ACTS AND REGULATIONS PUBLICATION AMENDMENT BILL

AS REPORTED FROM THE GOVERNMENT ADMINISTRATION COMMITTEE

COMMENTARY

The Government Administration Committee has examined the Acts and Regulations Publication Amendment Bill and recommends that it be passed with the amendments shown in the bill.

Conduct of the examination

The Acts and Regulations Publication Amendment Bill is a Government bill and was introduced into the House on 1 June 1999. It was subsequently referred to the Government Administration Committee following its second reading on the same day.

The committee called for submissions on the bill and set a closing date of 9 July 1999. We received two submissions, one from the Privacy Commissioner and one from DPA (New Zealand) Incorporated, also known as the national assembly of people with disabilities. We met on 5 and 26 August 1999 to consider the bill. We spent 25 minutes considering the bill. Advice was received from the Parliamentary Counsel Office.

This commentary sets out the details of our consideration of the bill and the major issues we addressed.

Background

The physical appearance of legislation is an important factor affecting access to the law. Understanding of the law may be helped or hindered by such factors as typeface, type size, the space between lines of type, the length of lines, the layout and ordering of provisions, the use of headings, and the indentation of text. Communication experts agree that a page that is well designed is not only more attractive but also aids understanding. Improvement to the design of New Zealand legislation will make it more accessible and more easily understood.

In December 1993 the Law Commission published a report entitled *The Format of Legislation* (the report) which considered the format and style of legislation. The

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work of the Law Commission was subsequently advanced by a Steering Committee comprising representatives from the Law Commission, the Office of the Clerk of the House of Representatives, the Inland Revenue Department, GP Legislation Services, and the Parliamentary Counsel Office (PCO). A survey of legislation users was undertaken in 1998 on a number of issues raised in the report. The survey asked participants to compare six samples of an Act of Parliament reproduced in the proposed new format. The samples were produced in three different typefaces. Over 90 responses were received on the issue of typeface. The larger size Times New Roman was the first preference of nearly twice as many respondents as the second preference. Times New Roman has been adopted in a number of Australian jurisdictions and in the United Kingdom. Most of the other proposed changes to format were favourably received. The bill flows directly from the work of the Law Commission, the Steering Committee and PCO. We would like to thank all those involved for their efforts.

Purpose

The principal purpose of the bill is to confer power to print and publish reprints of Acts and statutory regulations in a format and style that is consistent with current drafting practice. The power is necessary to facilitate the introduction on 1 January 2000 of a new format for legislation and the adoption of various changes in legislative drafting style. Changes to the Standing Orders of the House of Representatives are also required in order to implement the new format for legislation. These changes will be progressed separately through the Standing Orders Committee. The bill amends the Acts and Regulations Publication Act 1989 and makes minor consequential amendments to the Evidence Act 1908 and the Judicature Act 1908.

Submissions support the bill

The two submissions we received supported the bill and the proposed changes to the format of legislation. The Privacy Commissioner strongly supported the bill. He did, however, raise a number of issues in his submission and suggested several amendments. DPA (New Zealand) Inc also supported the bill and felt the changes are of relevance to people with disabilities. It considered that the bill is consistent with its belief that legislation must incorporate the principle of equality of access.

Wide consultation on format changes

DPA (New Zealand) Inc recommended that PCO should seek advice from organisations likely to be affected by the proposed format changes in order to ensure that the most appropriate format specifications are selected.

We note that the proposed changes have been the subject of extensive consultation. In preparing its report, the Law Commission consulted and received comments on its draft proposal from a variety of those who prepare and use legislation, including lawyers, politicians, groups who regularly make submissions on bills and others with an interest in the legislative process. The report states that the responses were almost without exception supportive and often enthusiastic.

PCO also undertook a survey of users of legislation on a number of issues raised in the report, in particular on the issue of what typeface should be used for New Zealand legislation. The survey was disseminated in written form, and via the PCO website. One hundred and seventy-four survey packs were sent out to members of Parliament, Judges, librarians, academics, lawyers in private practice and in government, legal publishers, and interested members of the public. Most of the proposed changes to format were favourably received.

