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September 2007, Wellington, New Zealand | ISSUES PAPER 2

# PRESENTATION OF NEW ZEALAND STATUTE LAW

IN CONJUNCTION WITH  
PARLIAMENTARY COUNSEL OFFICE



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# PRESENTATION OF NEW ZEALAND STATUTE LAW

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.

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Issues Paper/Law Commission, Wellington 2007

ISSN 1173-9789

This issues paper may be cited as NZLC IP2

This issues paper is also available on the Internet at the Commission's website: [www.lawcom.govt.nz](http://www.lawcom.govt.nz)

# Presentation of New Zealand Statute Law

## Issues Paper

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CALL FOR  
SUBMISSIONS

The Law Commission welcomes your comments on this issues paper, which is also available on the Law Commission's website at [www.lawcom.govt.nz](http://www.lawcom.govt.nz). The closing date for submissions is 12 November 2007. Submissions should be sent to: Zoë Prebble, Law Commission, PO Box 2590, Wellington 6140; or by email to [statuteaccess@lawcom.govt.nz](mailto:statuteaccess@lawcom.govt.nz).

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TERMS OF  
REFERENCE

The Commission, in conjunction with the Parliamentary Counsel Office, will investigate and recommend methods of making New Zealand Statute Law more accessible by the introduction of a more systematic method of classifying and/or indexing Acts of Parliament. This will include:

- (a) Carrying out preliminary research;
- (b) Investigating statutory classification or indexing initiatives in other jurisdictions;
- (c) Reviewing electronic subject-based indexing and searching methods;
- (d) Developing a discussion paper for public consultation; and
- (e) Making final recommendations to Government.



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**ACKNOWLEDGMENT** This project is being 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 issues paper are presented as those of the Law Commission, they have been arrived at only after very substantial input from the Parliamentary Counsel Office. The Commission expresses its considerable gratitude for this assistance.

# Introduction

Citizens should be able to know and understand the law that affects them. It is unfair to require them to obey it otherwise. This is an aspect of the rule of law.

This issues paper is about the accessibility of New Zealand's statute law; we believe that it falls well short of the desirable standard. Certainly there have recently been improvements in the way our Acts are expressed, and in how they are presented. Moreover we are soon going to have official versions of Acts, continually updated, available electronically and accessible by computer free of charge. However, we believe that much more still needs to be done.

Acts on the same topic are scattered throughout the statute books, and can be hard to find. The relationship between them is often not clear. There is no official index to help the user. Some Acts have been in force for so long, and amended so often, that they are shapeless and confusing to the reader. It is hard to piece all the amendments together. Old Acts are often drafted in a dense and wordy style that everyone, even lawyers, find hard to understand. These old Acts exist side by side with more modern Acts and provisions. There is thus a mixture of styles. Some old Acts are probably dead wood, and are not needed anymore.

In short, our statute law as a whole lacks coherence, is untidy and unwieldy, and is difficult to find, understand and use.

We believe that a detailed official subject index would be of great assistance. So would a programme of revision to tidy the statute book and make it easier to navigate and understand. We believe that a new position should be created in the Parliamentary Counsel Office to oversee such a programme.

The advance of the electronic age also raises questions about the future of hard copy. They are explored in the paper. We also take the strong view that historical Acts, dating right back to the mid-nineteenth century, should be captured digitally and made available electronically. Some of the old books are in such a precarious state of repair that there is a risk of losing them if something is not done.

In summary, in this paper we examine the present problems of access to our statute law, and express our strong view that something needs to be done to improve the position.

We seek comment.

# 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 Paper<sup>1</sup>

- 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 publicity also results in there being no check against disregard of the laws by the law enforcers themselves.
- 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

<sup>1</sup> 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. The Irish Law Reform Commission has been working on a similar project. Its Consultation Paper 'Statute Law Restatement' LRC CP 45-2007 was published too late for consideration in this issues paper.

comprising anywhere between 700 and 800 pages are published for each year. In 2005 the number of pages totalled 2,062, and in 2006 there were a total of 3,308 pages. There are often well over three hundred sets of regulations a year.

- 3 All of these forms of law – common law, Acts of Parliament and delegated legislation – raise questions of accessibility. This issues paper is concerned simply with Acts of Parliament. This limitation is based solely on practical considerations of time rather than strict logic. Full study of the accessibility of the common law, delegated legislation and bills in parliament must await a future time.

### What Does Accessibility Mean?

- 4 When we say the law must be accessible, what do we mean? The term has at least three relevant meanings in this context.
- 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.<sup>2</sup> As long ago as 1651, Hobbes said:<sup>3</sup>

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...

- 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**.
- 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**.
- 8 The third sense of accessibility involves the law, once found, being understandable to the user. If the law is expressed 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.<sup>4</sup>

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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](http://www.gutenberg.org/wiki/Main_Page) > (last accessed 17 August 2007). 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).

4 Fuller, above, n 2.

- 9 Lord Oliver of Aylmerton once said:<sup>5</sup>

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.

- 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?

- 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. Many people 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;<sup>6</sup> 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. Legislation Direct maintains a list of much-accessed legislation that it calls its “best-seller” list.<sup>7</sup> In addition, the interim website of New Zealand legislation receives an average of over 30,000 unique visitors a month; between them they view over 1.8 million pages of legislation a month.
- 12 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.<sup>8</sup>

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 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.

7 In the year ending 28 February 2007, some of the highest selling Acts were the Holidays Act 2003 and the Employment Relations Act 2000; regulations such as the Education (Early Childhood Centres) Regulations 1998 were also in big demand.

8 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. See Chapter 2: The PAL Project, para 73.

- 13 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 being a prime example. 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.<sup>9</sup>

#### THE FULFILMENT OF THE OBLIGATION

#### Availability

- 14 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.<sup>10</sup> The Attorney-General may from time to time give directions as to the form in which Acts are to be printed and published.<sup>11</sup> 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;<sup>12</sup> and the Chief Parliamentary Counsel, under the control of the Attorney-General, must make copies of the Act available for purchase at those places.<sup>13</sup> The long title of the Act states its purpose as follows. It is an Act:<sup>14</sup>
- (a) to provide for the printing and publication of copies of Acts of Parliament and statutory regulations; and
  - (b) to ensure that copies of Acts of Parliament and statutory regulations are available to the public....
- 15 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 *Bulletin* is available from the Legislation Direct website and from selected retail outlets.<sup>15</sup> Many Acts do not come into force until some time after their enactment, and some contain provisions

9 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.

10 Acts and Regulations Publication Act 1989, s 4.

11 *Ibid*, s 7.

12 *Ibid*, s 9.

13 *Ibid*, s 10.

14 *Ibid*, long title.

15 Legislation Direct < <http://www.legislationdirect.co.nz/> > (last accessed 17 August 2007).

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 electronic databases of legislation referred to below.

- 16 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.<sup>16</sup> Legislation Direct also publishes a list, which is updated weekly and available via the Parliamentary Counsel Office (PCO) website.<sup>17</sup> 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.<sup>18</sup> 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.<sup>19</sup>
- 17 Electronic databases of New Zealand Acts are now available, both on CD ROM and through a number of websites. These 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. This puts them out of reach of most members of the public. The PCO has undertaken a project to provide free public access to legislation online. It is called the “Public Access to Legislation (PAL)” project. The project is not yet live, but PCO, through an arrangement with Brookers, has made an interim website of legislation available since September 2002. The legislation on the interim website is not official. The PAL project is expected to go live in late 2007. There will then follow quite a long period of “officialising” the Acts, which will involve detailed checking to make sure their contents are accurate. When that process has been completed, it is proposed that the Acts on the PAL system will acquire official status. This will involve an Act of Parliament.<sup>20</sup>
- 18 Full discussion of the PAL project is reserved for the following chapter.<sup>21</sup>

### Navigability

- 19 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

16 A list of these outlets is available on the PCO website: < <http://www.pco.parliament.govt.nz/legislation/retailoutlets.shtml> > (last accessed 17 August 2007).

17 PCO website < <http://www.pco.parliament.govt.nz/> > (last accessed 17 August 2007).

18 Sometimes a very large Act is published in a separate volume or volumes – for example the Income Tax Act 2004.

19 Copyright Act 1994, s 27.

20 Up-to-date information on the progress of the PAL project can be found on the PCO website < <http://www.pco.parliament.govt.nz/> > (last accessed 17 August 2007).

21 See Chapter 2: The PAL Project.

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 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. The table appears on the PCO website as well, where it is updated at least six monthly and often more regularly. 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.

- 20 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).<sup>22</sup> 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 private firm Brookers assists in this process by visiting subscribers twice a year and updating 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.
- 21 When an Act has been much amended, it is often 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.
- 22 The Acts and Regulations Publication Act 1989 imposes a duty to publish those compilations or reprints.<sup>23</sup> At earlier points in our history, there were complete reprints of all Acts, which were published in a series of reprint volumes.<sup>24</sup> In 1979, another process was begun of publishing reprinted Acts in bound volumes, but that practice has now been discontinued. Reprints of much-amended and much-

22 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).

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

24 This happened in 1931 and 1957.



used Acts are now published individually. However, the series of volumes begun in 1979 numbers 42 volumes, and those volumes still contain the most up-to-date reprints of many 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.

- 23 The electronic databases of Acts can provide up-to-date “electronic reprints” continuously. They incorporate amendments into the text of the principal Acts as soon as possible after they are passed. When the PAL website goes live, it will do the same. Thus there will be available, in electronic form, the up-to-date versions of each Act with amendments incorporated directly into the text. Electronic Acts will to that extent have an advantage over the hard copy system that currently exists.

### Clarity

- 24 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.

- 25 The Queensland Legislative Standards Act 1992<sup>25</sup> 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.

- 26 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:<sup>26</sup>

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.

- 27 The Act provides also that in making recommendations the Commission must:<sup>27</sup>

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

- 28 In furtherance of this function, the Law Commission has published manuals and reports on plain drafting<sup>28</sup> and legislative format.<sup>29</sup> 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 provides that it is committed to a number of objectives including:<sup>30</sup>

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

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

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

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

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

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

30 PCO “Vision Statement” < <http://www.pco.parliament.govt.nz/corporatefile/vision.shtml> > (last accessed 17 August 2007).

- 29 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.
- 30 In recent times, these defects have been substantially eliminated.

#### *Format*

- 31 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*

- 32 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.

#### *Language*

- 33 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*

- 34 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.
- 35 However, despite these undoubted 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.

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#### CONCLUSION

- 36 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 PAL Project

### IN THIS CHAPTER, WE:

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

- 37 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 advent of the Public Access to Legislation (PAL) project, as is suggested by the project's name, New Zealand is finally catching up with these other jurisdictions in beginning to harness the potential of electronic technology to give citizens greater access to legislation.
- 38 The PAL project will be a great advance for accessibility of legislation. As will be explained in this chapter, it will result in the statute book being captured in a state-owned digital database. This will open 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. PAL will go online as a result of a large government investment of time, effort and expense. It is important to continue to build on this initial investment. PAL will provide a platform upon which can be built further initiatives to improve access to legislation.

SCOPE OF THE  
PAL PROJECT

- 39 The PAL project is being undertaken by the PCO, in collaboration with the Office of the Clerk and the Tax Drafting Unit of the Inland Revenue Department.<sup>31</sup> It will employ new technology to improve the way in which New Zealand legislation is made available to the public. When the PAL project is completed, it will provide a fully-integrated drafting, printing, publishing and reprinting system for the PCO to use in preparing and amending legislation and for making legislation available to the public. Members of the public will have free access to legislation electronically via the internet. The website will deliver access to legislation in both HTML and PDF formats.<sup>32</sup>
- 40 The project will cover the legislation that the PCO is responsible for drafting or publishing. It will include bills, Acts, statutory regulations, and Supplementary Order Papers (SOPs). As currently scoped, the project will not provide access to deemed regulations, bylaws, Hansard, or international treaties or conventions.<sup>33</sup> For the rest of this chapter, the term “legislation” refers to legislation that is within the current scope of the PAL project.

OBJECTIVES  
OF THE PAL  
PROJECT

- 41 The PAL Project is designed to improve the way in which New Zealand legislation is made available to the public. The aim of the project is to provide public access to up-to-date legislation in both printed and electronic form. Electronic versions will be available free via the internet. It will also implement a new XML-based drafting and publishing system. The project is currently well-advanced and the PAL website is forecast to go online before the end of 2007.
- 42 The objectives of the PAL project are to:<sup>34</sup>
- make legislation available electronically and in printed form from a database owned and maintained by the Crown;
  - provide access to Acts and statutory regulations in electronic and printed forms as soon as possible after their enactment or making;
  - provide access to legislation with amendments incorporated as soon as possible after the legislation becomes law;
  - provide electronic access to bills at key stages during their progress through the House;
  - provide free electronic access to bills, SOPs, Acts, and statutory regulations via the internet (including Acts and statutory regulations with their amendments incorporated);
  - make it possible (in selected cases) to see the effects of proposed amendments on existing legislation; and
  - make it easier to see the effect of amendments to proposed legislation during its passage through the House.
- 43 The PAL 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

31 Unisys New Zealand Limited (Unisys) is the PCO’s implementation partner for the project.

32 The technical solution is based on an XML platform.

33 Although, 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 PAL database.

34 PCO “Introduction to the Public Access to Legislation (PAL) Project” < <http://www.pco.parliament.govt.nz/pal/palintro.shtml> > (last accessed 17 August 2007).

the passage or making of the legislation and its commencement and also depending to some extent on the length of the legislation. The PAL system will not automatically incorporate amendments into existing legislation. Initially, the job of maintaining the database by incorporating amendments will be undertaken by Brookers under contract to the PCO, while the PCO Reprints Unit officialises the database.<sup>35</sup> This is an interim arrangement only. Once the database is officialised, any compilation will be maintained by the Reprints Unit.

## TECHNICAL SPECIFICATIONS OF PAL

- 44 A key objective of PAL is 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”.<sup>36</sup> A fundamental decision in the development of PAL has been to select the most appropriate technical platform upon which to construct the PAL database. The PCO made the decision to adopt XML (Extensible Markup Language) as the platform for the PAL project. XML is a subset of SGML (Standard Generalised Markup Language). Both are international standards that provide a mechanism for managing arbitrary markup in documents.<sup>37</sup> XML is now the dominant standard and was designed particularly for website applications.<sup>38</sup> 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.

### Data Longevity

- 45 Legislation is dynamic. There is a constant flow of new legislation; amendments to existing Acts and regulations are even more frequent. These factors are important to the design of PAL for the long-term storage and tracking of the statute book. The material covered in PAL is quite different to that produced using desktop publishing applications suited to one-off publications like annual reports or prospectuses.<sup>39</sup> As such, an important characteristic of legislation as opposed to other document types is its longevity. The typical office document has a life-span of weeks or months, and anything greater than a year or two is exceptional.<sup>40</sup> The lifespan of legislation is generally much longer than this. An Act might be in force for years, or decades. Some Acts are even in force for centuries.<sup>41</sup>
- 46 The data in the PAL system needs to be available for a very long time, theoretically forever. The PCO and its technical advisors gave much careful consideration to the longevity of the data in the PAL system. No legislative data will ever be removed from the PAL collection, so that an historical collection of legislation is built up over time. The data needs to remain usable and accessible with

35 Officialisation is discussed in greater detail below at paras 53-61.

36 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).

37 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> > (last accessed 17 August 2007).

38 Geoff Lawn “Improving Public Access to Legislation” (2004), above, n 36, s 2.

39 Michael Rubacki “Access to Online Legislation and e-Government” (Southern Currents: Joint Conference ALLG & NZLLA, Melbourne, September 2006) s 5.1.

40 Timothy Arnold-Moore “Point-in-time Publication of Legislation (XML and Legislation): Automating Consolidation of Amendments to Legislation in Common Law and Civil Jurisdictions” (Law via the Internet, Conference on Computerisation of Law via the Internet, Paris, 3-5 November 2004) s 2.1.3, < [http://frlii.org/IMG/pdf/2004\\_frlii\\_conference\\_tja.pdf](http://frlii.org/IMG/pdf/2004_frlii_conference_tja.pdf) > (last accessed 17 August 2007).

41 Parts of the Magna Carta (1215) are still in force in many Anglophone jurisdictions. The earliest Act still in force in New Zealand is the Statute of Marlborough 1267.

whatever technology is available, now and in the future. It was important to ensure that the data does not become trapped in proprietary software and publishing systems and to ensure that quality authoring, storage, and publishing tools remain available for the lifetime of the PAL system and beyond. The form in which the data is stored within PAL is critical.

- 47 SGML and XML are particularly suited to data like legislation that is of high value, has a long lifespan, is subject to change, is regularly structured and consistently formatted and is required to be re-used and published in multiple formats such as in print and on a website. Many Anglophone jurisdictions currently use XML or SGML to draft or manage legislation.<sup>42</sup> Since SGML and XML are platform-independent, they are relatively immune to changes in technology. This ensures the longevity of data stored within these formats:<sup>43</sup>

As ... international standard[s], SGML [and XML are] forced to be very stable. International standards are not changed whimsically. No single company or organisation owns it and can steer it to their own advantage. Since SGML is so stable, software developers can safely build tools that employ the standard without the risk of having to constantly keep up with another company's dictums.

## Metadata

- 48 Aside from its advantages in terms of longevity, XML has other features that are useful for PAL. It allows for rich metadata from a single data source.<sup>44</sup> Any item of data is a description of something. Metadata is a type of data where the something that is being described is itself also data. That is, metadata is information about data. An item of metadata may describe an individual data item or a collection of data items. Metadata is used to facilitate the understanding, use and management of data. The metadata required for this will vary with the type of data and context of use.
- 49 The New Zealand Government Locator Service (NZGLS) Metadata Standard is the official New Zealand Government standard for creating discovery level metadata in the public sector.<sup>45</sup> It introduces a means of cataloguing government information and services using a common set of terms, or "metadata elements". Its function is analogous to the function of a library catalogue.<sup>46</sup> The principal benefit of the NZGLS is that, in combination with Internet search engines capable of using NZGLS metadata, it makes government information and services much easier to find than was previously possible.<sup>47</sup>

42 XML or SGML is used for drafting legislation in Tasmania, Canada, the United States (including many states), and South Australia. They are used for managing legislation in the United Kingdom, Singapore, Tasmania, Canada, New South Wales, the European Union, and the United States and a number of its states.

43 Travis and Waldt (1995) *The SGML Implementation Guide: A Blueprint for SGML Migration*, cited in Timothy Arnold-Moore "Connected to the Law: Tasmanian legislation using EnAct" (AustLII Law Via The Internet '99 Conference, Sydney, 21-23 July 1999) < <http://www.austlii.edu.au/au/other/CompLRes/1999/6/index.html> > (last accessed 17 August 2007), fn 11.

44 Rubacki "Access to Online Legislation and e-Government", above, n 39, s 5.1.

45 Cabinet Office Circular "Use of New Zealand Government Locator Service (NZGLS) Metadata Standard" (8 March 2002) CO 02/3, para 2.

46 Ibid, para 4.

47 Ibid, para 5.

- 50 The PAL system has been designed so that NZGLS metadata (Functions of New Zealand (FONZ) and Subjects of New Zealand (SONZ) thesauri) or other metadata can be inserted at the whole enactment level. This means that enactments can be assigned to one or more subject categories. For example, using the NZGLS SONZ thesauri, the Education Act 1989 could be assigned to the subject categories of Education; Students; Schools; School boards of trustees; Teachers; Corporal punishment; Universities; Polytechnics; Colleges of education; Private training establishments; Qualifications; Allowances; Tribunals. However, as currently designed, the PAL website does not make use of any metadata as part of the browse or search facilities. Nevertheless, there is the potential for the PAL system to be developed in the future so as to make use of XML containing metadata, especially if the metadata is assigned to individual provisions within enactments. The metadata might then be able to be extracted to create subject catalogues or indexes.<sup>48</sup>

#### GOVERNMENT-OWNED LEGISLATION DATABASE

- 51 The PAL project involves the acquisition by the state of a comprehensive database of New Zealand legislation. In 1989, the Government Printing Office (“GPO”) was sold.<sup>49</sup> A consequence of the sale was that the New Zealand government did not own a comprehensive electronic database of legislation. 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.<sup>50</sup>
- 52 An important component of the PAL project has been to acquire from a private sector publisher, Brookers, an electronic database of New Zealand legislation, and a set of legislative Document Type Definitions.<sup>51</sup> This is the data that will form the basis of the PAL system.

