted statutes as "compilations".

6.2 The process of reprinting involves just what the name suggests, that is, printing the Act again. Reprints are not re-enacted by Parliament. They are simply a reprint of Parliament's earlier text. Only minor changes of an editorial nature can be made. They include matters of format and style authorised by the Acts and Regulations Publication Act 1989, such as changes to punctuation and presentation that are consistent with current drafting practice, and references to enactments substituted for those referred to in the reprinted Act.[249]

6.3 The current practice is to reprint Acts individually on a prioritised basis. The PCO's reprint schedule is drawn up following public consultation and takes account of factors such as which Acts are heavily amended or in high demand.

6.4 The New Zealand statute book is now available online via the New Zealand Legislation Website. Amendments to Acts are incorporated as soon as possible after they are passed. In effect, the website provides continuously updated "electronic reprints".

249 Acts and Regulations Publication Act 1989, ss 17C-17E; Interpretation Act 1999, s 20(2).

HISTORY OF REPRINTING IN NEW ZEALAND

Early history

6.5 There is a long history of reprinting in New Zealand. The first reprint was that prepared by the Hon Alfred Domett in 1850. It covered the years 1841 to 1849. In 1885, Wilfred Badger produced a reprint in two volumes, with a second edition of four volumes following in 1892. More detail on these reprints is contained in the Law Commission's 2007 issues paper.[250]

The 1931 reprint

6.6 As will be discussed in Chapter 7, following the Revision of Statutes Act 1879 there was a major revision process, which resulted in the 1908 revision and re-enactment. This was much more extensive than a reprint. However, there has not been another total revision of the statute book since 1908. When order again needed to be imposed upon the statute book in the years after the 1908 revision, it was reprinting rather than revision that was chosen. The first of these reprints was the 1931 reprint.

6.7 The 1931 reprint was the first truly comprehensive reprint in New Zealand and was not, as such, authorised by Act of Parliament.[251] It was a joint undertaking by the government and Butterworths, the publishers.[252] It reprinted all public Acts in force in 1931, with amendments incorporated and repealed provisions omitted. It covered 816 principal Acts. The substance of the Acts was not altered by the reprint, although the compilers did correct "obvious grammatical or typographical errors".[253] The Attorney-General certified at the beginning of the reprint that it "correctly sets forth the law".[254]

6.8 The 1931 reprint was a major undertaking, and consisted of nine volumes. The reprinted Acts were arranged according to subject matter, with each subject heading introduced by a preliminary note. Sections of Acts were annotated, indicating when, if at all, they had been amended and from what earlier Act they were derived. Case law pertaining to the sections was also summarised. The reprint was also accompanied by a detailed subject index.[255]

6.9 The foreword discussed the need at the time for the statute book to be tidied as a result of the many and frequent amendments to the statute book since the 1908 revision, stating that "the need for a further consolidation and re-enactment of the Public General Acts or for their republication in a convenient form has for some time been apparent."[256] The more cautious approach of reprinting, rather than full revision and re-enactment, was chosen in 1931. The foreword of the reprint suggested that one reason for this was

250 New Zealand Law Commission *Presentation of New Zealand Statute Law* (NZLC IP2, Wellington, 2007), Chapter 6: Reprinting, paras 267-269.

251 JF Burrows *Statute Law in New Zealand* (3 ed, LexisNexis, Wellington, 2003) 94.

252 "Publishers' Announcement" in *The Public Acts of New Zealand (Reprint) 1908-1931* (Butterworth & Co Ltd, Wellington, 1932) vol 1, ix.

253 *The Public Acts of New Zealand (Reprint) 1908-1931*, ibid, vol 1, xii.

254 William Downie Stewart, Attorney-General, *ibid,* vol 1, v.

255 See Chapter 5: Indexing, para 5.25.

256 M Myers "Foreword" in *The Public Acts of New Zealand (Reprint) 1908-1931* (Butterworth & Co Ltd, Wellington, 1932) vol 1, vii.

the "grave danger of the law being unintentionally altered" in the course of a revision.[257] Reprinting was not thought to bear such a risk since "an exact repetition of the law is the aim of such a reprint".[258]

The 1957 reprint

6.10 Following the 1931 reprint, the presentation of the statute book again deteriorated due to amendments to, and repeals of, Acts and the enactment of new Acts. The next major reprint exercise was the *New Zealand Statutes Reprint 1908-1957*, commonly known as the 1957 reprint. Like the 1931 reprint, the 1957 reprint was not specifically authorised by Act of Parliament. It reprinted Acts, incorporating amendments and omitting repealed provisions.[259] The 1957 reprint covered 423 Acts and spanned 16 volumes. It was arranged alphabetically by Act title rather than by subject matter. Act sections were annotated to show the dates of any amendments, but there were no references to case law.

6.11 The final volumes of the 1957 reprint were not completed and published until 1961, some three years after the first volumes were published in 1958.[260] By the time the reprint was published as a complete set of 16 volumes, it was already four years out-of-date.

The *Reprinted Statutes* Series (1979 – 2003)

6.12 Since the 1957 reprint, Acts have been periodically reprinted on an individual basis when their highly amended state has merited it. From 1957 to 1979 any reprinted Acts were published as part of the annual volumes of Acts, usually in the last two or three volumes of Acts for the relevant year. During this period, 165 Acts were reprinted.

6.13 In 1979, the *Reprinted Statutes of New Zealand* series was begun. Volumes in the series were published not annually, but when completed. Pamphlet copies of reprinted Acts were made available before the reprint volumes were published. The intention behind the series was "steadily and progressively" to reprint all public Acts of general application, so that a point would come at which every public Act would be available in a form that was not more than 10 years old.[261] This intention was not fully realised, however, due to the volume of legislation and rate of amendment and insufficient resourcing.[262]

6.14 As discussed earlier, reprinted Acts within each volume of the *Reprinted Statutes* were not necessarily thematically related, although a few volumes were "of a kind", grouping together Acts covering similar subject matter.[263] In a few cases,

257 Ibid.

258 Ibid.

259 *New Zealand Statutes Reprint 1908-1957: With Amendments Incorporated* (RE Owen, Government Printer, Wellington 1958) vol 1.

260 Volumes 1-3 were published in 1958, volumes 4-7 in 1959, volumes 8-12 in 1960 and volumes 14-16 in 1961.

261 "Foreword" in *Reprinted Statutes of New Zealand* (PD Hasselberg, Government Printer, Wellington, 1979) vol 1, iii.

262 805 Acts were reprinted in the period the series was produced (1979-2003).

263 For a fuller discussion of this, see Chapter 3: Current Problems with Accessing Statute Law, para 3.7.

the reprinted statute is so long that it fills an entire volume. But aside from these exceptions, the *Reprinted Statutes* simply grouped together whichever Acts were reprinted in the same period.

6.15 The *Reprinted Statutes* series was discontinued after volume 42 was published in 2003. The series was discontinued by the PCO in anticipation of the completion of the PAL project.[264]

Other sources

6.16 The commercial publisher Brookers (part of the Thomson Corporation) has since 2005 published an unofficial *Bound Reprinted Statutes* series, the first volume covering Acts reprinted during 2002 and 2003. The volumes contain complete facsimiles of the text of the loose reprinted legislation published by the PCO. The series is published, not annually, but "as soon as the loose reprinted legislation reaches a suitable number of pages for binding as a volume".[265] Acts are grouped alphabetically within each volume. At the time of publication of this report, there were 25 volumes in the series. As mentioned earlier in this report, Brookers also offers an updating service whereby it annotates each principal Act to reflect amendments and repeals.[266] The service updates the annual bound volumes, the now discontinued *Reprinted Statutes of New Zealand* series, and Brookers' own *Bound Reprinted Statutes* series.

6.17 The commercial publishers Status Publishing (now part of LexisNexis) and Brookers[267] both invested in the back-capture of New Zealand Acts and statutory regulations and developed their own commercially available databases of legislation.[268] These are kept up-to-date and amendments are incorporated into principal Acts. These databases currently effectively provide electronic reprints, but they do not have official status.

6.18 The New Zealand Acts are also available through the New Zealand Legal Information Institute, or "NZLII", website,[269] and through the Knowledge Basket website.[270]

The PCO Reprinting Policy and Reprinting Programme

6.19 The objective of the PCO's reprinting policy is to provide a framework for producing printed reprints of New Zealand legislation to provide users of legislation with access to up-to-date legislation on an efficient and cost-effective

264 *Report of the Parliamentary Counsel Office for the year ended 30 June 2002* http://www.pco.parliament.govt.nz/archive/annualreport/2002/2002report.pdf (accessed 17 September 2008) 18.

265 "Foreword" *Bound Reprinted Statutes 2002-2003* (Thomson Brookers, Wellington, 2005).

266 See Chapter 1: Access to Legislation, para 1.22.

267 The Brookers product is *Statutes of New Zealand*, which is part of the *New Zealand Law Partner Legislation and Cases* suite of products.

268 The LexisNexis product is *Status Statutes*. See http://www.lexisnexis.co.nz/products/status/default.asp (accessed 17 September 2008).

269 New Zealand Legal Information Institute http://www.nzlii.org/ (accessed 9 September 2008).

270 The Knowledge Basket http://www.knowledge-basket.co.nz/ (accessed 16 September 2008).

basis.[271] The PCO conducts an annual reprinting programme under this policy. The PCO now publishes reprints only in individual pamphlet form.[272] The focus is on best-selling titles that are frequently or heavily amended.[273]

6.20 Each year, a reprinting programme is established in consultation with key users of legislation.[274] An annual reprints survey comprises a major part of that consultation. The survey can be completed online or mailed or faxed to the PCO. It canvasses legislation users' views on what legislation they would like reprinted and how often. The annual reprint programme is published on the PCO website, and is reviewed from time to time in the light of information about public sales of legislation, proposals to amend or repeal particular legislation, and other relevant factors.

The limitations of reprinting

6.21 As discussed above, New Zealand has a history of reprinting Acts to improve their accessibility. Reprinting an Act is intended to result in its tidier presentation in its current state. This has clear advantages for users of Acts: it is much easier for a user to refer to a single, up-to-date and official reprinted Act than to juggle a principal Act and numerous amending Acts.

6.22 Although reprinting is very helpful, it does not cure much of the untidiness of the statute book. Reprinting alone is not enough to solve the current accessibility problems of our Acts.

6.23 The next chapter will discuss the more radical solution of revision. Revision would deliver a more complete solution than reprinting alone.

Enhancements to current powers to make editorial changes to reprints

6.24 The current range of editorial changes that can be made in a reprint under the Acts and Regulations Publication Act 1989 is very limited. Power to make these changes was conferred on the PCO in an amendment to that Act in 1999, which inserted new sections 17A to 17F. The key driver was the decision to introduce major changes to the format of New Zealand legislation from the beginning of 2000. That focus is evident from new section 17B of the Act, which states that the purpose of the provisions is "to facilitate the production of up-to-date reprints that …. are in a format and style consistent with current drafting practice".

6.25 The purpose of a reprint is to present the current law in an up-to-date form. It is the version of the law that most people are likely to want to access. As indicated above, reprinting alone is not enough to cure much of the untidiness of the statute book, and we recommend the more radical solution of revision discussed in the next chapter.

271 PCO website http://www.pco.parliament.govt.nz/legislation/reprints.shtml (accessed 17 September 2008).

272 Ibid.

273 During the financial year ending 30 June 2007, the PCO's Reprint Unit produced hard copy reprints of 35 Acts and 9 Statutory Regulations.

274 These key users include the legal profession, the judiciary, librarians, government agencies and the public. (PCO website http://www.pco.parliament.govt.nz/legislation/reprints.shtml (accessed 17 September 2008).

6.26 But even if our recommendations for a systematic revision of the New Zealand statute book are adopted and implemented, it will be a very long time before the statute book is modernized. In the meantime, reprinting (which includes maintaining the electronic versions of legislation on the New Zealand Legislation Website in an up-to-date form) will remain the primary means of providing access to up-to-date Acts. The current statute book contains a large variety of drafting practices spanning over 100 years' worth of legislative activity. The fact that the current range of editorial changes that can be made in reprints is so limited means that the original drafting practices have to be reproduced on the New Zealand Legislation Website and in current hard copy reprints. As a result, these versions of New Zealand Acts are harder to read and understand than they need to be. The use of gender-specific language is an example. Another is obvious spelling, typographical, and grammatical errors, which the PCO has no power to correct.

6.27 Other jurisdictions, notably in Australia and Canada, have a wider range of powers for the preparation of reprints of Acts. The following are some examples.

Queensland

6.28 The Queensland Reprints Act 1992 gives legislative counsel powers to make a number of editorial changes in reprints. The Act goes into considerable detail regarding the kinds of changes that are permissible.[275] These include certain omissions, such as omissions of unnecessary punctuation; changes to names and references; changes in numbering; and minor error corrections. Where the text is changed under section 7(1), section 7(2) says that this must be indicated in a suitable place. Editorial changes to the text of the Act must not change its effect.

6.29 The Act is divided into "divisions", each of which concerns a related class of editorial changes. Many of the permitted changes are narrow reprint powers, such as the power to omit repealed or expired provisions, or the power to correct minor errors. However, the Act also allows more significant changes in the course of the reprinting process. Under section 30, definitions can be reordered so as to better conform to current legislative drafting practice. Under section 30A, the order of other provisions can also be changed. Section 46(1) also provides that "nothing in this Act requires every provision of a law to be shown in the location within the law in which the provision was located when the provision was made"; that is, reordering is permitted under the Act. Under section 43, provisions can be renumbered, and under section 24, gender specific language can be replaced.

South Australia

6.30 There is in South Australia a Legislation Revision and Publication Act 2002. The Act authorises the appointment of a Commissioner for Legislation Revision and Publication. The Act sets out a range of permitted editorial changes that can be made in the revision process. Although described as revision, the process is more in the nature of reprinting. Under the Act, certain provisions may be omitted, such as transitional or expired provisions, or obsolete headings. Other alterations are permitted, such as changes to the long title or relevant

275 The Reprints Act 1992, s 9(1) (Queensland) gives an overview of the editorial changes that are permitted under ss 10-14 of the Act.

headings to take account of omissions of other provisions in an Act, minor error corrections, and formatting changes to achieve consistency with current practice or uniformity in style. The Act does not permit alterations to legislation that change the effect of the legislation.

Tasmania

6.31 The Tasmanian Legislation Publications Act 1996 contains provisions that are similar to those in Queensland and South Australia empowering the making of editorial changes in reprints. In particular, gender-specific language can be replaced, provisions can be renumbered, and minor errors can be corrected. Minor errors are defined as typographical, grammatical, or spelling errors, errors of punctuation, and errors in cross-referencing.

6.32 One power that, among the Australian jurisdictions, is unique to Tasmania is the ability to incorporate into a principal enactment any savings, transitional, validation, or other provision contained in an amendment Act, and make all necessary consequential amendments.

Ontario

6.33 The Ontario Legislation Act 2006 authorises the Chief Legislative Counsel to make certain changes in consolidated laws (reprints). Under this authority, the Chief Legislative Counsel may, among other things, correct spelling, punctuation or grammatical errors, or errors that are of a clerical, typographical or similar nature; alter the style or presentation of text or graphics to be consistent with the editorial or drafting practices of Ontario, or to improve electronic or print presentation; correct errors in the numbering of provisions or other portions of an Act or regulation and make any changes in cross-references that are required as a result; make a correction, if it is patent both that an error has been made and what the correction should be.

6.34 As in Tasmania, the Ontario Act provides that if a provision of a transitional nature is contained in an amending Act or regulation, the Chief Legislative Counsel may incorporate it as a provision of the relevant consolidated law and make any other changes that are required as a result.

6.35 Again, as in Australia and New Zealand, the Ontario legislation does not authorise any change that alters the legal effect of any Act or regulation.

Enhanced powers for New Zealand

6.36 We think that the current power to make editorial changes in reprints of New Zealand legislation is too narrow. As a result, reprints are harder to read and understand than they need to be. The power could usefully be enhanced by incorporating some of the powers that are found in overseas legislation, such as:

- the replacement of gender-specific language with gender-neutral language;
- the renumbering of provisions, or the numbering of provisions that are not numbered, and the making of all necessary consequential amendments;

- the correction of obvious typographical, grammatical, spelling, punctuation, cross-referencing, and similar errors;
- the making of changes to the way numbers, dates, times, quantities, measurements, and similar matters, ideas, or concepts are expressed so as to be consistent with current legislative drafting practice;
- the incorporation into a principal enactment of savings, transitional, validation, or other similar provisions contained in an amendment Act, and the making of all necessary consequential amendments.

6.37 The current reprint powers cannot be exercised to make any change that would change the effect of the legislation that is reprinted. That restriction should remain.

6.38 The draft Legislation Bill appended to this report incorporates the enhancements that we think should be made to the current list of reprint powers.

THE FUTURE OF REPRINTING: THE NEW LEGISLATION SYSTEM

6.39 The New Zealand Legislation Website went live in January 2008. When that happened, the primary focus of the PCO Reprints Unit shifted from the production of hard copy reprints to the officialisation of the database of legislation that underpins the New Zealand Legislation Website.[276] It is intended that the PCO will integrate its annual reprinting programme with the officialisation programme so far as this is possible. The Reprints Unit will need to strike a balance between the two programmes. However, a likely consequence of the officialisation programme is that fewer hard copy reprints can be produced during the officialisation period. The 2008/2009 Reprints Survey asked users to list the Acts that they would like reprinted, and also the Acts that they would like to see officialised first.[277]

6.40 The question is what the future of reprinting should be after the content of the New Zealand Legislation Website has been completely officialised, and the extent to which hard copy reprints should continue. As we intimated in an earlier chapter, we believe that there will remain a substantial number of users who will prefer hard copy, and will therefore prefer hard copy reprints. We thus believe that, as long as demand justifies it, the current PCO hardcopy reprint programme should continue.

6.41 However, the New Zealand Legislation Website has an advantage that hard copy reprints do not have: it is continuously updated. The electronic versions of Acts are updated to incorporate amendments as soon as possible after they are enacted or made. Hard copy reprints can state the law only as at the date they were printed and rapidly become out-of-date. That might happen within days or months of their publication date. Amendments passed after an Act is reprinted will not be incorporated until the next hard copy reprint, unless some form of manual updating of the kind that Brookers have done for so many years is available. Currently Brookers annotate their own privately produced bound volume reprint series but not the individual reprinted Acts issued by the PCO. Even then, manual updates can become out-of-date: they occur every 6 months,

276 The officialisation process is discussed in more detail in Chapter 2: The New Zealand Legislation Website and Legislation System, paras 2.12-2.17.

277 Parliamentary Counsel Office Annual "Reprints" http://www.pco.parliament.govt.nz/legislation/reprints.shtml (accessed 17 September 2007). The Reprints Survey closed on Friday 15 August 2008.

and there can be new amendments between updates. Furthermore, there are some Acts that have never been reprinted, and a good number that have not been reprinted for some considerable time.

6.42 So how is one to serve the needs of those users who continue to prefer hard copy? Currently, those people can use the latest hard copy reprint, but need to check on the website or in later hard copy Acts for any recent amendments. There is, however, a new development that may meet their needs better. It is print on demand technology. We believe a solution for some users will be to supplement the traditional published hard copy reprints with the ability to produce up-to-the-minute reprints from the New Zealand Legislation Website on a "print on demand" basis. We turn now to this subject.

Print on demand technology

6.43 "Print on demand" or "publish on demand" is a printing technology in which a printed copy is not created until after an order is received. Using traditional printing technology, such as letter press or offset printing, it is complicated, and prohibitive in economic and practical terms, to print a single unit of a text. For this reason, print on demand was developed only after the emergence of digital printing technology. It enables a single copy of a book to be printed easily.

6.44 Print on demand technology offers a nice compromise for hard copy users. The New Zealand Legislation Website will provide up-to-date PDF versions of all legislation. Up-to-date hard copy reprints could be printed on demand using the website's PDF versions as their source. Once officialisation is complete and a bill is passed to make the website an official source of statutes, these will be official versions of legislation. A user who lacked access to a printer, or simply wanted a bound copy of a reprinted Act, could order it from a commercial printer and receive it within maybe a 24-hour turnaround time. Acts could be ordered in the same ways they are currently: via booksellers that stock legislation; via a phone call to a customer services 0800 number; or via the publisher's website.

6.45 Print on demand technology could also facilitate more sophisticated variations on the current model of reprinting individual Acts.[278] For instance, it would be possible to print on demand, and bind, a volume that incorporated several Acts that all cover a single topic. That is, print on demand could allow users to order customised "subject volumes" on subjects that are particularly useful to them.

What would be a "reasonable price" for print on demand reprints?

6.46 The Acts and Regulations Publication Act 1989 requires the Chief Parliamentary Counsel to make available for purchase copies of Acts and regulations at a reasonable price.[279] Through the New Zealand Legislation Website, users now have access to a continuously updated electronic reprint of the entire statute book. This access is free. As mentioned already, the unit cost of an Act produced using print on demand would be higher than an Act produced as part of a large

278 This facility is someway in the future yet for New Zealand given the relatively small size of the market. But print on demand technology is likely to become more economically viable over time.

279 Acts and Regulations Publication Act 1989, s 10(1).

print run. Hard copy reprints are currently subject to a state subsidy. The higher cost of print on demand copies would have to be borne either entirely by the purchaser, or subsidised by the state to some degree.

6.47 In the context of the unprecedented access to the New Zealand statute book that the New Zealand Legislation Website delivers free of charge to users, there is a question as to what would constitute a reasonable price for an up-to-date, print on demand version of an Act or set of Acts. The cost per unit of producing the print on demand reprint can be two or three times higher than for a larger print run. However, the product will be completely up-to-date. Thus, print on demand can deliver a higher quality product than traditional methods; arguably, a better product can reasonably command a higher price. Furthermore, once the database of legislation behind the New Zealand Legislation Website is officialised, users will have free access to an official version of the same reprint via the New Zealand Legislation Website. That is, they will have a choice as to whether to access Acts electronically, or pay for print on demand hard copy versions. It should also be noted that if a group of users (for instance, a class of university students) wished to obtain a large number of copies of a reprinted Act, by ordering all the copies at once, it could take advantage of economies of scale and obtain the copies at a lower unit price.

