



15 August 2014

Hon Kate Doust
Chair, Standing Committee on Uniform Legislation and Statutes Review
Legislative Council Committee Office
18–32 Parliament Place
West Perth
WESTERN AUSTRALIA 6000

Dear Ms Doust

I am pleased to respond to your request for information, dated 23 June 2014, on how the statute book is reviewed in New Zealand, and on streamlining the review and consultation processes by which legislation is assessed for repeal. I hope the following information is helpful to your review.

Revision of the form of statutes

In New Zealand, the Legislation Act 2012 has introduced a new mechanism for the Government and Parliament to systematically revise the presentation of some New Zealand statutes to make them more accessible. Revision may include the consolidation of several statutes if they relate to similar areas of the law. The reforms are based on the New Zealand Law Commission's recommendations in its 2008 report *Presentation of New Zealand Statute Law* (R 104).

http://www.lawcom.govt.nz/sites/default/files/publications/2008/12/Publication_132_421_Part_1_R104%20part%201.pdf

The purposes of the Legislation Act 2012 include to make New Zealand statute law more accessible, readable, and easier to understand, by facilitating the progressive and systematic revision of the New Zealand statute book, so that:

- statute law is rationalised and arranged more logically
- inconsistencies and overlaps are removed
- obsolete and redundant provisions are repealed
- expression, style, and format are modernised and made consistent.

The Attorney-General is required under the Legislation Act 2012 to table a three-yearly revision programme for each new Parliament, setting out revision bills for that period. The New Zealand Parliamentary Counsel Office (PCO) is responsible for preparing the revision programme in consultation with the Government departments that administer the statutes that will be selected for revision. The Attorney-General must consult publicly on the draft programme before seeking the Government's approval and presenting it to the House. The PCO is currently consulting on the first revision programme, which will set out the programme of revision work to be undertaken during the next term of Parliament (2015 to 2017). Information about the draft programme can be found on the PCO website.

<http://www.pco.parliament.govt.nz/revision-consultation/>

Revision bills are intended to re-enact statute law in an up-to-date and more accessible form, but generally without changing its legal effect. The revision powers are set out in section 31 of the Legislation Act 2012, and enable revision bills to:

- combine or divide Acts or their parts
- adopt a new Title
- omit redundant and spent provisions
- renumber and rearrange provisions
- change to the current drafting style and format, and generally to express better the spirit and meaning of the law
- include new purpose or overview provisions and examples, diagrams and other devices to aid accessibility and readability, and
- correct typographical, punctuation, and grammatical errors.

A revision bill will not generally make policy changes, because as introduced it can only make minor changes to the effect of the law, as allowed under section 31(2)(i) and (j) of the Legislation Act 2012. This section allows a revision bill to:

- make minor amendments to clarify Parliament's intent or reconcile inconsistencies, and
- update monetary amounts for Consumer Price Index changes or provide for amounts to be prescribed by Order in Council.

The Act restricts the content of revision bills at their introduction, but expressly provides that it does not affect the powers of the House of Representatives to amend a revision bill for any purpose and to pass it with amendment (section 34(2)). However, the House's own procedural rules mean that substantive amendments would be outside the scope of a revision bill, and so would require the House's specific authority to be obtained through a separately debatable motion. No revision bills have yet been passed, but it seems unlikely that their scope would be adjusted in this way.

Suitable candidate Acts for revision may include old statutes that are drafted in "archaic" language, have been amended many times, or which could be consolidated with other(s) into one statute. They may also affect a significant sector of the public and are unlikely to be

proposed for separate substantive law change amendment during the revision process. The Parliamentary Counsel Office will draft the bills on the programme in accordance with the statutory revision powers.

Revision bills must be certified before introduction by a panel of eminent lawyers specified in section 33 of the Legislation Act 2012: the President of the Law Commission, the Solicitor-General, a retired High Court Judge nominated by the Attorney-General, and the Chief Parliamentary Counsel. The certifiers must be satisfied that:

- the revision powers have been exercised appropriately
- the revision bill does not change the effect of the law except as authorised under section 31(2)(i) or (j) of the Legislation Act 2012.

The certifiers may require a bill to be changed before they certify it.

After certification, the bills and their certificates will be provided to the Attorney-General in readiness for introduction to Parliament.

The explanatory note of a revision bill must include (as required by section 32 of the Legislation Act 2012) a statement setting out, in general terms, the inconsistencies, anomalies, discrepancies and omissions that were identified when preparing the revision, and how they have been remedied in the bill.

In view of the narrow remit of what a revision bill seeks to achieve, the House has amended the Standing Orders to include a streamlined legislative procedure for such bills. There will be no debates on the first and third readings of the bill, and the committee of the whole House stage will be omitted unless required to consider an amendment lodged by the Minister, or by another member with 24 hours' notice. Each revision bill will be referred to a subject select committee for consideration. Scrutiny of bills by select committees is usually informed by a call for public submissions. In the case of revision bills, advertisements calling for submissions will explain the restricted remit of the process to reduce the prospect of attracting substantive policy proposals in submissions about policy matters that committees would be powerless to implement.

Reprints of amended Acts

The Legislation Act 2012 also provides for the reprinting of legislation. Each time that amendments are incorporated into legislation in a reprint, The Chief Parliamentary Counsel may make certain editorial changes in accordance with sections 24 to 26 of the Act. This includes the numbering, renumbering and consequential amendments of provisions authorised by Order in Council under section 25(2).

Section 26 allows the Chief Parliamentary Counsel to make certain prescribed format changes so that the reprint format is consistent with current drafting practice. The reprint must always note the changes that have been made.