#### OFFICIALISING THE LEGISLATION DATABASE

- 53 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.<sup>52</sup> 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.

48 See Chapter 5: Indexing.

49 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/assetsales/completed2.asp> > (last accessed 17 August 2007).

50 Lawn “Improving Public Access to Legislation: the New Zealand Experience” above, n 36, s 3.

51 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.

52 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.

- 54 This state of affairs will continue when the PAL website is launched. None of the electronic versions of legislation on the PAL website, or copies of legislation printed from the website, will have official status such that they can be produced in court as evidence of their contents without further proof. However, an important objective of the PAL project is that the PAL website will eventually provide access to *official* versions of New Zealand legislation. The decision to purchase a comprehensive database of legislation from a commercial publisher has significant impacts on how, and when, this objective can be achieved.
- 55 The purchased database of legislation will be made available via the PAL 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. However, it 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.

### The "Officialisation" Process

- 56 Extensive quality assurance processes are necessary before the database that the PCO is acquiring 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.
- 57 The officialisation process will begin after the PAL website goes live. Officialisation will be 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.
- 58 It is important to note here that the PCO uses the term officialisation in a specialised sense in relation to the PAL database: "officialisation" is a different concept from "becoming an official source of legislation". The former necessarily precedes the latter. The PAL 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 PAL 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

- 59 The PAL 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 PAL 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 PAL website is launched. Such legislation will have been produced using the new PAL drafting and publishing 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 PAL 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.
- 60 “Semi-official” enactments will be visually distinguishable from the other unofficial enactments on the PAL website because they will have the New Zealand Coat of Arms, or Crest, on the front page. 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 process will be prioritised so that high demand legislation is officialised first.
- 61 The PCO intends, at some time in the future, to promote legislation to make the PAL website an official source of New Zealand legislation. This will be appropriate only once the entire PAL website has been officialised. The exact content and structure of this new legislation has yet to be decided, but it is likely to be designed to ensure that electronic copies of legislation printed from the PDF versions of legislation on the website, and perhaps also electronic copies viewed in that format on the website, would have the same official status that printed copies currently have. It is also not currently possible to say exactly when this legislation might be promoted or enacted, but the current intention is that it would not happen until the PCO has completed the task of officialising all the legislation on the PAL website.

## The PCO’s Printing and Reprinting Programme under PAL

- 62 Once the PAL website is launched, the PCO will 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 PAL website.
- 63 Unofficial “electronic reprints” of Acts and statutory regulations will also be available on the PAL website, because all current principal Acts and principal statutory regulations on the website will be kept up-to-date with amendments incorporated in them.<sup>53</sup>

53 During the time in which the PCO Reprints Unit is engaged in officialising the database, the job of maintaining the database by incorporating amendments will be undertaken by Brookers under contract to the PCO. Once officialisation is complete, the incorporation of amendments will be undertaken within the PCO.

## BROWSING AND SEARCHING CAPABILITY OF PAL

- 64 When the PAL website becomes available online, users will be able to access legislation electronically both by browsing and by searching. It will be 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.
- 65 Legislation will also be 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 system will be searchable 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 will be 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 will specify what version of an Act, regulation or bill has been found.

### The User Interface of the PAL System

- 66 Users will be able to use the search and browse features of PAL described by navigating through a series of screens within the PAL website. Several "screen shots" are reproduced below. The first is a screen shot of the PAL homepage. Users can proceed from the Homepage to a number of other pages by clicking on hyperlinks.



- 67 As can be seen in the next screen shot, users who wish to search the PAL database have a choice of quick, guided or advanced searches. As the name suggests, quick searches are the most simple of the three search modes:

**New Zealand Legislation: Acts**  
Acts are laws made by Parliament

Home | Search | **Acts** | Bills Regulations All | Browse: Acts Bills Regulations All | Glossary | About | Site map | Buy Online

Quick search (searches titles and content of current Acts)

**Quick search**

Enter search words:   Exact spelling

**Guided Search**

**Advanced Search**

Home | Search | **Acts** | Bills Regulations All | Browse: Acts Bills Regulations All | Glossary | About | Site map | Buy Online

- 68 Guided searches and advanced searches are more tailored and specific.

**New Zealand Legislation: Acts**  
acts are laws made by Parliament

Home | Search | **Acts** | Bills Regulations All | Browse: Acts Bills Regulations All | Glossary | About | Site map | Buy Online

**Guided search**

**Step 1 - Search Act content (optional)**

Enter search words:   Exact spelling

Examples:

- fence neighbour property
- dog control

**Step 2 - Search Act title (optional)**

Enter search words:

Examples:

- privacy
- resource management

Leave blank if you're unsure of the name of the act

**Step 3 - Year enacted (optional)**

Enter year:

Examples:

- 2002
- 1990-1995

Leave blank if you're unsure of the year

**Step 4 - Version (mandatory)**

**Select any or all (at least one)**

current - Up-to-date principal Acts, including those enacted but not yet in force

as enacted - Acts as they appeared before any changes (including amendment Acts)

repealed - Principal Acts that are no longer in force

Home | Search | **Acts** | Bills Regulations All | Browse: Acts Bills Regulations All | Glossary | About | Site map | Buy Online

## New Zealand Legislation: Acts

Acts are laws made by Parliament



Home | Search: **Acts** Bills Regulations All | Browse: Acts Bills Regulations All | Glossary | About | Site map | Buy Online

Advanced search You may fill in any or all of these fields:

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**Advanced search**

Act content:   
eg: 1996 and not OR value

Act title:   
Full title not required

Year enacted:   
eg: 1996; or 1996-2001

Act No.:

Section number:   
eg: 45

Results per page: 25  Exact spelling

**Order of results:**  
 relevance  alphabetical

---

**Types and Versions**

**Act type:**  
 all types  
 or, choose one or more:  
 public  
 local  
 private  
 provincial  
 impartial

**Act version:**  
 current (up-to-date principal acts)  
 or, choose one or more:  
 in force (current, excluding "not yet in force" Acts)  
 not yet in force (current, excluding "in force" Acts)  
 as enacted (principal and amendment Acts in original form)  
 repealed (principal Acts no longer in force)

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Home | Search: **Acts** Bills Regulations All | Browse: Acts Bills Regulations All | Glossary | About | Site map | Buy Online

### Accessing Versions of Legislation by Date

- 69 An important aim of the PAL project is to provide public access to up-to-date official legislation in both printed and electronic form. A completely up-to-date compilation of the statute book will be available online. The initial load of data in the PAL system will be those Acts and statutory regulations that are in force on the date the system goes live, as well as bills and SOPs before the House at that time. It will not contain any historical material. 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 PAL system will generate a new version, or electronic reprint.
- 70 No material will ever be removed from the PAL database. 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 PAL 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. At present, the project will not include back capture of repealed or revoked Acts and regulations.
- 71 Users of the PAL website will be able to access all versions of legislation within PAL. They will not be limited to viewing only the current version of an item of legislation. However, the PAL website will not provide the ability to search versions of legislation by date. It will not be possible to enter in a date and then get a version of legislation that is, or was, or will be, current at

- 72 The PAL project will be a great advance for accessibility of legislation. The PAL system will go online as 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 PAL as a platform for further initiatives to improve access to legislation. It is important to build on the possibilities that it will open up to us.
- 73 Some potential developments of the PAL system include:
- Automatic consolidation;<sup>55</sup>
  - Partial automatic consolidation;<sup>56</sup>
  - Point in time searching;<sup>57</sup>
  - 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;<sup>58</sup>
  - Interactive forms, allowing users to download and fill in forms directly from the PAL website;
  - 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;<sup>59</sup>
  - “As if enacted” versions of Acts showing how they will be affected by bills before the House (there will be the facility to do this in the PAL system as delivered, but it will be done only on a selective basis and these versions will not routinely be 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.<sup>60</sup>

54 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> > (last accessed 17 August 2007).

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

56 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> > (last accessed 17 August 2007).

57 This is a feature of the EnAct system in Tasmania. See < <http://www.thelaw.tas.gov.au/about/enact.w3p> > (last accessed 17 August 2007).

58 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> > (last accessed 17 August 2007).

59 ACT Legislation Register < <http://www.legislation.act.gov.au> > (last accessed 17 August 2007); Federal Legislative Instruments Database Home Page < <http://fqli.law.gov.au/> > (last accessed 17 August 2007).

60 The feasibility of providing this 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.

## HARD COPY AND ELECTRONIC ACCESS TO ACTS

74 With the advent of PAL, 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.<sup>61</sup> 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

- 75 There is no doubt that electronic publication has advantages over hard copy.
- Access in electronic form will be 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. PAL 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 (or even in court from a PDA or mobile phone). 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

- 76 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 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.

61 “Electronic Publication of New Brunswick Legislation, Yesterday, Today and Tomorrow” (conference paper, Commonwealth Association of Legislative Counsel, London, September 2005).

- 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, and he or she does not possess micro-technology such as a PDA, 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.<sup>62</sup>

### Why Not Just Print it Off?

- 77 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 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 443 pages, and the Income Tax Act 2004 is 2,088 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. Bound hard copy is there to be consulted for all time.

### CONCLUSIONS REGARDING HARD COPY AND ELECTRONIC ACCESS

- 78 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. As PAL comes online and its capabilities are enhanced, subscriptions to the hard copy Acts will probably 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.<sup>63</sup>
- 79 The Commission is strongly of the view 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,<sup>64</sup> but our conclusion inevitably involves a measure of compromise, to get the best of both worlds.

62 See Chapter 5: Indexing, para 254.

63 Chapter 5: Indexing, para 214.

64 Chapter 6: Reprinting.

- 80 We believe that all new Acts, including amending Acts, should be printed, published, and sold 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.
- 81 However, the publication of reprints incorporating amendments is a different issue. The Law Commission has considered the various alternatives of reprinting amended Acts separately; of publishing reprints of several Acts on similar subject matter in a single volume; and of complete reprints of the kind that were accomplished in 1931 and 1957. We have concluded that the rapidity of change in our legal system, and the resultant inevitability that even reprints will soon be out-of-date, militates against such solutions. It would be foolish not to take advantage of the capabilities of PAL, under which we will always have access to up-to-date versions of the Acts online. We therefore propose a system whereby hard copy reprints from the PAL database can be made available to individual users on demand from retail outlets, or by electronic ordering from publishers. These hard copy reprints could be customised to the requirements of the individual user. We have been told that this is entirely possible.<sup>65</sup> Modern printing technology is capable now of "print on demand". It will supplement, and provide an alternative to, printing off Acts oneself. More will be said of this in our chapter on reprints.

Q1. When the PAL system is operative will you:

- a) use both hard copy and electronic versions of Acts;
- b) use only hard copy versions; or
- c) use only electronic versions?

(By "hard copy" we mean published hard copy and not versions that you print off individually yourself.)

Q2. When the PAL system is operative, will you continue to subscribe to hard copy Acts?

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65 Meeting with SecuraCopy (Law Commission and PCO, Wellington, 27 June 2007).



# Chapter 3

## Current Problems with Accessing Statute Law

### IN THIS CHAPTER, WE:

identify and discuss a range of current problems with the way that the statute book is ordered.

- 82 The state currently does a great deal to make statute law accessible. Chapter 1 of this issues paper set 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 an annual reprint programme, which are directly relevant to the obligation to make Acts of Parliament available. Chapter 2 discussed the Public Access to Legislation (PAL) project that is being carried out by the PCO. When the PAL website goes live, this will greatly improve 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.
- 83 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<sup>66</sup>

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.

66 In this paper the term “statute book” is used to refer to the existing body of statute law currently in force. See glossary of terms.

### Ordering of Acts and Reprinted Acts

- 85 The New Zealand 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.<sup>67</sup> 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.
- 86 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.
- 87 Reprinted Acts are no more navigable.<sup>68</sup> Reprints are now published only in pamphlet form. The pamphlet format replaces the bound *Reprinted Statutes of New Zealand* series, which was published from 1979 until it was discontinued in 2003.<sup>69</sup> Its volumes still contain the most up-to-date reprints of many Acts of Parliament.<sup>70</sup> Brookers also now provides the *Bound Reprinted Statutes* series.<sup>71</sup> 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. 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.

67 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.

68 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 21.

69 The last volume in the series is volume 42. See Chapter 6: Reprinting, para 279.

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

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

- 88 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.<sup>72</sup> Volume 30 comprises Acts that deal with the incorporation of certain imperial enactments into New Zealand law,<sup>73</sup> and the imperial enactments themselves.<sup>74</sup> Volume 41 contains reprints of criminal legislation,<sup>75</sup> 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<sup>76</sup> or the Income Tax Act 1976,<sup>77</sup> 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 this system either.

### Current Aids to Navigation of the Statute Book

- 89 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.
- 90 The first such aid is the *Tables of New Zealand Acts and Ordinances and Statutory Regulations in Force*, which the PCO publishes annually. It lists all Acts (and regulations) in force in New Zealand in alphabetical order of titles. It also appears on the Legislation Direct website,<sup>78</sup> where it is updated at least six-monthly, and can also be reached via the PCO website.<sup>79</sup> It is a difficult task to begin to navigate the New Zealand Acts without the aid of the *Tables*. Yet, while it contains a

72 It collected together: the Conservation Act 1987; Conservation Law Reform Act 1987; Environment Act 1986; Harbours Act 1950; Maori 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.

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

74 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; Habeas Corpus Acts 1640, 1679 and 1816; and Magna Carta 1297. It also includes the imperial subordinate legislation in force in New Zealand. Part III comprises the provincial Acts and ordinances in force.

75 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.

76 RS vol 20; and RS vol 25. These have both been superseded by more recent reprints of the Local Government Act 1974.

77 RS vol 12.

78 Legislation Direct “New Zealand Public Acts as at 1 July 2007” < <http://w1.legislationdirect.co.nz/taomain/> > (last accessed 17 August 2007).

79 PCO website < <http://www.pco.parliament.govt.nz/> > (last accessed 17 August 2007).

certain amount of cross-referencing, it is a table rather than an index. Its 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.

- 91 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 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 commercial publisher LexisNexis does produce 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 PAL website will provide a significant new free navigation tool for the electronic versions of Acts. However, there are reasons to believe that electronic searching alone is not a substitute for a comprehensive subject index.<sup>80</sup>
- 93 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

- 94 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.<sup>81</sup> There are another 20 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 will soon be available on the PAL 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. Such related Acts will

80 See Chapter 5: Indexing, para 254.

81 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.

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,<sup>82</sup> the statutory requirements for Acts and regulations,<sup>83</sup> and the law on coastal property,<sup>84</sup> education,<sup>85</sup> and local government.<sup>86</sup>

- 95 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 in the statute book and form the impression that 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,<sup>87</sup> a programme of revision could gather together Acts and provisions on similar subject matter.

### Hidden Provisions

- 96 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

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82 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.

83 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.

84 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.

85 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; NZ Council for Education Research Act 1972; NZ Library Association Act 1939; Pacific Islands Polynesian Education Foundation Act 1972; Private Schools Conditional Integration Act 1975; and Education Standards Act 2001.

86 Local Government Act 1974; Local Electoral Act 2001; Local Government Act 2002; and Local Government (Rating) Act 2002.

87 See Chapter 7: Revisions.

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 PAL website will not provide an answer.

- 97 Such “hidden” provisions 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 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

- 98 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 Local Government Act 2002 preserves a small segment of the Local Government Act 1974; 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.

### Conclusion

- 99 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 AND OLDER ACTS

- 100 As discussed earlier, clarity is one of the requirements for accessibility.<sup>88</sup> 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 in recent years to improve the clarity of New Zealand legislative drafting. The Law Commission has published manuals and reports on plain language drafting<sup>89</sup> and the use of clear legislative format.<sup>90</sup> 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 generally drafted in plain English, and are fairly clear because of it.

88 See Chapter 1: Access to Legislation, para 8.

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

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

101 However, 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,<sup>91</sup> 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.

(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.

102 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 their joint family home:<sup>92</sup>

[(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

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

92 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 R 77, Wellington, 2001) para 22.

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.]

[(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.]

- 103 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. As will be discussed further in Chapter 7, a systematic programme of revision could see the drafting tidied up, and would ensure that the entire statute book, not only the more modern Acts, are understandable and accessible.

**MUCH AMENDED  
OLDER ACTS** 104

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 43 years since 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.<sup>93</sup> 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 generally 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.

- 105 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*<sup>94</sup>. Justice Blanchard, giving for the Supreme Court the reasons for its judgment on 19 July 2007, said:<sup>95</sup>

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.

- 106 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.

- 107 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 continual amendment. It can be better not to amend, but to begin again from

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

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

95 *Ibid*, para 23.

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.

- 108 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.
- 109 However, the approach of “beginning again” has been taken successfully with a number of recent Acts. The local government legislation provides a partial example of the redesign from scratch of a much amended Act rather than amending it. By 2002, the Local Government Act 1974 had been the subject of 55 amendment Acts. In 2002, rather than amending it further, it was partially replaced by a new Act that was begun from scratch, the Local Government Act 2002. This is only a partial example because the 2002 Act did not completely replace the 1974 Act, parts of which remain in force.
- 110 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 2004 covers three volumes of the 2004 annual Acts. It 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. Tax law is a specialised area of law and is drafted by the Inland Revenue Department rather than the PCO, but it nonetheless 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

- 111 A further problem with the current state of the New Zealand statute book is that a number of redundant Acts 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. They add clutter, but no value, to the statute book. Repealing them would be of great value. An accessible, navigable and clear statute book should have as little “dead wood” as possible.
- 112 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

- 113 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 engage 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.
- 114 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*<sup>96</sup> 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*<sup>97</sup> 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*<sup>98</sup> concerned a conflict between the Valuation of Land Act 1951 and Rating Powers Act 1988. In *R v Allison*<sup>99</sup> the Court of Appeal reconciled conflicting provisions within the Bail Act 2000 and Penal Institutions Act 1954. There is also the related but less common issue of internal conflicts between provisions within the same Act, as arose in the case of *R v Pora*.<sup>100</sup>
- 115 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.

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

97 *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.

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

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

100 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).

116 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

117 As has been discussed, much has been done in recent years to make Acts accessible. However, a number of problems remain and the 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 to the statute book. 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.<sup>101</sup>

118 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.<sup>102</sup> Chapters 5 to 9 of this issues paper 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.

Q3. Are the problems of accessing statute law that we have identified problems for you?

Q4. Can you identify any other problems of access?

101 See Chapter 5: Indexes.

102 See Chapter 7: Revisions, para 321.

# 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;
- strongly recommend the preservation and ongoing accessibility of disintegrating historical Acts; and
- strongly recommend that the PAL system be extended to include historical Acts and funded accordingly.

### THE IMPORTANCE OF PRESERVING HISTORICAL ACTS

- 119 This issues paper 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 PAL project. Under PAL, a collection of “historical” legislation will be built up as legislation that is in effect at the go live date is repealed or amended and older versions are retained on the system. However, at present, the PAL project is not scoped or funded to include historical back capture of legislation that is no longer in force at the go live date. PAL will acquire a historical dimension over time, but that historical dimension will extend no further back in time than the go live date.
- 120 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 regards 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

its repeal.<sup>103</sup> Historical Acts are also significant in a number of other senses.

- 121 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.
- 122 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.<sup>104</sup> 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.
- 123 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, courts look at the whole context, including the historical one. Often, one cannot understand a current Act properly without knowing its historical origins. A provision's meaning may be better understood in light of the context in which it originally appeared.<sup>105</sup> As Patrick Nerhot has put it, "[t]he statement of a present cannot be made without evoking a historical past".<sup>106</sup> Lord Hoffmann, in *Goodes v East Sussex CC*, similarly said:<sup>107</sup>

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.

103 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 contained transitional provisions.

