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The Evolving Accessibility of New Zealand Law:

Redesigning Legislation for Understanding and Empowerment

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Abstract

For decades, users of the New Zealand statute book have struggled with its complexity; legislation is not only difficult to find, but once found, it is difficult to understand and use. While the standard is certainly improving, 'ordinary' readers are still bewildered when attempting to understand legal rights and obligations, and professional users (whether legally trained or not) are frustrated by the time taken to ascertain required conduct. Consequently, New Zealand legislation can be disempowering, has significant productivity costs, and undermines fundamental principles of the rule of law. In a country led by one of the most open and transparent governments in the world, at the forefront of delivering user-centred digital services, this is not good enough.

This paper examines the evolution of the statute book, with a focus on accessibility. It suggests this evolution was informed by a legislative paradigm rooted in tradition, with constrained aspirations of how legislation could be experienced by citizens. It then proposes a new legislative paradigm – designed around the users of legislation, to support and empower every New Zealander to understand the law. Developments consistent with this paradigm are explored, and constraints in the law reform process are assessed, before recommendations are made for 'first steps' to set the stage for legislative transformation.

Keywords

Legislation, Statute Book, Law Reform, Accessibility, Human-Centred Design, Legal Design

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TABLE OF CONTENTS

I INTRODUCTION 5

II THE PROBLEM WITH LEGISLATION 6

A ACCESSIBILITY 7

III HOW DID WE GET HERE? 18

IV REIMAGINING LAW: A PARADIGM SHIFT 28

A LEARNING FROM LEGAL DESIGN 28

B THE NEW PARADIGM FOR LEGISLATION 30

V LEGISLATION THAT EMPOWERS: A DESIGN-DRIVEN APPROACH 31

A THE CENTRALITY OF THE USER 31

B ETHNOGRAPHIC METHODS 32

C BALANCING THE NEEDS OF MANY: MANAGING TENSION 32

D MULTI-DISCIPLINARY 33

E HUMANS FIRST, TECHNOLOGY SECOND 33

VI DIRECTIONS FOR DEVELOPMENT 33

A PLAIN LANGUAGE 33

B VISUALISATION 34

C ELECTRONIC GLOSSES (POP-UPS AND WINDOWS) 40

D TYPEFACE 44

E TRACKED CHANGES 47

F ORGANISATION BY SUBJECT MATTER 48

G SEARCH FUNCTIONALITY 53

H AUTOMATION AND MACHINE-READABILITY 54

I STATUTE ARCHITECTURE 57

VII CONSIDERING CONSTRAINTS 57

A PROCEDURAL CONSTRAINTS 58

B INSTITUTIONAL CONSTRAINTS 59

C CONSTRAINTS ON LEGISLATION 60

VIII THE ROAD TO TRANSFORMATION: RECOMMENDATIONS 61

IX CONCLUSION 64

X BIBLIOGRAPHY 65

XI WORD COUNT 70

"Because society itself is always changing, legislation must reflect the change" [1]

I Introduction

Statute Law plays a fundamental role in our daily lives; it sets out our rights and responsibilities, it prohibits and regulates conduct, and it is a vital instrument of law reform. In recent decades, various jurisdictions have recognised the complexity and inaccessibility of their statute books, and are making efforts to improve them. Beyond the realms of legislation, user-centred design processes are being applied to redesign legal phenomena, such as contracts and court processes, to better meet users' needs, as supported by a growing legal-tech sector.

New Zealand's legislation is still a confusing and convoluted experience for many readers. It is arguable the design of legislation has not kept pace with the changing needs or expectations of its increasingly digital readership, and the understandability and usability (or lack thereof) of legislation fundamentally affects the rule of law in New Zealand. The current standard of the statute book not only impacts the productivity of professionals who use legislation daily, but also undermines access to justice for 'ordinary' readers who occasionally need to understand legal rights and obligations.

One can view legislation as a static legal artefact, but as Roderick MacDonald, legal scholar and past Canadian Law Commissioner, writes, "scholars who have toiled in the manifold vineyards of law reform know that all legal artefacts – both formal and informal – are in constant evolution".[2] It is an exciting time for reimagining legislation; technological capability is better than ever before, offering new methods for diagnosing and understanding how law is used, as well as innovative tools for presentation.[3]

This paper examines the design and presentation of New Zealand's statute law, identifying a significant accessibility problem that still requires addressing. It critiques the incremental evolution of the design and presentation of New Zealand legislation, identifying points at which a more radical approach might have been taken. It then adopts the lens of human-centred design to suggest a new paradigm for legislation, one focused on maximising comprehension and empowerment. Possible developments for the design and presentation of New Zealand's statute law are explored, and this discussion is intentionally unbounded in order to challenge readers' notions of how legislation might conceivably be experienced. Finally, procedural, institutional and conceptual constraints are discussed, in order to identify feasible steps that set the stage for transformation.

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[1] Law Commission Legislation Manual (NZLC R35, 1996) at [3].

[2] R MacDonald "Law Reform for Dummies" (2014) 51 Osgoode Hall Law Journal 859 at 871.

[3] Office of the Parliamentary Counsel "Good Law" (25 November 2015) GOV.UK <www.gov.uk>.

II The Problem with Legislation

Legislation is an ancient tradition; for thousands of years, rules have been written down. Today, legislation is a pervasive feature of modern life. Law is a core tool used by governments to regulate human behaviour and achieve its policy goals, and in New Zealand, legislation "has long since outstripped the common law in importance as the modern instrument of law reform".[4] Legislation is a text with enormous influence; using legislation, Parliament can prohibit conduct, allocate rights, confer powers, and impose duties. Statute law underpins many, if not most, of our everyday activities, transactions, and interactions – establishing and maintaining essential services such as health, education and welfare. The effectiveness of governments is inextricably connected with the effectiveness of legislation, and the effectiveness of legislation is inextricably connected with our ability to understand and use it.

In recent decades, various jurisdictions have identified significant problems with their statute books, considering them to be, for example, complex, scattered, archaic in places, and confusing.[5] Consequently, efforts are being made to improve the design of legislation to increase accessibility for readers in various legal systems.

The quick pace of technological change has implications for experiences of legislation. More people can access information than ever before due to the availability of internet, and people are beginning to understand and seek information in different ways. Many readers are now accustomed to dynamic information that is quick to access and easy to understand, such as mobile applications and video. Web content is increasingly written according to principles of information design to make information intuitive for readers.[6] Within this context, governments are moving toward delivering information and services in a more effective way via the internet, an innovative trend known as "e-government".[7] New Zealand is recognised as one of the most digitally advanced governments in the world, and has an ICT strategy structured around enabling better digital services to citizens and modernising the way people interact with government.[8] Such commitment can be seen in the recent redevelopment of the ACC website, at a cost of $1.9 million.[9]

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[4] Law Commission *Presentation of New Zealand Statute Law* (NZLC IP2, 2008) at 9.

[5] For example, see When Laws Become Too Complex: A review into the causes of complex legislation (Office of the Parliamentary Counsel, March 2013); Law Reform Commission Accessibility, Consolidation and Online Publication of Legislation (LRC IP 11, 2016); Office of Parliamentary Counsel Reducing complexity in legislation (June 2016).

[6] R Waller "Graphic literacies for a digital age" in A Black, P Luna, O Lund and S Walker (eds) *Information design: research and practice* (Routledge, London, 2017) at 175.

[7] OECD e-Government for Better Government (online ed., OECD, 2005).

[8] Cabinet Minute "Impact of Government ICT Strategy" (25 May 2016) SEC-16-MIN-0023 at [3].

[9] Response from Katie Brown (Media and Social Manager, ACC) regarding response to request for information under the Official Information Act 1982 (4 August 2017).

Despite having more readers than ever before, New Zealand's legislation is not keeping pace with these trends. But for the availability of hyperlinked text, online legislation is still largely presented as though it were hard-copy, and suffers from many of the same problems as the paper-based statute book. It is not intuitive, and it can be remarkably time-consuming to find the legal answer one seeks. In 2004 George Tanner wrote,[10]

> The demand for understandable legislation may be expected to increase as more citizens are able to access Acts and regulations in an up-to-date form and access Bills free on the internet.

This raises the question: is there a problem with the design of New Zealand's legislation? Does legislation need to be more understandable and usable for a new wave of digital-native readers?

A Accessibility

Discussion of the accessibility of legislation is not new. It is a fundamental principle of the rule of law that states must make law accessible to their citizens, and governments have been concerned with doing so for decades.[11] In New Zealand, the Law Commission has played a key role in raising awareness of the inaccessibility of statute law. Since its inception, the Commission has been responsible for advising on "ways in which the law of New Zealand can be made as understandable and accessible as is practicable",[12] and since 1986 the Commission has done so through a series of reports focused on legislation.

In 2006, then-President Geoffrey Palmer described New Zealand's statute law as "not fit for human consumption", based on the massive, unmanageable, difficult to navigate and inaccessible nature of the statute book. [13]

The Law Commission published its report, *Presentation of New Zealand Statute Law* in 2008. Led by Palmer, this report drilled into the concept of accessibility, breaking it down to three key components: [14]

a) Availability (both physical and electronic);
b) Navigability, defined as the ability of users to find relevant law without unnecessary difficulty; and,
c) Clarity, defined as the ability of the user to understand the law once found.

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[10] G Tanner QC "Confronting the Process of Statute Making" in R Bigwood (ed) *The Statute: Making and Meaning* (LexisNexis, New Zealand, 2004) at 73.

[11] L Fuller *The Morality of Law* (Yale University Press, New Haven, 1964).

[12] Law Commission Act 1985, s 5(1)(d).

[13] G Palmer "Law Reform And The Law Commission In New Zealand After 20 Years - We Need To Try A Little Harder" (paper presented at the New Zealand Centre for Public Law, Victoria University of Wellington., March 2006) at 16.

[14] Law Commission *Presentation of New Zealand Statute Law* (NZLC R104, 2008) at 3.

The report identified a variety of significant issues regarding the accessibility of legislation as measured by these three yardsticks, and made various recommendations to address these. We will return to analyse the Commission's recommendations later in this paper, however for now, it is useful to adopt their definition of accessibility, as measured by availability, navigability, and clarity, to determine whether there remains a problem with New Zealand legislation that is worthy of addressing.

In doing so, it is important to note that users of legislation are diverse and their needs are not identical. The New Zealand Legislation website currently receives an average of 262,000 unique visitors each month,[15] with the top-accessed pieces of legislation (at the time of writing) being the:[16]

- Companies Act 1993
- Resource Management Act 1991
- Employment Relations Act 2000
- Crimes Act 1961
- Residential Tenancies Act 1986
- Health and Safety at Work Act 2015
- Holidays Act 2003
- Privacy Act 1993
- Property Law Act 2007
- Income Tax Act 2007

These Acts are not "lawyers' Acts"; they are important for a wide variety of people in their everyday lives. This indicates the broad spectrum of users of legislation, and demonstrates the importance of examining the accessibility of New Zealand legislation from various perspectives, ranging from expert user to novice.

1 Availability

In 2007, the Parliamentary Counsel Office (PCO) purchased an online database of New Zealand legislation from Brookers.[17] This became <legislation.govt.nz>, and today the site provides free digital versions of all primary legislation. The online versions have official status, with PCO ensuring Acts are up-to-date with all amendments. As shown below, the number of users accessing the website continues to grow significantly. The migration of the statute book online represents a landmark in accessibility efforts to date, and efforts to

[15] Email from Gillian McIlraith (Communications Adviser, Parliamentary Counsel Office) regarding New Zealand Legislation website user statistics (8 August 2017).