6.48 We consider that it is reasonable in these circumstances for users wishing to purchase a print on demand reprint to pay a higher price than would be imposed under current price structures. We do not recommend that print on demand access should be subsidised by the state. Submitters that addressed this issue generally indicated a willingness to pay more for up-to-date print on demand reprints. They said cost was a factor, but generally said an extra cost for Acts printed on demand was reasonable in the context of free access to up-to-date, official versions of Acts via the New Zealand Legislation Website.

CONCLUSIONS

6.49 In summary, the Law Commission concludes that those persons who prefer to use hard copy reprints can be served by the current PCO reprint programme continuing; by the availability of the website for the purpose of checking for recent amendments or printing out an up-to-the-minute loose-leaf reprint; and by the possibility of purchasing print on demand reprints of individual Acts, or collections of Acts, which are up-to-the-minute.

6.50 Some users will no doubt continue to use the hard copy bound reprint service supplied by Brookers. Even those users will benefit from the availability of print on demand technology.

6.51 We consider that since users will have continual access to up-to-date official electronic reprints via the New Zealand Legislation Website, and because the Government currently subsidises hard copy reprints produced as part of normal print runs, it is not necessary for the Government to subsidise a value-added print on demand service. It is appropriate for users who wish to purchase up-to-date hard copy statutes via print on demand to cover the extra cost themselves.[280]

280 We note here the view of one submitter that providing Acts on a print on demand basis "should be strictly controlled under licence to credible and experienced operators so as to guarantee the integrity of such an 'official' service": Nigel Royfee, General Manager Publishing, Brookers Ltd (submission, 8 November 2007).

MISCELLANEOUS

6.52 Two rather more minor matters deserve notice, and were discussed in our 2007 issues paper. They relate to reprinting and the presentation of updated Acts. They have implications for accessibility, at least for more specialist users.

6.53 First there is a question of formatting. In the past, provisions amended or inserted were identified in a reprinted Act by square brackets in the text. Currently this is not done. According to the PCO, in the past, the principle was to provide a significant amount of editorial material and textual clues to legislative history. The rationale behind this approach was to aid lawyers undertaking legal research.[281] This approach was changed however, so that the aim is now "simply to present a current statement of the law rather than provide any editorial comment".[282] Currently, history notes alert users to the origins of amendments and square brackets are omitted. This produces a "clean" reprint version of the principal enactment, as if it had been enacted in that form in order to facilitate access by a wider range of users.

6.54 The PCO moved to this "clean" reprint style because it is easier to read. We note that some groups, particularly lawyers, found it useful in the past to be able to clearly see where a principal Act had been amended through the use of square brackets. A number of lawyers in their submissions favoured a return to the use of square brackets. However, the use of square brackets in the past sometimes made Acts confusing to read: for instance, a provision that had been amended several times could contain several sets of square brackets nested within each other. While it is a more complicated process now to discern this indirectly through history notes, the PCO faces a trade-off between keeping statutes up-to-date and accessible, and including added value features like this that are of use to a limited number of professionals such as lawyers and legislative drafters. We have reached the view that the current system of historical notes to sections is sufficient and should continue.[283] We do not recommend a return to square brackets.

6.55 The second matter is that non-textual amendments cannot be "inserted" in reprinted Acts. They have to be separately printed as appendages (called "skeletons") at the end of the principal Acts. The purpose provisions of amending Acts are often dealt with in this way; so are important matters such as commencements, expiries, and transitional and savings provisions. They can be overlooked by users and sometimes even by compilers. For example, the Electoral Act 1993 was reprinted on 17 June 2005, incorporating amendments made by the Electoral (Integrity) Amendment Act 2001. The purpose section of the Electoral (Integrity) Amendment Act 2001 was omitted altogether in the reprint.

6.56 We recommend that particular steps be taken to ensure that skeleton sections are not lost in the reprinting process. It would be desirable to devise a way of ensuring that the attention of users is clearly drawn to the existence of such non-textual amendments. Consideration might also be given to whether some

281 Geoff Lawn "Improving Public Access to Legislation: the New Zealand Experience (So Far)" (Law via the Internet 2003, 5th Conference on Computerisation of Law via the Internet, University of Technology, Sydney and University of New South Wales, Sydney, Australia, 26-28 November 2003) s 13.

282 Lawn, above, n 281, s 13.

283 We note also that there are technological ways of comparing texts to identify changes, for instance, comparing PDFs.

such provisions might be better inserted textually into the principal Act. This might be done during the original drafting process, or as part of producing a reprint. As to the latter, see our recommendations for enhanced reprint powers at paragraphs 6.36 to 6.38 above.

RECOMMENDATIONS

R10 The current system of the PCO reprinting individual statutes in hard copy should continue for the foreseeable future.

R11 Reprinted statutes should be available on a print on demand basis without state subsidisation for those who want up-to-date versions of Acts, or who want volumes of Acts on a particular topic.

R12 The system of historical notes to sections should continue as it is now. We do not recommend a return to the use of square brackets.

R13 Particular steps should be taken to ensure that savings provisions, transitional provisions and similar provisions, are not lost in the reprinting process.

R14 When reprinting statutes, in both electronic and hard copy formats, there should be enhanced powers to correct errors and make other editorial changes as outlined in this chapter.

Chapter 7
Revisions

IN THIS CHAPTER, WE

- give an overview of the history of revision in New Zealand;
- discuss the revision programmes of other jurisdictions, and the enabling legislation;
- consider the kind of revision that might be undertaken in New Zealand to improve the accessibility of Acts of Parliament;
- consider how revised Acts could be given the status of law ("approved");
- recommend that a programme of revision should be introduced in New Zealand to be carried out by the PCO;
- advise that new legislation should be enacted to authorise such a revision programme and provide for expedited enactment of revision bills; and
- make a recommendation regarding the related topic of substantive amendment.

INTRODUCTION

7.1 As we have seen in Chapter 6, reprints simply reproduce Acts of Parliament with amendments incorporated. They make only minor changes of an editorial nature to the act in question. In other words reprints are simply that: they reprint existing legislation, and are not separately enacted.

7.2 Reprints do not solve all, or even many, of the problems of access to statute law. Consolidation and revision can have more far-reaching effects.

Definitions of "consolidation" and "revision"

7.3 The terms "consolidation" and "revision" are not always consistently used.

7.4 While *consolidation* can be loosely used, the most common meaning is captured in this definition by Alec Samuels:[284]

> The statement or re-enactment of the statutory law… in a single or organised form, bringing all the scattered relevant statutory law together in one statute, in order 'to consolidate and reproduce the law as it stood before the passing of the Act'.

284 Alec Samuels "Consolidation: A Plea" (2005) 26 Statute LR 56, 56, citing *Gilbert v Gilbert* [1928] P 1, 7 (CA).

7.5 The classic, "pure" consolidation does not change the law, but simply re-enacts it in a more accessible form. It brings together law on the same topic that was previously contained in other Acts, and enables redrafting and reorganisation of an Act to make its content clearer. An example of a "pure" consolidation was the Administration Act 1908, which drew together a number of Acts on the administration of estates, including the Administration Act 1879 and its amendments, the Intestate Estates Act 1903, and the Domicile Act 1877.[285]

7.6 In fact, there has been very little "pure" consolidation. Most so-called consolidations in fact include provisions that amend the pre-existing law. Thus in New Zealand in the twentieth century it was common to find Acts that were described in their long titles as Acts to "consolidate and amend" the law. Sometimes the element of amendment was minor.[286] At other times it was significant, the new Act being a combination of original provisions and new ones.[287]

7.7 In this chapter, to avoid ambiguity, we prefer to use the term *revision*, meaning Acts that substantially re-enact earlier law. A revision can be a redraft of a single Act, or a combination of several. The purpose of a revision is to make the law more accessible.

HISTORY OF REVISION IN NEW ZEALAND[288]

Revision of Statutes Act 1879

7.8 In New Zealand's history there have been a number of major revision exercises. In 1879, a Revision of Statutes Act was passed. It replaced the Reprint of Statutes Act 1878 at the request of the Commissioners appointed under the 1878 Act; the Commissioners believed reprinting did not go far enough, and they wanted greater powers, including powers to consolidate provisions and correct errors.[289]

7.9 Like the Act it replaced, the 1879 Act established a Commission that was to prepare and arrange for publication an edition of all the public general Acts.[290] However, the powers accorded the Commissioners under the 1879 Act were broader than under its predecessor. The 1879 Act directed the Commissioners appointed to undertake such work to "revise, correct, arrange, and consolidate such Acts omitting all such enactments and parts thereof as are of a temporary character or of a local or personal nature, or have expired, become obsolete, been repealed, or had their effect".[291] The Commissioners were also instructed to "omit mere formal and introductory words…and…make such alterations as may be necessary to reconcile the contradictions, supply the omissions, and amend

285 JF Burrows *Statute Law in New Zealand* (3 ed, LexisNexis, Wellington, 2003) 96.

286 For example the Land Transfer Act 1952.

287 For example, the Indecent Publications Act 1963.

288 This section on the history of revision in New Zealand owes a great deal to the currently unpublished and excellent research of Mr Ross Carter of the Parliamentary Counsel Office. We are very grateful for his generosity in allowing us access to his research.

289 *Parliamentary Paper*, H.–20 of 1879.

290 Revision of Statutes Act 1879, section 3; essentially equivalent to section 2 of the Reprint of Statutes Act 1878, establishing a Commission.

291 Revision of Statutes Act 1879, s 4(2). Under section 4 of the 1878 Act, the Commission had had some of these powers, namely, to "omit all such enactments and parts thereof as have expired, been repealed, or had their effect".

the imperfections of the existing Acts".[292] The 1879 Act also required the Commission to prepare reports to the Legislature to accompany completed revisions of Acts,[293] in order that the revised Acts "may be enacted by the Legislature … if the Legislature shall think fit".[294]

7.10 By the time of its 1880 report, the Commission had prepared 15 consolidated bills absorbing 64 Acts.[295] A year later, the Commission had prepared a further 17 consolidated bills to replace 83 existing Acts.[296] The Commission finished its programme of consolidation during 1884. Its final report in 1884 noted that it had "prepared upwards of fifty bills, which consolidated nearly two hundred and eighty Acts and ordinances of the colony".[297] The consolidations were not enacted in any single Legislative session, but instead "ran through the statute books of several years, the volumes 1880, 1881, 1882, and 1886, in particular, containing the bulk of their finished effort; in 1881 appeared their volume of Imperial Acts in force in the Colony".[298] This meant that there was no separate edition of the revised Acts.

1908 Revision and re-enactment

7.11 In 1895, a new Reprint of Statutes Act repealed the Revision of Statutes Act 1879.[299] It provided for the setting up of a Commission with powers of revision, not mere reprinting.[300] The Act enabled the Commissioners to consolidate Acts, omit obsolete Acts, and make alterations to "reconcile the contradictions, supply the omissions and amend the imperfections of the existing Acts".[301] The 1895 Act led to what has been described as "the greatest of all reforms of our statute book".[302] In 1908, a Consolidated Statutes Enactment Act was passed. It revised and re-enacted virtually all of New Zealand's Acts: 806 Acts were consolidated and reduced to 208 Acts. Some of them remain in force today. Writing in 1941, the then Attorney-General, the Hon HGR Mason, said: [303]

> An interesting piece of legislative work was the consolidation that took place in 1908. Before that time the statutory law of New Zealand was to be found in some forty-seven volumes containing the enactments from 1840 onwards, much of it spent, repealed and otherwise obsolete. A Commission was set up to examine these,

292 Revision of Statutes Act 1879, s 4(3). Section 4 of the 1878 Act had also allowed the Commissioners to "omit mere formal and introductory words", but the 1879 Act's powers to make necessary alterations as described in section 4(3) were much wider than the limited powers under the earlier Act.

293 Revision of Statutes Act 1879, s 4(8).

294 Revision of Statutes Act 1879, s 5.

295 *Report of the Revision of Statutes Commission, 1880* (1880) AJHR A.9, 2-3.

296 AH McLintock and GA Wood *The Upper House in Colonial New Zealand – A study of the Legislative Council of New Zealand in the period 1854-1887* (Ward, Government Printer, Wellington, 1987) 199.

297 *Report of the Statutes Revision Commission, 1884* (1884) AJHR A.6, 1.

298 Sir Thomas Sidey "Revising the New Zealand Statute Book" (1932) NZLJ 300, 301.

299 Reprint of Statutes Act 1895, s 6.

300 Similarly to the 1879 Act, it required the Commissioners to prepare reports to the Legislature in respect of any necessary corrections or changes to the revised Acts (s3(4)-(7)) in order that they "may be enacted by the Legislature … if the Legislature shall think fit" (s 4).

301 Reprint of Statutes Act 1895, s 3(3).

302 Sidey, above, n 298, 302.

303 HGR Mason "One Hundred years of Legislative Development in New Zealand" (3rd series) (1941) 23 JCL & IL 1, 12-13.

> assimilate amendments and remove the useless matter, and the result of their labour was compressed into five large volumes containing the whole of the extant public enactments in a readable form, up-to-date and free from amendment. These were attached as a schedule to the Consolidated Statutes Enactment Act, 1908, and on its coming into force each of the consolidations received authority as an enactment of 1908, so that to-day, although some of the work of the pioneer legislators remains in force unaltered, no public Act is ever dated earlier than that year.

7.12 Although described as consolidation, it is clear that the Commissioners made good use of the power to make minor amendments. In the report that accompanied the new Act, they spent 27 pages listing amendments they had made. They also said:[304]

> Part of the duty imposed upon us is to report the contradictions, omissions, and imperfections appearing in the existing Acts, and the mode in which they have been reconciled, supplied, and amended. We do not understand this to require us to specify every alteration or change we have made. The resources of the printing-office would be unequal to such a task, as, apart from numberless verbal alterations, many Acts are almost wholly recast.

7.13 The comprehensive revision of 1908 was never repeated. In the years after 1908 there were instances of individual Acts being revised: obvious and well-known examples are the Income Tax Acts of 1976 (described in its long title as a "consolidation"), 1994, 2004 and 2007.

7.14 But when after 1908 it was felt that order needed again to be imposed on the statute book as a whole, it was reprinting rather than revision that was chosen. The 1931 and 1957 reprints, and the rolling reprints begun in 1979, have been discussed in the previous chapter. In his foreword to the 1931 reprint, Sir Michael Myers, the Chief Justice, explained the reasons for that choice. Having noted "the inherent difficulty of considering the mass of legislation now on the statute book (with all its complexities resulting from repeals, substitutions and verbal amendments)" he went on to say:[305]

> It is sufficient to state that the preparation of a consolidation could not satisfactorily be undertaken except by a body of men familiar with the law and, at the same time, skilled in the art of draftsmanship. Moreover, no matter how careful and competent such a body of men may be, a general consolidation and re-enactment must always be attended by the grave danger of the law being unintentionally altered, for a consolidation can never be effected by a mere repetition of the terms in which the law to be consolidated is expressed. A reprint of statutes, as distinguished from a consolidation, does not present these difficulties. An exact repetition of the law is the aim of such a reprint, and this can be secured by the exercise of a high standard of care, and difficulties of draftmanship are in no way involved.

THE CASE FOR REVISION

7.15 With the passage of time the case for systematic revision of our statute book has grown. The Law Commission is strongly of the view that it should be undertaken. We have noted in Chapter 3 some of the problems faced by a modern user of the statute book. A comprehensive revision could address some of these problems:

304 *The Reprint of Statutes Act 1895* Final (Supplementary) Report of Commissioners, 1908, iii.

305 Foreword to the Public Acts of New Zealand 1908-1931, vii-viii.

(a) Dead wood could be removed by the repeal of Acts and provisions that are effectively obsolete. Examples of this problem have been given in Chapter 3.[306] Removing from the statute book enactments or parts of enactments that are expired, obsolete, repealed or spent has been a focus of past revision exercises.[307] A large project of this kind was recently undertaken in the United Kingdom, resulting in the Statute Law (Repeals) Act 2008.[308]

(b) There could be rationalisation by drawing together into one Act provisions on the same subject that are currently spread over several different Acts. An example might be the Acts on legislation: currently the law on legislation is found in the Statutes Drafting and Compilation Act 1920, Acts and Regulations Publication Act 1989, Regulations (Disallowance) Act 1989, and Interpretation Act 1999. There are many other possibilities for drawing together, within a revised Act, provisions on the same subject. We give more examples later in the chapter. Such an Act could also often be given a new title that is more indicative of its subject matter.

(c) Inconsistency and overlap could be substantially reduced.

(d) Provisions that are currently "hidden" in inappropriate Acts could be relocated in more logical context.[309]

(e) Long Acts containing a variety of subject matter could be divided into a number of separate Acts.[310]

(f) Expression could be modernised and made plainer.

(g) Consistency of style and expression could be achieved. Acts that are much amended could be redrafted in their entirety to bring coherence. At present old Acts and their more modern amendments can exhibit different styles and modes of expression. As a simple example, the Crimes Act 1961, as reprinted with amendments incorporated, contains a mix of styles: some sections use "shall", others "must"; some use the masculine gender, others are gender-neutral. More marked is the Social Security Act 1964, where the differences in drafting style are very apparent, even within single sections where new subsections have later been added.[311]

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306 See Chapter 3: Current Problems with Accessing Statute Law, paras 3.36-3.37.

307 Reprints Act 1875; Revision of Statutes Act 1879, s 4(2), (3) and (5); Reprints Act 1891; Reprint of Statutes Act 1895, s 3(2) (3), and Statutes Repeal Acts 1902 and 1907.

308 On 27 February 2008 a Statute Law (Repeals) Bill was introduced into the House of Lords. It passed its third reading in the House of Lords on 6 June 2008, its third reading in the House of Commons on 9 July 2008, and the Statute Law (Repeals) Act 2008 received the Royal assent on 21 July 2008. It repeals 260 meaningless and defunct whole Acts and part repeals 68 other Acts. These date back centuries, ranging from laws on turnpikes and the East India Company to London workhouses and the aftermath of the Peterloo Massacre of 1819.

309 See Chapter 3: Current Problems with Accessing Statute Law, paras 3.18-3.20.

310 For instance, the Education Act 1989 is over 600 pages and over 350 sections long, and covers a wide range of subject matter, including: early childhood education, schools, tertiary education and Skill New Zealand.

311 For instance, section 86 of the Social Security Act 1964 has 16 subsections, numbered as follows: (1), (1A), (1B), (2), (2A), (2B), (2C), (3), (4), (5), (6), (7), (8), (9), (9A), (9B). Another five subsections have been repealed: (1C), (1D), (1E), (1F), (10). A number of subsections are still chiefly in their original forms (subss (2) and (3) – (8). Other subsections were inserted more recently, and a number of these have been amended or substituted since that time. For instance, subsection (1A) was inserted, as from 1978, by the Social Security Amendment Act 1978, then amended in 1998 by the Employment Services and Income Support (Integrated Administration) Act 1998, and then substituted, as from 2002, by section 22(1) of the Social Security (Personal Development and Employment) Amendment Act 2002. See also Chapter 3: Current Problems with Accessing Statute Law, paras 3.29-3.35.

(h) Non-textual amendments, which are currently unable to be included in the body of the principal Act in a reprint but stand as separate "skeletons", could be incorporated into the principal Act.

(i) The process of revision would bring to light areas where there are gaps in the law, where there is lack of consistent principle, or where the law has grown out-of-date and inappropriate to modern needs. In such cases the process of revision could only reveal such difficulties; substantive new legislation would be needed to correct them.

7.16 Revision too is not without difficulties. Among these is the fact that, given the volume and speed of legislative output these days, a revision could never be more than a still picture of a moving scene. It would be continually overtaken by new developments. So the process of revision would have to be continuous. Great care would have to be taken to ensure that moving provisions from one location to another did not affect the scheme of either Act. There can of course be dangers in including too much in a single Act, in that it can lead to further obscurity and complexity if provisions that are fundamentally different are clustered together. Overlong Acts are to be avoided. There is also the likelihood that the changes of wording between the new and the repealed versions of an Act would lead to arguments that the content of the law had changed.[312] Inconsistencies with the New Zealand Bill of Rights Act 1990 may also be revealed and need to be reported on or resolved. There is also the difficulty that revision can disturb familiarity: section numbers can change, and some relearning may be required of users. But in our view these drawbacks and risks are greatly outweighed by the benefits. Affected users should tolerate a little temporary discomfort in return for the benefit of improved comprehensibility.

7.17 The Law Commission believes that to make a real difference to the accessibility of the New Zealand statute book it is essential that a systematic programme of revision of the statute book be undertaken. Its purpose would be to enhance the accessibility of the law, not to change its substance. The majority of submitters on our 2007 issues paper supported such a programme.

7.18 A number of questions arise:

- What kind of revision programme should it be?
- Who would undertake the revision?
- What should the reviser's powers be?
- How should the revision be approved and given the status of law?

Before we answer these questions, it will be helpful to see how the task was undertaken in New Zealand in 1908, and how it has been handled in other jurisdictions.