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

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

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

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

- 124 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*,<sup>108</sup> 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.<sup>109</sup> That historical discussion comprised almost half of the judgment.<sup>110</sup> The decision in *Rodney District Council v Attorney-General*<sup>111</sup> turned on the meaning of the expression “separate property”. The Privy Council traced the legislative history of the rating and land valuation provisions,<sup>112</sup> explaining their approach as follows:<sup>113</sup>

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.

- 125 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 in the context of such diverse areas of law as barristerial immunity,<sup>114</sup> criminal

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

109 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.

110 The legislative history discussion spans paragraphs 16-34 of the 41 paragraph judgment.

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

112 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.

113 *Rodney District Council v Attorney-General*, above, n 111, para 23, lines 10-14.

114 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 judgment, was similarly interested in the legislative history, and discussed the Law Practitioners Acts of 1861, 1882, 1908, 1931 and 1955.

law,<sup>115</sup> tax law,<sup>116</sup> imposition of rates on land,<sup>117</sup> Maori land rights,<sup>118</sup> registration of property and personal security in ships;<sup>119</sup> intellectual property,<sup>120</sup> and liquor licensing laws.<sup>121</sup>

- 126 Historical Acts also place the Treaty of Waitangi in a broader context, and are a central resource for the Waitangi Tribunal.<sup>122</sup> Furthermore, working lawyers often need to consult old legislation. This is particularly true for lawyers working in areas such as property, local government and tax law.

- 115 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.
- 116 In *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.
- 117 In *Royal New Zealand Foundation for the Blind v Auckland City Council* [2007] NZSC 61, 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.
- 118 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 Maori 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; Maori Affairs Act 1953; Marlborough Harbour Amendment Acts 1960 and 1977; and Reserves and Other Lands Disposal Act 1973.
- 119 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.
- 120 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.
- 121 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.
- 122 Richard Moorsom, Acting Chief Historian, Waitangi Tribunal, to Ann Parsonsen, 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](http://www.nzlla.org.nz/documents/Rubacki%20report_support.pdf) > (last accessed 17 August 2007).



- 127 It can be immensely useful for parliamentarians considering legislative change 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

- 128 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.<sup>123</sup> In 2006, it commissioned Michael Rubacki to prepare a background paper on this issue.<sup>124</sup> 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.<sup>125</sup> If they are not preserved, they will be lost.
- 129 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.
- 130 The historical volumes have not been digitised or captured electronically, although some work to this end has been done by commercial publishers. 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 paper suggested the best way to do this was electronically, as an adjunct to the PAL project.<sup>126</sup>

### Two Issues: Preservation and Access

- 131 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.

123 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](http://www.nzlla.org.nz/publications.cfm) > (last accessed 17 August 2007).

124 Rubacki, *ibid*.

125 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](http://www.nzlla.org.nz/publications.cfm) > (last accessed 17 August 2007).

126 Rubacki, above, n 123, 7.

- 132 Despite the importance of historical Acts, at present no governmental agency has responsibility for them either in terms of preservation or access. The PCO is undertaking the Public Access to Legislation (PAL) project in line with its responsibility for the current statute book. PAL will give online access to current Acts. However, the PCO's responsibility does not extend to preserving or providing access to historical Acts, which consequently fall outside the PAL project as currently scoped and funded.

### The National Library of New Zealand: The Preservation Issue

- 133 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.<sup>127</sup> 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.
- 134 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. It has agreed to microfilm those volumes, and to make the microfilm available for sale.<sup>128</sup> This National Library initiative addresses the preservation issue in respect of volumes 1888 to 1894. Microfilm is the standard medium used for long-term preservation.<sup>129</sup> The Acts that are deteriorating are doing so rapidly. Capturing them on microfilm prevents them from being lost altogether.<sup>130</sup> Microfilm produced today has a life expectancy of 500 years if stored according to particular standards.<sup>131</sup> 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.<sup>132</sup>
- 135 However, the NZLLA has concerns that the years at risk may extend wider than the volumes 1888-94 that the National Library is microfilming.<sup>133</sup> If this is correct, then the National Library's solution does not go far enough in addressing the preservation issue.<sup>134</sup>

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

128 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.

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

130 Helga Arlington, President, NZLLA, to Sir Geoffrey Palmer, President, Law Commission "New Zealand Historical Legislation" (6 October 2006) Letter.

131 Steve Dalton "Microfilm and Microfiche" (Northeast Document Conservation Center, Andover, Massachusetts, 2004) < <http://www.nedcc.org/resources/leaflets/6Reformatting/01MicrofilmAndMicrofiche.php> > (last accessed 17 August 2007); Archival Backup and Disaster Recovery Committee, Property Records Industry Association "Progress Report # 1" 2005 < [http://www.pria.us/archivalcomm/ABDR\\_PRIAmembershipProgressReport06 2705.pdf](http://www.pria.us/archivalcomm/ABDR_PRIAmembershipProgressReport06 2705.pdf) > (last accessed 17 August 2007).

132 European Commission on Preservation and Access "Digitization as a Means of Preservation?" (Amsterdam, 1997) < <http://www.clir.org/pubs/reports/digpres/digpres.html> > (last accessed 17 August 2007).

133 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.

134 Arlington, above, n 130.

## Possible Concerns about Digitization and Preservation

136 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.<sup>135</sup> They say that digital preservation presents a new arena of preservation concerns,<sup>136</sup> and point to the possibility that digital formats may turn out to be “even more ephemeral than newspaper”.<sup>137</sup> A key worry relates to the dangers of technical obsolescence at both the hardware and software level.<sup>138</sup> 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 digitisation projects can come to behave like “digital black holes”.<sup>139</sup> Some prefer microfilm, as a tried and true preservation method, to “untested” digital strategies.<sup>140</sup> 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.

135 Westenfeld, above, n 129; Deanna B Marcum “The Preservation of Digital Information” (1996) 22 *Journal of Academic Librarianship* 451.

136 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> > (last accessed 17 August 2007).

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

138 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> > (last accessed 17 August 2007).

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> > (last accessed 17 August 2007); Wisser, above, n 136.

139 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](http://www.tape-online.net/docs/Palm_Black_Hole.pdf) > (last accessed 17 August 2007): “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”.

140 Westenfeld, above, n 129; Marcum, above, n 135; ECPA, above, n 132; Heritage Microfilm “Film or Scan?” < <http://www.heritagemicrofilm.com/FilmOrScan.aspx> > (last accessed 17 August 2007); Dalton, above, n 131; 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> > (last accessed 17 August 2007); Centre for Microfilming and Conservation, Helsinki University Library “Guidance: Preservation Microfilming of Newspapers for Digitisation” (2001) < <http://tiden.kb.se/iflanewspapersupplement20010402.pdf> > (last accessed 17 August 2007); Russell, above, n 138, 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 Digitisation Project 1840-45 – An Update” (1999) < <http://www.nla.gov.au/nla/staffpaper/cwebb8.html> > (last accessed 17 August 2007).

137 The longevity of the data in the PAL system is a matter to which the PCO and its advisors have given careful thought.<sup>141</sup> 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 PAL project because it will ensure that the PAL data does not become trapped in proprietary software and publishing systems, and thus further ensure the longevity of PAL's legislative data. That is, the preservation issue with respect to the PAL data is adequately dealt with. This would also be the case for any historical legislative data that might come to be part of the PAL collection.

### The National Library: The Access Issue

138 Both access and preservation are part of the National Library's statutory brief, and it is addressing both issues. In relation to access, it has said that it will make microfilm copies of the historical volumes available for sale.<sup>142</sup> As well as preserving the Acts, this will improve access to the historical Acts to a limited extent. Preservation is after all a necessary precondition for access – nothing can be accessed once it has ceased to exist.

139 The microfilm will preserve the deteriorating Acts, but their accessibility will be limited. Microfilm is not a very practical access method for those working in the law. It cannot be thumbed 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. The National Library has indicated that if the PAL project cannot assist with access to historical Acts, it will make at least the microfilmed Acts available on a documentary heritage website.<sup>143</sup> This would be in line with its statutory responsibility to ensure the accessibility of documentary heritage.

140 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.<sup>144</sup>

141 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.

141 See above, "Data Longevity", paras 45-47.

142 Carnaby and Lawn, above, n 128.

143 Ibid.

144 See paras 123-127 above.

- 142 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. The PAL website, on the other hand, is a new access and search vehicle that is purpose-designed specifically for Acts.<sup>145</sup> It will revolutionise the way in which the current New Zealand statute book is made available to the public. The PAL database is much better suited to delivering access to historical Acts than the National Library's documentary heritage website. As the background to, and a part of, today's law, historical Acts should be accessible and searchable alongside contemporary Acts as part of PAL. This would allow the courts, legal profession, academics, students, parliamentarians and members of the public to search historical Acts and the present day statute book.
- 143 PAL does not cover historical Acts at present. However, this is only because historical Acts are not included within its current scope. There are no technological obstacles to extending the PAL system to include historical legislation. With additional funding, the PAL database could be extended so that it also encompasses historical Acts. The PAL technology represents a substantial investment by the government in public access to legislation. It is a vehicle built especially for Acts.<sup>146</sup> Having made that investment, it makes sense to make the best possible use of it. We seek the views of users regarding this opportunity to capitalise on PAL in ensuring accessibility of New Zealand's historical Acts.

### Extending PAL to Include Historical Acts

- 144 The PAL system should be extended to make historical Acts accessible. The Rubacki paper, commissioned by the NZLLA, envisaged the scope of such an extension to PAL as follows:<sup>147</sup>

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 PAL system, so as to preserve and provide access to the entire New Zealand statute book. The 1908 consolidation also merits early inclusion.

- 145 The Law Commission agrees with these priorities articulated in the Rubacki paper. The late nineteenth century material tends to be at the greatest risk of deterioration.

### Funding Required to Extend PAL

- 146 The PAL project is not currently scoped or funded to include historical Acts. If the PAL system were extended to cover historical Acts, additional funding would be required. At the time of writing this issues paper, no precise costings have

<sup>145</sup> Rubacki, above, n 123, 7.

<sup>146</sup> Ibid.

<sup>147</sup> Ibid, 9.

been carried out regarding a potential extension of the PAL system to cover historical Acts. However, the following are the two expected major cost areas:

(i) data capture; and

(ii) integrating the historical data into the PAL system.

- 147 Data capture will be relatively straightforward in technical terms. It is expected that it will be reasonably simple to predict and measure the work involved in this step and to produce cost estimates. The Law Commission has had a background discussion with the New Zealand Electronic Text Centre (NZETC) regarding the possibility of capturing electronically historical Acts.<sup>148</sup> The NZETC's preliminary view was that it could undertake this task if sufficiently funded.
- 148 However, the second cost area, of integrating the historical data into the PAL system, is more complex. The cost of this second area of activity will depend on the degree of compatibility between the historical Acts and the PAL system DTDs. The greater the degree of modification that needs to be made to PAL's existing DTDs and publishing standards, the higher the cost will be of integrating the additional data into PAL.<sup>149</sup>
- 149 Even though legislation may be back-captured, the value in the capture is in the compilation of the material so that all amendments and versions are available. This would add substantial cost to the process, but it would also add significant resource value to the collection.
- 150 The Law Commission strongly recommends that the PAL system be extended to make historical Acts accessible. 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.

Q5. How often do you refer to repealed Acts?

Q6. Do you agree with us that historical Acts should be available online?

148 Meeting with the Director of the New Zealand Electronic Text Centre (Law Commission and PCO, Wellington, 4 July 2007).

149 Rubacki, above, n 123, 14.

# 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
- strongly recommend the production of a subject index to New Zealand's Acts.

151 This chapter and the remaining chapters of this issues paper outline a range of possible measures for improving the accessibility of the New Zealand statute book. This chapter looks at the possibility 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 others. 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, an index could be but one step in a wider approach including other options that are set out in later chapters, like reprinting, revision or even codification.

152 A good index would provide 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 possible options for production of an index in the future and invite comment from readers on a range of recommendations.

### WHAT IS AN INDEX?

153 An index is an “ordered arrangement of entries ... designed to enable users to locate information in a document or specific documents in a collection”.<sup>150</sup> The function of an index is to provide users with an efficient means of tracing and finding information within a document or document series.<sup>151</sup>

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

151 The Society of Indexers < <http://www.indexers.org.uk/index.php?id=234> > (last accessed 17 August 2007).

- 154 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.<sup>152</sup> 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.
- 155 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.<sup>153</sup>
- 156 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.<sup>154</sup> 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<sup>155</sup>

- 157 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.<sup>156</sup> They are used, as required, 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

- 158 Following each heading and subheadings are references, of which there are two kinds: *locators* and *cross-references*.<sup>157</sup> 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

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

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

154 *Ibid.*

155 This section draws heavily on AGPS, above, n 153, paras 19.6-19.16.

156 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.

157 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.



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.

- 159 Two kinds of cross-references are used in indexing: *see* and *see also* references.<sup>158</sup> 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.

- 160 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

- 161 Indexes range from simple lists to very complex tools for locating information. Types of indexes and methods of indexing are varied.<sup>159</sup> Indexes differ in their level of detail. While indexes could occupy any place along the spectrum of included detail, for the purposes of this issues paper we will refer to the classes of index representing either end of the spectrum as, respectively, “title indexes” and “subject indexes”.
- 162 An example of a simple title index that has been discussed earlier in this issues paper is the *Tables of New Zealand Acts and Ordinances and Statutory Regulations in Force*. It lists all Acts (and 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.
- 163 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?

- 164 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

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158 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.

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

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.

- 165 Another way of putting this, and very 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.
- 166 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.

#### INDEXES TO LEGISLATION IN NEW ZEALAND

#### Current Indexes to the New Zealand Acts

##### *Tables of New Zealand Acts and Ordinances and Statutory Regulations in Force*

- 167 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 in Force* produced by the PCO. The *Tables* are available both in printed and electronic form.<sup>160</sup> For most of the year, the electronic version of the tables is more up-to-date than the printed version. For instance, as at the publication of this issues paper, the most recent tables is nine months out-of-date, whereas the electronic version was current to just over two months. Below is an extract taken from the electronic version of the tables, updated to 1 July 2007:<sup>161</sup>

Diplomatic Privileges and Immunities Act 1968	1968 No 36 / RS Vol 17, p 171
Disabled Persons Community Welfare Act 1975	1975 No 122 / RS Vol 26, p 143
Disabled Persons Employment Promotion Repeal Act 2007	2007 No 11
Disputes Tribunals Act 1988	1988 No 110

- 160 The electronic version contains only a list of principal Acts, whereas the hard copy also lists amending Acts. The electronic version is accessible via the PCO website < <http://www.pco.parliament.govt.nz/> >, at the Legislation Direct website < <http://w1.legislationdirect.co.nz/taomain/> > (last accessed 17 August 2007).
- 161 Legislation Direct *Tables of New Zealand Acts and Ordinances and Statutory Regulations in Force: New Zealand Public Acts as at 1 July 2007* < <http://w1.legislationdirect.co.nz/taomain/> > (last accessed 17 August 2007).

Distress Act 1689 (Imp)	1689, 2 Will and Mar, Sess 1 c 5 / RS Vol 30, p 101
Distress and Replevin Act 1908	1908 No 47 / RS Vol 6, p 153
Distress for Rent Act 1737 (Imp)	1737, 11 Geo 2, c 19 / RS Vol 30, p 117
District Courts Act 1947	1947 No 16 / (Reprinted 2005) as at 1 June 2005
District Railways Purchasing Act 1885	1885 No 52
Dog Control Act 1996	1996 No 13 / (Reprinted 2004) as at 12 November 2004
Domestic Actions Act 1975	1975 No 53 / RS Vol 26, p 167
Domestic Violence Act 1995	1995 No 86 / (Reprinted 2006) as at 29 June 2006
Domicile Act 1976	1976 No 17 / RS Vol 27, p 7
Door to Door Sales Act 1967	1967 No 126 / RS Vol 37, p 39

168 The tables provide an alphabetical list of Act and regulation titles. They contain some additional information about listed Acts,<sup>162</sup> but 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.

169 Even when a researcher, using the title index, 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 through use of the title index, they have no direct means of determining whether other relevant provisions still need to be found. As a tool to find legislative provisions on a particular topic, the title index is inefficient, incomplete and does not facilitate exhaustive searching of the statute book.<sup>163</sup>

### *LexisNexis Index to New Zealand Statutes*

170 The commercial publisher, LexisNexis, produces a looseleaf unofficial *Index to the New Zealand Statutes*.<sup>164</sup> It was commenced in 1995. The looseleaf publication is updated four times a year and is now maintained by a single editor on a part-

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

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

164 *Index to the New Zealand Statutes* (LexisNexis, Wellington, November 2005) issue 74. The Index continues to be updated quarterly, but the looseleaf volume referred to in this issues paper is issue 74, which is current as of November 2005.

time basis.<sup>165</sup>

- 171 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. An extract from the first page of the directory is as follows:

<b>Topic</b>	<b>Refer Under</b>
abandoned goods, seizure.....	biosecurity
abandoned land.....	rates
abandonment, child under 6.....	criminal law
abatement notice.....	property, resource management
abduction.....	criminal law
abduction, international.....	guardian and ward
abortion.....	criminal law, health
Abortion Supervisory Committee.....	statutory bodies
abortion, consent to.....	guardian and ward
abortion, mentally subnormal patient.....	mental health
absconding debtor.....	civil procedure

- 172 The main title “Animals” has six pages of entries. The following is a sample of the entries appearing under that heading:

bees *see* animal products – apiaries  
 biological control of animals or pests on reserves, 1977 No 66, s 51A  
 cruelty *see* welfare  
 damage caused by dangerous, liability for, 1989 No 97, s 4  
 disease control *see generally* BIOSECURITY  
 dogs *see also* CONSERVATION *and* WILDLIFE

- barking, 1996 No 15, s 55
- – removal of, 1996 No 13, s 56
- biosecurity searching, use of dogs for, 1993 No 95, s 115
- dangerous dogs, 1996 No 13, ss 31-33
- – at large among stock and wildlife, 1996 No 13, ss 59, 60
- – attacking persons, animals, etc, 1996 No 13, s 57
- – causing injury, 1996 No 13, s 58
- – rushing at persons etc, 1990 No 108, s 57A
- destruction, procedure when order made for, 1996 No 13, ss 64, 73
- dog control officers’ and rangers’ powers etc, 1996 No 13, ss 11-19A
- functions of local government, 1996 No 13, ss 6-10
- – bylaw making powers, 1996 No 13, s 20
- guide dogs, special provisions, 1996 No 13, s 75
- importation, prohibition on, 1990 No 108, s 30A, Sch 4

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

- 173 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 PAL system, it should be possible for the state to provide an index with an even greater level of detail.

### Historical Indexes to the New Zealand Acts<sup>166</sup>

- 174 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.

#### *Lists of Acts in force in appendices to the Journal of the House of Representatives*

- 175 A number of annual volumes of the Appendices to the Journal of the House of Representatives (AJHR) in the nineteenth century included official lists of Acts in force.<sup>167</sup>

#### *Henry Smythies’ Analytical Digest (1863)*

- 176 In 1863, an Auckland solicitor, Henry Smythies, compiled *An Analytical Digest of the Laws of New Zealand*. The digest describes in outline form the laws of New Zealand in force in 1862, comprised in: Acts of the Imperial Parliament relating to New Zealand; Ordinances of the Legislative Council; Statutes of the General Assembly; and Proclamations in the Colonial Government *Gazette*. Smythies explained the need for the work in its preface:

Men often suffer through a legal fiction—that everybody is supposed to be acquainted with the law of the country in which he resides.... [I]n this colony it would seem hard to disallow the plea of ignorance, as none but officials have ready access to the laws; and many have been unable to obtain a complete copy of the Ordinances and Statutes, though willing to purchase and pay for the same.... This work will be a ready *vade mecum*<sup>168</sup> and most useful pocket companion to colonists of every class.

