

Regulatory impact statement

Legislation Bill

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Parliamentary Counsel Office (PCO).

The Legislation Bill implements aspects of the Government response to recommendations made in the reports of the Law Commission: *Presentation of New Zealand Statute Law*¹ and *Review of the Statutes Drafting and Compilation Act 1920*². In those reports, the Law Commission made a series of recommendations about how to make New Zealand statute law more accessible.

The Law Commission recommended that there be a triennial programme of revision, the aim of which is to make statutes more accessible without changing their substance. The Legislation Bill provides for a 3-yearly revision programme to be prepared for each new Parliament. The PCO must prepare revision bills in accordance with the programme.

In considering the response to the Law Commission's recommendations on this subject, the PCO has discussed the various options with relevant stakeholders within government, as well as the Law Commission.

It has not been possible to quantify with any precision the costs associated with a statutory programme of revision, because these will depend on the size and nature of the programme itself. A programme of 3 or 4 revision Bills per year would amount to approximately \$220,000 in additional costs to the PCO, and some small associated costs in instructing departments.

It may be the case that the preferred option will impose some additional costs on businesses (arising from the need to familiarise themselves with the new Acts), but these are impossible to quantify and should, in any event, be offset by the benefits of more accessible statute law. Furthermore, there should not be any additional costs in the immediate term, as the first revision programme will not be required to be prepared until the next new Parliament.

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¹ NZLC R104

² NZLC R107

Executive summary

In December 2008, the Law Commission reported on access to New Zealand Acts of Parliament (*Presentation of New Zealand Statute Law*). The Law Commission identified various problems with clarity and navigability. For example, the law on one topic can be scattered, with provisions sometimes hidden in unlikely statutes; and Acts are amended many times before they are replaced. This can lead to inconsistencies, with obsolete and redundant provisions remaining in force.

Revision is the process whereby existing law is re-enacted in more accessible form, but without changing the substance. An existing Act and amendments to it are incorporated, language is modernised, and obsolete and expired provisions are removed.

The Legislation Bill creates a requirement for a triennial programme of statute law revision which will require the PCO to draft revision Bills. The revised statutes will be more accessible and easier to understand, thereby improving access to statute law.

Adequacy statement

The PCO has reviewed this regulatory impact statement and considers it to be adequate according to the adequacy criteria.

Status quo and problem

The PCO is required by statute to print, publish, and make available for purchase every Act of Parliament. It is by this provision that statute law is made available to the public. The PCO also has a duty to reprint Acts. This is not a re-enactment process. The Act is simply printed again, but with all amendments, and any alterations, showing in the text. The PCO carries out an annual reprint programme, and the reprints are published in hard copy. Finally, the New Zealand Legislation website provides free access to all Acts of Parliament currently in force.

Whatever steps are taken to make the law available to the public, statutes themselves must be understandable and navigable in order to be properly accessible.

The Law Commission sets out some current concerns with accessing statute law in Chapter 3 of its report.

Acts of Parliament are ordered chronologically, which means that the user looking for Acts on a particular topic will not get any assistance from the statute book about where to look. The law on one topic may well be scattered across any number of Acts. All of the content of an Act may not be indicated by its Title. Provisions about certain matters are located in unlikely Acts. Also, amending Acts sometimes contain substantive provisions, which stand separately from the Act being amended. These can sometimes be missed when searching for provisions on a particular subject. Some Acts are old, and were drafted in language that is not easy to understand, or in a style that is not accessible. Acts are often amended several times before they are eventually replaced. This can mean that there are inconsistencies in drafting style between original and inserted provisions in the same Act. In addition, redundant and

obsolete provisions remain in force. Finally, there are inconsistencies between Acts, which can give rise to difficult questions of interpretation.

Objectives

The objectives are:

- to make statute law clearer and easier to navigate; and
- to make measurable progress in updating the statute book.

Alternative options

Status quo

The PCO does not have an express function relating to the presentation or accessibility of public Acts. Departments with a policy function do not always treat accessibility of statute law as a high priority. They have to prioritise their policy agendas and so do not consider questions of accessibility or navigability unless there is a policy reason to tidy up an area of statute law. So revision may happen alongside substantive changes to the statute arising out of policy changes, but does not happen otherwise, except on rare occasions. Maintaining the status quo will not address the concerns raised by the Law Commission.