Public access to legislation

DPA (New Zealand) Inc, in its submission, raised the much wider issue of the form in which New Zealand legislation is made available, in particular the issue of electronic access. While this matter is beyond the scope of the bill, we note that in September 1998 a discussion paper on public access to legislation was issued by PCO.

The discussion paper said that the matter of public access to legislation raises a number of fundamental issues, including:

- the role of the State in making the law accessible
- what role should the Government and the private sector play in making legislation available to the public
- in what different forms should legislation be made available to the public.

The paper invited comments from the public on these issues, and over 90 submissions were received from a wide range of organisations and individuals.

The issue of improving public access to New Zealand legislation is of fundamental importance. Given this importance and the need to find a cost-effective solution to New Zealand conditions, PCO commissioned PricewaterhouseCoopers to assist in its work on public access to legislation.

PricewaterhouseCoopers will identify more clearly the available options for improving public access, and provide an analysis of the costs and benefits of those options. On the basis of this work, PCO will make detailed recommendations to the Government. We understand that this will be done before the end of the year.

Numbering of schedules

The Privacy Commissioner noted that current drafting practice is to number schedules as "Schedule 1, Schedule 2, etc", rather than "First Schedule, Second Schedule, etc" as previously. He suggested that the bill confer explicit authority to renumber schedules in reprints.

We note that the power to renumber schedules would not by itself be sufficient. Cross-references in the body of the reprinted legislation would also have to be changed. In addition, current drafting practice is now to refer to a schedule "of" an Act, rather than, as previously, "to" an Act.

PCO did not seek to include a change of this kind in the bill as introduced because it considered that it went beyond what was strictly necessary to implement the new format of legislation, and involves (albeit minor) changes to the wording of the original enactment. However, we consider that a reprint power of this nature is appropriate and note that PCO have no objection to its inclusion in the bill.

We recommend that new section 17E in clause 4 of the bill be amended to permit schedules to be renumbered in accordance with current drafting practice, to permit consequential amendments to cross-references to those schedules, and to permit references to "Schedule 000 to" to be changed to "Schedule 000 of".

Alternatives for "shall"

The Privacy Commissioner noted that current drafting practice is no longer to use "shall", but to use "must" or "is to" or other alternatives. He suggested that the bill be amended to confer power to replace "shall" in reprints in appropriate cases.

The word "shall" can have a variety of meanings. It can mean "must", and therefore impose an obligation on someone. Or it can simply be an alternative to

the present tense. Sometimes it is difficult to determine just what meaning "shall" is to be given in a particular case.

The object of the bill is to confer power to make editorial changes in reprinted legislation that do not affect the meaning of the legislation as originally enacted. The changes that the bill currently permits are all of a relatively minor nature, and there is little, if any, danger that a reprint that incorporates those changes will unintentionally change the meaning of the legislation reprinted.

By contrast, determining what form of words should replace "shall" in a particular case can often involve a difficult judgement-call, and may require recasting the legislation in a way that is far more involved than simply replacing a single word. In these circumstances, the likelihood that the meaning of a provision will be altered is much greater than arises with respect to powers currently conferred by the bill. We do not consider it appropriate to include in the bill power to change references to "shall".

Inclusion of material in analysis

The Privacy Commissioner suggested that the bill contain power to alter the analysis (or table of contents) of reprinted legislation. In particular, he suggested the inclusion of schedule headings, which are now included under recent changes in drafting style.

Changes to the analysis have always been made in reprints, without express statutory authority, in order to reflect the amendments made to the content of the legislation (such as the insertion or repeal of sections). Authority to change the analysis was not required, because the analysis appears before the enacting words, and is therefore technically not part of the legislation.

Under the new Interpretation Act 1999, which comes into force on 1 November 1999, an analysis or table of contents will be one of the "indications" provided in the enactment that may be considered in ascertaining the meaning of the enactment (section 5 (2)).