- 177 The *Analytical Digest* was more than an index in that it provided brief summaries of the law on various topics as well as references to the provisions containing the relevant law. The following is an example of one such entry:

COPYRIGHT

166 This section on historical indexes 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.

167 An “Index and Tabular Schedule of the Statute Law of New Zealand before 1853” appeared in the 1863 volume ((1862) AJHR A.—4); “Chronological Tables of the General Statute Law of New Zealand” appeared in the 1873, 1877, 1882 and 1890 appendices ((1873) AJHR A.—5; (1877) AJHR A.—8; (1882) AJHR A.—13; (1890) AJHR A.—6); and “Chronological Tables of the Provincial Laws of New Zealand” appeared in the 1862, 1877 and 1882 appendices ((1862) AJHR A.—4A; (1877) AJHR A.—8A; (1882) AJHR A.—14). GA Wood *Studying New Zealand—A Guide to Sources* (University of Otago Press, GP Print Ltd, Dunedin, 1999) 79.

168 That is, a handbook or guidebook, from the Latin verb *vadere*, meaning “to go” and *mecum*, meaning “with me”.

Copyright secured for 28 years and the life of the author.  
Penalty for infringement, £50, and double costs.

O. ii. 18.

[Ordinance of New Zealand, Session II, No. 18]

### *Badger's General Index*

- 178 In 1885 Wilfred Badger published his *Statutes of New Zealand, 1842 – 1884*. He compiled 511 Acts and ordinances in two volumes, a total of 1,782 pages. The volumes contain a general index of 52 pages of two columns. It is quite detailed. For instance the heading “Animals” reads:

#### Animals

Chatham Islands Prohibition	1620
Cruelty, Prevention	868
Illusage, Arrest for	869
Importation	960
Injuries to	152
Injurious Destruction	1068
Killing	1646
Larceny of	114
Protection	114, 152, 868, 908, 1068, 1711

- 179 Badger explained the value of the index in his preface:

The General Index will be found especially useful in many ways, and to all classes of readers, for, in order to render it so, every Ordinance and Act, from 1842 to 1884 inclusive, has been carefully considered, and every matter capable of being condensed and likely to be of service, has been condensed and entered, and often cross-entered or re-entered in different places, so as to ensure to this index, in the hands of Justices, Solicitors, and others, in outlying Districts, a value which it could not otherwise have.

- 180 He also produced a one-page guide on how to use the index.
- 181 In 1892 Badger produced an updated version of his statutes, this time in four volumes, but this time with a rather shorter and coarser-grained index.

### *Curnin's Index (1877-1933)*

- 182 John Curnin was the Clerk of the Legislative Council from 1861 to 1865, and was a Law Draftsman from 1877. He held the office, then non-statutory, of Compiler of Statutes for some time before his death in 1904. He is famously associated with a periodical *Index to the Laws of New Zealand, General, Local, and Provincial*, of which he was the first author. First published in 1877,<sup>169</sup> it is commonly referred to as *Curnin's Index*. It appears to be the first index that was not part of a volume collecting together a series of separate enactments. It is a predecessor to the *Tables of New Zealand Acts and Ordinances and Statutory Regulations in Force*.
- 183 In his introduction to the first edition of the index, Curnin highlighted what he regarded as the unfortunate state of New Zealand legislation at that time: “Like

169 John Curnin *Index to the Laws of New Zealand, General, Local, and Provincial, as existing on 1 January 1877* (New Zealand Times Office, Wellington, 1877).

a garden deserted for years, the Statute Book is overgrown with weeds”. He advocated a full revision of the statute book to remove spent and redundant provisions and considered his own index as a “modest part” of the overall work needed to improve accessibility of Acts. In 1895, he assigned copyright in the index to the Crown. *Curnin’s Index* was then edited by the Compiler of Statutes, Earnest Yevily Redward until his sudden death in 1929,<sup>170</sup> and then by TDH Hall, who was appointed Clerk of the House in 1930.

### *Index to the 1908 Consolidated Statutes*

184 A revision of the statute book was completed in 1908, resulting in the Consolidated Statutes of New Zealand 1908.<sup>171</sup> The Consolidated Statutes were accompanied by a volume comprising an historical table of legislation and an alphabetical index.<sup>172</sup> The index spans 172 pages of the 376 page volume.<sup>173</sup>

185 The index is arranged alphabetically under main subject headings, which are either subjects or Act titles. There are further levels of subheadings and cross-references to other subject headings. When an Act title is used for a main or subheading, a locator reference is given to the volume and page number at which the Act appears. For subheadings, locators are given to the relevant Act, volume and page, where this has not already been stated, and to section number. By way of illustration, consider the following extract from the index:<sup>174</sup>

ANGORA goats protected against destruction for trespass: Impounding Act, s. 14, II, p. 726; Stock Act s. 60, V, p. 515.

ANIMALS Protection Act, I, p. 45

Acclimatisation societies, mode of registering, ss. 50, 51.

property vested in, ss. 54, 56.

may catch animals, &c, for distribution to other district, s. 32.

lands used by, for acclimatisation purposes may be excepted from licences, s. 16.

“Authorised persons,” who are, s. 43.

Bullets, metal-cased, not to be used, s. 7.

“Close season” defined, s. 2.

Close season, selling, &c., game during, s. 30.

...

ANNUITIES are accruing from day to day, and are apportionable: Property Law Act, s. 108, IV, p.709.

### *Final Edition of Curnin’s Index (1933)*

186 The final edition of *Curnin’s Index* was produced in 1933. This was not long after the 1931 reprint, which also had an index volume.<sup>175</sup> The volume itself included

170 Redward held the position of Compiler of Statutes from 1924 until his death in 1929.

171 See Chapter 7: Revisions, paras 317-318.

172 *Historical Table of the Legislation of New Zealand and Alphabetical Index to the Consolidated Statutes* (John MacKay, Government Printer, Wellington, 1908).

173 The index spanned pages 205-376 of the volume.

174 *Historical Table of the Legislation of New Zealand and Alphabetical Index to the Consolidated Statutes*, above, n 172, 207.

175 See paras 189-191.

chronological tables of Acts, but its largest component is the subject index to Public General Statutes, which numbers 257 pages.<sup>176</sup> The entries under the subject heading “Animals” are reproduced below:

ANIMALS. *See also* STOCK.

Providing for the protection of animals, the regulation of game-shooting seasons, and the constitution and powers of acclimatisation societies, 1921-22, No. 57(a); 1931, No. 5, s. 9 [R. 1, 183].

Part I: Animals protection, 1921-22, No. 57, ss. 3-7.

Part II: Game, *ibid.*, ss. 8-16.

Part III: Opossums, *ibid.*, ss. 17-20; 1931, No. 5, s. 9. Regulations, Gazette 1930, p. 1653; 1931, p. 1770; 1932, p. 2450.

Part IV: Acclimatisation districts and societies, 1921-22, No. 57, ss. 21-29.

Part V: General, *ibid.*, ss 30-40.

Regulations, Gazette 1930, p. 1999; 1931, p. 463.

Acclimatisation districts, Gazette 1925, p. 749; 1929, p. 1721; 1930, p. 159; 1932, p. 1998.

For the protection of homing-pigeons, 1921-22, No. 57, s. 37. Regulations Gazette 1899, p. 256.

For the protection of branded Angora goats, 1908, No. 187, s. 60 [R. 1, 311].

For the destruction of injurious or destructive birds, 1908, No. 87 [R. 1, 234].

Chatham Islands: Importation of hares and rabbits prohibited, 1928, No. 8, s. 100 [R. 1, 243].

Titi Islands, Stewart Island: Protection of sea-birds and their eggs, 1924, No. 31, s. 32 [R. 4, 622]. Regulations, Gazette 1912, p. 1785; 1919, p. 857; 1932, p. 1222.

Stock importation, for the restriction of, 1908, No. 187(b); 1913, No. 65(c); 1927, No. 34; 1930, No. 32 [R. 3, 111].

Cruelty to, or the prevention of, 1927, No. 35, ss. 7-15 [R. 2 500]; 1932, No. 11, s. 4; special constables, 1927, No. 35, s. 14.

Pigs, goats, or poultry trespassing on fenced land may be destroyed, 1908, No. 79, s. 14 [R. 1, 213].

- 187 Hall, in his introduction to the 1933 edition, considered the future of the index. He lauded its usefulness, in particular noting some advantages it had over the index that was part of the 1931 reprint, while also anticipating the possibility of its demise.<sup>177</sup>

The publication of the [1931] Reprint and the development of other composite reference-books raises the question of the future of the Index. Much laborious work and considerable expenditure is involved in the production of each edition. It is unlikely that this can be continued unless the demand is adequate. In many quarters concern has been expressed at the possibility of its discontinuance....

One would regret terminating a work of many years' standing... anything, however, which has outlived its usefulness cannot in these days survive, and the future of the Index depends on the support accorded by the profession.

176 The volume as a whole was 458 pages.

177 TDH Hall (ed) “Introduction” in *Index to the Laws of New Zealand, General, Local, and Provincial (“Curnin’s Index”)* (28 ed, GH Loney, Government Printer, Wellington, 1933) ix.



188 Indeed, no further editions followed the 1933 edition. In 1931, perhaps as a cost-cutting measure, Cabinet had decided that production of the index would become part of the Law Drafting Office's routine duties and the special annual payment of £100 to the editor would cease. But their decision was reversed after submissions to the effect that the Law Drafting Office did not have the resources to accomplish the task. Hall agreed to produce a further edition of the index, which was issued by the government in 1933.<sup>178</sup> It was the last.

### *Index volume of the 1931 reprint*

189 The most comprehensive index of Acts ever compiled in New Zealand was the one prepared as part of the 1931 reprint of legislation.<sup>179</sup> Volume 9 of the reprint includes alphabetical and chronological tables of Acts and a table of cases, but is mostly taken up with a general index, which spans 831 pages.<sup>180</sup>

190 The index is arranged alphabetically under main subject headings. Below the subject headings are cross-references to other subject headings. Below these are Act titles that function as sub-headings.<sup>181</sup> A locator reference is given to the volume and page number at which the Act appears. The Act title subheadings are generally further divided by one or two lower levels of subheadings. Section, volume and page locators are given for each of the lowest level subheadings.<sup>182</sup> By way of illustration, consider a portion of the 14 pages of entries under the main subject heading "animals":

#### **ANIMALS, 1, 179-343**

See also—

CRIMINAL LAW: Crimes Act, 1908; Justices of the Peace Act, 1927; Police Offences Act, 1927.

DISTRESS: Distress and Replevin Act, 1908.

FORESTS: Forests Act, 1921-22.

LAND SETTLEMENT: Land Act, 1924.

LOCAL GOVERNMENT: Counties Act, 1920; Municipal Corporations Act, 1920.

MEDICINE, PHARMACY, AND RELATED PROFESSIONS: Poisons Act, 1908.

MINES, MINERALS, AND QUARRIES: Mining Act, 1926.

POST OFFICE, TELEGRAPHS, AND TELEPHONES: Post and Telegraph Act, 1928.

PUBLIC HEALTH: Health Act, 1920.

PUBLIC REVENUE AND EXPENDITURE: Customs Act, 1913.

PUBLIC WORKS: Public Works Act, 1928.

RAILWAYS: Government Railways Act, 1926.

SALE OF GOODS: Sale of Goods Act, 1908.

TOURIST AND HEALTH RESORTS AND SCENERY PRESERVATION:

178 *Curnin's Index*, *ibid.*

179 It is volume 9, the final volume of the reprint.

180 *The Public Acts of New Zealand (Reprint) 1908-31*, vol 9, 189.

181 Although some main headings only contain cross-referencing to other main headings.

182 That is, medium level subheadings that themselves branch into two or more lower level subheadings generally do not have their own reference. The reference is given for the final subheading in a chain of headings.

Scenery Preservation Act, 1908.

**Animals Protection and Game Act, 1921-22, 1, 183**

Acclimatisation—

Districts, creation of (s. 21), **1, 189.**

Societies—

Accounts of (s. 26), **1, 191.**

Animals—

Turned at large by (s. 29), **1, 191.**

Vesting of, in (s. 28), **1, 191.**

Balance sheet of, failure to forward (s. 27), **1, 191.**

Existing, registration of (s. 22), **1, 189.**

New, registration of (s. 23), **1, 190.**

Registered, bodies corporate (s. 24), **1, 190.**

Rules, alteration of (s. 25), **1, 190.**

Animals—

Damaging land, taking of (s. 32), **1, 193.**

Defined (s. 2), **1, 183.**

Importation of (s. 30), **1, 192.**

Keeping of (s. 30), **1, 192.**

Lawfully taken, keeping of (s. 33), **1, 193.**

Liberation of (s. 30), **1, 192.**

Taking of, authorised (s. 31), **1, 192.**

Bullets, use of certain, unlawful (s. 11), **1, 186.**

Close season, defined (s. 2), **1, 183.**

Cylinders, use of, prohibited (s. 13), **1, 187.**

Decoys, live, use of, prohibited (s. 13), **1, 187.**

Deer. See “Game, imported”, *infra*.

District, defined (s. 2), **1, 183.**

Fines, application of—

Under Part III (s 20), **1, 189.**

Under remainder of Act (s. 43), **1, 196.**

- 191 The index provided a very useful guide to the reprinted Acts. The high degree of cross-referencing that it contained greatly aided accessibility. Users could generally trace their way to a correct main subject heading from whatever similar terms they initially had in mind, although there might be some argument as to whether the approach of using Act titles as subheadings was ideal. The index was never updated and for several decades nothing replaced it.

*Table of public general Acts of New Zealand (1940-1964 and 1974-1976)*

- 192 From 1940, a table of the public general Acts of New Zealand appeared at the end of the annual volume (or at the end of the last of two or more annual volumes) of Acts.<sup>183</sup> The table was arranged alphabetically and was quite short when it first appeared. In 1976, the table was positioned instead in the opening pages of the first of the annual volumes for that year.<sup>184</sup>

183 Anonymous, “Publication of Statutes—A New Feature, and the Influence of War” (1941) 17 NZLJ 40.

184 The annual volumes of statutory regulations for the years 1962-1975 contained a “Table of Statutory Regulations” at the end of the annual volume for each year. They were the equivalent of the “Table of Public General Acts” that appeared in the annual volumes of Acts.

### Work on periodical index following 1957 Reprint

- 193 The *Reprint of the Statutes of New Zealand 1908-1957* arranged the Acts alphabetically. This meant that the reprint was, in a sense, self-indexed by Act title, but there was nothing more detailed than that.

### Tables of Acts and Ordinances and Statutory Regulations in Force

- 194 The first edition of the *Tables of Acts and Ordinances and Statutory Regulations in Force*, up-to-date to 31 December 1976, was published in 1977. Then Chief Parliamentary Counsel, Walter Iles, decided to publish the Tables in a separate volume from the Acts so as to reduce the amount of material that had to be completed before the annual volumes could be published, and because the tables would be more useful if published separately. In order to ensure that the tables did not suffer the same fate as Curnin's index, that is, of being unsustainable due to commercial considerations, he also arranged with the government printer that each subscription to the annual volumes would automatically include subscription to the tables and the annual interim indexes. The cost was built into the subscription rates, so there was essentially a captive market for the tables.<sup>185</sup>

## INDEXES TO LEGISLATION IN OVERSEAS JURISDICTIONS

- 195 A number of overseas jurisdictions currently produce, or have recently produced, subject indexes. It is useful in the context of this issues paper 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. We will begin with three of the indexes to legislation that are currently produced in Victoria, Tasmania and South Australia respectively. There are other commercially produced indexes also available to other states' legislation and to Commonwealth legislation.<sup>186</sup> However, the three that are canvassed here are a good sample of the indexing options used in Australia.

### Index to Subject Matter of Victorian Legislation

- 196 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.<sup>187</sup> The index is currently available in hard copy only. It costs \$50.50, and fewer than 250 copies are published each year. There has been some thought given to developing an interactive, enquiry-based internet version with hyperlinks to the Acts and statutory rules at some time in the future, but this is not currently underway.

185 Walter Iles, Chief Parliamentary Counsel "Publication of Statutes" (draft paper for the Attorney-General, 27 May 1985): Archives NZ: ACHG 8598 Acc W5352 2035-4-2 part 1 – printing requirements of Government Departments – including Law Drafting, paras 51-53. We are indebted to Mr Ross Carter for this material.

186 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).

187 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.

*Production and maintenance of the Victorian Index*

- 197 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.
- 198 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.

*Layout of the Victorian Index*

- 199 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.<sup>188</sup>
- 200 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. A typical entry consists of the following elements, arranged in alphabetical order within each subgroup:
- Subject heading;
  - See also* references (if applicable);
  - Titles of principal public Acts;
  - Titles of principal statutory rules.
- 201 There are three pages of entries for “Animals”, or other headings beginning with “Animals”. A sample is reproduced below:
- Animal shelters  
*See* **Domestic animals**
  
  - Animal welfare  
*See* **Animals**

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

Animals

*See also*

**Domestic animals**

**Livestock**

**Native animals**

**Pest animals**

**Stray animals**

**Wildlife**

**Other headings beginning with Animals**

**The names of certain animals, e.g. Dogs**

Domestic (Federal and Nuisance) Animals Act 1994

Prevention of Cruelty to Animals Act 1986

Summary Offences Act 1966

Prevention of Cruelty to Animals Regulations 1997

**Animals - Breeding**

Domestic (Feral and Nuisance) Animals Act 1994

Livestock Disease Control Act 1994

Prevention of Cruelty to Animals Act 1986

Livestock Disease Control Regulations 1995

Prevention of Cruelty to Animals Regulations 1997

Animals - Conservation

*See also*

**Endangered species**

**Fauna**

**Wildlife**

Flora and Fauna Guarantee Act 1988

Wildlife Act 1975

**Animals – Destruction and disposal**

Domestic (Feral and Nuisance) Animals Act 1994

Impounding of Livestock Act 1994

Livestock Disease Control Act 1994

Prevention of Cruelty to Animals Act 1986

Prevention of Cruelty to Animals Regulations 1997

Animals – Experiments

*See* Animals - Scientific procedures

### *Back of the book indexes*

- 202 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.

- 203 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. While some earlier Acts now have back of the book indexes, many do not. For instance, all of the seven Acts listed in the above example falling under the heading “Animals” or other headings beginning with “Animals” were passed before the year 2000, and so none of them has a back of the book index unless it has been selected among the older Acts to receive back of the book indexes retrospectively.
- 204 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 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

- 205 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.

### Subject Index to Tasmanian Legislation

- 206 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.<sup>189</sup> Also available on the website are alphabetical lists of Tasmanian Acts and statutory rules, and annual lists of legislation passed. It is 148 pages long and is structured under

189 Office of Parliamentary Counsel, Tasmania “Tables of, and information guides to, Tasmanian legislation” < <http://www.dpac.tas.gov.au/divisions/opc/publications.html> > (last accessed 17 August 2007).

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. It has about a page of entries under the heading “Animals” with a number of cross-references. A sample is below:

**ANIMALS** *See also*

- AGRICULTURE
- STOCK
- WILDLIFE
- DOGS
- SHEEP
- FLORA AND FAUNA
- VETERINARY SURGEONS
- IMPOUNDING
- WHALES

- Artificial breeding ..... *Animal Health Act 1995, Pt. 7*
- Branding and tagging of stock ..... *Animal (Brands and Movement) Act 1984*
- Conservation (including restrictions of possession or release of certain animals).....*Nature Conservation Act 2002 National Parks and Reserves Management Act 2002*
- Control – prescribed substances..... *Regulations under the Animal Welfare Act 1993*
- Cruelty to.....*Animal Welfare Act 1993*
- Cruelty to, prevention societies.....*Proclamations under the Animal Welfare Act 1993*
- Disease control (infections, &c.) ..... *Animal Health Act 1995, Pt.6 and regulations under the Act*
- Diseases – crime..... *Criminal Code Act 1924, Chpt. XXXIIA*
- Farming prescribed animals (wildlife) .....*Animal Farming (Registration) Act 1994*
- Gene Technology, regulation of..... *Gene Technology Act 2001*
- Genetically Modified Organisms Control Act 2004
- Identification devices..... *Animal (Brands and Movement) Act 1984*
- Impounded animals may be destroyed, sold, &c. .... *Local Government Act 1993, Civ. 5 of Pt. 12*
- Importation may be restricted..... *Animal Health Act 1995, Pt. 4*
- Meat (industry; also exemptions, &c.).. *Meat Hygiene Act 1985*
- Offences – control, keeping of, injury to, &c. *Police Offences Act 1935, ss. 13, 37*

207 It should be noted that Tasmania has good online access to legislation through the EnAct system.<sup>190</sup> EnAct has a number of useful and sophisticated features that help to improve accessibility. From the accessibility point of view, key features of the system include:

- automatic consolidation of amendment legislation on commencement;
- true “point-in-time” searching of consolidated legislation (searches are carried out on the legislation database for legislation relevant at a specified time point);

<sup>190</sup> Tasmanian Legislation website “About EnAct” < <http://www.thelaw.tas.gov.au/about/enact.w3p> > (last accessed 17 August 2007).