THE 1908 NEW ZEALAND REVISION

7.19 We have already outlined the features of the New Zealand revision – or consolidation as it was called – of 1908. The statute that empowered the consolidation was the Reprint of Statutes Act 1895. It provided for the appointment of Commissioners, then provided:

> 3. The Commissioners so appointed shall have the following powers, duties, and functions:-

312 See the Rt Hon Sir Alexander Kingcome Turner "Changing the Law" (1969) 3 NZULR 404, 414 – 417.

(1) They shall prepare and arrange for publication an edition of all the Public General Acts:

(2) They shall revise, correct, arrange, and consolidate such Acts, omitting all such enactments and parts thereof as are of a temporary character or of a local or personal nature, or have expired, become obsolete, been repealed, or had their effect:

(3) They shall omit mere formal and introductory words, and all enactments repealing any matter, and shall make such alterations as may be necessary to reconcile the contradictions, supply the omissions, and amend the imperfections of the existing Acts:

(4) They shall also report upon such contradictions, omissions, and imperfections as may appear in the existing Acts, with the mode in which they have reconciled, supplied, and amended the same:

(5) They may indicate such Acts or parts of Acts as in their judgment ought to be repealed, with their reasons for such repeal, and may recommend the passing of such new enactments as may, in their judgment, be necessary:

(6) They may indicate in any report such enactments or proposed measures of the Imperial Parliament as, from their general interest and importance, the Commissioners may think it desirable should be adopted and made applicable to the colony:

(7) They shall from time to time report to the Governor their progress and proceedings, and in every such report shall show any proposed new matter in different type from that which shows the existing law; and, when they shall have completed the revision and consolidation of the Acts relating to any separate branch of the law, they shall cause a copy of the same to be submitted to the Governor.

4. The Governor shall from time to time transmit to the Legislature the said reports, together with the Acts so revised and consolidated as aforesaid, in order that the said Acts may be enacted by the Legislature and the force of law given thereto, if the Legislature shall think fit.

As noted above,[313] the 208 revised Acts that resulted were passed as a single schedule to one bill.

OTHER JURISDICTIONS

7.20 Other jurisdictions have revision programmes that can provide useful guidance. Canada, both at the federal and provincial level, has wide experience of the revision process.

Canada

7.21 All the Canadian provinces and territories except one have a history of conducting periodic revisions of their Acts of Parliament.[314] Each of these provinces and territories has enabling legislation that authorises the revision process.[315]

313 See above, para 7.11.

314 The province of Saskatchewan does not have such a history.

315 For instance, Statute Revision Act, RSA 2000, ch S-19 (Alberta); Statute Revision Act, RSBC 1996, ch 440 (British Columbia); Department of Justice Act, CCSM, ch J35 (Manitoba); Statute Revision Act, SNB 2003, ch S-14.05 (New Brunswick); Statute Revision Act, SNWT 1996 (Northwest Territories; Nunavut); Statute Revision Act, RS 1989, ch 443 (Nova Scotia); Statutes and Subordinate Legislation Act, RSNL, ch S-27 (Newfoundland and Labrador); Statute and Regulation Revision Act 1998, SO 1998, Ch 18, sch c (Ontario); An Act Respecting the Consolidation of Statutes and Regulations, RSQ, ch R-3 (Quebec).

This is also the case at the federal level.[316] Responsibility for conducting revisions of Acts of Parliament generally is vested either with Legislative Counsel,[317] or with another body,[318] usually a Commissioner or Commission.[319]

Effectiveness of revision in Canada

7.22 The history of revision in Canada is long, both federally and provincially. For instance, the first revision in the province of British Columbia was in 1877, only six years after it joined Canada in 1871. By 1996, the province had completed a total of ten full revisions,[320] at variable intervals ranging from nine to 19 years.[321] Since confederation in 1867, the federal Acts of Canada have been revised six times.[322]

7.23 This process has been largely very successful. It has allowed Canadian jurisdictions to improve and update the arrangement and drafting style of their Acts. The long history of revision in the country demonstrates that, based on first hand experience of previous revisions, for well over one hundred years, it has been thought worthwhile in almost every province to conduct revisions. While no formal decision has been taken in most provinces to cease full revision, the last two decades have seen a move away from full revision to phased or limited revisions on an ongoing basis. More will be said later in this chapter about the reasons for the move away from full revision and towards phased revision.[323]

Revision powers

7.24 The enabling revision Act in each Canadian jurisdiction gives the revising person or body powers that may be employed in the revision process. The scope of these powers varies. Certain basic powers are common to all empowering revision Acts. For instance, a revision requires at least the power to correct clerical,

316 Statute Revision Act, RSC 1985, ch S-20.

317 In Newfoundland and Labrador, Ontario and Yukon, the respective Legislative Counsel Offices are responsible for revision. In Alberta, Nova Scotia, and British Columbia, responsibility rests specifically with the Chief Legislative Counsel. In New Brunswick, revision is carried out by a Statute Revision Steering Committee, comprising the Director and two other employees of the Legislative Services Branch of the Office of the Attorney-General.

318 In Quebec, revisions are conducted by the Statute Revision Branch of the Department of Justice. In Manitoba, the Minister of Justice is responsible for revision, and may appoint a Special Committee on Law Revision, of which the Minister shall be a member.

319 The most recent revision of the federal public Acts was conducted by the Statute Revision Commission of the Legislative Services Branch. Responsibility for revision in the Northwest Territories and in Nunavut rests with a Statute Revision Commissioner for each of those territories, appointed by the Ministers of Justice of the respective territories.

320 These revisions were in 1877 (176 Acts); 1888 (121 Acts); 1897 (195 Acts); 1911 (247 Acts); 1924 (279 Acts); 1936 (313 Acts); 1948 (371 Acts); 1960 (413 Acts); 1979 (437 Acts); 1996 (494 Acts).

321 JE Erasmus "Statute Revision in British Columbia: Recent Developments from a Jurisdiction with a Long History of Statute Revision" (Conference of the Commonwealth Association of Legislative Counsel, London, United Kingdom, 7-9 September 2005) 1. Available on the CALC Website http://www.opc.gov.au/calc/docs/Article_Erasmus_StatuteRevisionBritishColumbia_2007.pdf (accessed 17 September 2008).

322 These revisions were in 1886 (185 statutes); 1906 (155 statutes); 1927 (217 statutes); 1952 (340 statutes); 1970 (441 statutes) and 1985 (362 statutes).

323 See paras 7.31-7.32.

grammatical, or typographical errors; to make such changes in language and punctuation as are necessary for consistency of drafting style; and to omit repealed, redundant, or spent provisions.

7.25 However, other powers are broader than these. Many Canadian revision Acts authorise revisers to renumber and rearrange Acts or their sections or provisions. This is clearly a useful power for a reviser to have in that it can allow improvements in the way that individual Acts or groups of Acts are structured, and allow provisions on like subjects to be grouped together. Such powers are significant and can have an impact on the clarity of the Acts themselves. One of the most potentially wide-reaching powers is the power given by a number of Acts to alter the wording of Acts where necessary or desirable in order to better express, but not alter, the spirit and meaning of the law. This power presumes that revisers will know the intended meaning and spirit of a provision and will also know how to better express it.

7.26 Excerpts from the revision Acts of two provinces are reproduced below. The selected provinces have some of the broader available revision powers. The revision powers provided for in the Manitoba Act are as follows:[324]

Powers of Revising Officer

5(2) In preparing a draft consolidation and revision of the statutes of the province, the person charged with preparing the draft may:

(a) omit therefrom all Acts and parts thereof that have expired, been repealed or suspended, or had their effect;

(b) alter the numbering and the arrangement of the statutes in force on the completion of the work, and of the different sections and other provisions thereof;

(c) *revise and alter the language of the statutes where necessary or desirable in order to express better the spirit and meaning of the law, but, subject as herein provided, not so as to change the sense of any enactment;*

(d) alter the language of the statutes as may be required in order to preserve a uniform mode of expression;

(e) *make such minor amendments to the statutes as are necessary in order to state more clearly what he deems to have been the intention of the Legislature;*

(f) *make such amendments as are required to reconcile seemingly inconsistent enactments, or to correct clerical or typographical errors;*

(g) omit therefrom all Acts or parts thereof that, although public enactments, have reference only to a particular municipality, locality, or place, or have no general application throughout the province;

(h) include therein Acts or parts thereof that, although originally enacted as, or deemed to be, private Acts or enactments, are of such a character that they impose duties or obligations upon, or limit the rights or privileges of, the public; and

(i) frame new provisions and suggestions for the improvement of the laws.

[emphasis added].

324 Department of Justice Act, CCSM, ch J35, s 5(2) [emphasis added].

7.27 In British Columbia, certain core powers or authorities have been in place since 1924, but since then there have been a number of innovations and additions, in particular in the 1992 Act.[325] One such new power is the ability to move to regulations forms and schedules that would be more appropriately dealt with in that manner. Under that Act, revisers have, in addition to powers closely similar to those in the Manitoba Act, the following:[326]

> **2 Revision powers**
>
> (1) In preparing a revision, the Chief Legislative Counsel may do any or all of the following:
>
> (a) combine Acts or provisions of them;
>
> …
>
> (c) rename an Act or portion of an Act;
>
> …
>
> (j) omit forms or schedules from an Act.
>
> (2) If a form or schedule is omitted under subsection (1)(j), a power to prescribe the form or schedule by regulation may be added to the appropriate Act.
>
> …

As in Manitoba, there is power to "make minor amendments to clarify the intent of the Legislature".[327]

7.28 Interestingly, revisers in the provinces with the widest powers appear to exercise those powers very cautiously and conservatively. A *National Survey of Legislative Drafting Services*[328] conducted in 2002 noted, for instance, that Manitoba "makes only limited modifications" to Acts in the revision process. This is notwithstanding its broad powers as set out above. Similarly, Legislative Counsel in British Columbia have said:[329]

> We approach the limited authority to make "minor amendments" very cautiously. That authority will generally be used only to correct grammatical or typographical errors or to clarify relationships between provisions where these are clear from a careful reading of the legislation.

Scope of revisions: full and phased revisions

7.29 In the past, Canadian provinces and territories and the federal government have undertaken full or complete revisions, under which the statute book as a whole is revised in "one go". An example of the kind of language used to authorise periodic full revisions can be found in the federal enabling Act, which provides that "The Commission shall, from time to time, arrange, revise and consolidate

325 Erasmus, above, n 321, 5-7.

326 Statute Revision Act, RSBC 1996, Ch 440, s 2(1).

327 Ibid, s 2(1)(e).

328 Lionel A Levert QC, Special Adviser, Legislative Drafting, The International Cooperation Group, Department of Justice, Ottawa, Canada *National Survey of Legislative Drafting Services* (International Cooperation Group, Ottawa, 2002).

329 Office of Legislative Counsel *A Guide to Legislation and Legislative Process in British Columbia: Part 4: Statute Revisions* (Office of Legislative Counsel, Ministry of Attorney-General, Province of British Columbia, August 2003) 2.

the public general statutes of Canada".[330] The full revision approach involved periods of several years of intense revision activity, and then generally periods during which the revised Acts were gradually amended until, some years later, it became necessary to once again revise the statute book.

7.30 The most recent full revision of the federal Acts was in 1985. Many Canadian provinces and territories have conducted full revisions within the last 20 years, and several have done so within the last ten years.[331] However, our advice from several Canadian provinces, and from the federal government, is that most do not have plans to continue with a programme of full revision in the future.[332] The current focus for many is on the newer concept of limited or phased revisions of individual Acts,[333] based on the new model introduced in British Columbia's 1992 revision Act:[334]

> The Chief Legislative Counsel may prepare:
>
> (a) a general revision consisting of the public Acts enacted before a date chosen by the Chief Legislative Counsel together with those other Acts considered advisable, or
>
> (b) *a limited revision consisting of an Act or a portion of an Act.*
>
> [emphasis added].

7.31 Several themes emerged from our correspondence with Canadian provinces, territories and the federal government in connection with this trend towards limited or phased revision.[335] First, the feeling among jurisdictions that had recently completed full revisions was that partial or phased revision is a more efficient and effective means of ensuring access to an up-to-date version of the statute book than full revision. Some Acts, such as taxation Acts, are subject to much more amendment than others. Many of these are also high demand Acts that are heavily used. Such Acts are likely to require revision much earlier than some other parts of the statute book. Partial revisions target the areas of the statute book that most need revision, when they need it. Secondly, several provinces that have completed full revisions in the last decade noted that

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330 Statute Revision Act, RSC 1985, ch S-20, s a.

331 For instance, Manitoba's most recent full revision was in 1987; in Prince Edward Island, 1988; in Nova Scotia, 1989; in Ontario, 1990; in Alberta, 2000; and in Yukon, 2002. The most recent completed revision of the New Brunswick statutes was in 1973, but another full revision, begun in 2001, is still underway at the time of writing.

332 In Nunavut, the newest Canadian territory, a revision was begun in 2002 but was not completed. In late 2003 it became clear that, due to funding and human resources challenges, work on the revision was no longer progressing and a formal decision was made to redirect the resources of the Legislative Division of the Department of Justice to the consolidation of Acts and regulations. At the time of writing, the process of producing up-to-date consolidations of all of the Nunavut statutes was still a work in progress.

333 Steven Horn, Chief Legislative Counsel, Department of Justice, Government of Yukon to Law Commission (1 May 2007) Email; Valerie Perry, Legislative Counsel and Assistant Deputy Minister, Department of Justice, Government of Manitoba to Law Commission (26 April 2007) Email; Peter Pagano QC, Chief Legislative Counsel, Legislative Counsel Office, Alberta Justice to Law Commission (18 April 2007) Email; Janet Erasmus, Acting Chief Legislative Counsel, Office of Legislative Counsel, Department of Attorney-General, British Columbia to Law Commission (15 May 2007) Email; John Mark Keyes, Chief Legislative Counsel, Legislative Services Branch, Federal Government of Canada to Law Commission (20 April 2007) Letter.

334 Statute Revision Act [RSBC 1996] Ch 440, s 1 [emphasis added].

JE Erasmus notes that the concept of phased or limited revision was one which the Office of Legislative Counsel had "never seen used elsewhere": above, n 333, 7.

335 These points are relevant to reprinting as well as to revision.

this had been a large and time-consuming task. Few seemed eager to begin another full revision in the near future. Thirdly, several Canadian jurisdictions noted the growing public desire for up-to-date Acts available online on a real-time basis, suggesting that ensuring this kind of access is overtaking revision as a central concern of governments and legislative counsel.

7.32 Related to these themes is a fourth issue of financial cost, as the federal revision experience illustrates. The federal Statute Revision Act was enacted in 1974 to provide for the periodic and continuing full revision of the Canadian federal Acts.[336] The Statute Revision Commission established by the Act consisted of three Commissioners and had a staff of seven legislative editors, a jurilinguist and a legal counsel serving as secretary to the Commission. The Commission worked steadily, publishing the *Consolidated Regulations of Canada, 1978* (in 1979), the *Revised Statutes of Canada, 1985*, which came into force on 12 December 1988, and an unofficial loose-leaf edition of the statutes, which was discontinued following the 5th update, in 1993. However, in the early 1990s, a budget measure terminated the funding for the Commission, although the Act establishing it remained on the books. The Legislative Services Branch of the Department of Justice then became responsible for maintaining a database of the consolidated Acts and regulations, and the focus since that time has shifted from full revision to partial or phased revision and the provision of electronic access to the consolidated Acts.[337]

Mode of approving revised Acts

7.33 Any jurisdiction that conducts statute revisions requires a method for approving revised Acts. In Canadian jurisdictions, this is generally a parliamentary examination and approval process. Sometimes the Legislature itself examines a revision, approves it, and then brings it into force. Often however, in the interests of efficiency, a subcommittee of the Legislature completes some or all of these steps on the Legislature's behalf. A number of provinces and territories, including Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Yukon, Nunavut and the Northwest Territories, employ revision approval procedures that are similar:[338]

- The first step is for the completed revision of Acts of Parliament to be presented to the Legislature for examination and approval by the Legislature.

  In Alberta, Ontario, New Brunswick and the Northwest Territories, this specifically involves depositing the revision with the Clerk of the Legislative Council as an official copy of the revision.[339] In Manitoba and Nova Scotia the completed revision is deposited instead with a specific

336 Statute Revision Act, RSC 1985, c S-20.

337 Keyes, above, n 333.

338 Note, however, that since the territory of Nunavut uses the Northwest Territories' Act, only the latter territory is expressly referred to in this part of the paper.

339 Statute Revision Act, RSA 2000, ch S-19, s 4(1) (Alberta); Statute and Regulation Revision Act, SO 1998 ch 18 sch C, s 3(1) (Ontario); Statute Revision Act, SNB, 2003, ch S-14.05, s 5(1) (New Brunswick); Statute Revision Act, SNWT 1996, ch 16, s 7(3) (Northwest Territories); and Continuing Consolidation of Statutes Act RSY 2002 ch 41, s 8 (Yukon).

Committee of the Legislative Assembly.[340] British Columbia combines these two models, with the revision being presented to the Clerk of the Legislative Assembly for presentation to a Select Standing Committee of the Assembly, designated by the Assembly to examine the revision.[341]

- The next step is approval of the revision.

  In the case of the Northwest Territories, the Legislative Assembly approves the revision by motion.[342] In Nova Scotia, the Law Amendments Committee approves the revision.[343] In Manitoba, the Special Committee on Law Revision approves the revision and then refers it for enactment to the Legislature.[344] In British Columbia, the Select Standing Committee approves the revision.[345] The revision Acts of Alberta, Ontario, Yukon and New Brunswick do not expressly refer to an approval process of this type.

- The next step is for the revision to come into force, usually by proclamation or declaration.

  In Alberta, Ontario, Yukon and New Brunswick, the proclamation is made by the Lieutenant Governor in Council;[346] in Nova Scotia, the Governor in Council makes the proclamation.[347] In the Northwest Territories, the Commissioner brings the revision into effect by declaration.[348] In Manitoba, the Legislature itself enacts the revision.[349] In British Columbia, the Lieutenant Governor in Council may bring the revision into force by regulation.[350]

7.34 The process for approving federal revisions provides for parliamentary examination of revised Acts, followed by parliamentary enactment:[351]

Parliamentary examination

7(1) During the progress of the preparation of a revision or on the conclusion thereof, or both during the progress and on the conclusion thereof, the Minister shall cause drafts of the statutes so revised to be laid for examination and approval before such Committee of the House of Commons and such Committee of the Senate, or such Committee of both Houses of Parliament, as may be designated for the purpose of the examination and approval.

340 In Nova Scotia, the revision is submitted to the Law Amendments Committee of the Assembly: Statute Revision Act, RSNS 1989, ch 443, s 4(1). In Manitoba, the revision is submitted to the Special Committee on Law Revision of the Legislature: The Department of Justice Act, CCSM, ch J35, s 6(3).

341 Statute Revision Act, RSBC 1996, ch 440, s 3 (British Columbia).

342 Statute Revision Act, SNWT 1996, ch 16, s 7(3) (Northwest Territories).

343 Statute Revision Act, RSNS 1989, ch 443, s 5 (Nova Scotia).

344 The Department of Justice Act, CCSM ch J35, s 7(2) (Manitoba).

345 Statute Revision Act, RSBC 1996, ch 440, s 4(1) (British Columbia).

346 Statute Revision Act, RSA 2000, ch S-19, s 4(1) (Alberta); Statute Revision Act, SNB, 2003, ch S-14.05, s 6(1) (New Brunswick); Statute and Regulation Revision Act 1998, SO 1998, ch 18, sch c, s 3(2) (Ontario); Continuing Consolidation of Statutes Act RSY 2002 ch 41, s 12(1) (Yukon).

347 Statute Revision Act, RSNS 1989, ch 443, s 6(1).

348 Statute Revision Act, SNWT 1996, ch 16, s 11(1).

349 The Department of Justice Act, CCSM ch J35, s 8.

350 Statute Revision Act, RSBC 1996, ch 440, s 5(1) (British Columbia).

351 Statute Revision Act, RSC, 1985, ch S-20, s 7.

Enactment of Revised Statutes

(2) When drafts of all the statutes included in a revision have been examined and approved by the Committee or Committees referred to in subsection (1), the Minister shall cause to be prepared and introduced in Parliament a bill substantially in accord with the model bill set out in the schedule, or to the like effect.

7.35 The effect is that a revision has primary force. That is, unlike a reprint, it is enacted.

Australia

7.36 Legislative counsel in Queensland, South Australia and Tasmania have a range of powers for the preparation of reprints which are wider than those currently available in New Zealand. Some of these are close to the boundaries of revision. We have described these powers in our chapter on reprinting, and there recommend that similar reprinting powers be adopted in this country. It is of interest to note, however, that section 5 of the South Australian Legislation Revision and Publication Act 2002 does refer to "revision". It states:

(1) There is to be an ongoing program for the revision and publication of legislation.

(2) The principal object of the program is to consolidate public general legislation and make up-to-date copies of the public general legislation available to members of the public in printed and electronic form.

Nevertheless, the powers in the South Australian Act are not extensive, and it is probably better described as authorising reprinting rather than revision as the latter term is used in this report. The Canadian jurisdictions provide more suitable models for revision as we envisage it.

United Kingdom

Revision powers

7.37 There is in the United Kingdom a Consolidation of Enactments (Procedure) Act 1949.[352] It authorises the Lord Chancellor to prepare a bill to consolidate enactments relating to any subject, and in doing so, to make corrections or minor improvements.[353] The revision powers are not as broad as those in many of the Canadian jurisdictions. The Lord Chancellor has no powers to renumber or reorder provisions for instance. Corrections and minor improvements are defined in the Act to mean:[354]

[A]mendments of which the effect is confined to resolving ambiguities, removing doubts, bringing obsolete provisions into conformity with modern practice, or removing unnecessary provisions or anomalies which are not of substantial importance, and amendments designed to facilitate improvement in the form or manner in which the law is stated, and includes any transitional provisions which may be necessary in consequence of such amendments.

