

to the
COMPILATION PROJECT PARLIAMENTARY COUNSEL OFFICE

1. INTRODUCTION

1.1 This submission is from:
New Zealand Law Librarians Group Inc.
PO Box

WELLINGTON

1.2 The New Zealand Law Librarians Group Inc. is an incorporated society with nation wide membership. The Group aims to:

"promote law librarianship by providing a national and regional focus for information specialists working in the legal sector, by encouraging developments that will further improve the usefulness and efficiency of law libraries and fostering a spirit of co-operation among members of the group".

(NZLLG Inc. Constitution)

1.3 The Group has through an earlier Working Group on Access to Government Information commented on issues of equity of access to the laws of New Zealand and is pleased to have the opportunity to state its views again.

2. What role should the state and the private sector play in providing access to legislation?

There is no doubt that the Government should continue to make available an official version of the legislation.

The Government cannot simply endorse as an official version one or more versions of legislation produced by the private sector publishers. These products have been developed as a result of market demand and it would seem a little late for Government to now endorse these products as the official version. The practical considerations of how the Government would satisfy itself that these versions were accurate would require the co operation of private publishers and presumably their acquiescence to standards established by another authority.

What form should an official version of the legislation take

If the Government remains responsible for publishing an official version legislation then yes an official version of the legislation should be published in print form both individual Acts and Statutory Regulations as a matter of course. We do not have all have the technology to provide online access to the statute book and the print version is reasonably priced.

It is important that the bound volumes of legislation passed or enacted in a particular year continue to be made available as they provide inexpensive historical access to the law as passed in a given year.

We do not think it appropriate for the Government to compete with the private sector in providing access to various pieces of legislation by subject matter. These products have long been in the marketplace as student or practitioner texts and have little wider appeal. It would seem appropriate to provide an electronic database of uncompiled legislation over the internet as this would provide access for not only New Zealand residents but those overseas also.

In the case of compiled legislation the brown reprint series serve little purpose as the various commercial products both print and electronic serve the legal market better. Publishers have also provided commentary together with the legislation thus adding further value to their products.

Ideally the opportunity to obtain an individually compiled act on demand would suit the majority of public access needs but there would be difficulties in charging any more than is currently charged for uncompiled legislation.

It would seem more sensible to compile the legislation on an ongoing basis as amendments are passed rather than at a specific interval of time simply to ensure that the task does not become too onerous or difficult to perform. It would also ensure that those who need to monitor their legislative requirements can ensure that they are up to date with the latest amendments.

If the Government was to provide electronic access to the compiled legislation then it would be doing so in direct competition to private publishers. It would be difficult to justify such a development

LEGISLATIVE HISTORY

Introduction, first reading and referral to Justice and Law Reform Select Committee (Bill 72-1) 25 August 1988: 491 NZPD 6369-6375.

Reported back from Justice and Law Reform Select Committee (Bill 72-2) 3 October 1989: 502 NZPD 12893-12903.

Carried forward 12 December 1989: 504 NZPD 14741-14742; 6 September 1990: 510 NZPD 4360-4361.

Second reading 10 November 1992; 12 November 1992: 531 NZPD 12144-12150; 12257-12263.

In committee 17 November 1992: 531 NZPD 12329-12332.

Divided into Defamation Bill (cls 2-47; Schedules 1, 2, 3) and Legislature Amendment Bill (Part 4) 17 November 1992: 531 NZPD 12330.

Third reading 17 November 1992: 531 NZPD 12331-12334.

The Defamation Act 1992 implements in part the recommendations contained in the Report of the Committee on Defamation (1977).

3.5 Report 35 Legislation Manual – Structure and Style, in the section titled "In the use of Explanatory Material", page 30, para 122 it states that "notes can outline the legislative history of an Act," and "make cross-references to other Acts, cases, or to reports of law reform bodies or other relevant bodies, on which the legislation is based".

3.6 We also note the statement in Report 17, page 47, para 116 that "It is the rare case that calls for a comprehensive reference to the Legislative History."

3.7 As experienced law librarians we take issue with this point. Apart from tax legislation, which requires a Legislative History prepared each time it is litigated, many other statutes have to be investigated prior to litigation. Examples in which members of the NZLLG Inc. have been involved, include:

Resource Management Act 1991
 Local Government Act 1974
 Education Act 1989
 Earthquake Commission Act 1993
 Holidays Act 1991
 Partnership Act 1908

In some cases, these statutes need to be traced back into their UK antecedents. In other cases, they need to be traced back to their originating New Zealand statute, the bills that formed the statute and the regulations derived from it, together with all relevant reports and submissions to the Select Committee where available.

4. INFORMATION BRIDGE

4.1 There is no public annotating service, electronic or paper, that links the Bill, Bill title and number to the Act or Acts. There is no New Zealand electronic source of historical legislation including Bills at this time. The Legislative History, if an integral part

of the printed copy of the Act, would be in the electronic database, and therefore act as a bridge between the Bill and the Act.

4.2 When the Legislative History example was presented in NZLC Report 27, page 50, law librarians from Auckland engaged in discussion with Sir Kenneth Keith, the then President of the Law Commission, suggesting additions and changes to the example provided.

4.3 These suggestions were as follows:

LEGISLATIVE HISTORY

Defamation Act 1992 No. 105

Defamation Bill 1988 (72-1-2)

Bill 72-1 introduced with Explanatory Memorandum 25 August 1988. First reading and referral to Justice and Law Reform Select Committee : 491 NZPD 6369-6375.