- advanced searching and browsing capabilities with all cross-references and amendment history information available as electronic hyperlinks from the underlying SGML markup; and
- multiple format delivery for the publication of legislation allowing paper-based products, CD ROM products and HTML publishing via the internet.

### Subject Index to South Australian Legislation

- 208 The *Subject Index to South Australian Legislation* 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.<sup>191</sup> It is very similar to the Victorian index.
- 209 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.<sup>192</sup> The index is not available in PDF or word format for download – it is chiefly envisaged as an electronic document to be used online,<sup>193</sup> thus allowing users to capitalise on its hyperlinking facilities.<sup>194</sup>

### Iowa Subject Index

- 210 Many of the states in the United States of America produce indexes to their Acts or state codes.<sup>195</sup> There are also a large number of commercially produced indexes. For reasons of space, we have limited the sample examined in this issues paper 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*.

191 Australian Law Librarians Group Incorporated *Subject Index to South Australian Legislation* < [http://www.slsa.sa.gov.au/legislation\\_index/](http://www.slsa.sa.gov.au/legislation_index/) > (last accessed 17 August 2007). The establishment of the index was made possible through a grant from the Law Foundation of South Australia Incorporated.

192 South Australian Legislation < [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au) > (last accessed 17 August 2007).

193 Although, 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.

194 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 256-259 of this chapter.

195 To name just two other examples in addition to the two that are discussed in this section of the issues paper, 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> > (last accessed 17 August 2007). The Wisconsin index can be viewed and searched online: < [http://www.legis.state.wi.us/rsb/about\\_the\\_index.htm](http://www.legis.state.wi.us/rsb/about_the_index.htm) > (last accessed 17 August 2007).



211 Like many states in the United States of America, legislation in Iowa is arranged and presented in the form of a “code”.<sup>196</sup> 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.<sup>197</sup> In printed, published form, the detailed index is over 800, double-columned pages.<sup>198</sup> The skeleton index is much shorter: about 30 double-columned pages.<sup>199</sup>

212 The skeleton index is a quick guide to the main headings related to a particular subject area, such as “Animals”. After each heading is a locator reference to a chapter or chapters of the code or, in three instances, a cross-reference to another heading in the skeleton index. The skeleton index entry for “Animals” is reproduced below:<sup>200</sup>

Abuse, ch 717B  
Bestiality, ch 717C  
Care in commercial establishments, ch 162  
Contest events, ch 717D  
Cruelty, 717B  
Dead animals, disposal, ch 167  
Diseases, ch 163 - ch 166D, ch 172E  
Domesticated animal activities, liability, ch 673  
Endangered species, 481B  
Facilities, offences relating to, 717A  
Feed, ch 198  
Hunting, *see HUNTING*  
Livestock, *see LIVESTOCK*  
Poultry, *see POULTRY*  
Wild animal depredation, ch 481C  
Zoos, ch 394

213 The detailed index has about five double-columned pages of entries for the main heading “animals” and other main headings beginning with “animals”. Headings have two levels of sub-headings, which themselves are followed by either cross-references to other headings or locator references to chapters or provisions of the code itself. A portion of the entry for “animals” is reproduced below:<sup>201</sup>

**ANIMALS**

Abandonment of animals and abandoned animals  
    Animal neglect, *see subhead Neglect of Animals and Neglected Animals below*  
    Cats and dogs, abandonment of, criminal offences, 717B.8  
    Disposition of abandoned animals by veterinarians and kennels, 162.19  
Abuse of animals and abused animals

196 United States style codes will be discussed in Chapter 8: Codification.

197 Iowa Legislature “Iowa Code” < <http://www.legis.state.ia.us/IACODE/> > and “Indexes” < <http://www.legis.state.ia.us/Current/tablesandindex/> > (last accessed 17 August 2007).

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

199 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.

200 Iowa Legislature “Indexes” < <http://www.legis.state.ia.us/Current/tablesandindex/> > (last accessed 17 August 2007).

201 *Ibid.*

- Criminal offences, 717B.2
- Disposition of threatened animals, 717B.4
- Livestock abuse, 717.1A
- Rescue of threatened animals, 717B.5
- Agricultural animals, *see* LIVESTOCK
- Agricultural liens on farm products, *see* UNIFORM COMMERCIAL CODE, *subhead Secured Transactions, thereunder Farm Products*
- Amphibians, *see* AMPHIBIANS
- Antelope, *see* GAME
- Arthropods, endangered and threatened species protection, *see* ENDANGERED SPECIES PROTECTION
- Artificial insemination, *see* ARTIFICIAL INSEMINATION
- Assistive animals for persons with disabilities, right to use, 216C.11
- Attacks by animals, reports and confinement of animals, 351.36–351.43
- Auctions of animals, *see subhead Sales of Animals below*
- Avians, *see* BIRDS
- Badgers, *see* FUR-BEARING ANIMALS

### United States Code Annotated

- 214 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.
- 215 The USCA also includes a popular name index in a separate volume. The table itself spans 1,302 pages.<sup>202</sup> 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”.<sup>203</sup> It is not unlike New Zealand’s *Tables of Acts and Ordinances and Statutory 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.
- 216 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 USCA. Returning to our earlier example, there are seven pages of entries for the heading “Animals” and other headings beginning with “Animals”. A sample is reproduced below:<sup>204</sup>

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

203 *Ibid*, V.

204 *Ibid*, 305.

## 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-1**

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**

- 217 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.

### United Kingdom Index to the Statutes

- 218 An official index to United Kingdom legislation was produced in that jurisdiction from 1870 until 1991.<sup>205</sup> 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

205 *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 issues paper is not the most recent edition of the index, but rather the 1987 edition.

indicates that the index is in suspension for the foreseeable future.<sup>206</sup> It is nonetheless useful to consider it as an example in this issues paper.<sup>207</sup>

- 219 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* is 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.<sup>208</sup> A portion of the entry under the “Animals” heading is reproduced below:<sup>209</sup>

#### ANIMALS

- 1876 c. 77 Cruelty to Animals (4:5)
- 1892 c.55 Burgh Police (S) (81:2)
- 1897 c.38 Public Health (S) (100:2)
- 1906, c 32 Dogs (4:1)
- 1911 c.27 Protection of Animals (a) (4:5)
- 1912 c. 14 Protection of Animals (S) (b) (4:5)

...

- 1984 c.40 Animal Health and Welfare (2:8)
- 1984 c. 54 Roads (S) (108)
- 1984 c.60 Police and Criminal Evidence (95)
- 1985 c. 51 Local Government (81:1)

- 1 *Prevention of Cruelty*
- 2 *Animal Health*
- 3 *Liability for Damage done by Animals, E&W*
- 4 *Endangered Species*
- 5 *Generally*

#### 1 Prevention of Cruelty

Offences of cruelty, and penalties (*see further, 3 below*): S 1892 c.55 ss 5, 380(7)  
 E&W 1911 c.27 s.1  
 E&W 1912 c.17  
 S 1921 c.14 s.1  
 E&W 1933 c.17  
 S 1934 c.25  
 1954 c.40 s.3

206 The Stationery Office: Online Bookshop < <http://www.tsoshop.co.uk/bookstore.asp?FO=1159966&Action=Book&ProductID=0118403079&From=SearchResults> > (last accessed 17 August 2007).

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

208 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.

209 *Index to the Statutes*, above, n 205, 98.

- 1977 c.45 s.31(1), sch 6
- Abandonment of animals: 1960 c. 43
- Anaesthetic required for operations on animals *See below*
- Cinematograph film involving cruelty: power of court to infer, etc.: 1937 c.59
- Power for court to—
- order destruction of animal (*see also* DOG, 1): E&W 1911 c.27 s.2  
S 1912 c.14 s.2
  - deprive person of ownership of animal: E&W 1911 c.27 s.3, S 1912 c.14 s.2
  - disqualify for dog licence *See* DOG, 2
  - disqualify for custody of any animal: 1954 c.40 ss.1,2  
1963 c.43 s.3(3)  
1973 c.60 s.3(3)  
1973 c.65 s.237(1), sch.29
  - Compensation to owner, etc., of injured animal: E&W 1972 c.71 s.1
  - Boarding establishments, licensing and control of: 1963 c. 43 1981 c.22 s.96(1),  
sch.5, para.6
  - islands and district councils as local authority: S 1973 c.65 s. 188(3)(h)

### UK Statute Law Database

- 220 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.<sup>210</sup> The *SLD* website states that 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.
- 221 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 Acts and Ordinances and Statutory 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

- 222 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.<sup>211</sup> 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.

210 *UK Statute Law Database* < <http://www.statutelaw.gov.uk/> > (last accessed 17 August 2007). The database was launched on 20 December 2006 by the Publications Office, which is part of the Ministry of Justice.

211 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).

## CONSIDERATIONS IN PRODUCING AN INDEX

## The Special Considerations of Legal Indexing

- 223 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.<sup>212</sup> 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 the possibility of producing an index to New Zealand's Acts.
- 224 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 point of view of indexing and electronic searching.<sup>213</sup> 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.<sup>214</sup> 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]]...
- 225 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.<sup>215</sup> 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.
- 226 These kinds of connections often are not 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

212 Maryann Corbett “Indexing and Searching in Statutory Text” (1992) 84 Law Libr J 759.

213 Ibid, 760.

214 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 158 above.

215 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.

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 in the PAL database for “smuggling migrants” will not turn up section 7A(1) because those words are not used in the section.

- 227 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 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.<sup>216</sup> 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.
- 228 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.<sup>217</sup> 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.
- 229 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”<sup>218</sup> and “mentally defective person”<sup>219</sup> that were used in the past are now replaced by concepts related to “mental health”.<sup>220</sup> An index needs to keep track of such name changes.
- 230 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. For instance, the Crimes (Substituted Section 59) Amendment Bill received a great deal of media attention during its

216 Corbett, above, n 212, 761.

217 Ibid.

218 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.

219 Mental Defectives Act 1911.

220 For instance, Mental Health Commission Act 1998.

passage through the legislative process.<sup>221</sup> However, it was generally referred to as the “anti-smacking bill” rather than by its formal title, and it is by this popular name, or some variation on it, that most people are likely to know the Act now. 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. 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.<sup>222</sup>

- 231 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.

### Deciding the Scope and Tone of the Index

#### *For whom is the index intended?*

- 232 The design of an index depends a great deal on its intended audience. A subject index to the New Zealand Acts, on the one hand, 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.
- 233 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.

#### *What legislation is to be indexed?*

- 234 As has been discussed earlier, the focus of this issues paper 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.

221 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.

222 Corbett, above, n 212, 764.



- 235 Even having confined the index to Acts, however, questions remain as to which types of Acts should be indexed. For example, should Appropriation Acts, Private and Local Acts, Finance Acts, Imprest Supply Acts, or Subordinate Legislation (Confirmation and Validation) Acts be indexed?

*To what level of detail will material be indexed?*

- 236 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 other search options are elements to be considered in this process. Arguably, an index that is supplemented by the availability of online searching has less need for fine detail; “fine detail can be traded off if this is practical in order to achieve other major goals”.<sup>223</sup>

### Adopting or Designing a Taxonomy or Thesaurus

- 237 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?*

- 238 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”.<sup>224</sup> 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?*

- 239 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 indexing, a taxonomy is a set of permitted terms that recognises relationships among the terms in the set. For the purposes of this issues paper, the two terms thesaurus and taxonomy 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.

223 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.

224 Jessica Milstead “About Thesauri” (2000) < <http://www.bayside-indexing.com/Milstead/about.htm> > (last accessed 17 August 2007).

*Elements of a thesaurus*

- 240 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.
- 241 A good thesaurus will have neither too few nor too many terms. If 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*

- 242 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.<sup>225</sup> However, the thesaurus could be tailored to the specific characteristics of New Zealand statute law.
- 243 Adopting an existing thesaurus would be quicker and less costly than designing one from scratch. However, it could be difficult to find an existing thesaurus that is a good fit for an index to New Zealand Acts. An existing legal thesaurus, as opposed to a statute law thesaurus, would have entries for legal matters that are chiefly matters of common law and are not dealt with in statute law. An overseas statute law thesaurus would be tailored to the peculiarities of that jurisdiction's statute law, which could be very different from those in New Zealand.

**Human Indexing and Automatic Indexing**

- 244 Completion of the PAL project will eventually provide an official, electronic version of the New Zealand statute book. The PAL database will greatly aid the production of a subject index to the statute book, whether in hard copy format, electronic format, or both, because the compiler will have access to PAL's ability to organise material in an almost limitless variety of ways. 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.

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225 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).

However, while electronic technology would 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. That is, an index could not be produced wholly automatically and without human involvement.

- 245 Over time, indexers of the New Zealand Acts could “train” a computer indexing programme so that it is able to make first guesses at how to categorise and index the subject matter of Acts. However, at present it is not possible for a computer, even once “trained” in this way, to categorise subject matter with the necessary level of accuracy and intuition.<sup>226</sup> Human indexers would still be needed to check and correct the computer programme where it has wrongly categorised an Act or failed to recognise a relevant relationship between a set of provisions.
- 246 Automatic indexing is faster and cheaper than human indexing. However, for reasons of quality, human indexers are still integral to the indexing process. Humans are able to analyse concepts within writing in a way that computers cannot yet achieve.<sup>227</sup>

### Who Would Undertake the Task?

- 247 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.
- 248 We consider that there are two broad options regarding what body would produce a subject index in New Zealand: either the PCO could produce an index; or the task could be contracted out to another, perhaps private, body. The PCO does not currently undertake any indexing and so lacks experience in that area at present. Were the PCO to produce the index, it would require extra staffing with indexing expertise. Notably however, the PCO has considerable expertise in and knowledge of the New Zealand Acts of Parliament. Knowledge of the subject matter to be indexed would be a great asset in producing an index. The PCO also has in-house expertise regarding the PAL system, which would need to be used in producing an index. While an outside indexing body would have existing indexing experience, it would lack the PCO’s extensive knowledge of the statute book and the PAL system. Whether the PCO or another body were to undertake the indexing task, additional resourcing would be required. The Law Commission’s recommendation is that the PCO should undertake the task.
- 249 We have heard an argument that it would be a threat to, or breach of, the separation of powers if the state were to produce a subject index. The argument is that subject-based classification of Acts or provisions within Acts is a form of interpretation. It is constitutionally improper for a body that makes the law to also engage in interpreting it; these roles should be played by the legislative and judicial branches respectively. However, we think such an argument is flawed. Our view is that a subject index is an aid to access and navigation, rather than

226 Seth Maislin, President of the American Society of Indexer “Notes on Automatic Indexing” <<http://taxonomist.tripod.com/indexing/autoindex.html>> (last accessed 17 August 2007).

227 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](http://www.shieldsnetwork.com/LI842_Shields_Automatic_Indexing.pdf)> (last accessed 17 August 2007).

an aid to interpretation. The PCO already has obligations to make Acts and regulations accessible to the public.<sup>228</sup> We consider that it would be entirely constitutionally appropriate for the PCO to produce a subject index to New Zealand's Acts.

### Ensuring the Currency of an Index

250 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.

### Time and Resources Required

251 As stated earlier, the production of a subject index would require adequate funding. The cost of producing a subject index would vary according to a number of factors discussed above, such as the type of index produced and level of detail or granularity of the index, as well as the medium or media in which the index is to be presented. The time required to produce an index would also vary according to such factors.

### THE MEDIUM

252 This chapter has so far focussed mainly on print-based indexing. However, modern technology has seen the emergence of new kinds of searchable electronic indexes, which are designed and used quite differently to their print counterparts. In this section of the chapter, we turn to electronic indexing and searching.

### Indexes and Electronic Searching

253 There will be those who believe 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 that require more familiarity than many others for effective navigation. For such persons an index is a helpful additional tool.

254 However, 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 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

228 Acts and Regulations Publication Act 1989, ss 4 and 10.

to other Acts.<sup>229</sup> We have already discussed the special nature of legal indexes in this regard.<sup>230</sup>

- 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.
- While computer-generated indexes are possible, the fact that many publishers still prefer human-generated ones suggests that, to many, the intervention of creative human intelligence can do more than an automated agent. For instance, in New Zealand, the commercial publisher LexisNexis produces an *Index to the New Zealand Statutes*, and in the United States, West Thomson produces a *General Index of the United States Code Annotated*.

255 So it is our view that an index will always add value to even the most sophisticated search engine. Though PAL will allow Acts to be searched electronically, an index would be an additional source of assistance.

### In What Medium is the Index to be Presented: Electronic or Hard Copy?

256 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 indexing would be likely to involve a significantly different approach to hard copy indexing. Although both are referred to as indexes, they operate differently and ideally should be designed with these differences firmly in mind. Some of the chief benefits of hard copy indexes, such as ease of browsing, do not translate well to electronic indexes.

257 If an index is to be produced, careful consideration would need to be given to the different media in which it is to be presented and how it is presented in each medium.

258 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; they provide users with an overview of the structure of the statute book; and they supplement users’ ingenuity by referring them to categorisations they may not have thought of on

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229 See above, paras 224-227. However, modern search technology can deliver many of these functions 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 a good subject index. If additional metadata of this kind were added to the PAL system, an index could also be generated from the metadata.

230 See below, paras 223-231.

their own.<sup>231</sup> Because of these benefits, we are strongly of the view that a hard copy index should be produced by the state. However, we are also aware that many users may instead prefer to use an electronic index to search the statute book. We recommend that both kinds of indexes be developed.

- 259 Fortunately, the task of producing a subject index in two different formats could be facilitated by the new PAL system. PAL will store legislative data in XML format, a structured information system. This means that the content of the PAL database is kept separate from its format or presentation. This can allow the same content to be produced in different formats, such as hard and soft copies. The metadata content that would help to produce a hard copy index would also facilitate a more sophisticated and user-friendly electronic one.<sup>232</sup> 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 PAL system may facilitate the production of an index in both hard copy and electronic format.

### Delivery of a Hard Copy Index

- 260 An advantage of electronic over hard copy sources is that hard copy begins to become out-of-date once it has been printed, whereas electronic sources, such as the PAL database, can be kept continuously up-to-date.<sup>233</sup> This has implications for the production of a hard copy index. The Law Commission recommends that a similar approach should be taken to the production of a hard copy index as we propose in the next chapter regarding the production of hard copy reprints. In short, 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 PAL website. Users should be able to print this off themselves at any time and obtain an up-to-date index to the Acts of Parliament. If they prefer to purchase a bound printed copy, they should be able to purchase a copy produced using “print on demand” technology. More will be said about print on demand in the following chapter.<sup>234</sup>

### CONCLUSIONS FOR NEW ZEALAND

- 261 New Zealand’s statute law is untidy and difficult to navigate. 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 and comprehensive index to the Acts of New Zealand would provide users with a “map”, making Acts more accessible.
- 262 The Law Commission strongly recommends the production of a subject index for the New Zealand Acts. This task should be undertaken by the PCO. The index should be directed at as wide an audience as possible. It should cover the whole base of current Acts with the exception only of Acts with a limited lifespan, such as Appropriation Acts, Imprest Supply Acts, Subordinate Legislation (Confirmation and Validation) Acts and some spent transitional

231 See above, para 254.

232 The Brookers case law taxonomy mentioned above, at n 225, 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.

233 See discussion in Chapter 6: Reprinting, para 287.

234 Chapter 6: Reprinting, paras 292-296.

provisions. The index should be at as fine a level of detail as is reasonably possible. It should be available both electronically and in hard copy, and it should be updated regularly.