[16] Information gathered from <legislation,govt.nz> home page.

[17] Interview with S Murray and J Price (staff members at PCO) regarding Parliamentary Counsel Office processes and plain English drafting (17 August 2017).

improve availability continue with plans to publish all subordinate legislation on the site under the Access to Subordinate Instruments Project.[18]

Figure 1: Average Monthly Unique Visitors to the New Zealand Legislation Website[19]

Given that there is not a significant problem with the availability component of accessibility, focus will be placed on the latter two components below.

2 Navigability

In 2008, the Commission considered the statute book to be difficult to navigate not only because of its size, but also because of its lack of logical order.[20]

Legislation is ordered chronologically, based on time of passage, rather than by subject matter (as is the case in legislative codes such as those in American states), and legislation suffers from "legislative sprawl", whereby the law on any one topic might not be encapsulated in one Act but located across several. The Commission considered this to create difficulty locating relevant law, particularly given that "in many circumstances, users will not know what Act they are looking for or when it may have been passed."[21] Unless clear from the title of an Act, users are unlikely to look anywhere other than the most obvious Act, and "there is a significant 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".[22]

The Commission found the existing navigation aids insufficient to overcome the difficulties caused by the order of the statute book,[23] recommending the introduction of an official index

[18] Parliamentary Counsel Office "2016 Annual Report" (31 October 2016) <www.pco.govt.nz>.

[19] Parliamentary Counsel Office "2016 Annual Report" (31 October 2016).

[20] NZLC R104, above n 14 at 35.

[21] At 36.

[22] NZLC R104, above n 14 at 39.

[23] At 39.

to alleviate the problems stemming from legislative sprawl, and a programme of revision and consolidation to gather law spread across numerous Acts into one statute. [24] While the revision programme has now produced one statute, an index has never been introduced, and accordingly, little has changed in relation to navigability since the 2008 report.

One will notice the Law Commission referred frequently to the statute 'book' – which makes sense given that legislation had predominantly been accessed in hard copy. Today, with the vast majority of users accessing legislation via the website, the term 'statute book' is somewhat stretched; it is more appropriate to think of the statute book as an online database – a collection of digital documents hosted at an online domain.

Accordingly, a key navigation aid presently available is the website's search function. Where a user knows an Act's title, it is simple to locate it using the search tool. Search by subject matter is not available however, and where a user does not know all the statutes implicated in a legal problem, they are likely to struggle to locate all relevant law. While the search function does enable searching Acts' content, it only produces results for words that appear specifically in-text, and cannot produce results for variants or related searches. For example, one cannot search "fired" and be referred to the Employment Relations Act because, even though "fired" is a variant of "dismissal", it does not appear in any provisions. This also makes it difficult for a layperson, who may be unaware of legal terminology, to locate relevant provisions.

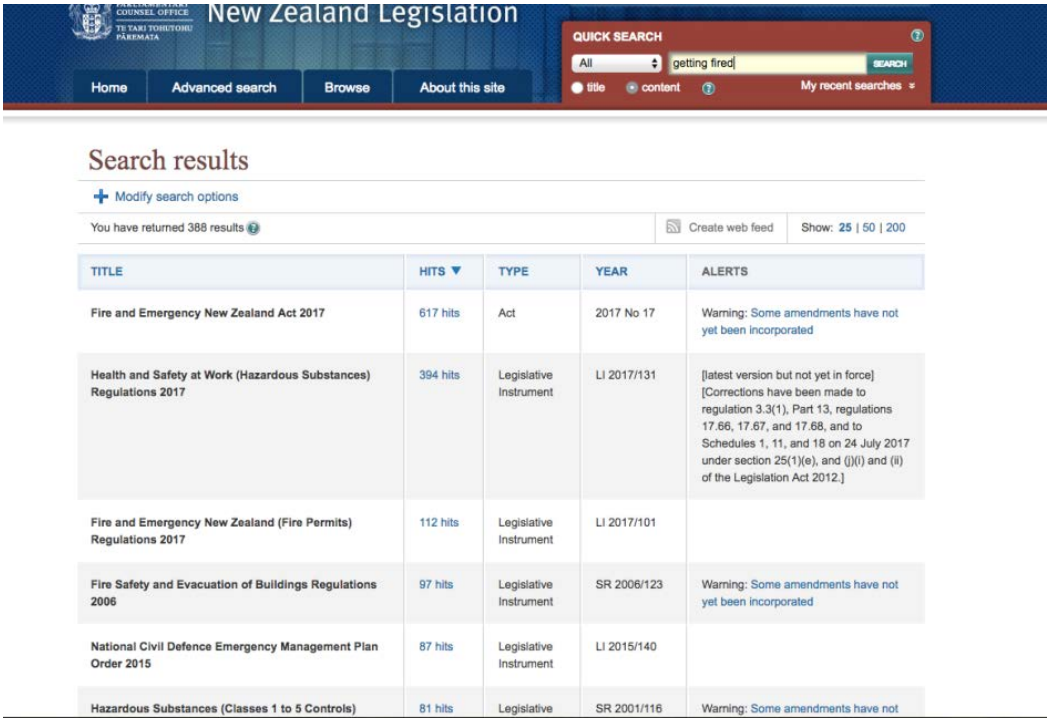

Figure 2: NZL Search Results for "Getting Fired"

[24] At 48.

Another navigation tool available is the 'browse' function, which provides an up-to-date alphabetised list of statutes. As identified by the Commission, Acts' titles seldom give a comprehensive indication of their contents, and a navigation tool based solely on titles is of limited utility.[25]

Together the navigation aids are workable, but leave much to be desired in terms of easily locating all relevant law on a subject. A user is more likely to locate all relevant law by using a generic search engine such as Google, and reading guidance on other websites referring to relevant legislation.

Not only can it be difficult to navigate the overall statute book, but it can be difficult to navigate the scheme of an Act. Legislative schemes often suffer from illogical ordering of provisions and sections. An example of such a scheme is the Accident Compensation Act 2001. Dr. Bevan Marten describes his experience teaching the complex provisions to law students,[26]

> The basic structure of the cover provisions requires a type of personal injury to have been suffered (for example, a physical injury or a mental injury), followed by a causation element (for example, caused by an accident or by medical treatment). However, the current iteration of these provisions is overly complex. Students can draw comfort from the fact the Chief Justice herself has criticised the Act as not being easy to follow: "[i]t contains much cross-referencing, repetition, and circularity of expression". Numerous exceptions, qualifications, and amendments are also thrown into the mix.…
>
> … This level of complexity might be permissible in a more obscure and specialist area of the law, but the ACC cover provisions touch the lives of most New Zealanders at one time or another. Given the ACC scheme is designed to remove lawyers from the picture, the legislation's goals have failed if they are not accessible to the average reader. ….

One might assume navigation difficulties would naturally affect non-legally trained users more than lawyers. However, user-testing undertaken by the United Kingdom's Office of Parliamentary Counsel (OPC) found that most users (including barristers) considered statute architecture to be frustrating and convoluted, involving lots of "going backward and forward", consequently making legislation difficult to read.[27] Many users could not properly navigate a statute, and lacked knowledge of what elements of the statute were, such as sections and schedules.[28] Beyond this, users struggle to know when an Act should be read with regard to another piece of legislation, or when to refer to an Act's interpretation section for defined words.

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[25] NZLC R104, above n 14, at 39.

[26] B Marten "ACC's Cover provisions need a makeover" (2016) NZLJ [2016] 223 at 223.

[27] Office of the Parliamentary Counsel When Laws Become Too Complex: A review into the causes of complex legislation (March 2013) at 19.

[28] At 19.

New Zealand does not yet have empirical evidence to indicate a navigability problem exists like the United Kingdom, however it is reasonable to assume that such research, as well as consultation with experts such as law professors, would reveal similar findings. While the revision and consolidation programme underway at PCO is making progress toward improved navigability of the statute book, progress is slow, and revision alone will not remedy the significant navigability problem– a great deal more must be done.

3 Clarity

Given the wide readership of legislation, "clarity" is an ambiguous term; the requirements for 'clear' legislation are likely to vary significantly for different users, who each have different familiarity with legislation and therefore different needs. A lawyer, who has been taught how to read legislation, may consider law to be sufficiently clear, when someone who has not received such an education will consider it to be complex and opaque. A Member of Parliament has entirely different needs – they need clarity in order to understand how they are changing the law. It is therefore necessary to determine what 'clarity' means. Does it simply require the language used in provisions to be grammatically correct with readable font? Does the scheme of the act need to be clear? Or does it require the meaning of the law and its application to be clear? If so, does it require indications where other Acts, definitions, and even judge-made precedents are relevant? And does the requirement for clarity also extend to bills?

In accordance with its statutory functions, the Law Commission has consistently emphasised the 'understandability' of legislation.[29] Given the ambiguity of 'clarity', it is helpful to use 'understandability' as a substitute; this is certainly an interpretation consistent with the rule of law, which requires that the law be intelligible to those who must obey it.[30]

OPC's research revealed that the comprehension level of legislative texts by both legally qualified and non-legally qualified users was generally quite low and all users found it challenging to read legislation and demonstrate their understanding of it.[31]

Throughout its reports, the Commission placed importance on increasing plain language drafting of legislation to improve readers' understanding.[32] Today PCO has an organisation-wide focus on plain language across all communications,[33] and a chapter of its drafting manual devoted to clear drafting, with all new legislation to be drafted in plain language.[34] Additionally, certain innovations are being used to make legislation easier to understand,

[29] Law Commission Act 1985 s5(1)(d).

[30] Lord Bingham "What is the Law?" (2008 Robin Cooke Lecture, Victoria University of Wellington, 4 December 2008) at 597.

[31] OPC, above n27 at 19.

[32] NZLC R104, above n 14, at 42.

[33] Interview with S Murray and J Price, above n 17.

[34] Parliamentary Counsel Office "Principles of Clear Drafting" <www.pco.gov.nz>.

such as the use of examples for illustrative purposes. Though it will take time for this approach to filter down through drafts people, it will do so eventually, saturating the approach to drafting. However, simply increasing plain English drafting is not enough to ensure a high-quality statute book,[35] and it does not aid the complexity of older Acts which were not drafted with such an approach.

It is useful to illustrate a lack of understandability with an example. Below is a provision from the Residential Tenancies Act 1986, which is one of the ten most-accessed statutes. This important provision establishes the conditions in which tenancies may be terminated. Some of the conditions are relatively understandable, but consider paragraphs (a) and (b). Upon reading these provisions, do you understand the conditions under which a tenancy may be terminated?

Termination of tenancies and recovery of possession

50 Circumstances in which tenancies are terminated

Subject in the case of a subtenancy to section 57, no tenancy to which this Act applies shall terminate or be terminated otherwise than as follows:

(a) in the case of a fixed-term tenancy, on the expiry of the term of the tenancy or, if any of sections 58(1)(d), (da), 59, or 59A apply, by giving notice in accordance with the applicable section:

(ab) on the death of a sole tenant under a tenancy agreement or a sole tenant under a boarding house tenancy agreement, in accordance with section 50A or 66W, as the case requires:

(b) by the giving of notice of a period no shorter than that required by this Act, in the case of a periodic tenancy or where provision is made in the tenancy agreement for termination by notice:

(c) where the tenant acquires the landlord's interest in the premises:

(d) where the tenant surrenders the tenancy, or delivers up vacant possession of the premises, to the landlord with the landlord's written consent:

(e) by disclaimer, by any person having lawful power to disclaim:

(f) by order of the Tribunal pursuant to the powers conferred on it by this Act.