352 See HH Marshall "Statute Law Revision in the Commonwealth" (1964) 13 Int Comp LQ 1407, 1409.

353 Consolidation of Enactments (Procedure) Act 1949, s 1(1) (UK).

354 Ibid, s 2.

Approval procedure

7.38 The approval procedure for a consolidation in which the revision powers under the 1949 Act are exercised is a parliamentary examination and approval process similar to the Canadian approach:

- First, the Lord Chancellor is required to lay before Parliament a memorandum proposing the corrections and minor improvements.[355]
- Notices are also published in the *Gazette* specifying where copies of the memorandum can be obtained and the time period during which representations regarding the memorandum can be made.[356]
- Later, a bill to consolidate the enactments to which the memorandum relates, with such corrections and minor improvements, may be presented to either of the Houses of Parliament. The bill and memorandum are then referred to a joint committee of both Houses. Any representations regarding the memorandum in accordance with the provisions of the notice published in the *Gazette* will also be referred to the joint committee.[357]
- The committee considers the bill and any representations and informs the Lord Chancellor and the Speaker of the House of Commons of which corrections and minor improvements it is prepared to approve.[358]
- The committee can only approve corrections and minor improvements that do not effect any changes in the existing law that in the committee's opinion are of such importance that they ought to be separately enacted by Parliament.[359]
- The effect of this is that the corrections and minor improvements approved by the committee will be treated as if they had been made by an Act.[360]

7.39 The Law Commissions Act 1965 also provides that the Law Commission can carry out programmes of non-substantive statute law revision.[361] These revision bills are also scrutinised by a joint select committee of both Houses, which gives its views to Parliament.[362]

7.40 However, despite the provisions of the Consolidation of Enactments (Procedure) Act 1949 and the Law Commissions Act 1965, there have been relatively few consolidations in the United Kingdom. Consolidation is a highly skilled task requiring careful work by Parliamentary counsel and support from government departments involved. One of the reasons that consolidation has not been more widespread is that departments often decide to devote their resources to other

355 Ibid, s 1(1).

356 Ibid, s 1(2).

357 Ibid, s 1(3).

358 Ibid, s 1(4).

359 Ibid, s 1(5).

360 Ibid, s 1(7).

361 Law Commissions Act 1965, s 3(1)(d) (UK).

362 See Lord Simon and JVD Webb "Consolidation and Statute Law Revision" [1975] PL 285; H Brooke "The Role of the Law Commission in Simplifying Statute Law" (1995) 16 Stat LR 1; and M Arden "Improving the Statute Book: A Law Reformer's Viewpoint" (1997) 18 Stat LR 169.

tasks.[363] There are relatively few Acts that departments want consolidated at the expense of other projects;[364] without greater departmental support, consolidation has not been widespread.

7.41 In 1975, Lord Renton issued a famous report in the United Kingdom. Entitled "The Preparation of Legislation" it isolated the same problems we have identified in New Zealand. Even after the legislation of 1965 he said that Acts were presented inaccessibly:[365]

> the provisions relating to a given matter are to be found not in one self-contained Act but in a series of Acts piled one upon another at different dates.

Lord Renton advocated increasing consolidation. Although there had been difficulties, "given time and will power" they could, he believed, be overcome. In a submission to the Renton Committee, Francis Bennion advocated the establishment of a statutory commission:[366]

> 55. In my submission the history and present state of the statute-book irresistibly point to one conclusion. It is that the problem of obscure statute law will not be solved until a body is established whose primary function is to keep under continuous review the state of our statute law, and to promote and execute the activities needed to put the statute-book into a satisfactory condition, and keep it there. This body would be, as it were, the keeper of the statute-book, and might well take the form of a statutory commission.

Progress in the United Kingdom is still unsatisfactory.

Other jurisdictions

7.42 We have above discussed the position in a number of overseas jurisdictions. They are not the only overseas jurisdictions to have such programmes. Malaysia, for example, has since 1968 had a Commissioner with power to revise and reprint laws without changing substance. The Revision of Laws Act 1968 confers very similar powers to those in the Canadian provinces.[367]

7.43 There is much to be learned from these overseas models. We turn now to consider what should be the features of the New Zealand revision programme.

A PROGRAMME OF REVISION FOR NEW ZEALAND

7.44 We recommend a programme of revision for New Zealand. We deal in turn with the questions we posed earlier.

363 Arden, ibid, 169-170.

364 As Guido Calabresi has noted "getting a statute enacted is much easier than getting it revised". Guido Calabresi *A Common Law for the Age of Statutes* (Harvard University Press, Cambridge, Massachusetts, 1982) 6.

365 David Renton *The Preparation of Legislation: Report of a Committee Appointed by the Lord President of the Council* (HMSO, London, 1975) Cmnd 6053, IX.1.

366 Bennion's submission is reproduced in "Renton and the Need for Reform", a monograph produced on behalf of the Statute Law Society in 1979, 27-51. The quotation is at para 55.

367 We note also the recent report and consultation paper of the Irish Law Reform Commission: *Statute Law Restatement: Report* (LRC 91-2008, Dublin, July 2008); and *Legislation Directory: Towards a Best Practice Model: Consultation Paper* (LRC CP 49-2008, Dublin, July 2008).

What kind of revision process?

7.45 The most effective action would be to undertake a comprehensive revision of the whole body of statute law, as was last done in 1908, and enact it "all in one go." The fact that it was done in 1908, with fewer resources than are now available, shows that such a feat is not beyond imagination. But the cost in terms of time and money would be enormous. There is much more law now than there was in 1908, and the law today is much more various. The revision of the income tax legislation began with the reordering and renumbering of the Income Tax Act 1976, setting out the core provisions in Part B of the Income Tax Act 1994 with an alphanumeric numbering system. In 1996, the next stages of the rewrite process were begun. This resulted in the Income Tax Act 2004. Producing that Act alone took eight years.[368] Then, three years later, the Income Tax Act 2007 was passed and the income tax rewrite project completed.[369] Any such wider revision project would require the continuing direction and determination of a group of committed and knowledgeable individuals. It would be a long time before the task was completed.

7.46 Another approach, instead of a comprehensive revision all at once, would be to initiate a phased programme of revision, which would involve the enactment of several revised Acts a year over a period of time. Such revisions happen now – the Income Tax Acts just referred to are recent examples. However, what is suggested is a methodical, staged approach, with the object of eventually revising all legislation in need of revision. This would have the advantage that the Acts most in need of revision could be attended to and re-enacted individually, without the need to wait for the completion of the whole task. As we have seen, phased or progressive revisions of this kind are now favoured in Canada.

7.47 The Law Commission favours this phased approach. It would mean that every year something would be achieved. If an "all at once" approach were adopted, nothing would emerge for a very long time; in the meantime, matters would get progressively worse.

7.48 The phased approach was also favoured by a number of submitters. One said:

> The paper identifies several options for systematic revision. The option favoured by this Office is described in paragraphs 323 to 324: a methodical, staged approach with the object of revising all legislation in need of revision. We agree with a targeted approach that identifies those areas of the law where the problems identified in paragraph 321 are most clearly demonstrated. It is sensible to develop a prioritised programme of revision to address these issues.

368 Rewrite Advisory Panel *Panel Statement: Process for Resolving Unintended Legislative Changes in the Income Tax Act 2004* (RAP 001, 2004) http://www.rewriteadvisory.govt.nz/rap001.pdf (accessed 17 September 2008).

369 The Income Tax Act 2007 was introduced on 15 November 2006; it had its first reading on 23 November 2006, was reported back from select committee on 16 July 2007, had its second reading on 16 August 2007, had its third reading on 26 October 2007 and received the Royal assent on 1 November 2007.

7.49 Under this approach, the Acts most in need of revision would be selected and dealt with first. There would be a triennial programme to coincide with a term of Parliament. Sometimes Acts on similar topics would be combined into a single Act. Other times it might simply be that individual Acts would be rewritten in more accessible and modern language.

Who would undertake the task?

7.50 The task of revision would obviously require time, resources, and considerable skill. The capacity of the New Zealand Legislation Website to allow searches for terms within the database of legislation would be of assistance. However, most of the work would have to be done manually. The people who undertook the task would need to be knowledgeable in the law and be skilled drafters. The 1908 consolidation was accomplished, nominally at least, by a team of Commissioners appointed under Act of Parliament. They were Sir Robert Stout (the Chief Justice), Dr Frederick Fitchett (the Solicitor-General), and Mr WS Reid, a former Solicitor-General. However, obviously the bulk of the work was not done by the commissioners themselves. It was undertaken by the Law Draftsman, Mr William Jolliffe, who had begun work long before the Commissioners were even appointed. Although the Commissioners were not entirely happy with some of Jolliffe's work, and found the need to revise it, there is no doubt that he was the leading force. The Leader of the Opposition, Mr Massey, said in the House during the debate on the Consolidated Statutes Enactment Bill:[370]

> We all know – I know, at least – that for years before the Commission was appointed he gave his spare time to the work, and gave it without fee or reward; and since then he has worked in a whole-hearted manner for the success of the consolidation. I repeat that had it not been for Mr Jolliffe the statutes would not have been on the table of the House today.

7.51 We believe there would be advantage in having a Committee of eminent persons – perhaps the Chief Parliamentary Counsel, the Solicitor-General, the President of the Law Commission and a retired judge appointed by the Attorney-General – to certify the revised statutes, so as to give assurance that they do not contain changes of substance and to ensure that the revision powers have been properly exercised. We expand on this idea later in this chapter. But the actual work of the revision must be entrusted to the Parliamentary Counsel Office. That Office should prepare a triennial programme of revision. It is our recommendation that this function be written into the PCO's constitutive statute. More will be said about this later in this chapter.

The revision powers

7.52 The next question is what the powers of the revisers should be. As we have seen, the enabling provisions of the overseas jurisdictions differ a little in this regard. The essence of the powers must be that the substance of the law is not to be changed, but that it is to be made more accessible and expressed with clarity in modern language.

370 (31 July 1908) NZPD 57. We are indebted to Mr Ross Carter for this material.

7.53 The provisions in the New Zealand Act of 1895 are a useful beginning, but not sufficiently detailed for our purposes. The provisions of the various Canadian provincial revision statutes contain useful precedents. We believe that the New Zealand revisers should have express powers to:

- alter the arrangement of an Act so that the order of its provisions is more logical;
- alter language so as to better express what is intended;
- reconcile seeming inconsistency;
- correct obvious errors;
- combine provisions from two or more Acts into one or more other Acts;
- relocate provisions from one Act into another Act;
- include outline or overview provisions that signpost, or cross-reference to, relevant provisions in other Acts;
- rename Acts or parts of Acts;
- modernise language, including gender references;
- omit spent provisions;
- add aids to interpretation such as diagrams or graphics; and
- move matter in schedules, including forms, to regulations.

7.54 There should be express provision that the powers of the revisers do not extend to changing substance. Consideration should also be given to including in the empowering legislation a provision to the effect that the new revision Acts are to be interpreted as not changing the substance of the law.

How would revisions be approved?

7.55 The Income Tax Act 2007, and its predecessor the Income Tax Act 2004, are revisions of the kind we envisage. The 2007 Act indicates that its provisions are "the provisions of the Income Tax Act 2004 in rewritten form",[371] and are intended to have the same effect as those earlier provisions.[372] Despite this, however, it went through the normal parliamentary process and spent considerable time before a Select Committee, which required to be satisfied that it did not change policy. The bill's passage through the House took 12 months.[373]

7.56 If each revision Act had to go through the full parliamentary process in this way, the job would never be finished. What is needed is an approval process, itself authorised by legislation, which can "fast-track" revisions, provided that:

(i) A certificate is provided stating that each revision bill re-enacts the content of the previous law without substantive change and that the revision powers have been properly exercised; and

371 Income Tax Act 2007, s ZA 3(3).

372 The 2004 Act in turn indicated in section YA 3 that its provisions were "the provisions of the Income Tax Act 1994 in rewritten form", and were intended to have the same effect as those earlier provisions. The only exceptions were the eighteen items listed in Schedule 22A of the 2004 Act, which did contain policy changes.

373 The time between the 2007 bill's first reading and the Select Committee report was nearly 8 months but this was slightly faster progress through the House than the much larger 2004 Bill had enjoyed: 10 months elapsed between its first reading and the Select Committee report and it took a total of 16 months to progress through the House.

(ii) Any minor amendments that have been made, for example, to reconcile inconsistencies, are clearly itemised in a report to the House.

7.57 In other words, Parliament would need assurance in each case that the revision bill changed only the form, and not the content, of the law. The purpose of such a revision must be purely to enhance accessibility, not to change the law. A revision bill could then be enacted without substantial debate or delay in Parliament. This is necessary for two reasons. First, it would ensure that revisions are passed into law quickly. Otherwise there would be a risk that other more substantive measures would take priority, while the revision bill languished at the bottom of the Order Paper. Secondly, valuable parliamentary time should not be taken up debating measures that have no element of new policy in them.

7.58 Nevertheless, the process must be such that Parliament has ultimate control. The submission on the 2007 issues paper made by of the Office of the Clerk of the House of Representatives pointed to the danger that revision may inadvertently alter the law. The legislative process, the submission continues, "must give both Parliament and the people of New Zealand confidence that revised Acts have been subject to adequate scrutiny and due process before entering into force".

7.59 The study of the revision process in other jurisdictions shows that a variety of methods are used. In New Zealand in 1908, all of the 208 new Acts went through the ordinary parliamentary process as a schedule to one bill. In some of the Canadian provinces revisions are passed by order in council. In the United Kingdom, a parliamentary committee can itself enact minor corrections and improvements in consolidation bills.

7.60 We believe that the first important step is for there to be a certification by some eminent person or body of persons that the revision restates the law without changing its substance and that the revision powers have been properly exercised. We have opted for a committee of eminent persons – for example, the Chief Parliamentary Counsel, the Solicitor-General, the President of the Law Commission, and a retired judge appointed by the Attorney-General. We acknowledge that the checking process involved would be time-consuming for those persons and their advisers. If it were felt that this would be an inappropriate use of such resources, it may be sufficient to provide that the certification of the Chief Parliamentary Counsel or the Attorney-General is required. These officials are in a good position to gain assurance that the revision has been properly done. However, on balance we favour the concept of the high-profile committee. The confidence it would engender would be valuable in ensuring public acceptance of the revision.

7.61 Once the certification has been provided, the next question is the process by which the revision is passed into law. We have considered three possibilities.

7.62 First, the bill could become law by order in council after being tabled in Parliament for a prescribed period. Although there is overseas precedent for this solution, we do not favour it. Executive action is almost never acceptable as a means of enacting, or even amending, an Act of Parliament. This would be an inappropriate precedent.

7.63 Secondly, the Standing Orders of the House of Representatives could be amended to provide that once a revision bill was reported back from a select committee, its second and third readings could be combined. This would certainly truncate the process, but would not inevitably avoid debate in the House. It could not ensure a revision a place high on the Order Paper.

7.64 Thirdly, it might be provided that every revision bill would stand referred to a select committee that would have power to recommend to the House that it be enacted. The committee's recommendation would be deemed to have been adopted after a prescribed period unless the House of Representatives resolved otherwise by negative resolution. This is the process we prefer. It would ensure that the revision bill was dealt with efficiently without taking up much parliamentary time, yet also ensure that Parliament has ultimate control. That is as it should be.

7.65 We believe that the process for enacting revision bills should be enacted in legislation, rather than being the subject of amendments to Standing Orders. Part of the new process would have to be legislative in any event (for instance, the obligation to have a programme of revision, and the revision powers), so it makes sense to have everything in one place so that the reader can see it all, rather than having to refer to both statute and Standing Orders.

7.66 In more detail, the process we envisage would be as follows. As soon as practicable after receiving a revision bill accompanied by the required certificate that it is pure a revision, the Attorney-General would present the bill and the certificate to the House. The bill and certificate would stand referred to a select committee. We believe this should be a special select committee and not a subject select committee. The only questions for the committee will be whether the bill accurately and clearly captures the substance of the law, and whether it has been prepared in accordance with the revision powers. These questions are best addressed by an apolitical committee, and one that has acquired experience in this kind of task. Such a committee would establish a modus operandi for dealing with revision bills. There would be a danger that subject committees might each adopt a different method of dealing with revision bills. If the revision select committee ever became concerned about a particular issue it would have power to refer it to a subject committee.

7.67 The revision select committee could recommend that the revision bill be enacted, with or without amendment; or it could recommend that it not be enacted. If it recommended that the bill be enacted with amendments, it would include in its report a copy of the bill incorporating the amendments, and the bill would be regarded as amended accordingly.

7.68 When a revision bill has been reported back with a recommendation that it be enacted, it should be treated as having received its third reading on the twenty-first sitting day after report back unless, before then, the House resolves that the bill not be enacted, or the bill is withdrawn. When the bill is treated as having had its third reading, it would be presented for the Royal assent. Any member could give notice of motion that the bill not be enacted, and if nothing then happened on or before the twentieth sitting day after the report back, the negative motion would be deemed to have been agreed to.

7.69 This "fast track" procedure would mean that there would be no second or third reading debates, and no committee of the whole House stage. But the only relevant questions regarding a revision bill are whether it accurately and clearly represents the current state of the law and has been prepared in accordance with the revision powers. Once a group of legal experts, and a specialist select committee, have certified that it does, routine debate in the House would seem usually to be unnecessary. However, the procedure we propose allows the House to become engaged should a member believe there are flaws in the bill. If the House passes a negative resolution in response to such a member's motion, the bill would not be enacted.

7.70 The process we recommend would achieve several major purposes. It would ensure that consideration is given simply to the form of the revision bill and not its content; that the legislative process for revision bills is efficient and speedy; but also, importantly, that Parliament retains the right to have the final word and thus final control.

The types of revision bill

7.71 As indicated earlier, we envisage two principal types of revision bill. The first is one that tidies a single Act and redrafts it in modern language. There are many candidates for such reform: Acts where policy is still sound, but which would benefit from modern drafting. Some such Acts have been much amended over the years and become progressively more difficult to read. Examples might include the Commerce Act 1986, the Financial Reporting Act 1993 and the Ombudsmen Act 1975.

7.72 The second kind of revision is where provisions on like subjects that are currently spread over several Acts are brought together in one Act. There are some obvious candidates. Our legislation on contract is currently to be found in the Frustrated Contracts Act 1944, Minors Contracts Act 1969, Illegal Contracts Act 1970, Contractual Mistakes Act 1977, Contractual Remedies Act 1979, and Contracts (Privity) Act 1982. They contain much repetition. But that is not all. Important provisions on contract are also to be found in the Judicature Act 1908: they relate to part-payment of a debt, and money paid under a mistake. All of these provisions could be brought together in a way that would enable coherence and rationalisation, and avoid repetition.

7.73 Another example is our legislation on legislation. The Interpretation Act 1999, the Regulations (Disallowance) Act 1989, the Acts and Regulations Publication Act 1989 and the Statutes Drafting and Compilation Act 1920 could validly be combined. We deal with this later in a separate chapter, because the reforms we are recommending could also with benefit be incorporated in such a combined Legislation Act.

7.74 Other candidates for such rationalisation might include our securities legislation (the Securities Act 1978, Securities Markets Act 1988, Securities Transfer Act 1991, Takeovers Act 1993) and our legislation about schools (parts of the Education Act 1964, Education Act 1989, Education Standards Act 2001, Private Schools Conditional Integration Act 1975, Education Lands Act 1949). Yet others might be our Acts on banking and cheques; insurance; and social security benefits.

7.75 No doubt when some old Acts are revisited it will be found that some of their policy needs reconsideration. If this is the case they will be unsuitable for revision. They will require a new Act which will have to go through the whole parliamentary process in the normal way. But there is no reason why, when such a new Act is passed, it could not later be incorporated into a revision Act which contains other provisions on the same topic.

7.76 Likewise, the revision process is likely to bring to light a number of old Acts and provisions that should be repealed. The removal of dead wood is an important aspect of our proposals. A revision would obviously involve the repeal of the old Acts that are being revised and replaced with new, revised Acts. It would be appropriate for these kinds of consequential repeals to be accomplished as part of the fast track revision process. However, the same does not apply to more substantial repeals that are not consequential, but rather are made on the ground that the Acts have fallen into disuse and have become redundant. The desirability of such policy-based repeals would obviously require proper consultation, and would in fact require a policy decision. We do not suggest that such repeals be accomplished by the fast track process we have recommended for pure revisions. Rather, where appropriate, the provisions should be collected together in a Statutes (Repeal) Bill (of the kind that was recently passed by the United Kingdom legislature[374]) which would go through the standard parliamentary process.

IMPROVING THE WAY LEGISLATION IS AMENDED

7.77 We turn to a related topic. New Zealand legislation is amended very frequently. The great majority of the Acts passed in New Zealand each year, like those in many other comparable jurisdictions, are amendment Acts. Some of them are very substantial in terms of both size and content. For example, the Armed Forces Law Reform Bill 2007 as it was introduced was to repeal and replace large parts of, and add new sections to, two principal Acts: the Armed Forces Discipline Act 1971 and the Courts Martial Appeals Act 1953. At 151 pages long when introduced, the bill was almost as long as the two principal Acts combined. By its second reading, it had grown to 288 pages. It was eventually divided into four bills, the longest of which was 176 pages.[375] Likewise, the Births, Deaths, Marriages, and Relationships Registration Amendment Bill 2007 is 64 pages long, and makes significant textual amendments to the principal Act of 1995, the principal Act itself being only 91 pages long.

7.78 Amendments like this can cause real difficulty, particularly when they are textual amendments, as they almost always are.[376] First, until the amendment is passed and incorporated in a reprint of the principal Act, a reader of the amendment can have difficulty understanding its effect without carefully scrutinising the principal Act and assessing how the amendment fits within it. Taken out of context the amendment may convey very little. It can often be difficult to visualise the composite whole. This can be a particular problem at bill stage, and legislators can find themselves in difficulty as much as lay persons.