- Q7. Do you agree that there should be an official subject index to our Acts?
- Q8. Should such an index be in hard copy; online and available to be printed; online in the form of a browsable subject style index or hierarchy; or any combination of these?
- Q9. Would you be prepared to pay for a hard copy index?
- Q10. If your answer to question 9 is yes, would you prefer to purchase a copy that was published as part of a periodic print run at a lower cost or pay a higher cost for an up-to-date copy produced using print on demand technology?
- Q11. Of the sample indexes in this chapter, which do you prefer?

# 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 will be available under the PAL system;
- recommend that hard copy access to reprinted Acts continue under PAL, but recommend also that it be done on a “print on demand” basis; and
- consider two miscellaneous issues regarding the formatting of reprinted Acts.

- 263 As explained in Chapter 1, from time to time the PCO reprints amended Acts with amendments included. The Statutes Drafting and Compilation Act 1920 refers to these reprinted statutes as “compilations”.
- 264 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 the minor 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.<sup>235</sup>
- 265 The current practice is to reprint Acts individually on a prioritised basis. The reprint schedule is drawn up following public consultation and takes account of factors such as which Acts are highly amended or in high demand.
- 266 Once the PAL website goes live, the New Zealand statute book will be available online and amendments will be incorporated as soon as possible after they are passed. PAL will effectively provide up-to-date “electronic reprints” continuously.

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



## Domett's Volume (1850)

267 As mentioned in Chapter 1, there is a long history of reprinting in New Zealand. In 1850, the Hon Alfred Domett prepared what was New Zealand's first reprint, covering the years 1841 to 1849, and popularly known as *Domett's Ordinances*.<sup>237</sup> The Hon Sir Thomas Sidey said that:<sup>238</sup>

What gives to this publication a very particular value, apart from its material contents, is the fact that it was compiled and arranged according to a carefully thought-out scheme. ... The contents were arranged chronologically, but under three main heads: First—Imperial Acts of Parliament; Charters and Royal Instructions. Second—Ordinances of New Zealand actually in force at the date of publication. Third—An appendix, Part I of which contained under various subheadings Ordinances repealed, disallowed or obsolete; and Part II, also under appropriate headings, Proclamations and Notices under the Charters and Ordinances.

... The Ordinances in force [are arranged] under the three general headings of Public Interests (General Government), Public Interests (Social Economy), and, finally, Private Interests.

## Badger's Reprints (1885 and 1892)

268 In 1885, a reprint of Acts and ordinances was published.<sup>239</sup> The two-volume publication appears to have been privately produced by Wilfred Badger, a barrister and solicitor, to be funded by private subscription. The reprinted work was organised chronologically, with the oldest ordinances at the beginning. Badger noted in his preface to the reprint that:<sup>240</sup>

The necessity for such a Work as this has been long felt, owing to the great inconvenience suffered by all classes of the community, in consequence of the Whole Law of the Colony being almost inaccessible even to Lawyers, and entirely so to the great mass of the people, rendering an entire reprint of Existing Law alike necessary and expedient.

269 Badger produced a second edition in 1892.<sup>241</sup> This edition was four volumes. Badger noted in the preface the help of John Curnin in producing the second edition.

236 This section on the history of reprinting 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.

237 Alfred Domett *The Ordinances of New Zealand passed in the first ten Sessions of the General Legislative Council, AD 1841 to AD 1849: To which are prefixed the Acts of Parliament, Charters, and Royal Instructions relating to New Zealand* (Printed for the Colonial Government, Wellington, 1850).

238 Hon Sir Thomas Sidey "Revising the New Zealand Statute Book—An Historical Survey: From Landmark to Landmark" (1932) NZLJ 300, 300.

239 Wilfred Badger *1842-84 The Statutes of New Zealand: Being the Whole of the Law of New Zealand Public and General and a Reprint of 511 Ordinances and Acts of the above colony in force on January 1<sup>st</sup> 1885 by Wilfred Badger* (Lyttelton Times Co Ltd, Christchurch, 1885).

240 Ibid, "Preface" iv.

241 Ibid.

### The 1931 Reprint

- 270 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.
- 271 The 1931 reprint was the first truly comprehensive reprint in New Zealand and was not, as such, authorised by Act of Parliament.<sup>242</sup> It was a joint undertaking by the government and Butterworths, the publishers.<sup>243</sup> It reprinted all 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”.<sup>244</sup> The Attorney-General certified at the beginning of the reprint that it “correctly sets forth the law”.<sup>245</sup>
- 272 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.<sup>246</sup>
- 273 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.”<sup>247</sup> 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 the “grave danger of law having been unintentionally altered” in the course of a revision.<sup>248</sup> Reprinting was not thought to bear such a risk since “the exact repetition of the law is the aim of such a reprint”.<sup>249</sup>

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

243 “Publishers’ Announcement” in *The Public Acts of New Zealand (Reprint) 1908-1931* (Butterworth & Co Ltd, Wellington, 1932) vol 1, ix.

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

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

246 See Chapter 5: Indexes, paras 189-191.

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

248 *Ibid*.

249 *Ibid*.

## The 1957 Reprint

- 274 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.<sup>250</sup> 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.
- 275 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.<sup>251</sup> 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)

- 276 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.
- 277 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.<sup>252</sup> This intention was not fully realised, however, due to the volume of legislation and rate of amendment and insufficient resourcing.<sup>253</sup>
- 278 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.<sup>254</sup> In a few cases, 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.

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

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

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

253 805 Acts were reprinted in the period the series was produced (1979-2003).

254 For a fuller discussion of this, see Chapter 3: Current Problems with Accessing Statute Law, para 88.

- 279 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.<sup>255</sup>

### Commercial Publishers and Reprints

- 280 The commercial publisher, Brookers, 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”.<sup>256</sup> Acts are grouped alphabetically within each volume. At the time of publication of this issues paper, there were 20 volumes in the series.
- 281 The commercial publishers Status Publishing (now part of LexisNexis) and Brookers (part of the Thomson Corporation)<sup>257</sup> both invested in the back-capture of New Zealand Acts and statutory regulations and developed their own commercially available databases of legislation.<sup>258</sup> 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.

### The PCO Reprinting Policy and Reprinting Programme

- 282 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 basis.<sup>259</sup> The PCO conducts an annual reprinting programme under this policy. The PCO now publishes reprints only in pamphlet form.<sup>260</sup> The focus is on best-selling titles that are frequently or heavily amended.<sup>261</sup>
- 283 Each year, a reprinting programme is established in consultation with key users of legislation.<sup>262</sup> 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 reprinting programme is published on the PCO

255 *Report of the Parliamentary Counsel Office for the year ended 30 June 2002* < <http://www.pco.parliament.govt.nz/archive/annualreport/2002/2002report.pdf> > (last accessed 17 August 2007) 18.

256 “Foreword” *Bound Reprinted Statutes 2002-2003* (Thomson Brookers, Wellington, 2005).

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

258 The LexisNexis product is *Status Statutes*. See < <http://www.lexisnexis.co.nz/products/status/default.asp> > (last accessed 17 August 2007).

259 PCO website < <http://www.pco.parliament.govt.nz/legislation/reprints.shtml> > (last accessed 17 August 2007).

260 *Ibid.*

261 During the financial year ending 30 June 2006, the PCO’s Reprints Unit produced hard copy reprints of 39 Acts and 10 Statutory Regulations.

262 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> > (last accessed 17 August 2007).

website,<sup>263</sup> 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

284 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.

285 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.

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

### THE FUTURE OF REPRINTING: THE PAL SYSTEM

287 When the PAL website has gone live, the PCO will continue to publish official hard copy reprints of individual Acts in pamphlet form in accordance with its annual reprinting programme. However, the primary focus of the PCO Reprints Unit will shift from the production of hard copy reprints to the officialisation of the PAL database of legislation.<sup>264</sup> The PCO has begun consulting on its officialisation programme (that is, the order in which Acts are officialised) in the same manner as it consults on its reprinting programme. It is intended that the PCO will integrate its annual reprinting programme with the officialisation programme so far as this is possible. A balance between the two programmes will need to be struck. However, a likely consequence of the officialisation programme is that fewer hard copy reprints can be produced during the officialisation period.

288 However, the question is what the future of reprinting should be after the PAL database has been completely officialised, and the extent to which hard copy reprints should continue. There will always be users, as discussed earlier,<sup>265</sup> who prefer hard copy, and would be sorry to see the current system of hard copy reprints disappear. There may be sufficient demand to continue with a reprint programme rather like the present.

289 However, it would be foolish not to take advantage of the potential of the PAL system. As discussed above, the PAL system will make available electronic versions of all current Acts. They will be continuously updated to incorporate amendments. In this regard, electronic versions of Acts available via the PAL system will always have an advantage over hard copy reprints, which 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 after their publication date. Amendments passed after an Act is reprinted will not be incorporated until the

263 List of Reprints Scheduled < [http://www.pco.parliament.govt.nz/legislation/reprints scheduled.shtml](http://www.pco.parliament.govt.nz/legislation/reprints%20scheduled.shtml) > (last accessed 17 August 2007).

264 The officialisation process is discussed in more detail in Chapter 2: The PAL Project, paras 53-58.

265 Chapter 2: The PAL Project, para 76.

next hard copy reprint, unless some form of manual updating of the kind that Brookers have done for so many years is continued.

- 290 The Law Commission has concluded that the rapidity of change in our legal system, and the resultant inevitability that even reprints will soon be out-of-date, militates against these established modes of hard copy reprinting. Yet how is one to serve the needs of those readers who continue to prefer hard copy? These persons will be able to print their own copies of up-to-date electronic reprints if they have access to a printer. Many users may choose this approach. However, not all users of legislation will have access to a computer or printer, and some users may prefer to access an Act in bound form rather than on A4 loose leaf paper. The Commission is of the view that users should be able to purchase, at a reasonable cost, up-to-date hard copies of Acts if they wish.
- 291 We believe, therefore, that hard copy reprints should continue to be available. The question becomes one of how this hard copy should be delivered. We propose a system in which hard copy reprints from the PAL database can be made available to individual users via “print on demand” technology.

### Print on Demand Technology

- 292 “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.
- 293 The unit cost of a text produced using print on demand is usually higher than one produced as part of a larger print run. However, notwithstanding their lower unit price, large print runs of reprinted Acts will not be desirable under the PAL system. When the PAL website goes live and, even more so after its contents are given official status, it will be counterproductive to produce large quantities of hard copy reprinted Acts. The hard copy versions may become out-of-date almost immediately. There will be little advantage in storing excess hard copy reprints, and as a result there will be little opportunity to capitalise on the lower unit price of large print runs.
- 294 Print on demand technology offers a compromise. The PAL system will provide up-to-date PDF versions of all legislation. Up-to-date hard copy reprints could be printed on demand using PAL’s PDF versions as their source. 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.
- 295 Print on demand technology could also facilitate more sophisticated variations on the current model of reprinting individual Acts.<sup>266</sup> For instance, it would be possible to print on demand a volume that incorporated several Acts that all

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266 Meeting with SecuraCopy (Law Commission and PCO, Wellington, 27 June 2007).

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.

- 296 No doubt this method will have its drawbacks. We suggest no change to the present practice of publishing the annual volumes of new Acts in hard copy. They will rapidly become out-of-date unless some form of manual updating continues. Thus, they will present traps for users, particularly inexperienced users, who go to the library to use the volumes. Not everyone has access to a computer, and not everyone is comfortable using the Acts in electronic form. No system is perfect. But, on balance, the Law Commission believes print on demand is the approach that will best meet the needs of the majority of users.

### What is a “Reasonable Price” for Print on Demand Reprints?

- 297 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.<sup>267</sup> Under the PAL system, users will have access to a continuously updated electronic reprint of the entire statute book. This access will be 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 print run. If the production of reprinted Acts came to be performed using print on demand, rather than by large print runs as is done now, then reprinted Acts would be more expensive to produce than is currently the case. This higher cost would have to be borne either entirely by the purchaser, or subsidised by the state to some degree.

- 298 In the context of the unprecedented access to the New Zealand statute book that the PAL system will deliver to users, free of charge, 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, users will have free access to the same reprint via the PAL system. 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.

- 299 The Law Commission considers that it may be 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 seek the views of readers on this matter.

### Miscellaneous

- 300 Two rather more minor matters deserve notice. They relate to reprinting and the presentation of updated Acts. They have implications for accessibility, at least for more specialist users.

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

- 301 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. It is thought that the rationale behind this approach was to aid lawyers undertaking legal research.<sup>268</sup> Indeed, it can be very important for both lawyers and historians to be able to reconstruct legislation as it stood at a particular time.<sup>269</sup> 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”.<sup>270</sup> 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.
- 302 While this “clean” reprint 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. It is a more complicated process now to discern this indirectly through history notes. We seek users’ views on whether there should be a reversion to some method of indicating in the text of a reprinted Act that it has been amended. Square brackets may be obsolete, but other forms of tracking could perform the same task.<sup>271</sup>
- 303 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. 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 such provisions might be better inserted textually into the principal Act.

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## CONCLUSIONS

- 304 Historically, reprinting has played a role in improving the accessibility of New Zealand Acts of Parliament. The PCO’s reprinting programme will continue when the PAL website goes live. Under the PAL system, amendments will be incorporated as soon as possible after enactment, so the website will effectively provide access to a continuous cycle of up-to-date electronic reprints.
- 305 Reprinting alone cannot be the whole solution, but under the PAL system, electronic reprints at least will remain part of New Zealand’s approach to

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268 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.

269 See Chapter 4: Preservation of Historical Statutes, para 125-126.

270 Lawn, above, n 268, s 13.

271 We note that a balance would need to be struck between inclusion of helpful information and updating Acts in a timely way.



ensuring the accessibility of Acts for many years to come. The question beyond that is the form that hard copy reprinting should take. Reprinting practice could continue much as it is now, supplemented by the continuous electronic reprints offered by PAL. However, once legislation is passed so that versions of Acts on PAL have official status, these established forms of reprinting will fall behind PAL – they will cover fewer Acts and will be less up-to-date.

- 306 The Commission is strongly of the view that the state should continue to provide useful hard copy access to reprinted Acts. This hard copy access should be as useful as the electronic access that will be delivered by the PAL system. The Commission has reached the view that the best way to deliver this meaningful access is via print on demand.

Q12. After legislation is passed to give official status to the electronic versions of legislation available on the PAL website, will you continue to want official hard copy reprints?

Q13. If your answer to question 12 is yes, would you prefer the reprints to be:

- a) of individual Acts;
- b) published in bound volumes;
- c) a complete reprint of all our Acts as in 1931 and 1957; or
- d) available on a print on demand basis?

Q14. Would you be willing to pay more for an up-to-date print on demand reprinted Act than you currently would pay for a less up-to-date reprint produced as part of a larger print run?

Q15. Do you want historical notes in reprints, and a return to a system of highlighting amended provisions?

# 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 authenticated;
- strongly recommend that a programme of revision should be introduced in New Zealand to be carried out by the PCO;
- advise that new legislation would be required to authorise such a revision programme; and
- make a recommendation regarding the related topic of substantive amendment.

**INTRODUCTION** 307 As we have seen in Chapter 6, reprints simply reproduce Acts of Parliament with amendments incorporated.<sup>272</sup> They make only minor changes of an editorial nature to the Act in question. These include changes to minor 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.<sup>273</sup> In other words reprints are simply that: they reprint existing legislation, and are not separately enacted.

308 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”

309 The terms “consolidation” and “revision” are not always consistently used.

<sup>272</sup> Chapter 6: Reprinting, para 264.

<sup>273</sup> Acts and Regulations Publication Act 1989, ss 17C-17E; Interpretation Act 1999, s20(2).

310 While *consolidation* can be loosely used, the most common meaning of it is captured in this definition by Alec Samuels:<sup>274</sup>

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’.

311 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.<sup>275</sup>

312 However, there is 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.<sup>276</sup> At other times it was significant, the new Act being a combination of original provisions and new ones.<sup>277</sup>

313 In this chapter we prefer to use the term *revision*, meaning Acts that substantially re-enact earlier law, whether with or without amendment.

## HISTORY OF REVISION IN NEW ZEALAND<sup>278</sup>

### Revision of Statutes Act 1879

314 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.<sup>279</sup>

315 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.<sup>280</sup> However, the powers accorded the Commissioners under the 1879 Act were broader than under its predecessor. The 1879 Act directed the Commissioners

274 Alec Samuels “Consolidation: A Plea” (2005) 26 Statute LR 56, 56, citing *Gilbert v Gilbert* (1928) P 1, 7 (CA).

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

276 For example the Land Transfer Act 1952.

277 For example, the Indecent Publications Act 1963.

278 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.

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

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

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”.<sup>281</sup> 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 the imperfections of the existing Acts”.<sup>282</sup> The 1879 Act also required the Commission to prepare reports to the Legislature to accompany completed revisions of Acts,<sup>283</sup> in order that the revised Acts “may be enacted by the Legislature...if the Legislature shall think fit”.<sup>284</sup>

- 316 By the time of its 1880 report, the Commission had prepared 15 consolidated bills absorbing 64 Acts.<sup>285</sup> A year later, the Commission had prepared a further 17 consolidated bills to replace 83 existing Acts.<sup>286</sup> 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”.<sup>287</sup> 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”.<sup>288</sup> This meant that there was no separate edition of the revised Acts.

### 1908 Revision and Re-enactment

- 317 In 1895, a new Reprint of Statutes Act repealed the Revision of Statutes Act 1879.<sup>289</sup> It provided for the setting up of a Commission with powers of revision, not mere reprinting.<sup>290</sup> The Act enabled the Commissioners to consolidate Acts, omit obsolete Acts, and make alterations to “reconcile contradictions, supply omissions and amend imperfections”.<sup>291</sup> The 1895 Act led to what has been described as “the greatest of all reforms of our statute book”.<sup>292</sup> 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

281 Revision of Statutes Act 1879, s 4(2). Under the 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”.

282 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.

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

284 Revision of Statutes Act 1879, s 5.

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

286 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.

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

288 Sir Thomas Sidey “Revising the New Zealand Statute Book” (1932) NZLJ 300, 301.

289 Reprint of Statutes Act 1895, s 6.

290 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).

291 Reprint of Statutes Act 1885, s 3(3).

292 Sidey, above, n 288, 302.

to 208 Acts. Some of them remain in force today. Writing in 1941, the then Attorney-General, the Hon HGR Mason, said:<sup>293</sup>

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, 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.

- 318 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:<sup>294</sup>

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.

- 319 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 and 2004.

- 320 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:<sup>295</sup>

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

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

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

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

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

- 321 With the passage of time the case for systematic revision of our statute book has grown. 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:
- (i) Dead wood could be removed by the repeal of Acts that are effectively obsolete. Examples of this problem have been given in Chapter 3.<sup>296</sup> 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.<sup>297</sup>
  - (ii) 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 Constitution Act 1986, Statutes Drafting and Compilation Act 1920, Acts and Regulations Publication Act 1989, Regulations (Disallowance) Act 1989, and Interpretation Act 1999. Other examples might include Acts regulating the courts; banking and cheques; insurance; and social security benefits (which are currently scattered over the Social Security Act 1964, the War Pensions Act 1954, the Education Act 1989, and the New Zealand Superannuation and Retirement Income Act 2001). There are many other possibilities for drawing together, within a revised Act, provisions on the same subject. Such an Act could also often be given a new title that is more indicative of its subject matter.
  - (iii) Inconsistency and overlap could be substantially reduced.
  - (iv) Provisions that are currently “hidden” in inappropriate Acts could be relocated in more logical context.<sup>298</sup>
  - (v) Long Acts containing a variety of subject matter could be divided into a number of separate Acts.
  - (vi) Expression could be modernised and made plainer.
  - (vii) Consistency of style and expression could be achieved. 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.<sup>299</sup>

296 See Chapter 3: Current Problems with Accessing Statute Law, paras 111-112.

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

298 See Chapter 3: Current Problems with Accessing Statute Law, paras 96-97.

299 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 104-110.