Compare: Residential Tenancies Act 1978–1981 s 61(1) (SA)

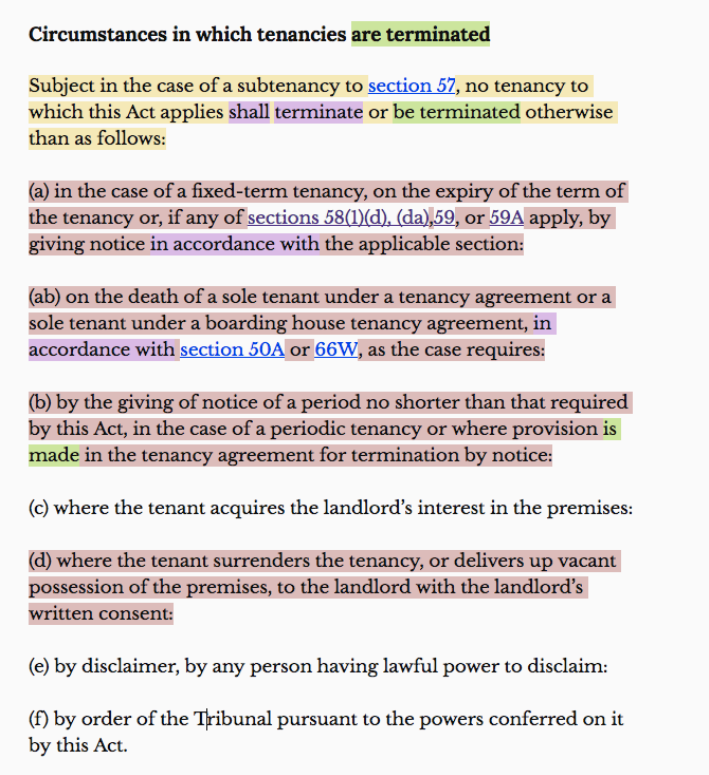
Section 50(a): replaced, on 1 October 2010, by section 31 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Section 50(ab): inserted, on 1 October 2010, by section 31 of the Residential Tenancies Amendment Act 2010 (2010 No 95).

Figure 3: Residential Tenancies Act 1986, s 50

Paragraph (a) refers the reader to four different sections that may apply without any indication of the content of the provisions, while paragraph (b) requires the "giving of a notice no shorter than required by this Act", but does not specify how long that period is. Additionally, when run through a basic online 'readability tool', five of nine paragraphs are hard or very hard to read, as shown by red and yellow highlighted text below. For a provision that has a fundamental impact on tenants' rights, it could certainly be easier to understand and apply.

[35] G Palmer "Improving the Quality of Legislation - The Legislation Advisory Committee, The Legislation Design Committee and What Lies Beyond?" (2007) 15 Wai L Rev 12 at 14.



Circumstances in which tenancies are terminated

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(ab) on the death of a sole tenant under a tenancy agreement or a sole tenant under a boarding house tenancy agreement, in accordance with section 50A or 66W, as the case requires:

(b) by the giving of notice of a period no shorter than that required by this Act, in the case of a periodic tenancy or where provision is made in the tenancy agreement for termination by notice:

(c) where the tenant acquires the landlord's interest in the premises:

(d) where the tenant surrenders the tenancy, or delivers up vacant possession of the premises, to the landlord with the landlord's written consent:

(e) by disclaimer, by any person having lawful power to disclaim:

(f) by order of the Tribunal pursuant to the powers conferred on it by this Act.

Figure 4: Readability of s 50 according to HemingwayApp.com

In considering whether legislation is understandable, it is important to note the increasing collection of guidance on legal rights and obligations, written by regulatory agencies or those with a legal aid focus. Guidance communicates important legal information in effective and dynamic ways to those for whom it is relevant. For example, <employment.govt.nz>, run by the Ministry of Business, Innovation and Employment, explains employment law in ordinary terms. The Ministry for Primary Industries now provides an online tool that guides traders through several questions to determine their relevant legal obligations under the Food Act 2014, and packages the results as a Template Food Plan that is simple and practical.[36] Additionally, third sector providers such as the Citizens' Advice Bureau and Community Law provide simple guidance on various areas of law, with increasing use of innovative technology such interactive chatbots, like 'Wagbot'.[37]

[36] Ministry for Primary Industries "Where Do I Fit?" (26 May 2017) <mpi.govt.nz>.

[37] New Zealand Law Society "Community Law launches legal application for schools" (18 May 2017) <lawsociety.org.nz>.

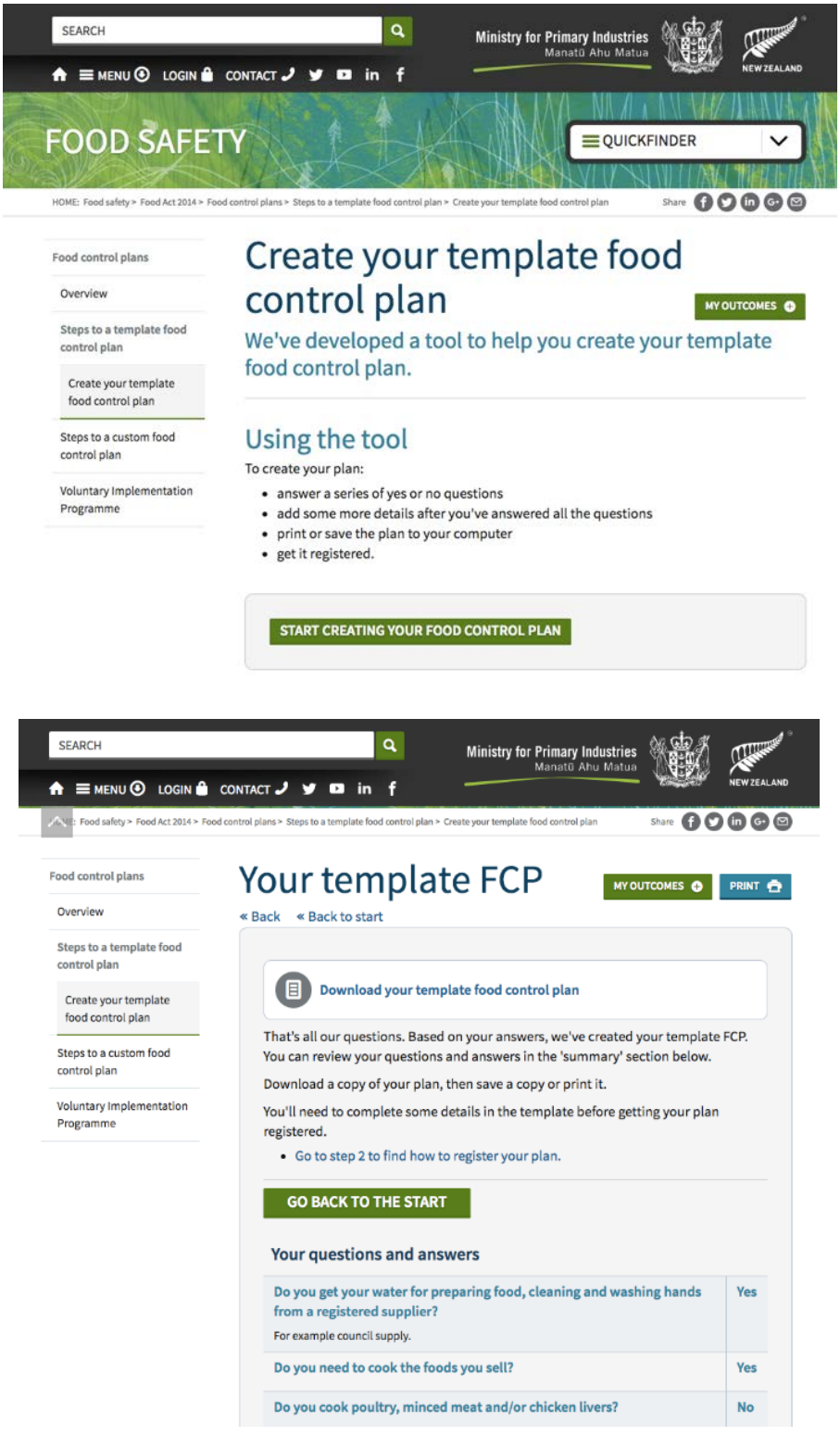

Figure 5: MPI's Online Food Plan Tool

Figure 6: Template Food Control Plan

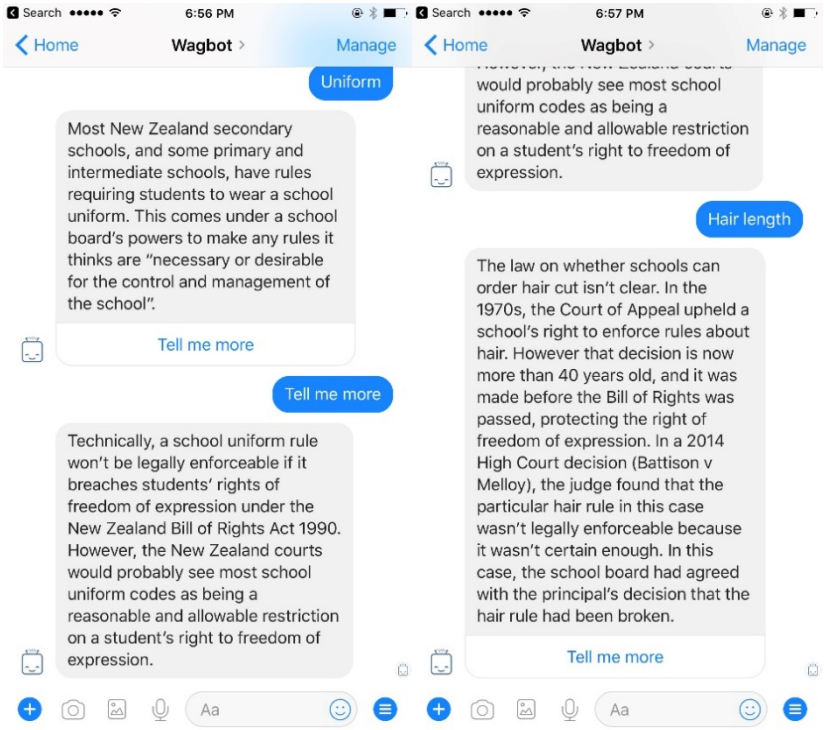

Figure 7: Wagbot Facebook Chat

With good guidance available on the law, one might consider making legislation understandable to be redundant. Assuming that users can find it,[38] clear guidance does go some way to remedy problems of complex legislation, but it nevertheless raises rule of law questions. How much does the rule of law depend on legislation itself being understandable?

[38] User research undertaken by the United Kingdom Office of the Parliamentary Counsel revealed many users found it difficult to find reliable explanatory information and relevant guidance; OPC, above n 27, at 28.

How important is the understandability of primary legislative texts if the law is understood generally?

Opinions on these questions may be influenced by whether one conceives of legislation as a "container for information", or a "communicator of information".[39] If one considers legislation to be merely a 'container', then only its legal effect matters; if readers struggle to understand it, that is a problem they must solve, either by reading guidance, or paying a lawyer to 'translate' the law for them. In contrast, if one considers legislation to be a 'communicator of information', that communication is fundamentally undermined if the audience does not understand; from this perspective, the fact secondary guidance must be prepared in order for legal obligations to be understood is a manifestation of the problem.