374 See above, para 7.15, n 308.

375 These were the Armed Forces Discipline Amendment Bill (No 2) 2007, which was 176 pages, the Court Martial Appeals Amendment Bill 2007, 26 pages, the Defence Amendment Bill 2007 (No 3), 3 pages, and the Court Martial Bill 2007, 68 pages.

376 See Geoff Lawn, Deputy Chief Parliamentary Counsel "Public Access to Legislation: Enhancing the Access Experience" (Australia–New Zealand Scrutiny of Legislation Conference: "Democracy in Legislation – The Role of Scrutiny Committees", Wellington, 31 July-2 August 2007), "Amending Legislation", 5-16. We have also referred to this matter earlier in this Report: see paras 3.29-3.35.

(The Legislation System has some potential to alleviate this problem in the case of selected bills of particular complexity. The facility exists to produce versions of principal Acts with proposed amendments incorporated, to show how the Act would look if the amendments were enacted. However producing these versions is a time-consuming, manual task and will not be undertaken as a matter of course. It is possible that future enhancements to the Legislation System will make it easier to produce these versions, at which point this could develop into a useful aid to understanding complex amending legislation). Secondly, there is a danger that a significant amendment may create inconsistency within the principal Act. If the Act being amended is an old one, the new amendment may embody a different philosophy or be expressed in a different style. Thirdly, if further amendments occur in later years, the Act can progressively become very untidy, and can begin to lose coherence. As we have seen, there are many examples of Acts that have been so often, and so substantially, amended over the years that they have got into this state. The Social Security Act 1964 is one of the best examples. Finally, the sections in Acts that have been heavily amended are often awkwardly numbered. When new sections are inserted between existing sections, drafters can be forced to label new sections with letters as well as numbers. The most striking example of this that we are aware of is section 707ZZZZA of the Local Government Act 1974.

7.79 We believe that in many cases where a principal Act needs to be substantially amended, it is better to start again, and to repeal and replace the principal Act as a whole. The new, and coherent, whole that results is usually much better than the awkward conjoined product of a process of amendment. Sometimes this is done now. The Weathertight Homes Resolution Services Act 2006 is a good example. Rather than simply amending the 2002 Act of the same name, it repealed it in total and enacted a new Act in its place. We would like to see the practice increase.

RECOMMENDATIONS

R15 The PCO should undertake a triennial programme of statute revision, the aim of which is to make the statutes more accessible without changing their substance.

R16 The PCO should have statutory powers to alter the wording, order and placement of the provisions subject to revision.

R17 When a revision is complete it should be certified by a committee comprising the Chief Parliamentary Counsel, the Solicitor-General, the President of the Law Commission and and a retired judge appointed by the Attorney-General, as changing only the presentation of the law, and not its meaning or spirit.

R18 The revision bill, once certified, should be passed by the streamlined Parliamentary process described in this chapter.

R19 If a bill involves a change of substance or policy it would be subject to the normal parliamentary process.

R20 If in the course of the process of revision provisions are found that are obsolete and thus no longer required, they should be proposed for repeal through the medium of an omnibus Statutes (Repeal) Bill.

R21 Those responsible for the preparation of legislation should note that it is desirable that, if it is proposed to make substantial and far-reaching changes to an Act, the Act should generally be repealed and completely replaced.

Chapter 8
Codification

IN THIS CHAPTER, WE

- discuss what is meant by the term "code", considering historical examples of "codes", the statutory codes of common law countries, and United States style codes;
- consider the advantages and disadvantages of producing a United States style code in New Zealand;
- consider how, when, and by whom, such a code might be produced in New Zealand; and
- conclude that codification is a desirable objective but one that is really only viable after a revision process is complete or near complete, and recommend that the matter be revisited at that time.

MEANING OF "CODE"

8.1 Lord Scarman once provided this definition of a "code":[377]

> A Code is a species of enacted law which purports so to formulate the law that it becomes within its field an authoritative, comprehensive and exclusive source of that law.

8.2 Among the various advantages that have been proclaimed for codes are that they introduce order and system into the law; that they bring it together in one place; and that the law is made easy to find.[378]

8.3 However this broad definition encompasses several quite distinct types of code.[379]

A code as a systematic, written reduction of a legal system's main principles

8.4 The first type of code is the reduction of all the main principles of a legal system into systematic written form. The ancient codes of Hammurabi of Babylon (c1750 BC) and Justinian (529 – 565 AD) were well-known early examples. Those codes had enormous influence: it was through Justinian's work that

377 Lord Scarman "Codification and Judge-Made Law: A Problem of Coexistence" (1967) 42 Ind L J 355, 358.

378 See Ferdinand Fairfax Stone "A Primer on Codification" (1955) 29 Tulane LR 303, 307-308; and Gilles Létourneau and Stanley A Cohen "Codification and Reform: Some Lessons from the Canadian Experience" (1989) 10 Statute LR 183, 185.

379 It clearly covers the first two types discussed below. The third, the United States code, does not fit quite so comfortably within this definition.

Roman law had such lasting effect on the development of the legal systems of the western world. This type of codification took hold in Europe during the Age of Enlightenment, prompted by a belief that all spheres of life could be dealt with in a system based on human rationality. The first of the modern European codes were those of the German states in the late 18th and early 19th centuries.[380] The most impressive, and best-known, of them was the French Code Civil, or Code Napoleon, which introduced a single set of laws to replace the several legal systems that had extended throughout feudal France before the French Revolution. The code distilled the law into a set of coherent principles contained in a single, slim volume. Today most European countries are civil law jurisdictions with codes of this kind. Many Latin American and Asian countries have also based their codes on the Napoleonic code.

8.5 The civil codes are often said to be marked by three features. First, they consist of succinct, broad, statements of principle rather than exhaustive detail. While in general this is true, there is not complete uniformity among codes. The German code, for example, is more specific than that of its French neighbour.[381] Secondly, they are ordered in a coherent and seamless way. Thirdly, they are the sole source of the law they cover. That is, there is no judge-made, or common law, in those countries; the contribution of the judges is confined to interpreting and applying the code. Again, however, there is a degree of oversimplification in this assertion. No code is without gaps (it is beyond the abilities of any drafter to devise one that is) so continental judges sometimes have to fill these gaps. They do so by a process not totally unlike common law method.[382] Moreover, a typical civil code deals only with the core areas of law such as contract, tort, property, family law, and the law of inheritance. Commercial law, corporate law, taxation law and civil procedure are often enacted separately. Furthermore, as society experiences rapid change, it has become not uncommon for code jurisdictions to enact more and more specific legislation, outside the code, to deal with it. In addition, the harmonisation of law within the European Community, and the acceptance of supranational norms in treaties, have created further overlays.[383]

8.6 There have been times in common law jurisdictions when law-makers have considered completely codifying the law. That is to say, they have considered replacing the common law with Acts of Parliament to convert the legal system to a complete code of the European kind. Sir John Salmond, speaking to the Bar Association of New York City in 1922 said:[384]

380 See Maria Luisa Murillo "The Evolution and Codification in the Civil Law Legal Systems: Towards Decodification and Recodification" (2001) 11 J Transactional Law & Policy 1.

381 See Hein Kotz "Taking Civil Codes Less Seriously" (1987) 50 MLR 1.

382 Ibid.

383 Murillo, above, n 380, 6. Some have described this process as "decodification". In some countries there have been moves to "recodify" to regain the old coherence..

384 A paper representing the substance of Salmond's address was published as "The Literature of Law" (1922) 22 Columbia Law Review 197.

> We are all proud of the common law … but the time has surely come when [it] must be reduced to statutory form. … We must formulate the common law in a comprehensive code which sums up the outcome of that age-long process of judicial precedent in which it has its source.

8.7 An express codification project was initially on the agenda of the English Law Commission.[385] But, as Hein Kotz has put it:[386]

> Eight years later, Lord Gardiner, who had blessed the ship [of codification] at launching, asked Her Majesty's Government about its present position. Lord Hailsham, then Lord Chancellor, had to admit that her speed had slowed down considerably, and in 1980, her captain, Sir Michael Kerr, the immediate past chairman of the Law Commission, finally, though I think without much regret, pronounced her a total loss.

8.8 Kerr concluded that codifying even discrete areas like the law of landlord and tenant, and the law of contract, had "no prospect of realisation".[387] However, the United Kingdom Law Commission website indicates that, while the criminal law codification project is no longer listed as part of its programme, it is now undertaking projects to simplify the criminal law which it views as necessary precursors to any attempts to codify the criminal law.[388]

The statutory codes of common law countries

8.9 Secondly, there are the "codes" of common law countries like New Zealand. In these jurisdictions the word "code" has a quite different sense. It is used to describe a single Act that abolishes the common law on a specific topic and replaces it with a set of statutory rules that henceforth become the exhaustive and exclusive source of the law on that topic. The Minors Contracts Act 1969 is a code in this sense. Section 15(1) of the Act provides:

> **15. Act to be a code –**
>
> (1) The provisions of this Act shall have effect in place of the rules of the common law and of equity relating to the contractual capacity of minors and to the effect, validity, avoidance, repudiation, and ratification of contracts entered into by minors and to any contract of guarantee or indemnity in respect of any such contract.

8.10 Likewise, but on a larger scale, the Crimes Act 1961 is a code.

8.11 These specific, ad hoc, codes bear little resemblance to their continental cousins. Despite the best efforts of their drafters they have always had an uneasy relationship with the common law – both with the common law they have supposedly replaced, and also with the remaining common law that continues to surround them.[389]

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385 Brooke, above, n 362, 2; Edward Caldwell "A Vision of Tidiness: Codes, Consolidations and Statute Law Revision" in Brian Opeskin and David Weisbrot (eds) *The Promise of Law Reform* (Federation Press, Sydney, 2005) 40, 41.

386 Kotz, above, n 381, 1.

387 Kerr "Law Reform in Changing Times" (1980) 96 LQR 515 at 527, quoted in Kotz, ibid, 2.

388 United Kingdom Law Commission http://www.lawcom.gov.uk/codification.htm (accessed 17 September 2008).

389 JF Burrows *Statute Law in New Zealand* (3 ed, LexisNexis, Wellington, 2003), Chapter 16.

United States style codes

8.12 Thirdly, there is the type of code found in the United States of America. There is a federal United States Code (assembled in 1926), and all the states have their own state codes.[390] Unlike the first two kinds of code discussed in this chapter, the United States style code does not seek to replace and supplant the common law, but simply to collect and order the statute law. In United States style codes, all of the statutes of a jurisdiction are arranged, in logical and ordered form, under subject headings. These codes are a sort of compilation of Acts by topic. Under this system, individual Acts are published chronologically as they are passed,[391] but are then inserted into, and republished as part of, the code. Thus the Iowa code presents all the Acts of that state in three volumes of some 1,500 pages each, organised under titles such as: State Sovereignty and Management; Elections and Official Duties; Agriculture; Education and Cultural Affairs; Transportation; Local Government; Property; and Criminal Law. There are 16 titles in all, subdivided into 83 subtitles. Each provision in each Act has a reference representing its place in the code.

8.13 The Iowa code is reprinted with amendments every second year. It is authorised, and is accorded official status, by a provision in the code itself.[392] However, not all the codes in United States jurisdictions have been given completely official status in this way. In the federal United States Code, only 23 of the 50 titles have been enacted into positive law; the other 27 are only prima facie evidence of the law. There is an ongoing process to grant official status to those other titles.[393]

8.14 The codes in United States jurisdictions do not constitute the whole law of the state concerned, for the United States is a common law jurisdiction[394] in which there is much judge-made law as well. Nor are they the equivalent of the continental codes; they do not have the same complete logical coherence. Rather, they are collections of statutes. Over the years, amendment has lessened even such coherence as they have. However the codes do contain all statute law, organised, categorised and indexed so as to make it as easy to navigate as possible.

CODIFICATION IN NEW ZEALAND

8.15 A question the Law Commission asked in our 2007 issues paper was whether a codification of this third kind should be considered for New Zealand. Such a code would resemble a complete reprint, like that of 1931, organised under subject headings.[395] However it would go a step further than a reprint, in

390 Different states use different names: for example "codes", "revised statutes" and "laws". California, New York and Texas have several subject-specific codes; other states and the federal government have a single code.

391 The individual acts are called "slip laws" and the bound volumes are called "session laws."

392 Iowa Code 2007, ch 2B.17.

393 US House of Representatives, Office of the Law Revision Counsel http://uscode.house.gov/codification/legislation.shtml (accessed 17 September 2008). There are also commercial publications of the codes, sometimes annotated, and also web-based versions, which although accurate are not "official". See for example the web-based version of the Arkansas Code, with its disclaimer, http://www.arkleg.state.ar.us/data/ar_code.asp (accessed 17 September 2008).

394 An exception is Louisiana, which is a civil jurisdiction, although governed by common law on federal matters.

395 The 1931 Reprint organised the statutes under headings such as Accountancy and Auditing, Agency, Agriculture, Aliens, Animals, etc, with excellent cross-referencing: for example Administration of Estates: see Executors and Administrators; Arms: see Explosives and Firearms; etc.

that the code would be given official status by Act of Parliament, and its organisation and numbering system would thus be formalised by law. Amendments to Acts in the code would become amendments to the code itself. Each new Act passed would be located in an appropriate place in, and become part of, the code.

Advantages of codification

8.16 Such a system would have the following advantages:

- It would bring some order to the statute book. Acts would appear in logical subject groupings. Relevant law would be easier to find.
- Overlap and duplication would more rapidly be detected and eliminated. By the same token, gaps in the law would become more apparent, and consideration could be given to filling them.
- It would facilitate the development of consistent principle in our law. Political considerations would, no doubt, continue to drive the enactment of ad hoc solutions to problems. However, there would be further incentives than there are now to ensure that those involved in processing such proposals would have regard to "fit", and consistency with the rest of the system.
- Even non-textual amendments would have a numbered place in the code, and would be less likely to be "lost".

Problems of codification

8.17 There are also arguments against such a code:

- The task of producing a code would be of such complexity and magnitude that it would be likely to distract efforts from more practical and readily achievable options like revision.
- Currently our Acts are a very diverse collection indeed. There is not much coherence about them. Acts of fundamental and legal importance exist together with small, ad hoc, provisions. Establishing a code would involve ordering existing statutory provisions under headings or categories. A code would initially lack the coherence of a continental code – some headings could have much more legislation under them than others. This could be misleading to users who expect a "code" to be comprehensive. But even then the process of ordering legislation in this way would help to identify gaps and inconsistencies. Over time, a more comprehensive version of the code would build up. As already intimated, codification might be the first step toward a more coherent body of law.
- There is no single way of classifying Acts. It can depend on the perspective of the classifier. Thus a media lawyer might well place the Defamation Act 1992 under "media law", whereas a tort lawyer would place it under "tort". However this difficulty can be overstated. Most Acts are not difficult to classify, as the 1931 reprint demonstrates. Those that are will require a decision one way or the other, and cross-referencing and an index can do the rest. Attention would have to be given to devising a suitable taxonomy.
- No doubt many would say that a code is a hard copy concept, and that in the world of electronic publishing the search facilities and flexibility of the New Zealand Legislation Website enable the reader to find things, and to organise Acts, in the form most suitable to himself or herself. Indeed, several

submitters made this point. The point has merit, but still does not meet the argument for principled development of the law. Moreover there are many who will agree with the advice the Princeton University Library gives its students:[396]

> Statutes are a resource that many experienced researchers agree is easier used in print, especially to find which statute is related to your subject. Because codes are already organized by subject, using the index and flipping the pages can be more effective than electronic full-text searching.

- It would initially be difficult to cope with Acts that contain a diversity of subject matter. The Judicature Act 1908, for instance, in addition to providing for the establishment of courts, contains a number of provisions about substantive law.[397] Consideration might be given to splitting such Acts and placing their various parts under different titles of the code. However, given the dangers of upsetting the scheme of the Act in question, we believe this is a step that should only be taken in the context of a careful process of revision. It is an argument for saying that codification is best done, if at all, after or in conjunction with a comprehensive revision of the statute book as a whole.

8.18 A number of submitters addressed the question of codification. Most agreed that codification would have some or all of the advantages set out above. However, they also discussed a number of perceived disadvantages, or comparative disadvantages, of codification. Several put forward the argument mentioned above that codification is a hard copy concept, and would have fewer benefits today in the context of the excellent electronic access and search facilities of the New Zealand Legislation Website. The general consensus was that, while codification had its attractions, it was a lower priority than other measures such as indexing and revision. They thought that codification offered fewer benefits for the costs involved than did other possible approaches.

How, when and by whom would a code be produced?

8.19 If it were thought desirable for New Zealand to move to a code of this type, there are questions of how, by whom, and when, it should be done.

8.20 To answer the last question first, there would seem little point in codifying the statute law in its present state. It would only be sensible to do so either concurrently with, or after, a comprehensive revision. The revision process would, as previously explained, excise dead wood, remove anomalies, promote consistency of expression and contribute to greater rationalisation of our statute law. One ought not to approach codification until that process is complete, or at least well down the track. As has been said (in another context) "reform of the substance of the law must necessarily precede codification".[398] A taxonomy, or classification system, would need to be created, and it would obviously need to be consistent with that adopted for an index of our Acts.

396 Princeton University Library http://firestone.princeton.edu/law/statutory.php (accessed 17 September 2008). Princeton does not have a law school, which in some ways makes this advice even more relevant to this report – it is advice for non-lawyers trying to navigate statutes.

397 For example, s 92 (discharge of a debt by acceptance of part payment) and ss 94A and 94B (payments made under mistake).

398 SM Cretney "The Codification of Family Law" (1981) 44 MLR 1, 1.

8.21 In the US, the task of codifying the law is undertaken in each jurisdiction by a specially authorised commission or office. Given that in New Zealand the task of codification would be so intimately related to an exercise of revision,[399] the same team of persons would seem appropriate to accomplish both tasks. Those persons would have statutory authority to determine the appropriate location of existing provisions, and newly enacted Acts, in the code. The Act so authorising them could also contain provisions to give the code official status.

8.22 The relationship between revision and codification has long been a feature of the federal United States Code:[400]

> Because many of the general and permanent laws that are required to be incorporated into the United States Code are inconsistent, redundant, and obsolete, the Office of the Law Revision Counsel of the House of Representatives has been engaged in a continuing comprehensive project authorized by law to revise and codify, for enactment into positive law, each title of the Code. When this project is completed, all the titles of the Code will be legal evidence of the general and permanent laws and recourse to the numerous volumes of the United States Statutes at Large for this purpose will no longer be necessary.

8.23 The rate of statutory amendment in New Zealand is likely always to remain high. There are no signs that the current output of 100 or so new Acts per year will ever reduce. The task of consigning these new provisions to a place in the code would thus be ongoing.

CONCLUSIONS

8.24 The Law Commission regards codification as a very desirable objective. However, as noted above, codification is best done, if at all, in conjunction with a comprehensive revision of the statute book as a whole. More specifically, it is best done following such a process. That is, it is a possible further step following a comprehensive revision, and is only really viable after a revision process is complete or near complete.

8.25 We have recommended that a systematic programme of revision be undertaken. We also recommend that, following the completion or near completion of a revision programme, codification again be considered as a further step.

RECOMMENDATION

R22 The prospect of codification should be considered at such time as a programme of revision has been completed or nearly completed.

399 See Chapter 7: Revisions.

400 Office of the Law Revision Counsel, United States House of Representatives "Certification Legislation" http://uscode.house.gov/codification/legislation.shtml (accessed 17 September 2008).

Chapter 9

New Legislation Act

IN THIS CHAPTER, WE

- propose that a new Legislation Act be passed to serve the dual purposes of revising the law relating to legislation and enacting the other recommendations contained in earlier chapters of this report.

PROPOSAL

9.1 This report has considered a range of possible measures for improving the accessibility of the New Zealand statute book. We have made a number of recommendations that particular measures be adopted in New Zealand. Chapter 4 of this Report recommended that historical Acts should be made available online. Chapter 5 recommended that a subject index to the New Zealand Acts should be produced. Chapter 7 recommended that there be initiated a programme to revise the whole of New Zealand's statute law. It also noted that the statute law relating to legislation is currently untidy and would itself benefit from revision.

9.2 Implementing these recommendations would require an enabling Act of Parliament to be passed. This chapter proposes that a new "Legislation Act" should be passed. An indicative draft of a Legislation Bill is appended to this report. It is a revision of the current Acts that concern legislation, and in Part 6 provides for a programme of revision.

PURPOSES

9.3 We consider that a new Legislation Act should serve two key purposes:

(i) A revision of the law relating to Acts would introduce greater order into the parts of the statute book that deal with legislation. These provisions are currently scattered across a number of Acts. A new Legislation Act could be the first step in a wider revision, by bringing together in one Act those currently scattered provisions. So the Act would be an example of the rationalisation we have spoken of in our discussion of revision.[401]

(ii) In addition to revising existing law relating to legislation, it would also contain new provisions to implement some of the recommendations in this report.

401 See Chapter 7: Revisions.

CONTENTS OF THE NEW ACT

9.4 As a starting point for a more general Act, a revision should be produced of all the Acts and provisions that deal with legislation or the PCO. Acts that would need to be included in this revision include:

- Statutes Drafting and Compilation Act 1920 or its modern replacement;
- Acts and Regulations Publication Act 1989;[402]
- Regulations (Disallowance) Act 1989; and
- Interpretation Act 1999. (Despite its name, this Act relates to more than just interpretation. Examples of this are its provisions regarding commencement[403] and repeal[404] of legislation. Some of the provisions of the Interpretation Act 1999 would sit much more naturally in an Act about legislation in general.)

9.5 The Statutes Drafting and Compilation Act 1920 is currently under review by the Law Commission. The Law Commission is likely to recommend that the 1920 Act be replaced by a modern Act which will contain some changes of substance. There would be no point in including this legislation in the proposed revision until that modern Act has been passed.

9.6 In addition to this revision component, the new Legislation Act would also contain new obligations and powers that would be necessary to allow the implementation of recommendations in this report.