(viii) The process of revision can 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 can only reveal such difficulties; substantive new legislation would be needed to correct them.

322 No doubt revision has difficulties too. Among the difficulties 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 slightly different are clustered together. Overlong Acts are to be avoided. Moreover, revision is such a major undertaking that it might create difficulties of its own in the form of new inconsistencies, and even mistakes. The 1908 consolidated Acts contained examples.<sup>300</sup> 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.<sup>301</sup> 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 re-learning may be required of users. But in our view these drawbacks and risks are greatly outweighed by the benefits. Affected users should not resent a little pain in return for the benefit of improved comprehensibility.

#### WHAT KIND OF REVISION?

323 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 1994 that the Rewrite Advisory Panel conducted, starting in 1996, resulted in the Income Tax Act 2004. Producing that Act alone took eight years.<sup>302</sup> Now, three years later, the income tax rewrite project is almost complete.<sup>303</sup> Any such wider revision project would require the continuing direction and determination of a group of committed and knowledgeable individuals; they would need to be experienced drafters.

324 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 – but what is suggested is a methodical, staged approach, a number of revision Acts being enacted each

300 See John Burrows “Consolidation Acts” (1983) 2 *Canta LR* 1, 5-8.

301 See the Rt Hon Alexander Kingcombe Turner “Changing the Law” (1969) 3 *NZULR* 404, 414-417.

302 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> > (last accessed 17 August 2007).

303 The Income Tax Bill 2006 was introduced on 15 November 2006; it had its first reading on 23 November 2006, and at the time of publication of this paper was almost through the parliamentary process.

year, with the object of revising all legislation in need of revision after a number of years. This would have the advantage that the Acts most in need of revision could be done individually, without the need to wait for the completion of the whole task. As we shall see, phased or progressive revisions of this kind are now favoured in Canada.

#### WHO WOULD UNDERTAKE THE TASK?

- 325 The task of revision would obviously not only require time and resources, it would require considerable skill. While PAL's capacity to reorder material would be of assistance, the great majority of the work would have to be done manually. A body of experts would need to be appointed. They would need to be knowledgeable in the law and be skilled drafters. The 1908 consolidation was accomplished 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, a great part of the work was done not by the commissioners themselves but 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.<sup>304</sup>

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.

- 326 The position in other jurisdictions will be outlined shortly. In New Zealand today the most obvious and sensible solution would be to entrust the task to the PCO. It would need to be augmented and adequately funded for the purpose.

#### HOW WOULD THE REVISIONS BE AUTHENTICATED?

- 327 The Income Tax 2004 is a revision of the kind we envisage. It indicates that its provisions are “the provisions of the Income Tax 1994 in rewritten form”,<sup>305</sup> and are intended to have the same effect as those earlier provisions. The only exceptions are the eighteen items listed in Schedule 22A of the 2004 Act, which do contain policy changes. Despite this, however, the bill went through the normal parliamentary process, and spent considerable time before a Select Committee, which required to be satisfied that indeed it did not change policy in any other ways than those stated. Its passage through the House took 16 months.<sup>306</sup>
- 328 It may be that some “revision” Acts would need similar painstaking scrutiny to that undergone by the Income Tax Act 2004. But 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 authentication process, itself authorised by legislation, which can “fast-track” revisions provided that:
- (i) the limits of what constitutes a revision are clearly defined;

304 (31 July 1908) NZPD 57. We are indebted to Mr Ross Carter for this material.

305 Income Tax Act 2004, s YA 3.

306 The time between first reading and the select committee report was 10 months. (11 May 2004) 9 Parliamentary Bulletin 44.



- (ii) a certificate is provided that each revision bill re-enacts the content of the previous law without substantive change; and
- (iii) any minor amendments that have been made, for example to reconcile inconsistencies, are clearly itemised in a report to the House.

329 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. The Reprint of Statutes Act 1895 is instructive in this regard. It provided for the appointment of Commissioners, and then provided:

3. The Commissioners so appointed shall have the following powers, duties, and functions:-

- (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.

330 As noted above,<sup>307</sup> the 208 revised Acts that resulted were passed as a single schedule to one bill. There are precedents in other jurisdictions. To these we now turn.

<sup>307</sup> See above, para 317.

OTHER  
JURISDICTIONS

- 331 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

- 332 All the Canadian provinces and territories bar one have a history of conducting periodic revisions of their Acts of Parliament.<sup>308</sup> Each province and territory has enabling legislation that authorises the revision process.<sup>309</sup> This is also the case at the federal level.<sup>310</sup> Responsibility for conducting revisions of Acts of Parliament generally is vested either with Legislative Counsel,<sup>311</sup> or with another body,<sup>312</sup> usually a Commissioner or Commission.<sup>313</sup>

*Effectiveness of revision in Canada*

- 333 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,<sup>314</sup> at variable intervals ranging from nine to 19 years.<sup>315</sup> Since confederation in 1867, the federal Acts of Canada have been revised six times.<sup>316</sup>
- 334 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

308 The province of Saskatchewan does not have such a history.

309 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).

310 Statute Revision Act, RSC 1985, ch S-20.

311 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.

312 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.

313 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.

314 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).

315 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.

316 These revisions were in 1886 (185 statutes); 1906 (155 statutes); 1927 (217 statutes); 1952 (340 statutes); 1970 (441 statutes) and 1985 (362 statutes).

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.<sup>317</sup>

### *Revision powers*

- 335 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, 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.
- 336 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 meaning 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.
- 337 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.<sup>318</sup>

#### 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;*

317 See paras 342-343.

318 Department of Justice Act, CCSM, ch J35, s 5(2).

- (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].

338 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.<sup>319</sup> 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:<sup>320</sup>

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”.<sup>321</sup>

339 Interestingly, revisers in the provinces with the widest powers appear to exercise those powers very cautiously and conservatively. This has also been the experience in Australia, which will be discussed later in this chapter.<sup>322</sup> A *National Survey of Legislative Drafting Services*<sup>323</sup> 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:<sup>324</sup>

319 Erasmus, above, n 315, 5-7.

320 Statute Revision Act, RSBC 1996, Ch 440, s 2(1).

321 Ibid, s 2(1)(e).

322 See paras 347-351.

323 Lionel A Levert, Special Adviser, Legislative Drafting, The International Cooperation Group, Department of Justice, Ottawa, Canada *National Survey of Legislative Drafting Services* (International Cooperation Group, Ottawa, 2002).

324 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.

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*

340 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 the public general statutes of Canada”.<sup>325</sup> 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.

341 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 five years.<sup>326</sup> 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.<sup>327</sup> The current focus for many is on the newer concept of limited or phased revisions of individual Acts,<sup>328</sup> based on the new model introduced in British Columbia’s 1992 revision Act:<sup>329</sup>

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].

325 Statute Revision Act, RSC 1985, c S-20, s 5.

326 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.

327 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.

328 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.

329 Statute Revision Act [RSBC 1996] Ch 440, s 1. 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 315, 7.

- 342 Several themes emerged from our correspondence with Canadian provinces, territories and the federal government in connection with this trend towards limited or phased revision. 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 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.
- 343 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.<sup>330</sup> 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 5<sup>th</sup> 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.<sup>331</sup>

#### *Mode of authenticating revised Acts*

- 344 Any jurisdiction that conducts statute revisions requires a method for authenticating 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 authentication procedures that are similar.<sup>332</sup>
- 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.

330 Statute Revision Act, RSC 1985, c S-20.

331 Keyes, above, n 328.

332 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.

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.<sup>333</sup> In Manitoba and Nova Scotia the completed revision is deposited instead with a specific Committee of the Legislative Assembly.<sup>334</sup> 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.<sup>335</sup>

- The next step is approval of the revision.

In the case of the Northwest Territories, the Legislative Assembly approves the revision by motion.<sup>336</sup> In Nova Scotia, the Law Amendments Committee approves the revision.<sup>337</sup> In Manitoba, the Special Committee on Law Revision approves the revision and then refers it for enactment to the Legislature.<sup>338</sup> In British Columbia, the Select Standing Committee approves the revision.<sup>339</sup> 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,<sup>340</sup> in Nova Scotia, the Governor in Council makes the proclamation.<sup>341</sup> In the Northwest Territories, the Commissioner brings the revision into effect by declaration.<sup>342</sup> In Manitoba, the Legislature itself enacts the revision.<sup>343</sup> In British Columbia, the Lieutenant Governor in Council may bring the revision into force by regulation.<sup>344</sup>

- 345 The process for authenticating federal revisions is similar. It provides for parliamentary examination of revised Acts, followed by parliamentary enactment:<sup>345</sup>

#### 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

333 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).

334 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).

335 Statute Revision Act, RSBC 1996, ch 440, s 3 (British Columbia).

336 Statute Revision Act, SNWT 1996, ch 16, s 7(3) (Northwest Territories).

337 Statute Revision Act, RSNS 1989, ch 443, s 5 (Nova Scotia).

338 The Department of Justice Act, CCSM ch J35, s 7(2) (Manitoba).

339 Statute Revision Act, RSBC 1996, ch 440, s 4(1) (British Columbia).

340 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).

341 Statute Revision Act, RSNS 1989, ch 443, s 6(1).

342 Statute Revision Act, SNWT 1996, ch 16, s 11(1).

343 The Department of Justice Act, CCSM ch J35, s 8.

344 Statute Revision Act, RSBC 1996, ch 440, s 5(1) (British Columbia).

345 Statute Revision Act, RSC, 1985, ch S-20, s 7.

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.

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.

346 The effect is that a revision has primary force. That is, unlike a reprint, it is enacted.

## Australia

### Queensland

347 Australia does not have the full revision tradition that Canada does. However, Legislative Counsel in a number of Australian states have a range of powers for the preparation of reprints of Acts that are similar to some of the Canadian revision powers. 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.<sup>346</sup> 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.<sup>347</sup>

348 The Act is divided into “divisions”, each of which concerns a related class of editorial changes.<sup>348</sup> Many of the permitted changes are narrow reprint powers, such as the power to omit repealed or expired provisions,<sup>349</sup> or the power to correct minor errors.<sup>350</sup> 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 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.

346 Reprints Act 1992, s 7(1) (Queensland) gives an overview of the editorial changes that are permitted under ss 10-44 of the Act.

347 Ibid, s 8.

348 For instance, division 2 (ss 10-21) allows a range of stylistic changes; and division 4 allows changes concerning gendered language as well as the correction of spelling, punctuation, and grammatical and syntactical errors.

349 Above, n 346, ss 36-40.

350 Above, n 346, s 44.



## *South Australia*

- 349 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.<sup>351</sup> The Act sets out a range of permitted editorial changes that can be made in the revision process. Certain provisions may be omitted, such as transitional or expired provisions, or obsolete headings.<sup>352</sup> Other alterations are permitted, such as changes to the long title or relevant headings to take account of omissions of other provisions in an Act,<sup>353</sup> minor error corrections,<sup>354</sup> and formatting changes to achieve consistency with current practice or uniformity in style.<sup>355</sup> The Act does not permit alterations to legislation that change the effect of the legislation.<sup>356</sup>
- 350 Interestingly, section 5 of the Act provides for an ongoing programme of revision to be carried out by the Commissioner:<sup>357</sup>
- (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.
- 351 Nevertheless, the powers in the South Australian Act are not extensive, and it is probably better described as authorising reprinting rather than revision in the sense in which we use that term in this issues paper. Some of the Canadian jurisdictions contain more suitable models.

## **United Kingdom**

### *Revision powers*

- 352 There is in the United Kingdom a Consolidation of Enactments (Procedure) Act 1949.<sup>358</sup> 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.<sup>359</sup> The revision powers are not as broad as those in many of the Canadian jurisdictions or in Queensland or South Australia. The Lord Chancellor has no powers to renumber or reorder provisions for instance. Corrections and minor improvements are defined in the Act to mean:<sup>360</sup>

[A]mendments of which the effect is confined to resolving ambiguities, removing doubts, bringing obsolete provisions into conformity with modern practice, or

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351 Legislation Revision and Publication Act 2002, s 4 (South Australia).

352 Legislation Revision and Publication Act 2002, s 7(1)(a) and (c) (South Australia).

353 Ibid, s 7(1)(b).

354 Ibid, s 7(1)(d).

355 Ibid, s 7(1)(h).

356 Ibid, s 7(2).

357 Ibid, s 5.

358 See HH Marshall “Statute Law Revision in the Commonwealth” (1964) 13 Int Comp LQ 1407, 1409.

359 Consolidation of Enactments (Procedure) Act 1949, s 1(1) (UK).

360 Ibid, s 2.

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.

### *Authentication procedure*

353 The authentication 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.<sup>361</sup>
- 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.<sup>362</sup>
- 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.<sup>363</sup>
- 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.<sup>364</sup>

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.<sup>365</sup>

- The committee may then re-enact the existing law with the corrections and minor improvements that it has approved.<sup>366</sup>
- The effect of this is that the corrections and minor improvements in the re-enacted Act or Acts will be treated as if they had been made by an Act.<sup>367</sup>

354 The Law Commissions Act 1965 also provides that the Law Commission can carry out programmes of non-substantive statute law revision.<sup>368</sup> These revision bills are also scrutinised by a joint select committee of both Houses, which gives its views to Parliament.<sup>369</sup>

355 However, despite the provisions of the Consolidation of Enactments (Procedure) Act 1949 and the Law Commissions Act 1965, there have been relatively few

361 *Ibid*, s 1(1).

362 *Ibid*, s 1(2).

363 *Ibid*, s 1(3).

364 *Ibid*, s 1(4).

365 *Ibid*, s 1(5).

366 *Ibid*, s 1(4).

367 *Ibid*, s 1(7).

368 Law Commissions Act 1965, s 3(1)(d) (UK).

369 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.

consolidations in the United Kingdom. Consolidation is a highly skilled task requiring careful work by 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 tasks.<sup>370</sup> There are relatively few Acts that departments want consolidated at the expense of other projects;<sup>371</sup> without greater departmental support, consolidation has not been widespread.

## CONCLUSIONS FOR NEW ZEALAND

- 356 New Zealand's statute law is untidy. This is a result of its historical development. Unlike other jurisdictions we have examined there is no provision in New Zealand for systematic revision with the purpose of improving accessibility.
- 357 The Law Commission is strongly of the view that there should be initiated a programme to revise all of our Acts. There has been no such comprehensive revision for nearly one hundred years, and the time is long since past when it needs to be done again. Ideally the revision should be done as a single exercise, as last happened in 1908. However, the task is of such magnitude that its fruits would not appear for some considerable time. It may, then, be more realistic for there to be a series of partial revisions accomplished progressively until the task is complete. The task should be entrusted to a body of experts located within the PCO, and empowered by Act of Parliament to undertake it. Their work should be authenticated and enacted by a statutorily prescribed process of the kind provided for by the Reprint of Statutes Act 1895 (NZ) or in the revision Acts from other jurisdictions to which we have referred.
- 358 New legislation would be required to provide for, and authorise, the revision process. For instance, legislation would need to set out that the PCO would undertake the revision; provide the PCO with revision powers; and provide a mode of authenticating revised Acts. In addition to its new provisions that would enable a programme of revision to begin, this legislation could be the first step in a wider revision programme, by drawing together the existing provisions about legislation that are currently scattered across a range of Acts. This new legislation Act will be discussed in greater detail in Chapter 9.

## SUBSTANTIVE AMENDMENT

- 359 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 English speaking 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 repeals and replaces large parts of, and adds new sections to, two principal Acts: the Armed Forces Discipline Act 1971 and the Courts Martial Appeals Act 1953. At 155 pages long, the bill is almost as long as the two principal Acts combined. Likewise, the Births, Deaths, Marriages and Relationships Amendment Bill 2007 is 54 pages long, and makes significant textual amendments to the principal Act of 1995, the principal Act itself only being 60 pages long.

370 Arden, *ibid*, 169-170.

371 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.

- 360 Amendments like this can cause real difficulty, particularly when they are textual amendments, as they almost always are.<sup>372</sup> 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. (This is a problem that the PAL system has the potential to address in the future. It may some day be possible to present Acts with proposed amendments read in to show how the Act would look if the amendments were enacted.) 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 numbers such as 198ZZC.
- 361 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.

- Q16. Do you agree that there should be a systematic revision of our statute book as described in this chapter?
- Q17. If so, should it be done all at once as in 1908, or progressively over a period of years?
- Q18. How should a revision be authenticated?
- Q19. Do you agree that if an Act is to be substantially amended, it should generally be repealed and a new Act substituted?

372 See Geoff Lawn, Deputy Chief Parliamentary Counsel “Public Access to Legislation” (Scrutiny of Legislation Conference: “Democracy in Legislation – The Role of Scrutiny Committees”, Wellington, 31 July-2 August 2007), “Amending Legislation”, 5-16.

# 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
- seek the view of users regarding the possible production of a United States style code in New Zealand.

### MEANING OF “CODE”

362 Lord Scarman once provided this definition of a “code”:<sup>373</sup>

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.

363 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.<sup>374</sup>

364 However this broad definition encompasses several quite distinct types of code.<sup>375</sup>

### A Code as a Systematic, Written Reduction of a Legal System’s Main Principles

365 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 Roman law had such lasting effect on the development of the legal systems of

373 Lord Scarman “Codification and Judge-Made Law: A Problem of Coexistence” (1967) 42 Ind LJ 355, 358.

374 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.

375 It clearly covers the first two types discussed below. The third, the United States code, does not fit quite so comfortably within this definition.

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.<sup>376</sup> 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.

- 366 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.<sup>377</sup> 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 misrepresentation 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.<sup>378</sup> 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.<sup>379</sup>
- 367 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:<sup>380</sup>

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.

376 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.

377 See Hein Kotz “Taking Civil Codes Less Seriously” (1987) 50 *MLR* 1.

378 *Ibid.*

379 Murillo, above, n 376, 6. Some have described this process as “decodification”. In some countries there have been moves to “recodify” to regain the old coherence.

380 A paper representing the substance of Salmond’s address was published as “The Literature of Law” (1922) 22 *Columbia Law Review* 197.

368 Such a codification project was initially on the agenda of the English Law Commission.<sup>381</sup> But, as Hein Kotz has put it:<sup>382</sup>

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.

369 Kerr concluded that codifying even discrete areas like the law of landlord and tenant, and the law of contract, had “no prospect of realisation”.<sup>383</sup>

### The Statutory Codes of Common Law Countries

370 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.

371 Likewise, but on a larger scale, the Crimes Act 1961 and the Evidence Act 2006 are codes.

372 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.<sup>384</sup>

### United States Style Codes

373 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.<sup>385</sup> 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 Acts of Parliament 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

381 Brooke, above, n 369, 2; Edward Caldwell “A Vision of Tidiness: Codes, Consolidations and Statute Law Revision” in Brian Opeskin and David Weisbrot (eds) (Federation Press, Sydney, 2005) 40, 41.

382 Kotz, above, n 377, 1.

383 Kerr “Law Reform in Changing Times” (1980) 96 LQR 515 at 527, quoted in Kotz, *ibid*, 2.

384 JF Burrows (3 ed, LexisNexis, Wellington, 2003), Chapter 16.

385 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.

individual Acts are published chronologically as they are passed,<sup>386</sup> 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.

- 374 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.<sup>387</sup> 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.<sup>388</sup>
- 375 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<sup>389</sup> 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. They are rather collections of Acts. 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

- 376 The question is 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.<sup>390</sup> However it would go a step further than a reprint, in 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

- 377 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. Thus, a code would facilitate more effective revision.

386 The individual acts are called “slip laws” and the bound volumes are called “session laws.”

387 Iowa Code 2007, ch 2B.17.

388 US House of Representatives, Office of the Law Revision Counsel < <http://uscode.house.gov/codification/legislation.shtml> > (last accessed 17 August 2007) 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](http://www.arkleg.state.ar.us/data/ar_code.asp) > (last accessed 17 August 2007).

389 An exception is Louisiana, which is a civil jurisdiction, although governed by common law on federal matters.

390 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.



- 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”.