Guidance is not available on all legislation, but even when it is this can raise issues when guidance takes an interpretation of legislation that may be arguable.[40] Crucially, legislative text holds authority that guidance simply cannot, and if some readers can only understand explanatory guidance, equality before the law is undermined. Lord Bingham has identified the importance of this authoritative status, particularly in the context of business, and businesses will expend great resource to ascertain the effect of legislation.[41] This can represent a significant and ongoing cost; thus legislation that is difficult to understand therefore impacts productivity. Additionally, legislation that is difficult to understand and use can make regulation seem more burdensome than it really is, undermining trust in the legal system.[42] Additionally, some readers risk breaching the law, rather than attempting to understand it, which dilutes the credibility of legislation.[43]

Lord Bingham considered that, with statute law being the primary source of law in New Zealand, statutes themselves must be as clear and intelligible as the subject matter permits. [44] One can imagine that if the subject matter permits clear guidance to be prepared, it is likely the enactment itself could be more understandable. Throughout their reports, it is clear the Commission considers it is important that users can understand legislation itself, and PCO undoubtedly considers legislation is a "communicator" to readers, rather than a "container" to be 'translated' into guidance.[45] Explanatory material is certainly useful, but legislation should be understandable even when standing alone. Additionally, significant resources are spent on preparing guidance, which could be spent elsewhere if legislation itself was understandable.

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[39] R Waller *Layered Formats for Legal Information* (Simplification Centre, University of Reading, 2014).

[40] Above n 17.

[41] Lord Bingham, above n 30, at 598.

[42] OPC, above n27, at 28.

[43] OPC, above n27, at 30.

[44] Lord Bingham, above n 30at 600.

[45] Interview with S Murray and J Price, above n 17.

Interestingly, in contrast to some overseas jurisdictions, the New Zealand government has no statutory obligation to make legislation understandable.[46] However, if the current design and presentation of legislation creates a barrier to citizens' understanding of the law, putting a distance between the "ordinary" citizen and the legal system, this represents a significant problem for the rule of law in New Zealand.[47] As the Law Commission writes, [48]

> Everyone is presumed to know the law; citizens must obey it and ignorance is not an excuse. Accordingly, they need to be able to find the law and understand it. They will not respect it if they cannot.

Legislation that is not understandable impacts experiences of engaging with government, of realising legal rights, creates challenges for self-represented litigants, and damages productivity. New Zealand parliamentarians, officials, and drafts people do not set out to enact laws that are confusing or obscure, nor do they set out to deliberately impose unnecessary productivity costs on users, but this has been the effect of the strategy to date.[49] Lord Oliver of Aylmerton wrote: [50]

> For every legislative enactment constitutes a diktat by the state to the citizen which he is not only expected but obliged to observe in the regulation of his daily life... That is why it is so vitally important that legislation should be expressed in language that can be clearly understood and why it should be 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.

Despite the lack of New Zealand-based empirical research, it is clear we still face a significant accessibility problem. Simply put, legislation must improve.

III How Did We Get Here?

The question arises: how, in 2017, do we find ourselves with legislation that is still complex, convoluted, and difficult to understand and use? The legislation we are familiar with in New Zealand has evolved gradually, and insights into the state of the statute book today can be gleaned by examining its history.

New Zealand's first ordinances were drafted by William Swainson, our first Attorney General, in collaboration with the Chief Justice Sir William Martin, modelled on English enactments.[51] From 1900-1916 Solicitor-General William Joliffe prepared 5 volumes of the 1908 Consolidated Statutes. Evidently it is in these statutes that the 'look' we are now

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[46] NZLC R104, above n 14 at 20

[47] NZLC IP2, above n 4 at 9.

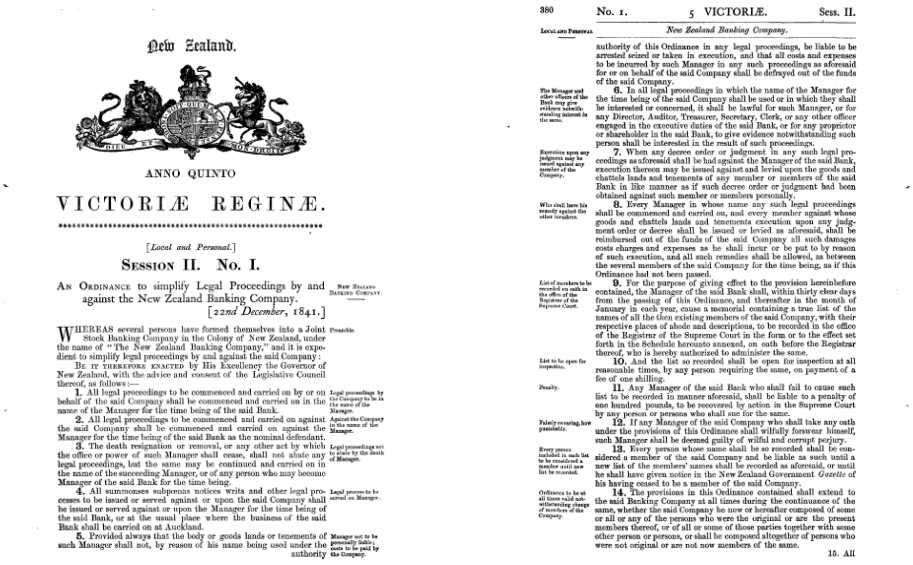
[48] NZLC R104, above n 14 at 3.

[49] G Tanner, above n 10 at 52.

[50] Lord Oliver of Aylmerton "A Judicial View of Modern Legislation" (1993) 14 *Statute Law Review* 1 at 2.

[51] TY Chan "Changes in Form of New Zealand Statutes" (1975) 8 VUWLR 318 at 320.

familiar with in New Zealand began to emerge,[52] but a modern reader looking back at a 1908 Act will notice considerable differences to today's statutes, with less 'white space', more densely-formatted text, and fewer headings. By 1970 certain design elements had evolved, such as the introduction of bold headings, and the removal of marginal notes.



New Zealand.

ANNO QUINTO

VICTORIÆ REGINÆ.

[*Local and Personal.*]

SESSION II. No. I.

AN ORDINANCE to simplify Legal Proceedings by and against the New Zealand Banking Company. [*22nd December*, 1841.]

WHEREAS several persons have formed themselves into a Joint Stock Banking Company in the Colony of New Zealand, under the name of "The New Zealand Banking Company," and it is expedient to simplify legal proceedings by and against the said Company: BE IT THEREFORE ENACTED by His Excellency the Governor of New Zealand, with the advice and consent of the Legislative Council thereof, as follows:—

1. All legal proceedings to be commenced and carried on by or on behalf of the said Company shall be commenced and carried on in the name of the Manager for the time being of the said Bank.

2. All legal proceedings to be commenced and carried on against the said Company shall be commenced and carried on against the Manager for the time being of the said Bank as the nominal defendant.

3. The death resignation or removal, or any other act by which the office or power of such Manager shall cease, shall not abate any legal proceedings, but the same may be continued and carried on in the name of the succeeding Manager, or of any person who may become Manager of the said Bank for the time being.

4. All summonses subpœnas notices writs and other legal processes to be issued or served against or upon the said Company shall be issued or served against or upon the Manager for the time being of the said Bank, or at the usual place where the business of the said Bank shall be carried on at Auckland.

5. Provided always that the body or goods lands or tenements of such Manager shall not, by reason of his name being used under the authority

380 No. 1. 5 VICTORIÆ. Sess. II.

New Zealand Banking Company.

authority of this Ordinance in any legal proceedings, be liable to be arrested seized or taken in execution, and that all costs and expenses to be incurred by such Manager in any such proceedings as aforesaid for or on behalf of the said Company shall be defrayed out of the funds of the said Company.

6. In all legal proceedings in which the name of the Manager for the time being of the said Company shall be used or in which they shall be interested or concerned, it shall be lawful for such Manager, or for any Director, Auditor, Treasurer, Secretary, Clerk, or any other officer engaged in the executive duties of the said Bank, or for any proprietor or shareholder in the said Bank, to give evidence notwithstanding such person shall be interested in the result of such proceedings.

7. When any decree order or judgment in any such legal proceedings as aforesaid shall be had against the Manager of the said Bank, execution thereon may be issued against and levied upon the goods and chattels lands and tenements of any member or members of the said Bank in like manner as if such decree order or judgment had been obtained against such member or members personally.

8. Every Manager in whose name any such legal proceedings shall be commenced and carried on, and every member against whose goods and chattels lands and tenements execution upon any judgment order or decree shall be issued or levied as aforesaid, shall be reimbursed out of the funds of the said Company all such damages costs charges and expenses as he shall incur or be put to by reason of such execution, and all such remedies shall be allowed, as between the several members of the said Company for the time being, as if this Ordinance had not been passed.

9. For the purpose of giving effect to the provision hereinbefore contained, the Manager of the said Bank shall, within thirty clear days from the passing of this Ordinance, and thereafter in the month of January in each year, cause a memorial containing a true list of the names of all the then existing members of the said Company, with their respective places of abode and descriptions, to be recorded in the office of the Registrar of the Supreme Court in the form or to the effect set forth in the Schedule hereunto annexed, on oath before the Registrar thereof, who is hereby authorized to administer the same.

10. And the list so recorded shall be open for inspection at all reasonable times, by any person requiring the same, on payment of a fee of one shilling.

11. Any Manager of the said Bank who shall fail to cause such list to be recorded in manner aforesaid, shall be liable to a penalty of one hundred pounds, to be recovered by action in the Supreme Court by any person or persons who shall sue for the same.

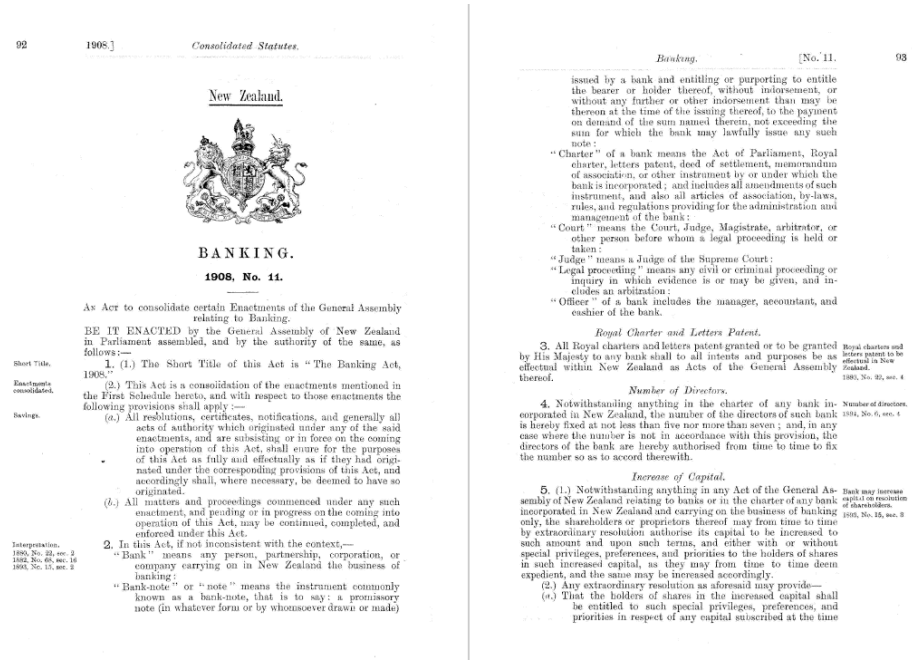
12. If any Manager of the said Company who shall take any oath under the provisions of this Ordinance shall wilfully forswear himself, such Manager shall be deemed guilty of wilful and corrupt perjury.

13. Every person whose name shall be so recorded shall be considered a member of the said Company and be liable as such until a new list of the members' names shall be recorded as aforesaid, or until he shall have given notice in the New Zealand Government *Gazette* of his having ceased to be a member of the said Company.