Making acts available both in hard copy and electronically

9.7 Currently, the Chief Parliamentary Counsel is responsible for arranging for the printing and publication of legislation,[405] and for making it available for purchase at a reasonable price.[406] These existing obligations should be retained under a new Legislation Act.

9.8 Under the new Legislation System, legislation is published electronically on the New Zealand Legislation Website. A requirement to do so should be included in a new Legislation Act. Such a requirement exists in California. Section 10248 of the California Government Code requires that:

> (a) The Legislative Counsel *shall*, with the advice of the Assembly Committee on Rules and the Senate Committee on Rules, make all of the following information available to the public in electronic form:
>
> …
>
> (8) The California Codes.
>
> (9) The California Constitution.
>
> (10) All statutes enacted on or after January 1, 1993.
>
> (b) The information identified in subdivision (a) shall be made available to the public by means of access by way of the largest nonproprietary, nonprofit cooperative public computer network. The information shall be made available in one or more

402 The Acts and Regulations Publication Act 1989, s 16C (inserted by the Evidence Act 2006) provides that legislation printed under the authority of the New Zealand Government is evidence of the law.

403 Interpretation Act 1999, ss 8-11.

404 Interpretation Act 1999, ss 17-22.

405 Acts and Regulations Publication Act 1989, s 4(1).

406 This requirement is set out in the Acts and Regulations Publication Act 1989, s 10(1). See Chapter 1: Access to Legislation, para 1.16.

formats and by one or more means in order to provide the greatest feasible access to the general public in this state. Any person who accesses the information may access all or any part of the information. The information may also be made available by any other means of access that would facilitate public access to the information. The information that is maintained in the legislative information system that is operated and maintained by the Legislative Counsel shall be made available in the shortest feasible time after the information is available in the information system. The information that is not maintained in the information system shall be made available in the shortest feasible time after it is available to the Legislative Counsel.

…

[emphasis added].

9.9 In New South Wales, section 45C of the Interpretation Act 1987 provides for, but does not require, the publication of legislation on the NSW legislation website:

(1) The Parliamentary Counsel *may* publish on the NSW legislation website under the authority of the Government:

(b) legislation (as originally made or as amended), and

(c) other matter (including information relating to legislation and any matter authorised by law to be published on the website).

…

[emphasis added].

9.10 We would wish that electronic publication of statutes would be a function of the PCO. Further, we consider that the provision in New Zealand should require the PCO, as far as is practicable, to publish electronically, as in California, rather than be merely permissive, as in New South Wales. The electronic data used to publish data on the New Zealand Legislation Website is now the source data for the official hard copy. There is therefore no reason why that same data, when published on the website, cannot constitute an official electronic version.

"Officialisation" of the New Zealand Legislation Website

9.11 The New Zealand Legislation Website went live in January 2008. It is not currently an official source of Acts. The PCO intends to officialise the Acts in the database that sits behind the website over several years, checking that each Act contains no errors. Once the officialisation process is complete, it will be appropriate to enact legislation so that the website will become an official source of legislation; that is, that legislation from the website can be used as evidence of the law.

9.12 The officialisation process is expected by PCO to take around three years. It will be appropriate to make the New Zealand Legislation Website an official source of legislation then. Making the website an official source of legislation could be done via a new Legislation Act or an Order in Council under it,[407] or by an amendment to that Legislation Act.

407 Section 16C of the Acts and Regulations Publication Act 1989 (inserted by the Evidence Act 2006) is the provision relating to evidence of New Zealand legislation. See n 402 above.

Publishing in hard copy

9.13 As discussed in Chapter 6, the Law Commission recommends that Acts should continue to be printed in pamphlet form as they are passed, and also in bound annual volumes.[408] We also recommend that hard copy access to reprints of individual Acts should continue, though we recognise that the number of hard copy reprints produced each year is likely to decrease during the period of officialisation of the New Zealand Legislation Website, and that with electronic access to up-to-date electronic reprints via the website, demand for hard copy reprints is likely to decrease over time.[409]

9.14 The Law Commission believes that specific provision should be included in a new Legislation Act, clearly providing:

- that up-to-date legislation be provided free by electronic means;
- that legislation as enacted or made be available in hard copy at a reasonable price; and
- that a programme of hard copy reprinting continue, with copies available at a reasonable price, and that up-to-date hard copy reprints also be available on a print on demand basis, with users meeting the higher costs associated with this delivery method.

Undertaking a revision programme

9.15 A new Legislation Act should require the PCO to undertake a programme of systematic revision.

9.16 We considered in Chapter 6 how such a revision programme should be carried out, and how the revision bills resulting from it enacted. We noted the importance of having them enacted in an efficient and speedy manner, but one which retains parliamentary control over the process. The process we recommend is set out in Chapter 6. It should be legislated for in the Legislation Act. A draft of the proposed provisions is contained in Part 5 of the Bill appended to this report.

CONCLUSION

9.17 In conclusion, a new Legislation Act should:

(a) Combine the provisions of the:
- Interpretation Act 1999;
- Acts and Regulations Publication Act 1989;
- Regulations (Disallowance) Act 1989; and
- Statutes Drafting and Compilation Act 1920 (or a modern Act that replaces it).

(b) Contain new provisions:
- Requiring hard copy and electronic publication of Acts;
- Giving official status to the electronic versions of Acts on the New Zealand Legislation Website;

408 See Chapter 6: Reprinting, para 6.40.

409 See Chapter 6: Reprinting, paras 6.43-6.48.

- Enhancing the reprint powers as recommended in Chapter 6 of this Report; and
- Imposing on PCO a requirement to undertake a programme of revision, specifying the powers of those undertaking the revision, and prescribing a process of approval.

RECOMMENDATION

R23 There should be a new Legislation Act combining the provisions of the Interpretation Act 1999, Acts and Regulations Publication Act 1989, Regulations (Disallowance) Act 1989, and Statutes Drafting and Compilation Act 1920 (or its modern equivalent), and containing new provisions to give effect to the recommendations contained in this report. A draft bill of this kind is appended to this report. (This draft bill is indicative only).

Appendix

Legislation Bill

Note: This draft bill is indicative and by way of example. Parts of it are examples of revision; it also incorporates new amendments recommended in the report. Part 7 is a revision of the Statutes Drafting and Compilation Act 1920, and no changes of a policy nature have been made to it. The Law Commission is currently reviewing the 1920 Act and will make recommendations for change in due course.

00—1

Legislation Bill

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The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Legislation Act **2008**.

2 Commencement

This Act comes into force on [date to be inserted].

Part 1
Preliminary provisions

3 Purpose

This Act sets out the main provisions of New Zealand legislation that relate to the drafting, publication, interpretation,

reprinting, and revision of legislation (Acts of Parliament and regulations), and the disallowance of regulations.

4 Outline

(1) This Act is arranged as follows:

(a) **Part 2** provides for—

(i) the publication of legislation in both printed and electronic form, to ensure that it is available to the public; and

(ii) judicial notice to be taken of legislation, and the evidential status of printed and electronic copies of legislation:

(b) **Part 3** states principles and rules for the interpretation of legislation:

(c) **Part 4** provides for the production of up-to-date versions of legislation (reprints) that, to the extent permitted, are modernised and made consistent with current drafting practice with respect to mode of expression, style, and format:

(d) **Part 5** provides for the progressive and systematic revision of the New Zealand statute book, and sets out a process for the preparation, approval, and enactment of revisions of Acts of Parliament:

(e) **Part 6** provides for the disallowance of regulations by the House of Representatives:

(f) **Part 7** provides for drafting and reprinting of legislation through the constitution of the Parliamentary Counsel Office and the appointment of the staff of that office:

(g) **Part 8** highlights enactments that are relevant to legislation but are not incorporated in this revision.

(2) This section is intended only as a guide to the general scheme and effect of this Act.

5 Interpretation

(1) **Subpart 5 of Part 3**, which defines terms and expressions in legislation, applies to the interpretation of this Act.

(2) **Sections 7, 18(3), 62, 69, and 80** also define terms and expressions for the purposes of certain provisions of this Act.

6 Act binds the Crown

This Act binds the Crown.

Part 2
Publication, availability, and evidence of legislation

Subpart 1—Interpretation

7 Interpretation

In this Part, unless the context otherwise requires,—

Imperial enactment and **Imperial subordinate legislation** have the meanings given to them by the Imperial Laws Application Act 1988

legislation means any Act, Imperial enactment, Imperial subordinate legislation, or regulations

regulations—

(a) has the same meaning as in **section 51**; and

(b) includes resolutions of the House of Representatives that—

(i) revoke regulations; or

(ii) amend regulations; or

(iii) revoke regulations, and substitute other regulations; and

(c) in **subpart 4**, includes any instrument that, under **section 17**, has been published as if it were a regulation.

Compare: 1989 No 142 ss 2, 16B(2)

Subpart 2—Publication and availability of legislation

8 Publication of legislation

(1) The Chief Parliamentary Counsel must arrange for the publication, in both printed and electronic form, of—

(a) copies of every Act enacted by Parliament after the commencement of this section; and

(b) copies of all regulations made after the commencement of this section; and

(c) reprints of Acts and reprints of regulations; and

(d) reprints of Imperial enactments and Imperial subordinate legislation that have effect as part of the laws of New Zealand.

(2) Copies of Acts must be published as soon as practicable after they are enacted.

(3) Copies of regulations must be published as soon as practicable after they are made.

(4) When an amendment to any legislation is enacted or made after the commencement of this section, the Chief Parliamentary Counsel—

(a) must arrange for a reprint of that legislation to be published in electronic form so that, as far as practicable, an up-to-date version of that legislation is available in accordance with **section 11** by the time the amendment comes into force; and

(b) may also arrange for a printed copy of that reprint to be published.

(5) All copies and reprints of legislation published under this section must include a statement that they are published under the authority of the New Zealand Government.

(6) The Chief Parliamentary Counsel performs functions under this section under the control of the Attorney-General.

Compare: 1989 No 142 s 4

9 Designation of places where printed copies of legislation may be purchased

(1) The Attorney-General must, by notice in the *Gazette*, designate places where printed copies of Acts and printed copies of regulations are available for purchase by members of the public.

(2) Copies may be made available for purchase by members of the public not only at the places designated under **subsection (1)** but also at other places.

Compare: 1989 No 142 s 9

10 Sale of copies of legislation

(1) The Chief Parliamentary Counsel must, under the control of the Attorney-General, make available for purchase by mem-

bers of the public at the places designated under **section 9(1)** printed copies of Acts and regulations at a reasonable price.

(2) On the repeal or expiry of any Act or the revocation or expiry of any regulations, **subsection (1)** ceases to apply in relation to that Act or those regulations.

Compare: 1989 No 142 s 10

11 Availability of electronic copies of legislation

(1) The Chief Parliamentary Counsel must ensure, as far as practicable, that electronic versions of legislation with official status are at all times available to the public in the manner prescribed by regulations made under **section 25**.

(2) The electronic versions are to be available to the public free of charge.

(3) This section applies to legislation that is in force as well as to legislation that ceases to be in force, but does not apply to legislation that ceased to be in force before the commencement of this section.

Subpart 3—Regulations

Forwarding to Chief Parliamentary Counsel

12 Regulations to be forwarded to Chief Parliamentary Counsel

All regulations made after the commencement of this Act must be forwarded to the Chief Parliamentary Counsel without delay.

Compare: 1989 No 142 s 5

Presentation to House of Representatives

13 Regulations to be presented to House of Representatives

All regulations made after the commencement of this Act must be presented to the House of Representatives not later than the 16th sitting day of the House of Representatives after the day on which they are made.

Compare: 1989 No 143 s 4

Numbering and notification

14 Numbering of regulations

(1) All copies of regulations published under **section 8** must be identified by a number as part of an annual series of regulations.

(2) Regulations may be cited by the number given to them and by a reference to the year in which copies of them are published.

(3) **Subsection (2)** does not limit any other mode of citation.

Compare: 1989 No 142 s 11

15 Notice of making of regulations

Each time that copies of regulations are published under **section 8**, the Chief Parliamentary Counsel must arrange for the publication in the *Gazette* of a notice showing—

(a) the title of the regulations:

(b) the date on which the regulations were made:

(c) the Act or other authority under which the regulations were made:

(d) the number allocated to the regulations under **section 14**:

(e) a place at which copies of the regulations may be purchased:

(f) any other information the Chief Parliamentary Counsel considers appropriate.

Compare: 1989 No 142 s 12

16 Publishing under this Act sufficient compliance with direction to be published in *Gazette*

Where any regulations are required by any Act to be published or notified in the *Gazette*, the publication in the *Gazette* of a notice under **section 15** which relates to those regulations is sufficient compliance with that requirement.

Compare: 1989 No 142 s 13

Other instruments

17 Publication of instruments other than regulations

(1) Any instrument that is not a regulation may, if the Attorney-General or the Chief Parliamentary Counsel directs, be published in accordance with **section 8**, as if it were a regulation.

(2) An instrument is not a regulation for the purposes of this Part just because it is published under this section.

(3) The following provisions of this Act apply with respect to every instrument that is published under this section as if it were a regulation for the purposes of this Part:

(a) **section 14** (numbering of regulations):

(b) **section 15** (notice of making of regulations):

(c) **section 16** (publishing under Act sufficient compliance with direction to be published in *Gazette*):

(d) **section 19** (judicial notice of Acts and regulations):

(e) **section 20** (versions of legislation that have official status):

(f) **section 23** (form of copies and reprints):

(g) **section 24** (special requirements in relation to copies of regulations).

Compare: 1989 No 142 s 14

Revocation of spent regulations and other instruments

18 Power to revoke spent regulations and other instruments

(1) The Governor-General may, by Order in Council, revoke any regulations or, as the case requires, declare that they cease to have effect as part of the laws of New Zealand, if the Governor-General in Council is satisfied that they have ceased to have effect or are no longer required.

(2) This section is in addition to the provisions of any other enactment relating to the revocation of any regulations.

(3) In this section, **regulations** includes, in addition to regulations within the meaning of **sections 7 and 51**, any of the following kinds of instrument made or given by the Governor-General or any Minister of the Crown or any person in the service of the Crown, or made or given under any Imperial Act:

(a) any Order in Council or Proclamation:

(b) any notice, warrant, order, direction, determination, rules, or other instrument of authority.

Compare: 1989 No 142 s 16

Subpart 4—Judicial notice and evidence of legislation

Judicial notice of legislation

19 Judicial notice of Acts and regulations

All courts and persons acting judicially must take judicial notice of all Acts and all regulations.

Compare: 1989 No 142 ss16A, 16B

Official versions of legislation

20 Versions of legislation that have official status

(1) The following versions of legislation have official status:

(a) a printed version that is printed or published under the authority of the New Zealand Government:

(b) an electronic version that is in a format prescribed by regulations made under **section 25** and is published under the authority of the New Zealand Government:

(c) a printed version that is produced directly from an electronic version that has official status.

(2) Section 141 of the Evidence Act 2006 provides that certain documents, including documents that purport to have been printed or published by authority of the New Zealand Government, are presumed to be what they purport to be.

(3) This section applies whether the legislation is printed or published before or after the commencement of this section.

21 What official status means

(1) A version of legislation that has official status in accordance with **section 20** is to be taken—

(a) to correctly state the law enacted or made by that legislation; and

(b) in the case of a reprint of that legislation, to correctly state, as at the date at which it is stated to be reprinted,

the law enacted or made by the legislation reprinted and by the amendments (if any) to that legislation; and

(c) in the case of a copy or reprint of any regulations, to be evidence that the regulations were notified in the *Gazette* on the date shown on that copy or reprint as the date of their notification in the *Gazette*.

(2) The presumption in **subsection (1)**,—

(a) applies unless the contrary is shown:

(b) to avoid any doubt, applies to a reprint in which changes authorised by **section 64** have been made.

Compare: 1989 No 142 ss 16C, 16D

Evidence of parliamentary Journals

22 Copies of parliamentary Journals to be evidence

All copies of the Journals of the Legislative Council or the House of Representatives, purporting to be printed by the Government Printer or published by order of the House of Representatives, must be admitted as evidence of those matters by all courts and persons acting judicially without proof being given that those copies were so printed or published.

Compare: 1989 No 142 s 16E

Subpart 5—Miscellaneous provisions

Form of copies and reprints of legislation

23 Form of copies and reprints

(1) The Attorney-General may give directions about the form in which all or any of the following must be published under this Part:

(a) copies of Acts:

(b) reprints of Acts:

(c) copies of regulations:

(d) reprints of regulations:

(e) reprints of Imperial enactments or Imperial subordinate legislation that have effect as part of the laws of New Zealand.

(2) A direction may include provision for the omission of signatures and formal or introductory parts.

Compare: 1989 No 142 s 7

24 Special requirements in relation to copies of regulations

(1) In the case of all regulations, references to the following must be published:

(a) the Act or other authority under which the regulations were made:

(b) the date on which the regulations were made:

(c) the date (if any) on which the regulations are stated to come into force.

(2) This section overrides **section 23(2)**.

Compare: 1989 No 142 s 8

Regulations

25 Regulations

The Governor-General may, by Order in Council, make regulations—

(a) prescribing, for the purpose of **section 11(1)**, the manner in which electronic versions of legislation with official status are to be made available to the public, which (without limitation) may include being made available from an Internet site maintained by the New Zealand Government:

(b) prescribing, for the purpose of **section 20(1)(b)**, the formats of electronic versions of legislation that have official status, which (without limitation) may include the following formats:

(i) one or more formats accessed at, or downloaded from, an Internet site maintained by the New Zealand Government:

(ii) one or more formats authorised by the Chief Parliamentary Counsel:

(c) prescribing, for the purpose of **section 20**, how the official status of an electronic version of legislation can be authenticated, for example (without limitation) through the use of digital signatures or digital watermarks:

(d) providing for any other matters contemplated by this Part, necessary for its administration, or necessary for giving it full effect.

Part 3
Interpretation

Subpart 1—Purposes and application

26 Purposes of this Part

The purposes of this Part are—

(a) to state principles and rules for the interpretation of legislation; and

(b) to shorten legislation; and

(c) to promote consistency in the language and form of legislation.

Compare: 1999 No 85 s 2

27 Application

(1) This Part applies to an enactment that is part of the law of New Zealand and that is passed either before or after the commencement of this Act unless—

(a) the enactment provides otherwise; or

(b) the context of the enactment requires a different interpretation.

(2) The provisions of this Part also apply to the interpretation of this Act.

Compare: 1999 No 85 s 4

Subpart 2—Principles of interpretation

28 Ascertaining meaning of legislation

(1) The meaning of an enactment must be ascertained from its text and in the light of its purpose.

(2) The matters that may be considered in ascertaining the meaning of an enactment include the indications provided in the enactment.

(3) Examples of those indications are preambles, the analysis, a table of contents, headings to Parts and sections, marginal notes, diagrams, graphics, examples and explanatory material, and the organisation and format of the enactment.

Compare: 1999 No 85 s 5

29 Enactments apply to circumstances as they arise

An enactment applies to circumstances as they arise.

Compare: 1999 No 85 s 6

30 Enactments do not have retrospective effect

An enactment does not have retrospective effect.

Compare: 1999 No 85 s 7

Subpart 3—Specific provisions applying to legislation

Commencement of legislation

31 Date of commencement of Acts

(1) An Act or an enactment in an Act comes into force on the date stated or provided in the Act for the commencement of the Act or for the commencement of the enactment.

(2) If an Act does not state or provide for a commencement date, the Act comes into force on the day after the date of assent.

Compare: 1999 No 85 s 8

32 Date of commencement of regulations

(1) Regulations or enactments in regulations come into force on the date stated or provided in the regulations for the commencement of the regulations or for the commencement of the enactments.

(2) If regulations do not state or provide for the date on which the regulations or enactments in the regulations come into force, the regulations come into force on the day after the date of their notification in the *Gazette*.

Compare: 1999 No 85 s 9

33 Time of commencement of legislation

(1) An enactment comes into force at the beginning of the day on which the enactment comes into force.

(2) If an enactment is expressed to take effect from a particular day, the enactment takes effect at the beginning of the next day.

(3) An Order in Council may appoint a day for an enactment to come into force that is the same day as the day on which the Order in Council is made, in which case the enactment comes into force at the beginning of that day.

Compare: 1999 No 85 s 10

Exercise of powers between passing and commencement of legislation

34 Exercise of powers between passing and commencement of legislation

(1) A power conferred by an enactment may be exercised before the enactment comes into force or takes effect to—

(a) make a regulation or rule or other instrument; or

(b) serve a notice or document; or

(c) appoint a person to an office or position; or

(d) establish a body of persons; or

(e) do any other act or thing for the purposes of an enactment.

(2) The power may be exercised only if the exercise of the power is necessary or desirable to bring, or in connection with bringing, an enactment into operation.

(3) The power may not be exercised if anything that results from exercising the power comes into force or takes effect before the enactment itself comes into force unless the exercise of the power is necessary or desirable to bring, or in connection with bringing, the enactment into operation.

(4) **Subsection (1)** applies as if the enactment under which the power is exercised and any other enactment that is not in force when the power is exercised were in force when the power is exercised.

Compare: 1999 No 85 s 11

Exercise of powers in legislation generally

35 Power to appoint to an office

The power to appoint a person to an office includes the power to—

(a) remove or suspend a person from the office:

(b) reappoint or reinstate a person to the office:

(c) appoint another person in place of a person who—
  (i) has vacated the office; or
  (ii) has died; or
  (iii) is absent; or
  (iv) is incapacitated in a way that affects the performance of that person's duty.

Compare: 1999 No 85 s 12

36 Power to correct errors

The power to make an appointment or do any other act or thing may be exercised to correct an error or omission in a previous exercise of the power even though the power is not generally capable of being exercised more than once.