Although the Interpretation Act will alter the status of the analysis, we do not consider that an express power is necessary to permit changes to it in a reprint. Changes to the analysis are a necessary consequence of the reprinting process, and therefore in our view are impliedly authorised under the general power to produce reprints. Given that the analysis simply reflects the content of the legislation, we take the view that additional entries can be made in an analysis without express authority.

We note that it is now PCO practice to include an analysis in all legislation, regardless of size. Previously, while all Acts included an analysis, regulations containing fewer than around ten provisions did not. If such regulations are reprinted, PCO would automatically include an analysis and does not consider that express statutory authority is needed to do so. We do not consider it necessary to include in the bill express power to include or alter an analysis.

Marginal notes

The Privacy Commissioner submitted that the bill be amended to confer authority to alter marginal notes (section headings) to accord with current drafting practice or to improve understanding.

Marginal notes are not currently part of the legislation (section 5 (g) of the Acts Interpretation Act 1924). Therefore they can be, and often are, altered in reprints to reflect changes to the provision to which they relate, or to better reflect the content of that provision. Similarly, marginal notes are currently altered during

the passage of a bill through the House without going through the formal amendment process.

However, under the new Interpretation Act, the marginal note or section heading will be one of the "indications" provided in the enactment that may be considered in ascertaining the meaning of the enactment (section 5 (2)). PCO take the view, as does the Clerk of the House, that this change means that PCO will no longer be free to alter marginal notes during the passage of a bill. If an amendment to a marginal note is desired, this will have to be done through the normal amendment process, either by way of a slip at the select committee stage, or by way of a supplementary order paper at the Committee of the whole House stage.

In the light of this, we do not think it appropriate for PCO to have the power to alter marginal notes in reprints. Unlike the content of an analysis, which simply reflects the content of the Act or regulations, the content of a marginal note is not fixed. There is a risk that altering the marginal note would inadvertently change the meaning that a court, after considering the marginal note, might give to the relevant provision.

If a marginal note in a principal Act or principal regulations is to be altered, we consider that, after the commencement of the Interpretation Act, this will have to be done by way of an amendment to the relevant legislation. We do not consider it appropriate for the bill to confer power to alter marginal notes.

Section notes and endnotes

The Privacy Commissioner considered that the bill should confer power to make changes in the content and layout of section notes and endnotes.

Like the analysis and marginal notes, section notes (footnotes) are not currently part of the legislation. However, as indicated above, under the new Interpretation Act all indications provided in the enactment may be considered by the courts in ascertaining the meaning of the enactment.

We take the same view with respect to this suggestion as we take in relation to the suggestion that there be power to alter marginal notes. An alteration made in a reprint could affect the meaning that a court might subsequently give to the legislation. We do not think that this is desirable.

With respect to endnotes, the only endnote currently appearing in Acts states the name of the administering department for the legislation. This information is added after the Act is assented to, and is not part of the Act. Regulations contain an explanatory note, but this is stated not to be part of the regulations. Regulations also have printed at the end a statement that they are issued under the authority of the Acts and Regulations Publication Act 1989, the date on which they were notified in the *Gazette,* and the name of the administering department. This information is again not part of the regulations.

The only information in an endnote that might require change in a reprint is the name of the administering department. We do not think that express power is needed to do this.

The Privacy Commissioner also suggested that (at least in the Privacy Act 1993, and possibly in other statutes) section notes should be moved to the end of the statute and tabulated (in a comparative table) as endnotes.

Comparative tables have been included in legislation in the past, and they are undoubtedly useful in appropriate cases. However, we consider that it would not be appropriate to include in the bill a general power to make this sort of change, which goes well beyond the sorts of editorial changes currently authorised by the bill. Just what is the best way of presenting the sort of information currently

contained in section notes is something PCO would like to investigate further. It may be that there are better alternatives to that suggested by the Privacy Commissioner.

We do not consider it appropriate for the bill to confer power to alter section notes and it is unnecessary for there to be express power to alter endnotes, as they are currently formulated.