14. The provisions in this Ordinance contained shall extend to the said Banking Company at all times during the continuance of the same, whether the said Company be now or hereafter composed of some or all or any of the persons who were the original or are the present members thereof, or of all or some of those parties together with some other person or persons, or shall be composed altogether of persons who were not original or are not now members of the same.

15. All

Figure 8: New Zealand Banking Company Ordinance 1841



92 1908.] *Consolidated Statutes.*

New Zealand.

BANKING.

1908, No. 11.

AN ACT to consolidate certain Enactments of the General Assembly relating to Banking.

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title.

1. (1.) The Short Title of this Act is "The Banking Act, 1908."

Enactments consolidated.

(2.) This Act is a consolidation of the enactments mentioned in the First Schedule hereto, and with respect to those enactments the following provisions shall apply:—

Savings.

(*a.*) All resolutions, certificates, notifications, and generally all acts of authority which originated under any of the said enactments, and are subsisting or in force on the coming into operation of this Act, shall continue for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.

(*b.*) All matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

Interpretation. 1889, No. 22, sec. 2; 1892, No. 68, sec. 16; 1895, No. 15, sec. 2

2. In this Act, if not inconsistent with the context,—

"Bank" means any person, partnership, corporation, or company carrying on in New Zealand the business of banking:

"Bank-note" or "note" means the instrument commonly known as a bank-note, that is to say: a promissory note (in whatever form or by whomsoever drawn or made)

Banking. [No. 11. 93

issued by a bank and entitling or purporting to entitle the bearer or holder thereof, without indorsement, or without any further or other indorsement than may be thereon at the time of the issuing thereof, to the payment on demand of the sum named therein, not exceeding the sum for which the bank may lawfully issue any such note:

"Charter" of a bank means the Act of Parliament, Royal charter, letters patent, deed of settlement, memorandum of association, or other instrument by or under which the bank is incorporated; and includes all amendments of such instrument, and also all articles of association, by-laws, rules, and regulations providing for the administration and management of the bank:

"Court" means the Court, Judge, Magistrate, arbitrator, or other person before whom a legal proceeding is held or taken:

"Judge" means a Judge of the Supreme Court:

"Legal proceeding" means any civil or criminal proceeding or inquiry in which evidence is or may be given, and includes an arbitration:

"Officer" of a bank includes the manager, accountant, and cashier of the bank.

Royal Charter and Letters Patent.

Royal charters and letters patent to be effectual in New Zealand. 1860, No. 32, sec. 4

3. All Royal charters and letters patent granted or to be granted by His Majesty to any bank shall to all intents and purposes be as effectual within New Zealand as Acts of the General Assembly thereof.

Number of Directors.

Number of directors. 1894, No. 6, sec. 4

4. Notwithstanding anything in the charter of any bank incorporated in New Zealand, the number of the directors of such bank is hereby fixed at not less than five nor more than seven; and, in any case where the number is not in accordance with this provision, the directors of the bank are hereby authorised from time to time to fix the number so as to accord therewith.

Increase of Capital.

Bank may increase capital on resolution of shareholders. 1895, No. 15, sec. 3

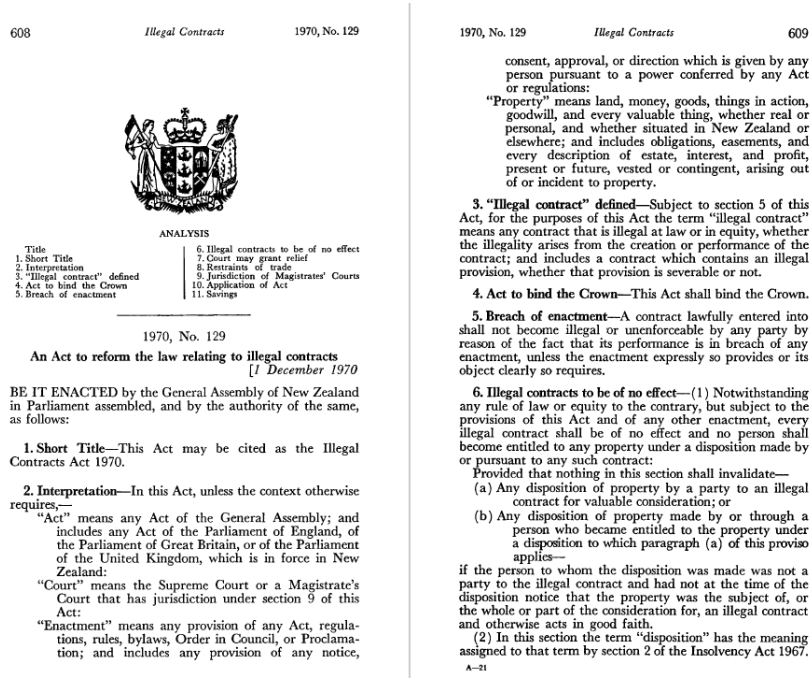
5. (1.) Notwithstanding anything in any Act of the General Assembly of New Zealand relating to banks or in the charter of any bank incorporated in New Zealand and carrying on the business of banking only, the shareholders or proprietors thereof may from time to time by extraordinary resolution authorise its capital to be increased to such amount and upon such terms, and either with or without special privileges, preferences, and priorities to the holders of shares in such increased capital, as they may from time to time deem expedient, and the same may be increased accordingly.

(2.) Any extraordinary resolution as aforesaid may provide—

(*a.*) That the holders of shares in the increased capital shall be entitled to such special privileges, preferences, and priorities in respect of any capital subscribed at the time

Figure 9: Banking Act 1908

[52] At 321.



608 *Illegal Contracts* 1970, No. 129

ANALYSIS

Title
1. Short Title
2. Interpretation
3. "Illegal contract" defined
4. Act to bind the Crown
5. Breach of enactment
6. Illegal contracts to be of no effect
7. Court may grant relief
8. Restraints of trade
9. Jurisdiction of Magistrates' Courts
10. Application of Act
11. Savings

1970, No. 129

An Act to reform the law relating to illegal contracts
[*1 December 1970*

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

1. Short Title—This Act may be cited as the Illegal Contracts Act 1970.

2. Interpretation—In this Act, unless the context otherwise requires,—
"Act" means any Act of the General Assembly; and includes any Act of the Parliament of England, of the Parliament of Great Britain, or of the Parliament of the United Kingdom, which is in force in New Zealand:
"Court" means the Supreme Court or a Magistrate's Court that has jurisdiction under section 9 of this Act:
"Enactment" means any provision of any Act, regulations, rules, bylaws, Order in Council, or Proclamation; and includes any provision of any notice,

1970, No. 129 *Illegal Contracts* 609

consent, approval, or direction which is given by any person pursuant to a power conferred by any Act or regulations:
"Property" means land, money, goods, things in action, goodwill, and every valuable thing, whether real or personal, and whether situated in New Zealand or elsewhere; and includes obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incident to property.

3. "Illegal contract" defined—Subject to section 5 of this Act, for the purposes of this Act the term "illegal contract" means any contract that is illegal at law or in equity, whether the illegality arises from the creation or performance of the contract; and includes a contract which contains an illegal provision, whether that provision is severable or not.

4. Act to bind the Crown—This Act shall bind the Crown.

5. Breach of enactment—A contract lawfully entered into shall not become illegal or unenforceable by any party by reason of the fact that its performance is in breach of any enactment, unless the enactment expressly so provides or its object clearly so requires.

6. Illegal contracts to be of no effect—(1) Notwithstanding any rule of law or equity to the contrary, but subject to the provisions of this Act and of any other enactment, every illegal contract shall be of no effect and no person shall become entitled to any property under a disposition made by or pursuant to any such contract:
Provided that nothing in this section shall invalidate—
(a) Any disposition of property by a party to an illegal contract for valuable consideration; or
(b) Any disposition of property made by or through a person who became entitled to the property under a disposition to which paragraph (a) of this proviso applies—
if the person to whom the disposition was made was not a party to the illegal contract and had not at the time of the disposition notice that the property was the subject of, or the whole or part of the consideration for, an illegal contract and otherwise acts in good faith.
(2) In this section the term "disposition" has the meaning assigned to that term by section 2 of the Insolvency Act 1967.

A—21

Figure 10: Illegal Contracts Act 1970

In 1975 one legal scholar considered New Zealand could be "justifiably proud of its statutes", and that, among Commonwealth jurisdictions, the standard of presentation in New Zealand was one of the highest and the drafting style as good as any.[53] However, he identified that there had been "a number of calls for the simplification of statutes";[54]

> The layman knows when he is reading a statute (or any legal document). There is a distinct legal ring about the language. This is a product of the combination in such documents of firstly, the use of archaic English and Latin words, and secondly, giving common words an uncommon meaning
>
> …. While New Zealand statutes have improved noticeably over the years to the point where at least some of them are readable in a lay sense, progress has been extremely slow. The changes are often hard to detect and the development still far from adequate.…Whether statutes can or should ever be simplified to the point where a layman can read them easily is perhaps a moot point, but it is generally agreed that at least they should not be more complicated than is absolutely necessary.
>
> … The present format has been used for about 120 years, and whilst it is the best present format, it may need to be changed to meet the requirements of changing times. More and more people without legal training are now seeking to understand statutes for themselves. For this reason, as well as for those already discussed there has perhaps to be some change in emphasis.

[53] Chan, above n51 at 336.

[54] At 341.

Interestingly, despite his criticisms of the complexity of legislation, Chan considered,

> In presentation and form the improvements made to New Zealand statutes have probably reached their ultimate. Following the introduction of Arabic numerals in 1969, very little else needs to be done to the existing format, which with its economy of dots and dashes is both neat and effective. In this, it is as good as any in the world.

While Chan considered modernisation would be worthwhile, he identified "nothing in the statutes of today to suggest any radical movement for change in the future."[55]

It is worth pausing here to remark on this author's conclusion. Chan identified a significant problem, being the complexity of legislation and calls for simplification, and identified the potential need for change to ensure those without legal training could understand statutes for themselves. He proceeded, however, to suggest the presentation and form of legislation had "reached its ultimate", and was quick to dismiss any move for change.

One can glean from these statements the first of several key issues with New Zealand's approach to legislation to date: we have been too rooted in the tradition of what legislation 'should' look like, and we have been far too easily pleased. As Chan identified, it is essential that laypeople are able to understand the law. This may well require a radical shift in our conceptions and expectations of legislation. We should not constrain ourselves in terms of what might be achievable in the future by suggesting that a flawed situation is 'good enough'.

Shortly after the publication of this article, Sir Kenneth Keith wrote on the size and shape of the New Zealand statute book, considering it to be enormous, the language obscure, and its structure illogical and unhelpful.[56] Some years later, in 1985, the newly-created Law Commission was tasked with advising on ways in which the law could be made as "understandable and accessible as is practicable", with "regard to the desirability of simplifying the expression and content of the law".[57] Specifically, the Commission was to examine and review (among other things) the language and structure of legislation, arrangements for the systematic monitoring and review of legislation, and to recommend changes as appropriate to the relevant law and practice.[58]

In *Legislation and its Interpretation* the Commission discussed the publication and physical availability of legislation, emphasising the importance of making the law available to those who are governed by it and who must comply with it.[59] The Commission proceeded to

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[55] Chan, above n 51 at 342.

[56] KJ Keith "A Lawyer Looks at Parliament" in Sir John Marshall (ed.) *The Reform of Parliament: Contributions by Dr Alan Robinson and Papers Presented in his Memory* (New Zealand Institute of Public Administration, Wellington, 1978) 26 at 27.