Compare: 1999 No 85 s 13

37 Exercise of powers by deputies

A power conferred on the holder of an office, other than a Minister of the Crown, may be exercised by the holder's deputy lawfully acting in the office.

Compare: 1999 No 85 s 14

38 Power to amend or revoke

The power to make or issue a regulation, Order in Council, Proclamation, notice, rule, bylaw, warrant, or other instrument includes the power to—

(a) amend or revoke it:

(b) revoke it and replace it with another.

Compare: 1999 No 85 s 15

39 Exercise of powers and duties more than once

(1) A power conferred by an enactment may be exercised from time to time.

(2) A duty or function imposed by an enactment may be performed from time to time.

Compare: 1999 No 85 s 16

Repeals

40 Effect of repeal generally

(1) The repeal of an enactment does not affect—

(a) the validity, invalidity, effect, or consequences of anything done or suffered:

(b) an existing right, interest, title, immunity, or duty:

(c) an existing status or capacity:

(d) an amendment made by the enactment to another enactment:

(e) the previous operation of the enactment or anything done or suffered under it.

(2) The repeal of an enactment does not revive—

(a) an enactment that has been repealed or a rule of law that has been abolished:

(b) any other thing that is not in force or existing at the time the repeal takes effect.

Compare: 1999 No 85 s 17

41 Effect of repeal on enforcement of existing rights

(1) The repeal of an enactment does not affect the completion of a matter or thing or the bringing or completion of proceedings that relate to an existing right, interest, title, immunity, or duty.

(2) A repealed enactment continues to have effect as if it had not been repealed for the purpose of completing the matter or thing or bringing or completing the proceedings that relate to the existing right, interest, title, immunity, or duty.

Compare: 1999 No 85 s 18

42 Effect of repeal on prior offences and breaches of enactments

(1) The repeal of an enactment does not affect a liability to a penalty for an offence or for a breach of an enactment committed before the repeal.

(2) A repealed enactment continues to have effect as if it had not been repealed for the purpose of—

(a) investigating the offence or breach:

(b) commencing or completing proceedings for the offence or breach:

(c) imposing a penalty for the offence or breach.

Compare: 1999 No 85 s 19

43 Enactments made under repealed legislation to have continuing effect

(1) An enactment made under a repealed enactment, and that is in force immediately before that repeal, continues in force as if it had been made under any other enactment—

(a) that, with or without modification, replaces, or that corresponds to, the enactment repealed; and

(b) under which it could be made.

(2) An enactment that continues in force may be amended or revoked as if it had been made under the enactment that replaces, or that corresponds to, the repealed enactment.

Compare: 1999 No 85 s 20

44 Powers exercised under repealed legislation to have continuing effect

Anything done in the exercise of a power under a repealed enactment, and that is in effect immediately before that repeal, continues to have effect as if it had been exercised under any other enactment—

(a) that, with or without modification, replaces, or that corresponds to, the enactment repealed; and

(b) under which the power could be exercised.

Compare: 1999 No 85 s 21

45 References to repealed enactment

(1) The repeal of an enactment does not affect an enactment in which the repealed enactment is applied, incorporated, or referred to.

(2) A reference in an enactment to a repealed enactment is a reference to an enactment that, with or without modification, replaces, or that corresponds to, the enactment repealed.

(3) **Subsection (1)** is subject to **subsection (2)**.

Compare: 1999 No 85 s 22

Amending legislation

46 Amending enactment part of enactment amended

An amending enactment is part of the enactment that it amends.

Compare: 1999 No 85 s 23

Authority to make certain enactments

47 Authority to make certain enactments

(1) It is not necessary for an enactment, Proclamation, Order in Council, warrant, or other instrument made under an enactment to refer to facts, circumstances, or preconditions that must exist or be satisfied before the enactment, Proclamation, Order in Council, warrant, or other instrument can be made.

(2) An enactment, Proclamation, Order in Council, warrant, or other instrument is not invalid just because the enactment under which it is expressed to have been made does not authorise its making as long as its making is authorised by another enactment.

Compare: 1999 No 85 s 24

48 Amendment and revocation of regulations made by Act

Regulations amended or substituted by an Act may be amended, replaced, or revoked by subsequent regulations as if they had been made by regulation.

Compare: 1999 No 85 s 25

Forms

49 Use of prescribed forms

A form is not invalid just because it contains minor differences from a prescribed form as long as the form still has the same effect and is not misleading.

Compare: 1999 No 85 s 26

Subpart 4—Application of legislation to the Crown

50 Enactments not binding on the Crown

No enactment binds the Crown unless the enactment expressly provides that the Crown is bound by the enactment.

Compare: 1999 No 85 s 27

Subpart 5—Meaning of terms and expressions in legislation

51 Definitions

In an enactment,—

Act means an Act of the Parliament of New Zealand or of the General Assembly; and includes an Imperial Act that is part of the law of New Zealand

commencement, in relation to an enactment, means the time when the enactment comes into force

committed for trial means committed to the High Court or a District Court under the Summary Proceedings Act 1957

Commonwealth country and **part of the Commonwealth** mean a country that is a member of the Commonwealth; and include a territory for the international relations of which the member is responsible

consular officer means a person who has authority to exercise consular functions

de facto partner means a person who is a party to a de facto relationship (as defined in **section 52**)

enactment means the whole or a portion of an Act or regulations

Gazette means the New Zealand Gazette published or purporting to be published under the authority of the New Zealand Government; and includes a supplement

Governor-General in Council or a similar expression means the Governor-General acting on the advice and with the consent of the Executive Council

Imperial Act means an Act of the Parliament of England, or of the Parliament of Great Britain, or of the Parliament of the United Kingdom

Minister, in relation to an enactment, means the Minister of the Crown who, under the authority of a warrant or with the authority of the Prime Minister, is responsible for the administration of an enactment

month means a calendar month

New Zealand or similar words referring to New Zealand, when used as a territorial description, mean the islands and territories within the Realm of New Zealand; but do not include the self-governing state of the Cook Islands, the self-governing State of Niue, Tokelau, or the Ross Dependency

North Island means the island commonly known as the **North Island**; and includes the islands adjacent to it north of Cook Strait

Order in Council means an order made by the Governor-General in Council

person includes a corporation sole, a body corporate, and an unincorporated body

prescribed means prescribed by or under an enactment

Proclamation means a Proclamation made and signed by the Governor-General under the Seal of New Zealand and published in the *Gazette*

public notification, **public notice**, or a similar expression in relation to an act, matter, or thing, means a notice published in—

(a) the *Gazette*; or

(b) one or more newspapers circulating in the place or district to which the act, matter, or thing relates or in which it arises

regulations means—

(a) regulations, rules, or bylaws made under an Act by the Governor-General in Council or by a Minister of the Crown:

(b) an Order in Council, Proclamation, notice, warrant, or instrument, made under an enactment that varies or extends the scope or provisions of an enactment:

(c) an Order in Council that brings into force, repeals, or suspends an enactment:

(d) regulations, rules, or an instrument made under an Imperial Act or the Royal prerogative and having the force of law in New Zealand:

(e) an instrument that is a regulation or that is required to be treated as a regulation for the purposes of this Act or the Regulations Act 1936 or the Acts and Regulations Publication Act 1989 or the Regulations (Disallowance) Act 1989:

(f) an instrument that revokes regulations, rules, bylaws, an Order in Council, a Proclamation, a notice, a warrant, or an instrument, referred to in **paragraphs (a) to (e)**

repeal, in relation to an enactment, includes expiry, revocation, and replacement

rules of court, in relation to a court, means rules regulating the practice and procedure of the court

South Island means the island commonly known as the **South Island**; and includes the islands adjacent to it south of Cook Strait

summary conviction means a conviction by a District Court Judge or by 1 or more Justices of the Peace in accordance with the Summary Proceedings Act 1957

territorial limits of New Zealand, **limits of New Zealand**, or a similar expression, when used as a territorial description, means the outer limits of the territorial sea of New Zealand

working day means a day of the week other than—

(a) a Saturday, a Sunday, Waitangi Day, Good Friday, Easter Monday, Anzac Day, the Sovereign's Birthday, and Labour Day; and

(b) a day in the period commencing with 25 December in a year and ending with 2 January in the following year; and

(c) if 1 January falls on a Friday, the following Monday; and

(d) if 1 January falls on a Saturday or a Sunday, the following Monday and Tuesday

writing means representing or reproducing words, figures, or symbols in a visible and tangible form and medium (for example, in print).

Compare: 1999 No 85 s 29

52 Meaning of de facto relationship

(1) In an enactment, **de facto relationship** means a relationship between 2 people (whether a man and a woman, a man and a man, or a woman and a woman) who—

(a) live together as a couple in a relationship in the nature of marriage or civil union; and

(b) are not married to, or in a civil union with, each other; and

(c) are both aged 16 years or older.

(2) Despite **subsection (1)**, a relationship involving a person aged 16 or 17 years is not a de facto relationship unless that person has obtained consent for the relationship in accordance with section 46A of the Care of Children Act 2004.

(3) In determining whether 2 people live together as a couple in a relationship in the nature of marriage or civil union, the court or person required to determine the question must have regard to—

(a) the context, or the purpose of the law, in which the question is to be determined; and

(b) all the circumstances of the relationship.

(4) A de facto relationship ends if—

(a) the de facto partners cease to live together as a couple in a relationship in the nature of marriage or civil union; or

(b) one of the de facto partners dies.

Compare: 1999 No 85 s 29A

53 Meaning of step-parent, etc

For the purposes of an enactment, the relationship of step-parent, stepson, stepdaughter, or any other relationship described by a word containing the prefix "step", may be established by civil union or by de facto relationship as well as by marriage.

Compare: 1999 No 85 s 29B

54 Definitions in enactments passed or made before commencement of Interpretation Act 1999

In an enactment passed or made before the commencement, on 1 November 1999, of the Interpretation Act 1999,—

Act includes rules and regulations made under the Act

constable includes a police officer of any rank

Governor means the Governor-General

land includes messuages, tenements, hereditaments, houses, and buildings, unless there are words to exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure

person includes a corporation sole, and also a body of persons, whether corporate or unincorporate.

Compare: 1999 No 85 s 30

55 Use of masculine gender in enactments passed or made before commencement of Interpretation Act 1999

In an enactment passed or made before the commencement, on 1 November 1999, of the Interpretation Act 1999, words denoting the masculine gender include females.

Compare: 1999 No 85 s 31

56 Parts of speech and grammatical forms

Parts of speech and grammatical forms of a word that is defined in an enactment have corresponding meanings in the same enactment.

Compare: 1999 No 85 s 32

57 Numbers

Words in the singular include the plural and words in the plural include the singular.

Compare: 1999 No 85 s 33

58 Meaning of words and expressions used in regulations and other instruments

A word or expression used in a regulation, Order in Council, Proclamation, notice, rule, bylaw, warrant, or other instrument

made under an enactment has the same meaning as it has in the enactment under which it is made.

Compare: 1999 No 85 s 34

59 Time

(1) A period of time described as beginning at, on, or with a specified day, act, or event includes that day or the day of the act or event.

(2) A period of time described as beginning from or after a specified day, act, or event does not include that day or the day of the act or event.

(3) A period of time described as ending by, on, at, or with, or as continuing to or until, a specified day, act, or event includes that day or the day of the act or event.

(4) A period of time described as ending before a specified day, act, or event does not include that day or the day of the act or event.

(5) A reference to a number of days between 2 events does not include the days on which the events happened.

(6) A thing that, under an enactment, must or may be done on a particular day or within a limited period of time may, if that day or the last day of that period is not a working day, be done on the next working day.

Compare: 1999 No 85 s 35

60 Distance

A reference to a distance means a distance measured in a straight line on a horizontal plane.

Compare: 1999 No 85 s 36

Subpart 6—Saving

61 Saving of section 26 of Acts Interpretation Act 1908

Section 26 of the Acts Interpretation Act 1908, as set out in **Schedule 1**, continues in force despite the repeal of that Act, the Acts Interpretation Act 1924, and the Interpretation Act 1999.

Compare: 1999 No 85 s 38(2)

Part 4
Reprinting of legislation

62 Interpretation

In this Part, unless the context otherwise requires,—

current drafting practice means the legislative drafting practice for the time being used in New Zealand

legislation means—

(a) an Act:

(b) an Imperial Act that has effect as part of the laws of New Zealand:

(c) any regulations

(d) an instrument that, under **section 17** or any corresponding provision of any previous enactment, has been published as if it were a regulation

referential words means words (for example, "of this Act", "of this section", "of this paragraph", "the said", and "hereof") that identify the whole or part of a provision (including a schedule) as a provision, or as part of a provision, of the enactment in which they appear

reprint means a version of legislation that—

(a) states, as at the date at which it is stated to be reprinted, the law enacted or made by the legislation reprinted and by the amendments (if any) to that legislation; and

(b) is published under **Part 2**; and

(c) has official status under **section 20**.

Compare: 1989 No 142 s 17A

63 Purpose of this Part

The purpose of this Part is to facilitate the production of up-to-date reprints that, to the extent permitted by this Part, are modernised and made consistent with current drafting practice with respect to mode of expression, style, and format.

Compare: 1989 No 142 s 17B

64 Power to make changes in reprints

(1) Changes authorised by **sections 65 and 66** may be made in a reprint.

(2) **Sections 65 and 66** do not permit any change that, if it were enacted or made as an amendment to the legislation reprinted, would change the effect of the legislation.

(3) Nothing in this section limits the authority to make changes in a reprint—

(a) to show the effect of any amendment or repeal; or

(b) in reliance on the application of **section 45(2)** or any other enactment.

Compare: 1989 No 142 s 17C

65 Editorial changes

The following changes may be made in a reprint:

(a) language that indicates or could be taken to indicate a particular gender may be changed to gender-neutral language so that it is consistent with current drafting practice:

Examples

The word "he" may be changed to "he or she", or replaced with the relevant noun.

The word "chairman" may be changed to "chairperson".

The words "Her Majesty the Queen" may be changed to "the Sovereign".

(b) provisions may be renumbered, and provisions that are not numbered may be numbered, and all necessary consequential amendments may be made, so as to be consistent with current drafting practice:

Examples

If an amendment to an Act inserts a new section between existing sections, the new section and all following sections may be renumbered so that they are sequential, and all necessary consequential numbering amendments may be made in that Act and any other enactment.

A Part numbered with roman numerals may be numbered with arabic numerals.

"First Schedule" may be changed to "Schedule 1".

(c) a reference to the name or title of a body, office, person, place, or thing that has been changed may be replaced with a reference to the name or title as changed:

(d) a reference to body, office, person, place, or thing that has been replaced by another body, office, person, place, or thing may be changed to a reference to the replacement body, office, person, place, or thing:

(e) changes may be made to the way provisions are referred to, so as to be consistent with current drafting practice:

Example

A reference to a schedule to a particular enactment may be changed to a schedule of that enactment.

(f) unnecessary referential words may be omitted:

(g) punctuation may be changed or omitted, or new punctuation inserted, so as to be consistent with current drafting practice

(h) conjunctives and disjunctives may be inserted, omitted, or changed so as to be consistent with current drafting practice:

(i) obvious errors of the following kinds may be corrected:

(i) typographical and clerical errors:

(ii) grammatical and spelling errors, and errors of punctuation:

(iii) errors in numbering, cross-referencing, and alphabetical ordering:

(iv) errors in or arising out of an amendment, by another enactment, to the legislation reprinted:

(v) any other error of a similar nature:

Examples

In the following provision, the word in bold can be omitted: "The board of a company may make offers on **on** one or more stock exchanges."

An Act consequentially repeals section 85(3) of another Act. The other Act does not contain a section 85, and it is obvious from the context that the intention was to repeal section 75(3). The error can be corrected.

An Act contains amendments to section 6 of another Act. Before the first Act comes into force, the other Act is amended so that section 6 is replaced by section 6A in substantially similar terms. Section 6A can be amended to reflect the intent of the amendments to section 6.

(j) changes may be made to the way numbers, dates, times, quantities, measurements, and similar matters, ideas, or concepts are referred to or expressed so as to be consistent with current drafting practice:

Example

A reference in a form to "this [blank] day of [blank] 19...." may be changed to "this [blank] day of [blank] 20...." or to "[*Date*]".

(k) a provision in the nature of a savings, transitional, validation, or other similar provision that is contained in an amending enactment may be incorporated as a provision of the enactment it amends, and all necessary consequential amendments may be made:

(l) changes may be made that are purely consequential on any amendment made, by another enactment, to the legislation reprinted:

Example

The heading to a section may be changed to reflect the effect of an amendment to the section.

(m) changes may be made that are purely consequential on any other change authorised by **section 64**.

Compare: 1989 No 142 s 17E

66 Changes to format

(1) Format may be changed so that the format of the reprint is consistent with current drafting practice.

(2) Changes authorised by this section include (without limitation)—

(a) changes to the setting out of provisions, tables, and schedules:

(b) the repositioning of marginal notes or section headings:

(c) changes to typeface and type size:

(d) the addition or removal of bolding, italics, and similar textual attributes:

(e) the addition or removal of quotation marks and rules:

(f) changes to the case of letters or words:

Example

Small capitals may be changed to ordinary capitals, and capitals and small capitals may be changed to capitals and lower case.

(g) the addition, alteration, or removal of running heads:

(h) the repositioning of the date of Royal assent.

Compare: 1989 No 142 s 17D

67 Changes to be noted in reprint

If changes authorised by **section 64** are made in a reprint, the reprint must—

(a) indicate that fact in a suitable place; and

(b) outline in general terms, and in a suitable place, the changes made.

Compare: 1989 No 142 s 17F

Part 5
Revision of statutes

Purpose, overview, and interpretation

68 Purpose and overview

(1) The purpose of this Part is to make New Zealand statute law more accessible, readable, and easier to understand by facilitating the progressive and systematic revision of the New Zealand statute book, so that statute law is rationalised and arranged more logically, inconsistencies and overlaps are removed, obsolete and redundant provisions are repealed, and expression, style, and format are modernised and made consistent.

(2) This Part therefore sets out a process for the preparation, approval, and enactment of revisions of Acts of Parliament.

(3) A revision is a new Act that re-enacts, in an up-to-date and accessible form, the law previously contained in all or part of 1 or more Acts of Parliament, but (except as authorised by this Part) does not change the spirit and meaning of the law.

(4) This Part contains—

(a) a requirement for the preparation and approval of a three-yearly revision programme:

(b) the powers that may be exercised in the preparation of revisions:

(c) the process by which revisions may be submitted for the approval of the House of Representations and enacted as Acts of Parliament.

69 Interpretation

In this Part, unless the context otherwise requires,—

revision Bill means a Bill in respect of which a certificate is given under **section 73**

revision committee means the Committee of the House of Representatives responsible for examining revision Bills

revision programme means a final revision programme published in accordance with **section 70**.

Preparation of revisions

70 3–year revision programme

(1) The Chief Parliamentary Counsel must, no later than 3 months after the first meeting of the House of Representatives following a general election, prepare a draft revision programme for the period corresponding with the term of that Parliament, setting out—

(a) the revisions that it is proposed will be started during that period; and

(b) the revisions that are expected to be completed during that period; and

(c) the revisions on which work is expected to continue during that period.

(2) As soon as practicable after preparing a draft revision programme, the Chief Parliamentary Counsel must—

(a) give the draft revision programme to the Attorney-General, who must then present the draft to the House of Representatives without delay; and

(b) make the draft publicly available, and invite submissions on the draft from interested persons and members of the public (allowing a reasonable time for those submissions to be made).

(3) The Chief Parliamentary Counsel must consider any submissions and comments received on the draft revision programme (including any comments received from the revision committee and any other Parliamentary select committee), and then finalise and make the revision programme publicly available no later than 3 months after the date on which the draft revision programme was presented to the House of Representatives.

(4) The Chief Parliamentary Counsel must also give a copy of the final revision programme to the Attorney-General, who must then present the programme to the House of Representatives without delay.

(5) The Chief Parliamentary Counsel must include, in every annual report of the Parliamentary Counsel Office under section 43 of the Public Finance Act 1989, a report on the carrying out of the Chief Parliamentary Counsel's functions under this Part during the year to which the report relates. The report may include (without limitation)—

(a) recommendations for the repeal of obsolete or redundant enactments or provisions of enactments, where their repeal is not suitable for inclusion in a revision:

(b) recommendations for changes to the revision powers set out in **section 71**, or to the procedures for the certification, examination, and enactment of revision Bills.

71 Revision powers

(1) The Chief Parliamentary Counsel must prepare revisions of Acts of Parliament in accordance with the current revision programme and this section.

(2) A revision may—

(a) revise the whole or part of 1 or more Acts, and for that purpose combine or divide Acts or parts of Acts:

(b) adopt a title for the revision that is different from the title of the Acts or parts of Acts revised:

(c) omit redundant and spent provisions:

(d) renumber and rearrange provisions from the Acts or parts of Acts revised:

(e) make changes in language, format, and punctuation to achieve a clear, consistent, gender-neutral, and modern style of expression, to achieve consistency with current

drafting style and format, and generally to express better the spirit and meaning of the law:

(f) include new or additional purpose provisions, outline or overview provisions, examples, diagrams, graphics, flowcharts, readers' notes, lists of defined terms, and other similar devices to aid accessibility and readability:

(g) include new or additional provisions alerting users of the revision to enactments that are not incorporated in the revision but are relevant to the subject matter of the revision:

(h) correct typographical, punctuation, and grammatical errors, and other similar errors:

(i) make minor amendments to clarify the intent of the legislature, or reconcile inconsistencies between provisions:

(j) omit forms and schedules from the Acts or parts of Acts revised, and instead authorise the matters in those forms and schedules to be prescribed by or under regulations:

(k) make consequential amendments to enactments that are not incorporated, or are incorporated only in part, in the revision:

(l) include any necessary repeals, savings, and transitional provisions.