Presentation of stylistic alterations

The Privacy Commissioner noted that care needs to be taken in the presentation of substituted or omitted material (in reprints) to avoid it having a cluttered and unattractive appearance.

New section 17F, as inserted by clause 4, provides that if editorial changes are made in a reprint, the reprint must indicate that fact in a suitable place, and outline in general terms, and in a suitable place, the changes made.

PCO will give careful consideration to the presentation of this material, to avoid the problems mentioned by the Privacy Commissioner. In particular, it may be best to include, in one place in the reprint, a note outlining all editorial changes of a general nature that have been made throughout the text of the reprinted legislation.

Conclusion

We support the bill and welcome the changes to the format of legislation it provides for. The changes will greatly improve the appearance of legislation and make legislation far more "user friendly". This will have positive benefits for all those that prepare and use legislation or comment on proposed legislation.

Some of us have concerns about the removal of quotation marks from the words or names or titles defined in the interpretation section of legislation in favour of simply bolding the word or name or title defined. We wonder whether this particular practice will find favour with users compared to the other proposed changes to format.

KEY TO SYMBOLS USED IN REPRINTED BILL

AS REPORTED FROM A SELECT COMMITTEE

Struck Out (Unanimous) Subject to this Act,	Text struck out unanimously
New (Unanimous) Subject to this Act,	Text inserted unanimously
[*Subject to this Act,*]	Words struck out unanimously
Subject to this Act,	Words inserted unanimously

Rt Hon Sir Douglas Graham

ACTS AND REGULATIONS PUBLICATION AMENDMENT

ANALYSIS

A BILL INTITULED

An Act—

(a) To amend the Acts and Regulations Publication Act 1989 to empower the production of reprints of legislation in a format and style consistent with current drafting practice; and

(b) To make consequential amendments to the Evidence Act 1908 and the Judicature Act 1908

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title and commencement—(1) This Act may be cited as the Acts and Regulations Publication Amendment Act **1999**, and is part of the Acts and Regulations Publication Act 1989* ("the principal Act").

(2) This Act comes into force on **1 January 2000.**

*R.S. Vol. 38, p. 1

PART 1

AMENDMENTS TO PRINCIPAL ACT

2. Printing and publication of instruments other than regulations—(1) Section 14 (3) of the principal Act is amended by omitting the expression "13, and 15", and substituting the expression "and 13".

(2) The Acts and Regulations Publication Amendment Act 1992 is consequentially repealed.

3. Incorporation of amendments in reprints—Section 15 of the principal Act is repealed.

4. New heading and sections inserted—The principal Act is amended by inserting, after section 17, the following heading and sections:

"*Power to Make Editorial Changes in Reprints*

"17A. **Interpretation**—In this section and **sections 17B to 17F**, unless the context otherwise requires,—

" 'Current drafting practice' means the legislative drafting practice for the time being used in New Zealand:

" 'Legislation' means—

"(a) An Act of Parliament:

"(b) An Imperial Act that has effect as part of the laws of New Zealand:

"(c) Any regulations:

"(d) An instrument that, under section 14 of this Act or section 6A of the Regulations Act 1936, has been printed and published as if it were a regulation:

" 'Referential words' means words (for example, 'of this Act', 'of this section', and 'of this paragraph') that identify the whole or part of a provision (including a schedule) as a provision, or as part of a provision, of the enactment in which they appear:

" 'Reprint' means a reprint—

"(a) That is printed and published under this Act; and

"(b) That is a reprint of legislation; and

"(c) That, under section 29A of the Evidence Act 1908, is presumed to correctly state the law enacted or made by the legislation reprinted and by the amendments (if any) to that legislation.

"17B. **Purpose of sections 17C to 17E**—The purpose of **sections 17C to 17E** is to facilitate the production of up-to-date reprints that, to the extent permitted by those sections, are in a format and style consistent with current drafting practice.

"17C. **Power to make editorial changes in reprints**—(1) Changes authorised by **sections 17D and 17E** may be made in a reprint.