[57] Sections 5(1)(d), 5(2) Law Commission Act 1985

[58] Law Commission "Terms of reference" Legislation and its Interpretation <lawcom.govt.nz>.

[59] Law Commission *Legislation and its Interpretation* (NZLC R17, 1990) at 4.

identify that availability alone is insufficient; those who are expected to know, obey, apply, and advise on law must be helped so far as possible to understand it.[60] In 1993 the Commission identified that understanding could be enhanced in a number of ways, with improvements to both the substance and the appearance of the text, and it explored the latter of these in *The Format of Legislation.* This report explored the layout and language of legislation, and echoed increasing recognition overseas that "the physical appearance of legislation is an important factor affecting access to law".[61]

The Commission engaged consultants with experience in design and typography, looked to other jurisdictions and legislation published by commercial producers, and consulted widely, before concluding improvements to the design and typography of legislation could make it more accessible and easily understood.[62] The Commission illustrated its recommended changes in a sample statute, a page of which is provided below**.** The new format would feature: clearer language and structure; a new typeface; more white space; definitions; increased use of notes to sections and cross-references to other Acts, cases or reports of law reform where relevant; schedules; examples, and an index. Visual clutter would be reduced through the omission of certain elements, such as the long title which was considered to no longer serve any useful function[63] Although not included in its recommendations, the Commission also considered various devices including flow charts, diagrams, and formulas, would assist readers' comprehension.[64] The Commission proposed the changes be implemented through introduction of standard rules for drafting, which would speed up the drafting process and make legislation easier to use.[65]

[60] At 4.

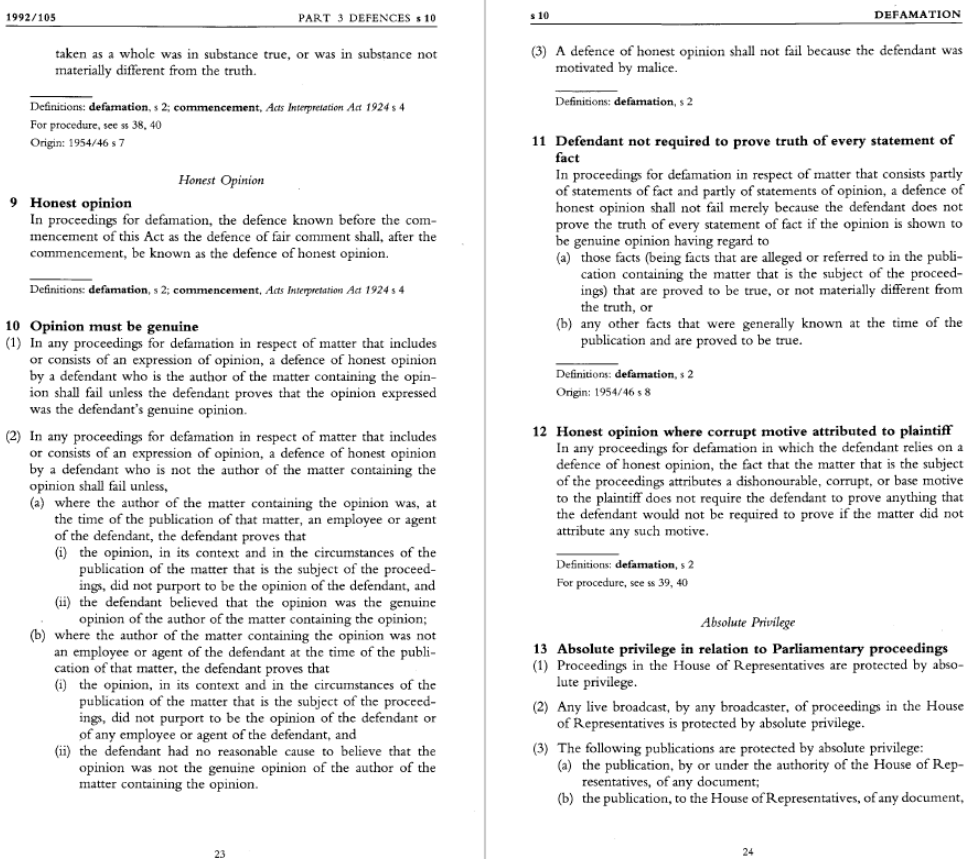
[61] Law Commission *Format of Legislation* (NZLC R27, 1993) at iv.

[62] At 5.

[63] NZLC R27 above n 61, 25

[64] At 43.

[65] At 2.



1992/105 PART 3 DEFENCES s 10

taken as a whole was in substance true, or was in substance not materially different from the truth.

Definitions: **defamation**, s 2; **commencement**, *Acts Interpretation Act 1924* s 4
For procedure, see ss 38, 40
Origin: 1954/46 s 7

Honest Opinion

9 Honest opinion
In proceedings for defamation, the defence known before the commencement of this Act as the defence of fair comment shall, after the commencement, be known as the defence of honest opinion.

Definitions: **defamation**, s 2; **commencement**, *Acts Interpretation Act 1924* s 4

10 Opinion must be genuine
(1) In any proceedings for defamation in respect of matter that includes or consists of an expression of opinion, a defence of honest opinion by a defendant who is the author of the matter containing the opinion shall fail unless the defendant proves that the opinion expressed was the defendant's genuine opinion.

(2) In any proceedings for defamation in respect of matter that includes or consists of an expression of opinion, a defence of honest opinion by a defendant who is not the author of the matter containing the opinion shall fail unless,
(a) where the author of the matter containing the opinion was, at the time of the publication of that matter, an employee or agent of the defendant, the defendant proves that
(i) the opinion, in its context and in the circumstances of the publication of the matter that is the subject of the proceedings, did not purport to be the opinion of the defendant, and
(ii) the defendant believed that the opinion was the genuine opinion of the author of the matter containing the opinion;
(b) where the author of the matter containing the opinion was not an employee or agent of the defendant at the time of the publication of that matter, the defendant proves that
(i) the opinion, in its context and in the circumstances of the publication of the matter that is the subject of the proceedings, did not purport to be the opinion of the defendant or of any employee or agent of the defendant, and
(ii) the defendant had no reasonable cause to believe that the opinion was not the genuine opinion of the author of the matter containing the opinion.

23

s 10 DEFAMATION

(3) A defence of honest opinion shall not fail because the defendant was motivated by malice.

Definitions: **defamation**, s 2

11 Defendant not required to prove truth of every statement of fact
In proceedings for defamation in respect of matter that consists partly of statements of fact and partly of statements of opinion, a defence of honest opinion shall not fail merely because the defendant does not prove the truth of every statement of fact if the opinion is shown to be genuine opinion having regard to
(a) those facts (being facts that are alleged or referred to in the publication containing the matter that is the subject of the proceedings) that are proved to be true, or not materially different from the truth, or
(b) any other facts that were generally known at the time of the publication and are proved to be true.

Definitions: **defamation**, s 2
Origin: 1954/46 s 8

12 Honest opinion where corrupt motive attributed to plaintiff
In any proceedings for defamation in which the defendant relies on a defence of honest opinion, the fact that the matter that is the subject of the proceedings attributes a dishonourable, corrupt, or base motive to the plaintiff does not require the defendant to prove anything that the defendant would not be required to prove if the matter did not attribute any such motive.

Definitions: **defamation**, s 2
For procedure, see ss 39, 40

Absolute Privilege

13 Absolute privilege in relation to Parliamentary proceedings
(1) Proceedings in the House of Representatives are protected by absolute privilege.

(2) Any live broadcast, by any broadcaster, of proceedings in the House of Representatives is protected by absolute privilege.

(3) The following publications are protected by absolute privilege:
(a) the publication, by or under the authority of the House of Representatives, of any document;
(b) the publication, to the House of Representatives, of any document,

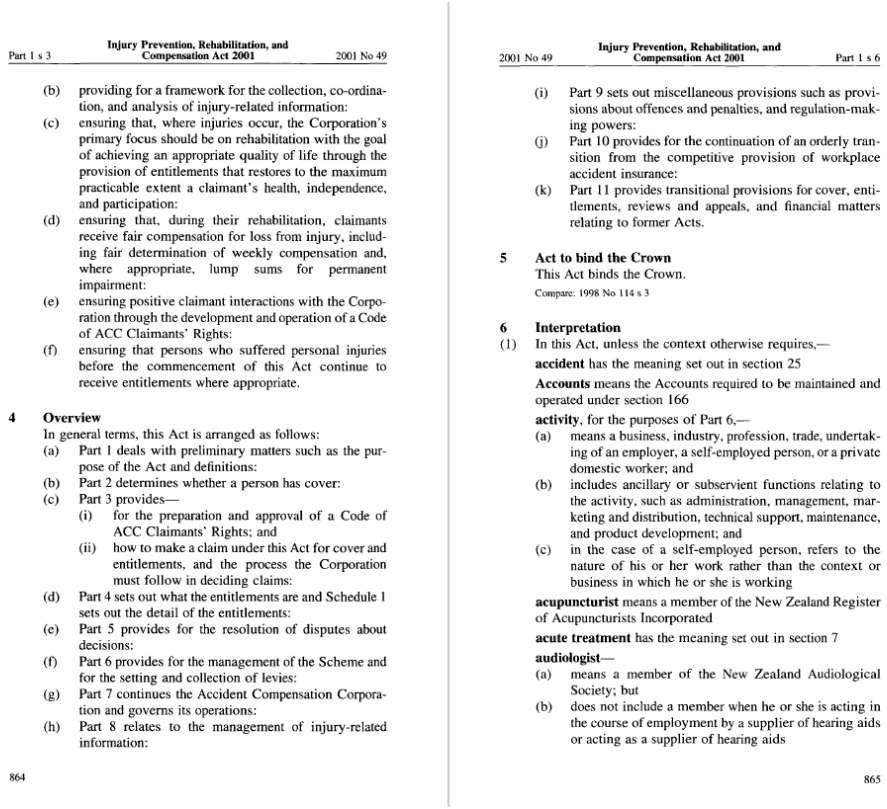
24

Figure 11: Pages from the Commission's Sample Defamation Act

The Commission's proposals were affirmed by PCO following the adoption of "Changes on Drafting Style in Legislation" by motion of the House on 13 March 1997.[66] A new legislation format was introduced on 1 January 2000.[67] A significant change in legislation can be noticed after this point, with legislation looking more like the format we recognise today, however, while some of the recommended changes are noticeable, the more promising proposals, such as the indication of defined terms, and use of flowcharts, have never been implemented.

[66] Law Commission "Government Response to R35" Legislation Manual <lawcom.govt.nz>.

[67] Parliamentary Counsel Office "Archived PCO Editorial Conventions for Reprints" <pco.govt.nz>.



Part 1 s 3 — Injury Prevention, Rehabilitation, and Compensation Act 2001 — 2001 No 49

(b) providing for a framework for the collection, co-ordination, and analysis of injury-related information:
(c) ensuring that, where injuries occur, the Corporation's primary focus should be on rehabilitation with the goal of achieving an appropriate quality of life through the provision of entitlements that restores to the maximum practicable extent a claimant's health, independence, and participation:
(d) ensuring that, during their rehabilitation, claimants receive fair compensation for loss from injury, including fair determination of weekly compensation and, where appropriate, lump sums for permanent impairment:
(e) ensuring positive claimant interactions with the Corporation through the development and operation of a Code of ACC Claimants' Rights:
(f) ensuring that persons who suffered personal injuries before the commencement of this Act continue to receive entitlements where appropriate.