(3) A revision may not alter the spirit and meaning of the law, except as authorised by **subsection (2)(i)**.

(4) For the avoidance of doubt, the changes that may be made in a revision include, but are not limited to, any of the changes that may be made in a reprint under **Part 4**.

72 Format of revision

(1) A revision is to be in the form of a Bill suitable for introduction into the House of Representatives.

(2) The Bill must include, as part of its explanatory note, a statement setting out, in general terms, the inconsistencies, anomolies, discrepancies, and omissions that were identified in the course of the preparation of the revision, and how they have been remedied in the Bill.

(3) A revision may be structured so that it is able to be divided into 2 or more Bills to be enacted at the same time.

73 Certification of revision Bill

(1) For the purposes of this Part, the certifiers are the President of the Law Commission, the Solicitor-General, a retired Judge of the High Court nominated by the Attorney-General, and the Chief Parliamentary Counsel.

(2) The Chief Parliamentary Counsel may submit a revision to the certifiers for certification under this section.

(3) The certifiers may certify a revision if they are satisfied—

(a) that the revision powers set out in **section 71** have been exercised appropriately in the preparation of the revision; and

(b) that the revision does not alter the spirit and meaning of the law, except as authorised by **section 71(2)(i)**.

(4) Before certifying a revision, the certifiers may require the Chief Parliamentary Counsel to make whatever changes they consider necessary to make the revision suitable for presentation to the House of Representatives as a revision Bill.

(5) When a revision has been certified, the Chief Parliamentary Counsel must give the revision Bill and certificate to the Attorney-General.

Procedure for examination and enactment of revisions

74 Presentation of revisions to House

(1) As soon as practicable after receiving a revision Bill and certificate in accordance with **section 73**, the Attorney-General must present the Bill and certificate to the House of Representatives.

(2) A revision Bill and certificate presented to the House of Representatives under **subsection (1)** stand referred, by virtue of this section, to the revision committee.

75 Examination of revision Bill by committee of House

(1) The revision committee must examine every revision Bill that stands referred to it under **section 74**, and make a report to the House of Representatives—

(a) recommending that the revision Bill be enacted, with or without amendment; or

(b) recommending that the revision Bill not be enacted.

(2) If the revision committee recommends to the House that a revision Bill be enacted with amendment, the revision committee must include in its report to the House a copy of the Bill incorporating those amendments, and the Bill is to be treated as amended accordingly.

(3) If amendments intended to clarify the intent of the legislature are included in the Bill in accordance with **section 71(2)(i)**, then before recommending that the revision Bill be enacted, the revision committee must be satisfied that the amendments are not of such importance that they should be enacted separately.

76 Amendment or division of revision Bill after revision committee report

(1) If, in its report to the House of Representatives, the revision committee recommends that a revision Bill be divided into 2 or more Bills to be enacted at the same time, then **section 77(1) and (2)** apply as if the Bill were divided into those separate Bills immediately before being treated as having been given a third reading under **section 77(1)**.

(2) If, after the revision committee has recommended to the House that a revision Bill be enacted, the revision committee considers that the Bill should be amended or further amended before enactment, the revision committee may report to the House and include a copy of the Bill incorporating those amendments, and the Bill is to be treated as amended accordingly.

77 Enactment of revisions

(1) A revision Bill is to be treated as having been given its third reading on the 21st sitting day after the date on which the revision committee has recommended to the House of Representatives that the revision Bill be enacted, unless, before then, the House of Representatives resolves that the revision Bill not be enacted or the Bill is withdrawn.

(2) A revision Bill that is treated as having been given its third reading is then presented for the Royal assent in the usual way.

(3) Any member of Parliament may give in the House of Representatives notice of a motion that a particular revision Bill not be enacted. The notice of motion must be given within 7 sitting days after the date on which the revision committee has recommended to the House that the revision Bill be enacted.

(4) If a member of Parliament gives a notice of motion with respect to a revision Bill in accordance with **subsection (3)**, and none of the things set out in **subsection (5)** has happened on or before the 20th sitting day after the date on which the revision committee has recommended to the House that the revision Bill be enacted, the motion is to be treated as having been agreed to by the House of Representatives on that 20th sitting day.

(5) The following are the things to which **subsection (4)** applies:
- (a) the notice has been withdrawn before the motion has been called on and moved:
- (b) the motion has been called on and moved but then withdrawn:
- (c) the motion has been moved and disposed of:
- (d) the Bill is withdrawn:
- (e) Parliament is dissolved or expires.

(6) If the House of Representatives resolves that a revision Bill not be enacted, the Bill lapses.

78 Special provision if Parliament dissolved or expires after revision committee recommends Bill be enacted

(1) This section applies if—
- (a) the revision committee recommends to the House of Representatives that a revision Bill be enacted; and
- (b) the revision Bill lapses because Parliament is dissolved or expires; and
- (c) the revision Bill is then reinstated in the next session of Parliament.

(2) When this section applies, then regardless of **subsections (1) and (3)** of **section 77**, **section 77** applies as if the recommendation of the revision committee had been made on the sitting day in the first session of the next Parliament on which the revision Bill is reinstated.

Interpretation of revisions

79 Interpretation of revisions

(1) An Act enacted in accordance with this Part (a revision Act) is not intended to alter the spirit and meaning of the law as expressed in the Acts or parts of Acts repealed by and incorporated in the revision Act.

(2) **Subsection (1)** does not apply to the extent that the revision Act states that a particular provision is intended to alter the law.

Compare: 2007 No 97 (Income Tax Act 2007) s ZA 3(3)

Part 6
Disallowance of regulations

Interpretation

80 Interpretation

In this Part, unless the context otherwise requires, **disallowance motion** means a motion to disallow any regulations or any provisions of any regulations, where notice of the motion is given by a member of Parliament who, at the time of the giving of the notice, is a member of the Committee of the House of Representatives responsible for the review of regulations.

Disallowance of regulations

81 Disallowance of regulations

(1) The House of Representatives may, by resolution, disallow any regulations or provisions of regulations.

(2) Where the House of Representatives passes a resolution disallowing any regulations or any provisions of any regulations, the regulations or provisions disallowed cease to have effect on the later of—

(a) the passing of the resolution; or

(b) any date specified in the resolution as the date on which the regulations or provisions cease to have effect.

(3) This section does not apply in relation to any resolution to which **section 85** applies.

Compare: 1989 No 143 s 5

82 Disallowance of regulations where motion to disallow not disposed of

(1) If notice of a disallowance motion is given in respect of any regulations or any provisions of any regulations, and none of the things set out in **subsection (2)** has happened on or before the 21st sitting day after the giving of the notice, the regulations or provisions specified for disallowance in the motion are to be treated as having been disallowed.

(2) The following are the things to which **subsection (1)** applies:

(a) the notice has been withdrawn before the motion has been called on and the motion moved:

(b) the motion has been called on and moved but then withdrawn:

(c) the motion has been moved and disposed of:

(d) Parliament is dissolved or expires.

(3) Where any regulations or provisions specified in a disallowance motion are disallowed under **subsection (1)**, the regulations or provisions so disallowed cease to have effect on the later of—

(a) the expiration of the 21st sitting day after the giving of notice of the motion; or

(b) any date specified in the motion as the date on which the regulations or provisions cease to have effect.

Compare: 1989 No 143 s 6

Effect of disallowance

83 Effect of disallowance

Where any regulations or any provisions of any regulations are disallowed under **section 81**, or are treated as having been disallowed under **section 82**, the disallowance of the regulations or provisions has the same effect as a revocation of those regulations or provisions.

Compare: 1989 No 143 s 7

84 Restoration or revival of Acts or regulations

(1) Where any regulations or provisions of regulations (being regulations or provisions that amended any Act or any regulation or repealed any Act or revoked any regulation)

are disallowed under **section 81** or are treated as having been disallowed under **section 82**, the disallowance of the regulations or provisions has the effect of restoring or reviving the Act or regulation, as it was immediately before it was amended, repealed, or revoked, as if the regulations disallowed or provisions disallowed had not been made.

(2) The restoration or revival of an Act or regulation pursuant to **subsection (1)** takes effect on the day on which the regulations or provisions by which it was amended or repealed or revoked ceased to have effect.

Compare: 1989 No 143 s 8

Amendment or substitution of regulations by House of Representatives

85 Amendment or substitution of regulations by House of Representatives

(1) The House of Representatives may, by resolution,—

(a) amend any regulations; or

(b) revoke any regulations, and substitute other regulations.

(2) Where the House of Representatives passes a resolution of the kind referred to in **subsection (1)**, the amendment or the revocation and substitution, as the case may be, takes effect on the later of—

(a) the 28th day after the date of the publication of the notice required by **section 86**; or

(b) any date specified in the notice required by **section 86** as the date on which the amendment or the revocation and substitution, as the case may be, takes effect.

Compare: 1989 No 143 s 9

Notification of disallowance, amendment, or substitution

86 Notice of resolution or motion

(1) This section applies in the following circumstances:

(a) a resolution disallowing or revoking any regulations is passed by the House of Representatives:

(b) a resolution amending any regulations or a resolution revoking any regulations and substituting other regulations is passed by the House of Representatives:

(c) notice of a disallowance motion has been given in respect of any regulations or any provisions of any regulations, and the regulations or provisions specified for disallowance in the motion are treated as having been disallowed under **section 82**.

(2) Where this section applies, the Clerk of the House of Representatives must immediately forward to the Chief Parliamentary Counsel a notice in relation to that resolution or notice of motion.

(3) The notice forwarded under **subsection (2)**—

(a) must be accompanied by the text of the resolution or the text of the notice of motion, as the case requires; and

(b) in the case of a resolution, must show the date on which the resolution was passed; and

(c) in the case of a notice of motion, must show—

(i) the date of the sitting day on which the notice of motion was given; and

(ii) the date of the 21st sitting day after the giving of the notice of motion.

(4) The notice is conclusive evidence of the matters stated in **subsection (3)(b) and (c)**.

(5) The Chief Parliamentary Counsel must arrange for every notice forwarded under **subsection (2)** to be published under **section 8** as if it were a regulation.

Compare: 1989 No 143 s 10

Part 7
Parliamentary Counsel Office

Constitution and functions

87 Parliamentary Counsel Office

(1) There continues to be an office of Parliament called the Parliamentary Counsel Office.

(2) The Parliamentary Counsel Office is under the control of the Attorney-General.

(3) During any period when there is no Minister of the Crown who is Attorney-General, the office is under the control of the Prime Minister.

Compare: 1920 No 46 s 2

88 Bill Drafting Department and Compilation Department

The Parliamentary Counsel Office has 2 departments, as follows:

(a) the Bill Drafting Department:

(b) the Compilation Department.

Compare: 1920 No 46 s 3

89 Duties of officers of Bill Drafting Department

(1) Officers of the Bill Drafting Department have the following duties:

(a) to draft the Government Bills that Ministers of the Crown direct to be prepared for the consideration of Parliament, and whatever amendments to those Bills are required by Ministers of the Crown during the passage of those Bills in Parliament:

(b) to supervise the printing of those Bills and amendments:

(c) to examine and report on local Bills, and to revise local Bills, in accordance with **section 90**:

(d) if and when directed by the Prime Minister or the Attorney-General, to report as to the form and effect of any Bills other than local Bills introduced by private members into the House of Representatives:

(e) any other duties relating to the drafting and preparation of statutes and regulations to be made under the authority of statutes as the Prime Minister or the Attorney-General assigns to be performed by the Bill Drafting Department.

(2) This section is subject to **section 97**

Compare: 1920 No 46 s 4(1)

90 Local Bills

(1) Officers of the Bill Drafting Department are to examine all local Bills, and to report to the Prime Minister or the Attorney-General whether and to what extent the provisions of any

local Bill affect the rights of the Crown or of the public, or repeal, extend, or amend the provisions of any public statute, and generally as to the form and effect of each local Bill.

(2) If and when directed by the Prime Minister or the Attorney-General on the request of a local authority, the Chief Parliamentary Counsel is to revise any local Bill proposed to be promoted by that local authority.

(3) If a local authority requests the revision of a local Bill, the fees (if any) prescribed by regulations made under **section 96** are payable by that local authority in respect of that revision.

Compare: 1920 No 46 s 4(1)(c), (2)-(4)

91 Duties of officers of Compilation Department

Officers of the Compilation Department have the following duties:

(a) as and when directed by the Prime Minister or the Attorney-General, to prepare compilations of statutes with their amendments, and supervise the printing of those compilations:

(b) to report to the Prime Minister or the Attorney-General on verbal or technical alterations of language that may be adopted for the purpose and in the course of any compilation:

(c) to consider the language and effect of the statutes that they have been directed to compile, and to provide for the consideration of the Prime Minister or the Attorney-General suggestions or proposals—

(i) for altering the law enacted by those statutes; or

(ii) for the extension or limitation of the effect of those statutes; or

(iii) for amending the wording of those statutes:

(d) any other duties relating to the compilation of statutes and the amendment or extension or limitation of the effect of statutes enacted by Parliament as the Prime Minister or the Attorney-General assigns to be performed by the Bill Drafting Department.

Compare: 1920 No 46 s 5

Officers and staff

92 Chief Parliamentary Counsel, Compiler of Statutes, and Parliamentary Counsel

(1) The Chief Parliamentary Counsel is the chief officer of the Bill Drafting Department.

(2) One or more Parliamentary Counsel are to be appointed.

(3) The Compiler of Statutes is the chief officer of the Compilation Department.

(4) The Chief Parliamentary Counsel, Parliamentary Counsel, and the Compiler of Statutes are all principal officers of the Parliamentary Counsel Office.

(5) The principal officers of the Parliamentary Counsel Office are appointed by the Governor-General on the advice of the Prime Minister, and hold office during the pleasure of the Governor-General.

Compare: 1920 No 46 s 6(1)-(3)

93 Other staff

(1) The staff of the Parliamentary Counsel Office (other than the principal officers) are appointed by the Chief Parliamentary Counsel.

(2) The number of those staff must not exceed a number (if any) determined by the Attorney-General.

Compare: 1920 No 46 s 6(4)

94 Remuneration and conditions of employment

(1) The Chief Parliamentary Counsel is paid—

(a) the remuneration determined by the Remuneration Authority; and

(b) any additional allowances (that is, travelling allowances or other incidental or minor allowances) that the Minister of Finance determines.

(2) The other principal officers of the Parliamentary Counsel Office are paid remuneration (including travelling allowances and other incidental allowances) that the Chief Parliamentary Counsel determines.

(3) The staff of the Parliamentary Counsel Office (other than the principal officers) are employed on terms and conditions of

employment, and are paid salaries and allowances, that the Chief Parliamentary Counsel determines.

(4) Before entering into a collective agreement under the Employment Relations Act 2000, the Chief Parliamentary Counsel must consult the State Services Commissioner about the conditions of employment to be included in the collective agreement.

Compare: 1920 No 46 s 6A(1)-(3A)

95 Commencement of determinations

(1) A determination made under **section 94** may be made to come into force on a date specified for that purpose in the determination, and may be the date of the making of the determination or any other date, whether before or after the date of the making of the determination.

(2) **Subsection (1)** is subject to the Remuneration Authority Act 1977.

(3) If a determination made under **section 94** does not specify a date on which it comes into force, it comes into force on the date of the making of the determination.

Compare: 1920 No 46 s 6A(4),(5)

Regulations

96 Regulations

The Governor-General may, by Order in Council, make regulations for the purpose of carrying into effect the provisions of this Part.

Compare: 1920 No 46 s 8

97 Power to authorise drafting and printing of Government Bills by Inland Revenue Department

(1) The Governor-General may, by Order in Council made on the recommendation of the Attorney-General, authorise the Inland Revenue Department—

(a) to draft whatever Government Bills the Minister of the Crown who is responsible for that Department directs to be prepared for the consideration of Parliament; and

(b) to draft whatever amendments to those Bills are required by that Minister during the passage of those Bills in Parliament; and

(c) to supervise the printing of those Bills and amendments.

(2) **Subsection (1)** overrides **section 89**.

(3) An Order in Council made under **subsection (1)** can only authorise the Inland Revenue Department to draft Bills, or amendments to Bills, intended to become Acts administered by that Department, and that authority may be subject to any exceptions specified in the order.

(4) Orders in Council made under **subsection (1)** are regulations for the purposes of **Parts 2 and 6**.

Compare: 1920 No 46 s 8A

Part 8
Enactments relevant to legislation but not incorporated in this revision

98 Power of Parliament to make laws

Section 15 of the Constitution Act 1986 deals with the power of Parliament to make laws.

99 Copyright in legislation

Section 27 of the Copyright Act 1994 deals with copyright in legislation.

100 Bylaws

The Bylaws Act 1910 deals with bylaws made by local authorities.

101 Evidence of legislation

Section 141 of the Evidence Act 2006 deals with the means of proving certain New Zealand and foreign documents, including New Zealand and foreign legislation.

Part 9
Consequential amendments and repeals

102 Consequential amendments and repeals

(1) The enactments listed in **Schedule 2** are amended in the manner specified in that schedule.

(2) The following Acts are repealed:

(a) Acts and Regulations Publication Act 1989 (1989 No 142):

(b) Interpretation Act 1999 (1999 No 85):

(c) Regulations (Disallowance) Act 1989 (1989 No 143):

(d) Statutes Drafting and Compilation Act 1920 (1920 No 46).

Schedule 1 s 61
Section 26 of Acts Interpretation Act 1908

26

Subject to the provisions of any Act passed after the abolition of the provinces by the Abolition of Provinces Act 1875, the following provisions shall be deemed to have had effect from the date of such abolition:

(a) The portion of New Zealand included within any province abolished as aforesaid shall be called a provincial district, and bear the same name as the abolished province which it comprised.

(b) Within the district included within any such province all laws in force therein at the date of the abolition of the province shall, except so far as the same were expressly or impliedly altered or repealed by the aforesaid Act, and so far as the same are applicable, continue in force in such district until altered or repealed by the Parliament of New Zealand.

(c) All powers, duties, and functions which immediately before the date of the abolition as aforesaid of any province were, under or by virtue of any law not expressly or impliedly repealed or altered by the aforesaid Act, vested in or to be exercised or performed by the Superintendent of such abolished province, either alone

or with the advice and consent of or on the recommendation of the Executive or Provincial Council of such province, or which by virtue of the Public Reserves Act 1854, or any Act amending the same, or by virtue of any Waste Lands Act or any regulations made thereunder, or otherwise howsoever, would but for the passing of the aforesaid Act have been exercised only under an Ordinance of such abolished province, shall, for the purposes of the district included within such abolished province, vest in and be exercised and performed by the Governor.

(d) Such powers, duties, and functions may be exercised or performed by the Governor as regards the district with respect to which they may be exercised or performed, whether the Governor is for the time being within such district or not.

(e) All powers, duties, and functions which immediately before the date of the abolition of any province were, under or by virtue of any law not expressly or impliedly repealed by the aforesaid Act, vested in or to be exercised or performed by the Provincial Treasurer, Provincial Secretary, or other public officer of such abolished province shall, for the purpose of the district included within such abolished province, vest in and be exercised or performed by any person or persons from time to time appointed for the purpose by the Governor.

(f) Except as hereinafter provided, all lands, tenements, goods, chattels, money, and things in action, and all real and personal property whatever, and all rights and interests therein which immediately before the date of the abolition of any province were vested in or belonged to the Superintendent of any province as such Superintendent shall, on the date of the abolition thereof, vest in the Crown for the same purposes and objects, and subject to the same powers and conditions, as those for and subject to which they were held by the Superintendent.

(g) All revenues and money, and all securities for such money, which on the date of the abolition of any province were the property of or invested on behalf of

such province shall, on the date of the abolition thereof, vest in the Crown:

Provided that if at the date of the abolition of any province any money or revenues of such province were specifically set apart and available for public works or other purposes within such province, or any district thereof, such money or revenues shall be applicable to such purposes accordingly.

(h) For the purposes of the last preceding paragraph **public works** means and includes branch railways, tramways, main roads, public bridges, and ferries on main roads, docks, quays, piers, wharves, and harbour works, reclamation of land from the sea, protection of land from encroachment or destruction by sea or river.

(i) All contracts existing immediately before the date of the abolition of any province, and all actions, proceedings, and things begun and not completed at the date of such abolition, of, by, or against the Superintendent of such abolished province, as such, shall belong and attach to and be enforced by and against the Crown.

(j) In every Act of the Parliament of New Zealand, except such as relate to the election of Superintendents and Provincial Councils, and to legislation by such Councils and the appointment of Deputy Superintendents, and to audit of provincial accounts, and matters of a like kind, and in every Act or Ordinance of the Legislature of an abolished province, the words and expressions following shall, with regard to any provincial district, include the meanings hereafter attached to them, that is to say:

(i) The word "province" shall include "provincial district", and when the name of any abolished province is used, or any province is otherwise expressly referred to, the enactment shall be deemed to mean and apply to the provincial district of that name.

(ii) The word "Superintendent" shall, with respect to such provincial district, mean the Governor, or any person or persons whom the Governor

may from time to time appoint to perform those duties and exercise those powers which might, if such duties and powers had to be performed within a province, be exercised or performed by the Superintendent thereof.

(iii) The expression "Provincial *Gazette*", or "Provincial Government *Gazette*" or other similar expressions shall be deemed to mean the *New Zealand Gazette*, or such newspaper as from time to time may be appointed by the Governor for the purpose of inserting therein notifications of any kind relating to the government of New Zealand or the administration of government within any provincial district.

Schedule 2 s 102(1)
Consequential amendments (example only)

Remuneration Authority Act 1977 (1977 No 110)

Section 12B(9): repeal and substitute:

"(9) Every determination to which subsection (1) or subsection (2) applies is a regulation for the purposes of **Part 2** (publication of legislation) of the Legislation Act **2008** but not for the purposes of **Part 6** (disallowance of regulations) of that Act."

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