### Disadvantages of Codification

378 There are also arguments against such a code:

- 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. There would initially not be much overall coherence in our code. But, 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 will say that a code is a hard copy concept, and that in the world of electronic publishing the search facilities and flexibility of the PAL system will enable the reader to find things, and to organise Acts, in the form most suitable to himself or herself. This 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:<sup>391</sup>

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.<sup>392</sup> 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, in conjunction with a comprehensive revision of the statute book as a whole.

391 Princeton University Library < <http://firestone.princeton.edu/law/statutory.php> > (last accessed 17 August 2007)

392 For example, s 92 (discharge of a debt by acceptance of part payment), and ss 94A and 94B (payments made under mistake).

### How, When and by Whom would a Code be Produced?

- 379 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.
- 380 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 underway. As has been said (in another context) “reform of the substance of the law must necessarily precede codification”.<sup>393</sup> 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.
- 381 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,<sup>394</sup> 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.
- 382 The relationship between revision and codification has long been a feature of the federal United States Code:<sup>395</sup>
- 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.
- 383 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.
- 384 The Law Commission seeks the views of users as to whether they would favour in New Zealand a codification of our Acts in the nature of a United States code.

Q20. Do you think there should be codification of all our Acts as is done in United States jurisdictions as described in this chapter?

393 SM Cretney “The Codification of Family Law” (1981) 44 MLR 1, 1.

394 See Chapter 7: Revisions.

395 Office of the Law Revision Counsel, United States House of Representatives “Certification Legislation” < <http://uscode.house.gov/codification/legislation.shtml> > (last accessed 17 August 2007).

# Chapter 9

## New Legislation Act

### IN THIS CHAPTER, WE:

- propose that a new Legislation Act be passed to serve the dual purposes of rationalising the law relating to legislation and enabling the other recommendations contained in earlier chapters of this issues paper; and
- consider examples from other jurisdictions of Acts relating to legislation, reprinting and revision.

### PROPOSAL

- 385 This issues paper has considered a range of possible measures for improving the accessibility of the New Zealand statute book. We have sought users' views regarding these measures. We have also made a number of recommendations that particular measures be adopted in New Zealand. Chapter 4 of this issues paper recommended that the PAL system be expanded to include historical Acts. 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.
- 386 Implementing these recommendations would require an enabling Act of Parliament to be passed. This chapter proposes that a new "Legislation Act" should be passed.

### PURPOSES

- 387 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.<sup>396</sup>
  - (ii) In addition to revising existing law relating to legislation, it would also contain new provisions to implement some of the recommendations in this issues paper.

<sup>396</sup> See Chapter 7: Revisions.

CONTENTS OF  
THE NEW ACT

- 388 As a starting point for a more general revision, a revision should be produced of all the Acts and provisions that deal with Acts or the PCO. Acts that would need to be included in this revision include:
- Statutes Drafting and Compilation Act 1920;
  - Acts and Regulations Publication Act 1989;<sup>397</sup>
  - 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<sup>398</sup> and repeal<sup>399</sup> of legislation. Some of the provisions of the Interpretation Act 1999 would sit much more naturally in an Act about legislation in general.)
- 389 The revision would set out the PCO's obligations in relation to publication of legislation. But it would also add new obligations and powers that would be necessary to allow the implementation of recommendations in this issues paper.

**Obligation to Make Acts Available Both in Hard Copy and Electronically**

- 390 Currently, the Chief Parliamentary Counsel is responsible for arranging for the publication of legislation,<sup>400</sup> and for making it available for purchase at a reasonable price.<sup>401</sup> These existing obligations should be retained under a new Legislation Act.
- 391 Under the PAL system, legislation will be published on the internet. A new obligation to publish legislation on the internet should be included in a new Legislation Act. Such an obligation 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 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

397 The Acts and Regulations Publication Act 1989, s 16C (inserted by the Evidence Act 1989) provides that legislation printed under the authority of the New Zealand Government is evidence of the law.

398 Interpretation Act 1999, ss 8-11.

399 Interpretation Act 1999, ss 17-22.

400 Acts and Regulations Publication Act 1989, s 4(1).

401 This obligation is set out in the Acts and Regulations Publication Act 1989, s 10(1). See Chapter 1: Access to Legislation, para 14.

maintained in the information system shall be made available in the shortest feasible time after it is available to the Legislative Counsel.

...

[emphasis added].

392 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:

(a) legislation (as originally made or as amended), and

(b) other matter (including information relating to legislation and any matter authorised by law to be published on the website).

...

[emphasis added].

393 We would wish the provision in New Zealand to be mandatory, as in California, rather than merely permissive, as in New South Wales.

### “Officialisation” of the PAL System

394 When PAL goes live, it will not initially be an official source of Acts. The PCO intends to officialise the Acts in the PAL database over several years, checking that each Act contains no errors. Once the officialisation process is complete, it will be appropriate to advance legislation so that PAL will become an official source of legislation; that is, that legislation from the PAL website can be used as evidence of the law.

395 It will be appropriate to do this via a new Legislation Act.<sup>402</sup>

### Producing Hard Copy Reprints by Print on Demand

396 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.<sup>403</sup> We recommend that hard copy access to reprints should continue, and be delivered on a print on demand basis.<sup>404</sup>

397 In the Canadian province of New Brunswick, legislation is primarily available electronically, via the Queen’s Printer webpage at the Government of New Brunswick website.<sup>405</sup> Hard copies of legislation in pamphlet form are available from the Queen’s Printer on a print on demand basis only.<sup>406</sup> Bound annual volumes are no longer printed.<sup>407</sup>

402 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 397 above.

403 See Chapter 6: Reprinting, para 291.

404 See Chapter 6: Reprinting, para 296.

405 Government Printer, New Brunswick, Canada < <http://www.gnb.ca/0062/acts/index-e.asp> > (last accessed 17 August 2007).

406 “Electronic Publication of New Brunswick Legislation, Yesterday, Today and Tomorrow” (conference paper, Commonwealth Association of Legislative Counsel, London, September 2005) 5.

407 The exception to this is that copies of the annual volumes are printed and deposited at the Library of Parliament (Canada) and the New Brunswick Legislative Assembly for archival posterity. *Ibid*, 6.

- 398 Printing was gradually pared to a minimum during the period between 2001 and 2005. This was facilitated by some changes to the Queen’s Printer Act, removing the state obligation to “print” legislation, and replacing it with a wider obligation to “publish”. Section 1 of the Queen’s Printer Act, assented to in 2005, defines “publish” as meaning “to make public by or through any media”.<sup>408</sup> The 2005 Act amended a range of other Acts, changing references to “printing” to “publishing”.<sup>409</sup> The 2005 Act provides that hard copies of Acts, regulations and the Royal Gazette may be distributed or sold by the Queen’s Printer.<sup>410</sup> This obligation is currently fulfilled only on a print on demand basis.<sup>411</sup>
- 399 The Law Commission believes that a more specific provision should be included in a new Legislation Act, clearly providing that up-to-date legislation be provided free by electronic means; that annual legislation be available in hard copy at a reasonable price; and that hard copy reprints be available on a print on demand basis at a price reasonable in the circumstances. There should also be provision to give official status to the electronic legislation on the PAL website.

### Production of an Index

- 400 A new Legislation Act should also contain a provision requiring the production of a subject index by the PCO. The Legislation Act would need to specify that the index must be available in hard copy for a reasonable price as well as available electronically for free.

### Imposition of an Obligation to Undertake a Revision Programme

- 401 A new Legislation Act should impose an obligation to undertake a programme of revision. This could either be specified as a full revision programme to be carried out “all in one go”, or a progressive programme of revision to be carried out over a number of years, or the Act could allow either.
- 402 The Acts of the Canadian provinces contain useful wording for a provision requiring an ongoing programme of revision and publication of legislation.<sup>412</sup>

### Who Would Conduct the Revision Programme?

- 403 Chapter 7 of this paper recommends that a programme of revision be initiated in New Zealand. We have recommended that the revision be conducted within the PCO. A new Legislation Act would need to specify that PCO, or a designated person within the PCO, would undertake this process.
- 404 In South Australia, revision is carried out under the supervision of a Commissioner for Legal Revision and Publication. Section 4 of the South Australian Legislation Revision and Publication Act 2002 provides that:
- (1) The Governor may appoint the Parliamentary Counsel or a legal practitioner

408 Queen’s Printer Act, SNB 2005, Ch Q-3.5, s 1 (assented to 1 June 2005) (New Brunswick).

409 Ibid, ss 11-23.

410 Ibid, s 5.

411 Queen’s Printer website, Legislation Order Form < <https://www.web11.snb.ca/snb7001/b/1000/CSS-FOL-SNB-45-0023B.pdf> > (last accessed 17 August 2007).

412 See the examples referred to in Chapter 7: Revisions, at paras 333-339.

employed in the Office of Parliamentary Counsel as Commissioner for Legislation Revision and Publication.

- (2) The Attorney-General may appoint a legal practitioner employed in the Office of Parliamentary Counsel to act as a Commissioner for Legislation Revision and Publication if there is no Commissioner or if the Commissioner is for any reason unable to Act.

405 We believe that a new Legislation Act should provide that revision be conducted with the PCO. There should be a person within that office, whether established by statute or administratively within the office, who would act as Revision Commissioner. That person’s function would be carrying out an ongoing programme of revision; maintaining and developing the PAL system; and the production of a subject index.

### Revision and Reprinting Powers

406 A new Legislation Act would also need to set out any new reprinting or revision powers that will be necessary and appropriate for the PCO to have in conducting a revision. It is important that these powers are sufficiently wide so that the full benefits of revision can be achieved. For instance, the PCO will need to be able to break up, reorder, renumber and retitle provisions, and prune “dead wood” from the statute book.

#### *Australian Capital Territory: Legislation Act 2001*

407 The Australian Capital Territory’s Legislation Act 2001 is a useful precedent for an appropriate range of *reprinting* powers. Part 11.3, section 114 of the Legislation Act 2001 authorises the parliamentary counsel to make a range of editorial changes and textual changes when reprinting, or “republishing” Acts:

In preparing a law for republication, the parliamentary counsel is authorised—

- (a) to make editorial amendments and other textual amendments of a formal nature that the parliamentary counsel considers desirable to bring the law into line, or more closely into line, with current legislative drafting practice; and
- (b) to make other editorial changes by way of format, layout or printing style, or in any other presentational respect, that the parliamentary counsel considers desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

408 These changes must not change the effect of the law.<sup>413</sup> The reprinted Act will, however, have full legal effect.<sup>414</sup> Section 116 defines what changes are permitted as “editorial” changes under the part:

- (1) An *editorial amendment* of a law is an amendment that—
  - (a) corrects a typographical error; or
  - (b) corrects or updates a reference to a law, position, entity, place or thing; or
  - (c) goes only to a matter of spelling, punctuation, grammar or syntax or the use of conjunctives and disjunctives; or
  - (d) changes the name of the law or a provision of the law; or

413 Legislation Act 2001 (ACT), s 115.

414 Ibid, s 117.

- (e) numbers or renumbers a provision of the law; or
- (f) changes the order of definitions or other provisions of the law; or
- (g) replaces a reference to a provision of a law with a different form of reference to the provision; or
- (h) changes the way of referring to or expressing a number, year, date, time, amount of money, penalty, quantity, measurement, or other matter, idea or concept; or
- (i) replaces a word indicating gender or that could be taken to indicate gender in accordance with current legislative drafting practice; or
- (j) replaces a reference to the Queen, the King or the Crown with a reference to the Sovereign or the Territory; or
- (k) omits—
  - (i) the enacting words or the law-making words (including any signatures); or
  - (ii) a provision that consists only of a description of how the law is arranged into groups of provisions; or
  - (iii) a provision that has expired, the operation of which is exhausted or spent or that is otherwise obsolete or redundant; or
- (l) omits, inserts or changes a referential term; or
- (m) inserts, omits or changes a note; or
- (n) updates a reference to the heading to a provision; or
- (o) is consequential on any amendment made to the law by another law; or
- (p) is consequential on any other editorial amendment (whether made to that law or another law).

409 However, as we have indicated, this Act does not really go beyond enabling the minor changes of format, style and grammar necessary for reprinting. We envisage a revision process that requires further powers of the type we discussed in Chapter 7.

#### *Manitoba: Department of Justice Act*

410 We set out again here, as a possible example of a provision conferring wider revision powers, section 5(2) of the Manitoba's Department of Justice Act:<sup>415</sup>

##### *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;

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415 Department of Justice Act, CCSM, ch J35, s 5(2).



- (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.

### *British Columbia: Statute Revision Act*

411 Again, as we also saw earlier, in British Columbia, revisers have, in addition to revision powers closely similar to those under the Manitoba Act, the following.<sup>416</sup>

#### 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.

...

### **Authentication Procedure**

412 The new Act will also need to define the authentication procedure for newly revised Acts.<sup>417</sup> The approaches taken to authentication of revisions in the Canadian provinces and the United Kingdom that were discussed in Chapter 7 would provide useful models.

## **CONCLUSION**

413 In conclusion, a new Legislation Act should:

- (i) 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.
- (ii) Contain new provisions:
  - requiring electronic publication of Acts;

416 Statute Revision Act, RSBC 1996, Ch 440, s 2(1).

417 See Chapter 7: Revisions, paras 344-346.

- requiring hard copy in some specific situations;
- giving official status to the electronic versions of Acts in the PAL system;
- requiring the production of a subject index; and
- imposing an obligation to undertake a programme of revision, imposing this obligation on the PCO, specifying the powers of those undertaking the revision, and prescribing a process of authorisation.

Q21. Would you like to see a new Legislation Act as described in Chapter 9?

#### GENERAL DISCUSSION QUESTION

Q22. Are there other ways, in addition to those discussed already in this issues paper, in which access to our Acts could be improved?

# Appendix

## Glossary of Terms

**authentication:** The process by which a completed *revision* gains official status. This could involve traditional Parliamentary scrutiny, or legislation could implement a new process allowing revisions to be “fast tracked”.

**code (United States style code):** A compilation of all the Acts of a jurisdiction, arranged in a logical and ordered form under subject headings.

**consequential amendment:** An amendment to an enactment that is required merely as a consequence of a substantive provision. Consequential amendments are needed to ensure that the whole of the statute book is consistent with the substantive changes proposed.

**consolidation (“pure” consolidation):** A “pure” consolidation does not change the law, but simply re-enacts the body of Acts in a more accessible form, bringing together law on the same topic that was previously contained in other Acts, and enabling redrafting and reorganisation of an Act to make its content clearer.

**deemed regulations:** Instruments that are required to be treated as regulations for the purposes of the Regulations (Disallowance) Act 1989, but are not published in the Statutory Regulations series because the authorising legislation excludes the application of the Acts and Regulations Publication Act 1989. Deemed regulations can include rules, guidelines, standards, and codes.

**DTD:** Document Type Definition. A formal definition of the elements, structures, and rules for marking up a given type of SGML or XML document.

**electronic:** Available on the internet or CD ROM.

**electronic reprint:** An up-to-date electronic version of an Act, or the statute book as a whole, with all amendments incorporated.

**full revision:** A *revision* in which the entire statute book is revised “all in one go” in contrast to a *phased revision*.

**hard copy:** In printed form. A physical, rather than *electronic*, copy.

**metadata:** Information about data.

**officialisation:** The process to be undertaken by the PCO Reprints Unit of checking the legislation in the PAL database against the original printed versions to ensure that the electronic version contains no errors. Officialisation will commence after the PAL website goes live.

**officialisation programme:** The order in which Acts are officialised, as determined annually by the PCO.

**PAL project:** The Public Access to Legislation project.

**PCO:** The Parliamentary Counsel Office.

**phased revision (limited or progressive revision):** A process in which the *revision* of the statute book is approached progressively in phases or stages rather than all at once. Often referred to in Canada as “limited revision”.

**print on demand:** A digital printing technology in which a printed copy is not created until after an order is received. It allows print runs as small as a single copy.

**reprint:** Acts and statutory regulations, incorporating subsequent amendments, are compiled and published by the PCO. These are known as reprints.

**reprinting policy (PCO):** The PCO designs its annual *reprinting programme* in line with its reprinting policy. The objective of the 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 basis.

**reprinting programme (PCO):** The prioritised annual list of Acts and regulations that the PCO intends to reprint. The programme is established in line with the PCO’s *reprinting policy* and in consultation with key users of legislation.

**revision:** A process of substantially re-enacting earlier law in a more accessible form, whether with or without amendment, bringing together law on the same topic that was once contained in other Acts, and enabling redrafting and reorganisation of an Act to make its content clearer.

**savings provisions:** Provisions included in an Act in order to preserve or save a right, privilege, or obligation that would otherwise be repealed or cease to exist once the Act is in force.

**semi-official status:** *Electronic* versions of legislation in the PAL system that that have been officialised or that were passed after the go live date will have semi-official status until such time as legislation is passed to give official status to all the versions of legislation in the PAL system. Legislation with semi-official status will have the New Zealand Coat of Arms, or Crest, on the front page.

**SGML:** Standard Generalised Markup Language. An international standard that provides a mechanism for managing arbitrary markup in documents.

**statute book:** The existing body of law set out in Acts of Parliament.

**Supplementary Order Paper:** A Supplementary Order Paper (SOP) is a document that sets out proposed amendments to a bill at the committee of the whole House stage.

**XML:** Extensible Markup Language. An international standard that provides a mechanism for managing arbitrary markup in documents. XML was designed particularly for website applications and is now the dominant standard. Valid XML is a strict subset of SGML and XML is intended to be a simplified form of SGML.

# Discussion Questions

## THE PAL PROJECT

- Q1. When the PAL system is operative will you:
- a) use both hard copy and electronic versions of Acts;
  - b) use only hard copy versions; or
  - c) use only electronic versions?
- (By “hard copy” we mean published hard copy and not versions that you print off individually yourself).
- Q2. When the PAL system is operative, will you continue to subscribe to hard copy Acts?

## CURRENT PROBLEMS WITH ACCESSING STATUTE LAW

- Q3. Are the problems of accessing statute law that we have identified problems for you?
- Q4. Can you identify any other problems of access?

## PRESERVATION OF HISTORICAL STATUTES

- Q5. How often do you refer to repealed Acts?
- Q6. Do you agree with us that historical Acts should be available online?

## INDEXING

- Q7. Do you agree that there should be an official subject index of our Acts?
- Q8. Should such an index be hard copy, online and available to be printed, online in the form of a browsable subject style index or hierarchy, or any combination of these?
- Q9. Would you be prepared to pay for a hard copy index?
- Q10. If your answer to question 9 is yes, would you prefer to purchase a copy that was published as part of a periodic print run at a lower cost or pay a higher cost for an up-to-date copy produced using print on demand technology?
- Q11. Of the sample indexes in Chapter 5, which do you prefer?

## REPRINTING

- Q12. After legislation is passed to give official status to the electronic versions of legislation available on the PAL website, will you continue to want official hard copy reprints?
- Q13. If your answer to question 12 is yes, would you prefer the reprints to be:
- a) of individual Acts;
  - b) published in bound volumes;
  - c) a complete reprint of all our Acts as in 1931 and 1957; or
  - d) available on a print on demand basis?
- Q14. Would you be willing to pay more for an up-to-date print on demand reprinted Act than you currently would pay for a less up-to-date reprint produced as part of a larger print run?
- Q15. Do you want historical notes in reprints, and a return to a system of highlighting amended provisions?

## REVISIONS

- Q16. Do you agree that there should be a systematic revision of our statute book as described in Chapter 7?
- Q17. If so, should it be done all at once as in 1908, or progressively over a period of years?
- Q18. How should a revision be authenticated?
- Q19. Do you agree that if an Act is to be substantially amended, it should generally be repealed and a new Act substituted?

## CODIFICATION

- Q20. Do you think there should be codification of all our Acts as is done in United States jurisdictions as described in Chapter 8?

## NEW LEGISLATION ACT

- Q21. Would you like to see a new Legislation Act as described in Chapter 9?

## GENERAL DISCUSSION QUESTION

- Q22. Are there other ways, in addition to those discussed already in this issues paper, in which access to our Acts could be improved?