4 Overview

In general terms, this Act is arranged as follows:
(a) Part 1 deals with preliminary matters such as the purpose of the Act and definitions:
(b) Part 2 determines whether a person has cover:
(c) Part 3 provides—
(i) for the preparation and approval of a Code of ACC Claimants' Rights; and
(ii) how to make a claim under this Act for cover and entitlements, and the process the Corporation must follow in deciding claims:
(d) Part 4 sets out what the entitlements are and Schedule 1 sets out the detail of the entitlements:
(e) Part 5 provides for the resolution of disputes about decisions:
(f) Part 6 provides for the management of the Scheme and for the setting and collection of levies:
(g) Part 7 continues the Accident Compensation Corporation and governs its operations:
(h) Part 8 relates to the management of injury-related information:

864

2001 No 49 — Injury Prevention, Rehabilitation, and Compensation Act 2001 — Part 1 s 6

(i) Part 9 sets out miscellaneous provisions such as provisions about offences and penalties, and regulation-making powers:
(j) Part 10 provides for the continuation of an orderly transition from the competitive provision of workplace accident insurance:
(k) Part 11 provides transitional provisions for cover, entitlements, reviews and appeals, and financial matters relating to former Acts.

5 Act to bind the Crown

This Act binds the Crown.

Compare: 1998 No 114 s 3

6 Interpretation

(1) In this Act, unless the context otherwise requires,—

accident has the meaning set out in section 25

Accounts means the Accounts required to be maintained and operated under section 166

activity, for the purposes of Part 6,—
(a) means a business, industry, profession, trade, undertaking of an employer, a self-employed person, or a private domestic worker; and
(b) includes ancillary or subservient functions relating to the activity, such as administration, management, marketing and distribution, technical support, maintenance, and product development; and
(c) in the case of a self-employed person, refers to the nature of his or her work rather than the context or business in which he or she is working

acupuncturist means a member of the New Zealand Register of Acupuncturists Incorporated

acute treatment has the meaning set out in section 7

audiologist—
(a) means a member of the New Zealand Audiological Society; but
(b) does not include a member when he or she is acting in the course of employment by a supplier of hearing aids or acting as a supplier of hearing aids

865

Figure 12: New PCO Legislation Format 2001

Again, it is worth pausing here to comment. The responsibility inherited by the Law Commission was (and is) one of vital significance. This responsibility can be essentially expressed as making the law understandable to as many New Zealanders as possible, and the Commission made a fundamental insight when recognising the design and presentation of legislation influences readers' understandings of law. The Commission's recommendations were well-researched and held great promise for making legislation more understandable, but it appears that only the more modest proposals were implemented – those that did not significantly alter the traditional appearance of legislation. The implemented recommendations such as typeface, white space, and the omission of visual clutter, while useful, can be perceived as superficial 'Band-Aid fixes' that simply made difficult text slightly more visually appealing.

Beyond this, it may still be argued that the Commission's recommendations, on the whole, were fairly modest, largely revolving around the existing format. It's possible the instruction to review the 'language and structure' of legislation was too narrow, limiting the Commission somewhat in the types of recommendations it could make. In this sense, the Commission had been subtly directed toward the kind of answer it should be looking for; it is possible that a more open-ended enquiry such as "why don't ordinary readers understand legislation?" might have led to more radical recommendations. The qualifier "as far as is practicable" may also have confined conceptions of how legislation could feasibly be experienced, suggesting (as identified by Chan), that there would always be some matters too complex for an ordinary

reader to understand. Perhaps a key factor in the modesty of these recommendations was that, because legislation was more difficult to access, most readers were legally trained, and were accustomed to the way legislation had looked for many years, but this cannot be stated with certainty. The Commission's report held potential to meaningfully alter New Zealanders' experiences of legislation, but unfortunately it was an opportunity missed.

Since 2007, following the landmark migration of legislation online, legislation has been accessible as HTML with hyperlinked cross references, or downloadable in PDF format. This change revolutionised practice for many New Zealand professionals, and dramatically improved the accessibility of legislation. As identified above, in 2008 the Commission published *The Presentation of New Zealand Statute Law*, making various recommendations to improve the availability, clarity and navigability of statute law. In respect of navigability and clarity, the Commission considered significant progress had been made, but there was room for improvement given that it was often very difficult for lay people, and even for experts, to find legislation, and to understand it once they had found it.[68] Recommendations included the creation of an index, the establishment of a programme of systematic revision to improve the coherence of legislation, and modernising expression to be plainer and more consistent.[69]

While the Commission's recommendations were well-reasoned, in hind sight, they can be criticised as unexceptional.[70] The movement of law online held huge promise for addressing the host of issues the Commission identified, but the majority of their recommendations focused on the change for physical and electronic availability. Although clarity and navigability were identified as important components of accessibility, electronic options for improving these components were barely discussed. The timing of this review presented the Commission with the opportunity to investigate all the unharnessed capability of the web to provide users of legislation with an experience that was intuitive, engaging, and that added value. Instead, the Commission's recommendations largely discussed New Zealand statute law as though it were still hard-copy, reconfirming ideas such as an official index, rather than making recommendations about the information architecture of the legislation website, and the digital possibilities that would improve the ability of users to both find and understand legislation.

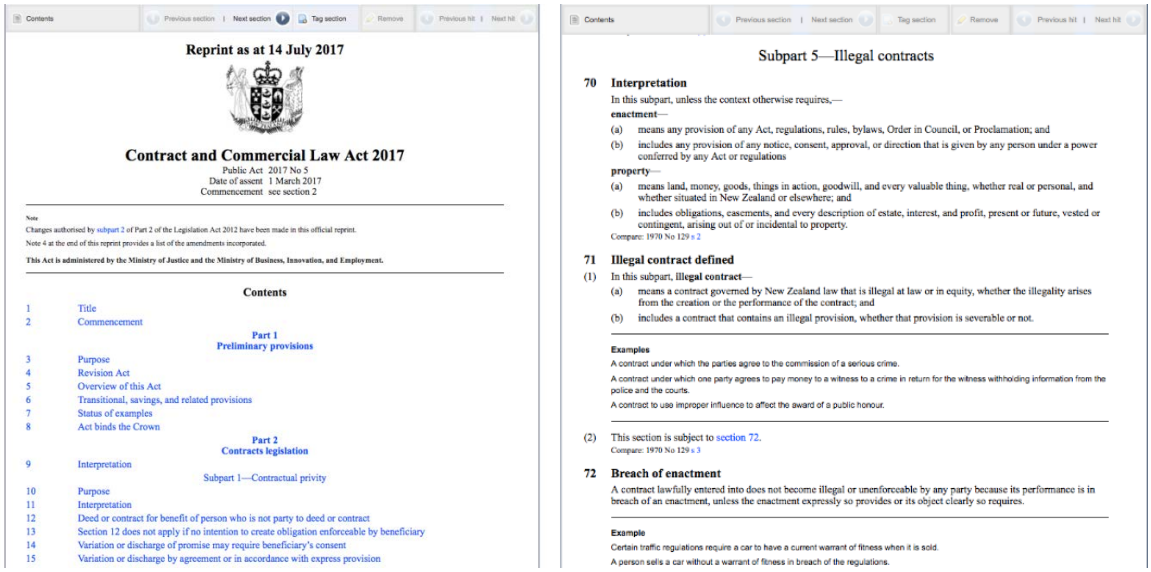
Following the Commission's recommendation, the Legislation Act 2012 established a revision programme for the modernisation and consolidation of older statutes. This year the first of these revised consolidations, the Contracts and Commercial Law Act 2017 came into force. The Act consolidated 11 statutes, some of which dated back to 1908, and represented

[68] NZLC R104, above n 14 at 3.

[69] At 10.

[70] M Curtotti, and E McCreath "Enhancing the Visualisation of Law" (paper presented to the Law via the Internet Twentieth Anniversary Conference, Cornell University, October 2012) at 6.

the first major statute law revision exercise by any government for over 100 years.[71] The programme promises to be a vital tool in removing obsolete legislation and ensuring consistency of law within the statute book.



Reprint as at 14 July 2017

Contract and Commercial Law Act 2017

Public Act 2017 No 5
Date of assent 1 March 2017
Commencement see section 2

Note
Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This Act is administered by the Ministry of Justice and the Ministry of Business, Innovation, and Employment.

Contents

1 Title
2 Commencement
Part 1
Preliminary provisions
3 Purpose
4 Revision Act
5 Overview of this Act
6 Transitional, savings, and related provisions
7 Status of examples
8 Act binds the Crown
Part 2
Contracts legislation
9 Interpretation
Subpart 1—Contractual privity
10 Purpose
11 Interpretation
12 Deed or contract for benefit of person who is not party to deed or contract
13 Section 12 does not apply if no intention to create obligation enforceable by beneficiary
14 Variation or discharge of promise may require beneficiary's consent
15 Variation or discharge by agreement or in accordance with express provision

Subpart 5—Illegal contracts

70 Interpretation
In this subpart, unless the context otherwise requires,—
enactment—
(a) means any provision of any Act, regulations, rules, bylaws, Order in Council, or Proclamation; and
(b) includes any provision of any notice, consent, approval, or direction that is given by any person under a power conferred by any Act or regulations
property—
(a) means land, money, goods, things in action, goodwill, and every valuable thing, whether real or personal, and whether situated in New Zealand or elsewhere; and
(b) includes obligations, easements, and every description of estate, interest, and profit, present or future, vested or contingent, arising out of or incidental to property.
Compare: 1970 No 129 s 2

71 Illegal contract defined
(1) In this subpart, illegal contract—
(a) means a contract governed by New Zealand law that is illegal at law or in equity, whether the illegality arises from the creation or the performance of the contract; and
(b) includes a contract that contains an illegal provision, whether that provision is severable or not.

Examples
A contract under which the parties agree to the commission of a serious crime.
A contract under which one party agrees to pay money to a witness to a crime in return for the witness withholding information from the police and the courts.
A contract to use improper influence to affect the award of a public honour.

(2) This section is subject to section 72.
Compare: 1970 No 129 s 3

72 Breach of enactment
A contract lawfully entered into does not become illegal or unenforceable by any party because its performance is in breach of an enactment, unless the enactment expressly so provides or its object clearly so requires.

Example
Certain traffic regulations require a car to have a current warrant of fitness when it is sold.
A person sells a car without a warrant of fitness in breach of the regulations.

Figure 13: The Contract and Commercial Law Act 2017 in HTML format.

In 2014, the Legislation Advisory Guidelines, first produced in 1987, were revised. Overseen by the Legislation Design and Advisory Committee (LDAC), these guidelines are intended to be the key point of reference for Ministers and Departments when preparing draft legislation or instructions for drafters. [72] While they provide some advice on matters such as ensuring existing legislation has been considered, much of the guidance is based on how to design legislative content with regard to particular legal and policy considerations such as treaties and the Bill of Rights Act. The guidelines recognise the rule of law as "the most fundamental constitutional principle in New Zealand law", and that the "law must be clear, accessible, and apply to everyone", but do not provide any practical guidance on what "clear, accessible" law means.[73] Nor do they provide advice on processes such as pre-legislative consultation with readers of an Act, or the use of innovative aids for understanding such as examples, or flowcharts.

Today PCO "champions the accessibility of legislation, which includes concern for the logical structure, ordering and readability of the statute book as a whole".[74] PCO has a strategic focus on legislative stewardship, which means the organisation aims to ensure New

[71] Parliamentary Counsel Office "Revision Programme" <pco.govtnz>.

[72] Legislation Design Advisory Committee "LAC Guidelines on Process and Content of Legislation (2014 edition)".

[73] At 12.