The Defamation Bill 1988, as introduced, implements in part the recommendations contained in the Report of the Committee on Defamation, Government Printer, Wellington, 1977 (I.L. McKay, Chairman).

Bill 72-2 reported back from Justice and Law Reform Select Committee 3 October 1989 : 502 NZPD 12893-12903.

Carried forward 12 December 1989 : 504 NZPD 14741-14742 ; 6 September 1990 : 510 NZPD 4360-4361.

SOP No. 157 dated Tuesday 10 November 1992 (amendments to Bill 72-2 ; includes Explanatory Note).

Second reading 10 November 1992 ; 12 November 1992 : 531 NZPD 12144-12150, 12257-12263

In committee 17 November 1992 : 531 NZPD 12329-12330.

SOP No. 160 dated Tuesday 17 November 1992 (includes Explanatory Note) : Bill 72-2 divided into Defamation 1992 Bill (cls 2-47 ; Schedules 1, 2, 3) and Legislature Amendment 1992 Bill (Part 4) 17 November 1992 : 531 NZPD 12330.

Third reading 17 November 1992 : 531 NZPD 12331-12334.

Assented to 26 November 1992 ; Assent Paper No. 105 [Public] ; Comes into force 1 February 1993.

4.4 The following notes were supplied to the Law Commission to explain the differences between the recommended Law Commission's Legislative History and the example offered by law librarians from Auckland.

EXPLANATORY NOTES

The legislative history of the Defamation Act 1992 is relatively straightforward. The history of some other Acts – Resource Management Act 1991 for example – is incredibly complex. It is important therefore that we get the format right so that all relevant information is collected in the one place.

The overall methodological consideration is to list chronologically all material relevant to a particular Act, so that the 'history' reads as a logical progression.

It is essential that the full Short Title of the relevant Act (including Act No.), and the Short Title(s) of all relevant Bill(s) appear in the legislative history. The Act title is often quite different from the title of the originating Bill. Similarly, Bills often change their titles, dates, and/or emanate from Omnibus Bills via SOPs and are consequently not printed separately.

GP print runs must also be included with Bill titles. Bills are split, amended, and renamed, so it is crucial to include the relevant print runs, and to distinguish between the different versions/titles of Bills at the different stages of the 'history'

Hence the importance of correct titles, print runs, and dates.

Full dates should always be included when citing a document or an event. 'Full date' means day, month and year.

All relevant SOPs must be listed. This includes their full date and number. Many relevant SOPs are from previous Sessions and/or years. SOPs are numbered by Session, so the full date and number is crucial for avoiding confusion.

We note that the commission's 'page 50' prototype for the Defamation Act 1992 does not list any SOPs. However, the Commission's own Report (NZLC R17 para 115) recommends that all relevant SOPs are cited in any legislative history. Perhaps this omission was simply an oversight.

Date of Assent, Assent Paper Number, and Act 'type' are all important. While it is proposed in the 'new format' that this information will appear on the front page of each Act, it is, in my view, also important that the information is repeated in the legislative

history. This is crucial if the legislative history 'field' is to be useful in an electronic environment.

Details of any 'minor' amendments to relevant Bills agreed to by the Committee of the Whole House should also be included.

It is an excellent idea to note all relevant 'official' reports, reviews, recommendations etc. But the full bibliographical details for each item must also be given, including any relevant AJHR 'shoulder numbers', chairpersons name etc.

In our view, this material should appear chronologically within the legislative history. That is, they should be noted and linked into the history at their point of primary relevance. (see 2 above)

If an Explanatory Memorandum or Explanatory Notes is published with a Bill or SOP, then this fact should always be noted.

In very complex histories it would be a good idea to include in the text of the history more detailed information on the effect of relevant SOPs – ie note whether the SOP amends the text, alters the title/date, or splits the Bill etc.

As a general rule, anything out of the ordinary should be noted in full. For example, later GP print runs of the same Bill that do not reproduce all of the text of the original print run.

5. CONCLUSION

5.1 The nature of the Interpretation Bill has wide ranging implications for the future format, structure and interpretation of New Zealand law. However, the changes recommended by this Bill will not be complete without the Legislative History recommendations made by the Law Commission.

5.2 As there are now two New Zealand publishers offering the legal profession databases of electronic statutes, more and more lawyers are utilising this means of access to legislation. The ability to electronically "read" and search a Legislative History as a separate field in these databases will be a significant advance.

5.4 A Legislative History will also enable lawyers to work more efficiently and cost-effectively for their clients because it will save them time. It will make the historical law as accessible as the current law has now become.

5.5 Some elements of Legislative History – Hansard, Bills, NZLC reports, treaties etc are presently separate sources of information. However the practical difficulties of timing

may preclude a note of some of this material. Hansard is not printed in final form until after the assent copy has been printed. The relevant volumes and dates would not be available at the time of printing.

5.6 Treaties, New Zealand Law Commission Reports and Commissions of Inquiry may all be in print form prior to the introduction of a bill. As with this bill they are frequently mentioned in the Explanatory Note, therefore we suggest they could also be listed in the Legislative History.

5.7 The bare elements of a Legislative History are already available in the Parliamentary Counsel Office as the legislation is being prepared.

5.8 A Legislative History would neatly and concisely give both the public and the legal profession a foundation of information from which to start tracing the origins of each piece of New Zealand legislation.