"(2) **Sections 17D and 17E** do not permit any change that, if it were enacted or made as an amendment to the legislation reprinted, would change the effect of the legislation.

"17D. **Changes to format**—(1) Format may be changed so that the format of the reprint is consistent with current drafting practice.

"(2) Changes authorised by this section include (without limitation)—

"(a) Changes to the setting out of provisions, tables, and schedules:

"(b) The repositioning of marginal notes or section headings:

"(c) Changes to typeface and type size:

"(d) The addition or removal of bolding, italics, and similar textual attributes:

"(e) The addition or removal of quotation marks and rules:

"(f) Changes to the case of letters or words (for example, the replacement of small capitals with ordinary capitals, and of capitals and small capitals with capitals and lower case):

"(g) The addition, alteration, or removal of running heads:

"(h) The repositioning of the date of Royal assent.

"17E. **Other changes**—(1) Punctuation may be altered or omitted, or new punctuation inserted, so that the reprint uses punctuation that is consistent with current drafting practice.

"(2) Unnecessary referential words may be omitted.

"(3) Dates may be expressed in a manner consistent with current drafting practice.

"(4) A Part numbered with roman numerals may be numbered with arabic numerals, and any cross-references to that Part in the reprint, or in another reprint, may be consequentially amended.

New (Unanimous)

"(5) The following changes may be made in relation to schedules:

"(a) A schedule may be renumbered so as to be consistent with current drafting practice (for example, Schedule 1 may replace First Schedule), and any cross-references to that schedule in the reprint, or in another reprint, may be consequentially amended:

"(b) A reference to a schedule to a particular enactment may be changed to a schedule of that enactment.

"(6) **Subsection (5)** does not limit this section or **section 17D**.

"17F. **Changes to be noted in reprint**—If changes authorised by **section 17C** are made in a reprint, the reprint must—

"(a) Indicate that fact in a suitable place; and

"(b) Outline in general terms, and in a suitable place, the changes made."

Cf. Reprints Act 1992, s. 7 (2) (Queensland)

5. Repeal of spent provisions—(1) Sections ~~(18)~~ 20 to 32 of the principal Act, and the headings immediately before sections 18, 20, 23, 26, 27, 28, 31, 32, and 34 of the principal Act, are repealed.

(2) The following orders are consequentially revoked:

(a) The Acts and Regulations Publication Act Commencement Order 1990 (S.R. 1990/152):

(b) The Acts and Regulations Publication Act Commencement Order (No. 2) 1990 (S.R. 1990/354).

PART 2

CONSEQUENTIAL AMENDMENTS TO OTHER ENACTMENTS

Amendments to Evidence Act 1908

6. Judicial notice of regulations—Section 28A of the Evidence Act 1908 is amended by repealing subsection (2), and substituting the following subsection:

"(2) In subsection (1) and **sections 29 (3) and 29A**, the term 'regulations'—

"(a) Has the same meaning as in section 2 of the Acts and Regulations Publication Act 1989; and

"(b) Includes any instrument that, under section 14 of that Act or section 6A of the Regulations Act 1936, has been printed and published as if it were a regulation."

7. Copy of reprint of Act, Imperial legislation, or regulations to be evidence—Section 29A of the Evidence Act 1908 is amended by inserting, after subsection (2), the following subsection:

"(2A) To avoid any doubt, the presumption contained in subsection (2) applies to a copy of a reprint in which changes authorised by **section 17C** of the Acts and Regulations Publication Act 1989 have been made."

Amendment to Judicature Act 1908

8. Publication of High Court Rules under Acts and Regulations Publication Act 1989—The Judicature Act 1908 is amended by repealing section 51A, and substituting the following section:

"51A. (1) The High Court Rules, and any reprint of the High Court Rules, may be printed and published under section 14 of the Acts and Regulations Publication Act 1989 as if the High Court Rules were regulations within the meaning of that Act; and that section applies accordingly.

"(2) **Sections 28A, 29 (3), and 29A** of the Evidence Act 1908 apply accordingly."

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