Other revision and consolidation

The revision bill process has only recently been set out in legislation, but this is not to say there have not been previous revision and consolidation efforts. In 1908, following a huge revision exercise conducted by a special commission, the corpus of New Zealand statute law was published as a consolidated edition and re-enacted by Parliament in that form. This would not be practicable to repeat now, partly because of the vast increase since that time in the amount of statute law, but also because of the House's need for the revised law to be examined to provide assurance that the meaning of the law is not changed.

Further general reprints of statutes occurred in 1931 and 1957, and then progressively from 1979 to 2003. The reprint of 1931 is of interest, as it was alphabetically arranged by subject-matter rather than by short title or chronological sequence. The subject areas followed those previously used by *Halsbury's Laws of England*, which were familiar to the legal profession in New Zealand at the time. This arrangement was authorised by a statute and the volumes were certified by the Attorney-General as correctly setting forth the law as at 31 December 1931.

More recently, a complete consolidation and revision of income tax legislation resulted in the passing of the Income Tax Act 2007, which was a major undertaking. This was an interesting process from a revision perspective, as the bill included some substantive policy changes. These changes were clearly identified both in explanatory material and in a schedule to the bill, which enabled the committee to consider them in that light. Such transparency meant that, even with the new policy content, the process was generally collaborative in light of the need to improve the accessibility of income tax legislation, and parties across the House facilitated the bill's passage.

Repeal of redundant legislation

The Parliamentary Counsel Office, working with administering Government departments or agencies, identifies redundant legislation for repeal. A revision bill may repeal any necessary provisions (s. 31(2)(m)). Spent legislation may also be repealed when principal Acts are created or generally amended. For example, the Local Government Act 2002 set out a new framework for local governance, but also repealed several hundred spent Local Acts.

Annual latent legislation report

The Attorney-General reports annually to Parliament about Acts or enactments in them that have not yet been brought into force. Responsible departments or agencies review their latent legislation each year for enactments that could be repealed.

Government department or agency stocktake of regulation

Government departments and agencies must put in place annual regulatory plans of expected new regulation or review of existing regulations and provide annual regulatory system reports. The Treasury oversees this work. Government departments and agencies are also required to undertake regulatory scanning of the existing legislative instruments for which

they have responsibility on an ongoing basis. This stocktake process helps identify legislation that can properly be repealed or revoked.

Accessibility of the law

While over time the three-yearly revision programmes will undoubtedly enhance the relevance, consistency and readability of the statute book, there may be a place for a more fundamental structural review, or codification. The Law Commission when it reviewed the presentation of New Zealand Statute Law reached the conclusion that at present the statute book is not arranged to facilitate navigability¹. The Commission considered it should be arranged according to a coherent logical order rather than the current chronological order.²

There are some 1,000 Acts in force in New Zealand. While they are all available on the Legislation website, www.legislation.govt.nz, they are physically spread over more than 140 volumes. The law on any particular topic can be spread amongst any of these volumes. There is no way a person can be sure he or she has found all the relevant Acts on any particular subject.

Revision is a bottom up approach to reforming the statute book, which on its own may not be enough. Revision attends to the detail, but in the absence of a high level framework may simply add to the complexity. Some sort of framework or codification would provide a cohesive structure in which to carry out revision.

As noted above, statutes were reprinted and arranged on a subject-matter basis in 1931 but subject codification has not been undertaken since. The Law Commission considered both the advantages and disadvantages of embarking on a codification exercise³. While electronic search may have reduced the need in some respects, the principled development of the law that may ensue is a considerable advantage. However, the magnitude of the task was seen as significant and therefore the Commission, while seeing codification as a desirable objective came down in favour of first completing a progressive revision. At the same time, the Commission recommended the immediate commencement of an official index to New Zealand's Acts, but this has not occurred.

There would seem to be some merit in considering a framework for the statute book based on the pillars of our constitutional arrangements. At the highest level such a framework might group our constitutional-type legislation: the Constitution Act, which provides for the head of the State and the three branches of government, along with freedom of information and privacy enactments, and those that establish fundamental rights and freedoms. Then the framework might recognise the three branches of government: the legislature, the executive and the judiciary, containing at the next level overarching statutes, for the executive branch for instance: the Public Finance Act, State Sector Act, Crown Entities Act, State-owned Enterprises Act, Local Government Act and other overarching enactments such as runanga

¹ Law Commission Report 104 (2008), *Presentation of New Zealand Statute Law*, p. 78

² Law Commission Issues Paper 2 (2007), *Presentation of New Zealand Statute Law*, p.32

³ Law Commission Report 104 (2008), *Presentation of New Zealand Statute Law*, p. 130

legislation. Then the more detailed enactments might be arranged by sector and subject groupings.

From a parliamentary perspective, such an approach would make determinations about what is an allowable omnibus bill and what is within the scope of a bill as introduced easier to judge. More coherent principles might be able to be established, rather than judging each scope or omnibus issue on its merits.

I am indebted to the Parliamentary Counsel Office (PCO) for its assistance with this correspondence. If you require further information on any of the matters above, please contact David Bagnall, Senior Parliamentary Officer in the Office of the Clerk on david.bagnall@parliament.nz in the first instance, or Julia Agar, Senior Legal and Policy Analyst at PCO on julia.agar@parliament.govt.nz.

In the foreword to the 1931 reprint of statutes, Rt Hon Sir Michael Myers, Chief Justice, cited a recent case in which a Judge had decried “this thick growth of legislative jungle”. The Chief Justice then noted that, on the appeal of the case, that phrase had resonated strongly with their Lordships on the Judicial Committee of the Privy Council. I wish your committee well with its review of the best method for disentangling the statute book of Western Australia.

Yours sincerely



Rt Hon David Carter
Speaker of the New Zealand House of Representatives