Based on research undertaken on the benefits of plain drafting (see *The Format of Legislation* NZLC R27 (1993), and *Plain English and the Law*, Report No. 9, Law Reform Commission of Victoria (1987), paragraphs 100-105), it could be said that untidiness and obscurity in statute law are likely to add to the costs of providing legal advice about rights and obligations to Government, business, and the public generally.

Option 1: statutory requirement to have revision programme, statutory fast-tracking procedure for enacting revision Bills

Under this option, the PCO would be under a statutory duty to undertake a triennial programme of statute law revision, the contents of which would be settled by Cabinet. The PCO would have statutory powers to alter the wording, order, and placement of the provisions subject to revision. When a revision bill had been drafted, it would be submitted to a committee comprising the Chief Parliamentary Counsel, the Solicitor-General, the President of the Law Commission, and a retired Judge appointed by the Attorney-General. The committee would certify the Bill if they were satisfied that it changed only the presentation of the law, and not its effect.

The revision Bill, once certified, would be passed by a streamlined parliamentary process, which would be set out in the legislation. A statutory fast-tracking mechanism could be justified to truncate the normal procedure for the passing of Bills because of the narrow nature of the question before Parliament, namely whether the proposed revision correctly states the existing law and is necessary to avoid revision Bills occupying Government legislation programme time in the House.

This option brings the benefit of certainty. There would have to be a revision programme every three years. The process for passing the Bills into law would be set out in primary legislation. And for users of the statute book there would be a benefit in that the law on a particular topic would be clearer. It would be easier to find. It would be streamlined and drafted in a consistent drafting style.

If revisions were carried out, there would be associated costs. There would be fiscal costs to the PCO and to administering departments. Users of statute law would have to familiarise themselves with the new Acts, giving rise to legal fees. There might be guidance on the law which would have to be updated.

There are risks associated with this option. Primary legislation is not a generally accepted vehicle to regulate House procedure. It would be more consistent with current constitutional understandings to achieve the changes to parliamentary procedure proposed by the Law Commission by amendments to Standing Orders rather than by legislative change because this would ensure that the changes have unanimous or near unanimous support from all or most parliamentary parties (which would make them enduring). Statutory provisions governing the procedure of the House raise the risk of challenge by way of judicial review and, where there are manner and form requirements for Bills, there is the additional risk that the validity of a statute might be called into question by some error in procedure. And procedures set out in primary legislation can only be changed by further primary legislation.

Option 2: a statutory power for PCO to undertake revision

Under this option, there would not be a duty to have a programme of revision. There could, however, be included in the PCO's statutory functions a general reference to undertaking revision. If revision bills were drafted, Standing Orders could set out a streamlined procedure for enacting them.

The benefit of this option is that the amount of resources committed to revision would reflect the actual priorities of the Government at any given time. If revisions were carried out, there would be the same benefits for users as with option 1. The associated costs would also be the same.

There would not be any obligation to carry out revision. In which case, the risk is that there would be no change. There is nothing to suggest that departments would take a greater interest in carrying out revisions than they do now.

Preferred option

The preferred option is a variation of option 1. This would be to have statutory provision for a revision programme, a duty for the PCO to draft revision Bills in accordance with the programme, and to submit them to a certifying committee. However, this option would not include statutory provision for the progress of revision statutes through Parliament. Instead, the Parliamentary procedure for the passage of revision Bills would be set out in Standing Orders.

This option brings with it the benefits of certainty and clarity described under option 1. The issues of cost for business or the public generally are not materially altered by this variation. However, this variation would remove the risks identified in relation to option 1.

Implementation and review

The proposal will be given effect by the Legislation Bill. Its effect will be gradual, as the first revision programme will not be required to be prepared until the next new Parliament.

The Chief Parliamentary Counsel will monitor the effectiveness of the revision programme, and will report on the revision functions exercised by PCO in every report on the Parliamentary Counsel Office under section 43 of the Public Finance Act 1989.

Consultation

The Law Commission consulted widely during the preparation of its reports.

The National Library, the Department of the Prime Minister and Cabinet, the Inland Revenue Department, the Law Commission, the State Services Commission, the Treasury, the Solicitor General, and the Clerk of the House of Representatives were consulted on the Cabinet paper.