[74] The Treasury "Support for Good Legislative Design" (28 July 2016) <treasury.govt.nz>.

Zealand's current and future laws are accessible, constitutionally sound, and fit for purpose.[75] This underpins a focus on continuous improvement of New Zealand legislation, the presentation of which continues to evolve gradually, with incremental innovations such as the increasing use of illustrative examples (as visible in the CCLA above), dual language, and shading of provisions to be inserted into other Acts in amendment statutes. [76] Despite PCO's legislative stewardship strategy, it is arguable that we have been, and continue to be, too constrained in our thinking about legislation. The revision programme is fundamentally intended to make legislation clearer and easier to navigate, and certainly, this first revision does make the law on contract and commercial law easier to access. The project itself holds great promise for making the statute book more navigable, however revisions take a long time, and the statutes themselves still conform to conservative conceptions of legislation, with only incremental developments in presentation. The website has limited functionality, and this is especially apparent when comparing it to other New Zealand government and parliamentary websites. Legislation.govt.nz could be significantly more intuitive, engaging, and valuable for interactions with legislation.

Throughout this evolution, a number of moments can be identified when actors had the opportunity to explore more radical change. However, at no point have we questioned what the spectrum of users really need, and whether the traditional format we seem so committed to delivers that. Today we are left with electronic legislation, that is increasingly written in plain English, but that translates most of the old problems of the hard-copy statute book into the online realm – a realm with so many more tools available for improving the experience. Upon reflection, a dominant approach to legislation can be detected, one that is deeply rooted in traditional conceptions of statute law; one that sees legislation as a document setting out legal rules to be complied with, rather than forming part of users' journeys through what are fundamentally legal problem-solving tasks; one that still operates on an understanding of 'us' (legally-trained users) and 'them', but without a truly clear understanding of who 'they' are, and what 'they' really want or need.

In *The Structure of Scientific Revolutions*, Thomas Kuhn popularised the term "paradigm shift".[77] In the scientific world, a paradigm shift is tantamount to a major conversion experience. Kuhn considered shifts become necessary when the previous paradigm is so damaged that patchwork "fixes" no longer suffice, and a once-threatening overhaul now represents a lifeline.[78]

We find ourselves at precisely such a moment in respect of legislation and the legal system. The old Band-Aid 'fixes' are no longer working. In an overall system where courts are over

[75] F Leonard "December 2016: Editorial" PCO Quarterly <www.pco.govt.nz>.

[76] Interview with S Murray and J Price, above n 17.

[77] T Kuhn *The Structure of Scientific Revolutions* (University of Chicago Press, Chicago, 1962).

[78] R Rohr and M Morrell *The Divine Dance* (Kindle ed., SPCK, 2016).

burdened with self-represented litigants with an incomplete understanding of the law, [79] where legal aid isn't available for all those who need it, where 'ordinary people' can't afford legal advice,[80] and where New Zealand's productivity remains well below that of leading OECD countries;[81] we must not consider 'accessibility' to have been achieved simply because legislation is available online and increasingly written in plain English. In a country that prides itself on the openness and transparency of its government; and in a unitary system with only four million possible readers, the majority of whom are likely to struggle to understand a statute – we need to do better.

Recent years have seen the birth of a movement focused on redesigning legal systems to improve access to justice and make engaging with the legal system an empowering rather than bewildering experience. There is no longer any excuse for legislation that users can't understand or use. The old approach to legislation is not serving New Zealanders – it is time for a paradigm shift.

IV Reimagining Law: A Paradigm Shift

In contrast to statutes constrained by traditional formats, that require users to work around their complexities and niche conventions, one can imagine legislation intentionally designed to meet the needs of many users – creating a statute book that is not only accessible, but also valuable, engaging and empowering.

This new paradigm has been emerging for some time and a revolution is already underway. This movement has significant links to human-centred design, which places users at the centre of efforts to redesign processes and phenomena in order to increase usefulness, usability, and desirability.[82] Below, the key tenets of the emerging field known as 'legal design' are explored.

A Learning from Legal Design

Design processes are increasingly applied to solve problems and innovate in diverse fields such as law, education, management, public policy, and health. The application of design processes in these novel areas has come to be known as 'design-thinking'. A significant literature has grown on the subject, and design-thinking is now taught at design schools and institutes around the world, such as the d.school at Stanford University.

'Legal design' is the term given to the application of design-thinking to legal phenomena such as court processes, legal drafting, and contractual documents. Stefania Passera and

[79] New Zealand Law Society "Does self-representation provide access to justice?" (16 March 2015) <lawsociety.org.nz>.

[80] T McClure "Legal Aid Funding Limits Creating 'Justice Gap'" *The Press* (New Zealand, 18 July 2014).

[81] OECD (2017) *OECD Economic Surveys: New Zealand 2017* (OECD Publishing, Paris June 2017) at 11.

[82] M Hagan *Law by Design* (online ed., 2017) <lawbydesign.co> at ch. 1.

Helena Haapio are well known for their work on improving the visualisation of contracts through the application of information design principles, while Margaret Hagen, a professor at the d.school's Legal Design Lab, and author of "Law by Design" is known for her work on technology for improving access to justice. In particular, legal design places a focus on increasing comprehension and empowerment for all users of legal services. Hagan writes, [83]

> In contrast to many other kinds of design, legal design is focused not so much on persuading users to consume a product or an experience, or on feeling a particular emotion. Rather, it is about increasing a person's capacity to make strategic decisions for herself. Legal design aims to build environments, interfaces and tools that support people's smartness — and shift the balance between the individual and the bureaucracy.

According to Hagan, legal design has a number of goals. Firstly, legal design aims to assist both the layperson and the legal professional to improve their comprehension of rules, and increase their power to navigate the legal system in a strategic way.[84] For the layperson, this requires asking "how can we make her smarter, more empowered and in control of the complexities of her legal matters, and the laws that apply to her?", and for the lawyer, "how can we support her so that she can practice law better and serve clients in a richer and more efficient way?"[85]

Secondly, legal design aims to create a better "front-end" and "back-end" of the legal system.[86] Legal design focuses on improving the legal system itself, and on building layers on the system, making it more understandable and accessible to laypeople.[87] In other words, it uses design-thinking to build interfaces and tools that better support people to navigate the legal system, and uses those same thinking processes to create more intuitive rules and systems at the "back-end".

Legal design sees phenomena in the context of users' problem-solving journeys through the overall legal system. This is consistent with the 'four orders of design' framework, which identifies that while changes at a graphic, industrial, or interaction level are all valuable, ultimately "systems-level" thinking is necessary in order to achieve meaningful solutions. [88] Focusing on making more usable documents or services isn't enough to see large-scale systemic change – rather, it is necessary to consider how the overall system works, and how users' experiences of various phenomena encountered throughout their journey could be more easy, integrated, and empowering.[89] Accordingly, legal design aims for both

[83] M Hagan above n 82 at ch. 1.

[84] At ch 1.

[85] At ch. 1.

[86] At ch 4.

[87] At ch 4.

[88] R Buchanan "Design Research and the New Learning" (2001) 17 Design Issues 3 at 10.

[89] Hagan, above n 82, at ch 1.

incremental short term improvements and breakthrough long term change, at any of the four levels, but especially at the level of system-change.

In accordance with these goals, the types of questions legal design asks include:[90]

- "How can we present complex information simply? What tools can be used?"
- "How can we simplify processes by which a user can accomplish a legal task?"
- "How can we increase normal people's trust and engagement in the legal system?"

B The New Paradigm for Legislation

Applying this lens to legislation, the new paradigm becomes clear. Legislation must be viewed as a product that is encountered in a user's problem solving journey through an overall legal system. We must reconsider how legislative design can ensure both laypeople and legal professionals are supported, equipped, and empowered to understand and apply the law through interfaces that provide the appropriate depth of detail for varied users. Simultaneously, it is necessary to reconsider the underlying processes that create complex, convoluted legislation in the first place. Finally, we must be open to both incremental and radical change on the path to better legislation.

The consequences of such a paradigm shift are staggering. Legislation that is understandable and usable will increase comprehension and empowerment, and should therefore increase the fulfillment of legal rights and change the balance of power between unequally weighted parties. Legislation designed around users could prevent more disputes from reaching already over-burdened courts, and increase trust in government and the legal system.[91] Legislation designed for its users sends a message that government genuinely wants the reader to comprehend the Act, thereby enhancing its credibility and increasing the likelihood that people will feel confident when looking for an answer in the statute book.

This paradigm will also have benefits for productivity. In 2014, the Productivity Commission published a number of findings on the challenges that poorly-designed legislation creates for business, considering New Zealand's productivity to require more coherent, clear, and simple law.[92] In 1993, the Law Commission identified,[93]

> …The democratic, social and economic benefits of clearer, more accessible legislation and proposed legislation are obvious. In some contexts, the financial savings have been quantified: they can be significant, and they continue to grow, For example, between 1982 and 1990 the British Government is said to have saved £15 million by redesigning some of its forms.

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[90] At ch. 1.

[91] OPC, above n 27, at 28.

[92] *Regulatory Institutions and Practices* (The New Zealand Productivity Commission, June 2014 at [16.1]-[16.2].

[93] NZLC R27 above n 61 at 2.

The new paradigm is consistent with PCO's legislative stewardship role, and with the government's desire to be more "open, accountable, and responsive to citizens" as part of the Open Government Partnership.[94] New Zealand has committed to "increasing access to information and legislation" given that "access to the law is central to the rule of law".[95] Roderick MacDonald identified that law reform agencies have "not yet fully exploited the capacity of legislation to educate, to incite debate, to guide, and to empower".[96] Designing legislation around the needs of users is the best possible method of meeting these goals, and can be part of an overall strategy for making the whole legal and government system more simple and accessible**.** It's time for legislation that empowers New Zealanders, by allowing the full spectrum of users to solve their legal problems supported by legislation that is both understandable and usable.

V Legislation that Empowers: A Design-Driven Approach

New Zealand has the potential to be a world leader in delivering understandable, usable, and empowering legislation. The new paradigm is heavily influenced by insights from human-centred design. It is therefore necessary to ask, what does it mean to take a design-driven approach?

People frequently associate 'design' with graphic design, considering it to be predominantly about improving the visual appearance of documents, thereby reducing the discipline to aesthetics, such as font choice or colour.[97] While appearance is certainly a focus of design, it is just one aspect of what design can offer. Design is a philosophy, discipline, and practice that is fundamentally about problem-solving to improve experiences of a wide variety of products. The objective is to create things that are intuitive and valuable to the people that use them, which can be measured by usability, utility, and engagement.

A The Centrality of the User

The fundamental tenet of human-centred design is that problems are best solved by observing and understanding the user, paying attention to how they use things, deriving insights about their needs, and using creative, collaborative methods to improve their experience of a product.[98] A 'user' can be defined as "anyone exposed to interaction with a product or service."[99] Only through close partnership with the ultimate consumer is it possible to build a

[94] Open Government Partnership New Zealand "Improving Access to Legislation" <www.ogp.org.nz>.

[95] OGPNZ, above n 94.

[96] MacDonald, above n 2 at 888.

[97] Hagan, above n 82 at ch. 1.

[98] T Brown *Change by Design* (HarperCollins, London, 2009) at 136.

[99] S Mettinen "Who are these Service Designers?" in M Stickdorn and J Schneider (eds.) *This is Service Design Thinking* (BIS Publishers, New Jersey, 2011) at 58/59.

comprehensive understanding of contexts in which users interact with the product, and ways in which their unmet needs can be addressed.[100]

Legislation is a particularly complex phenomenon given the multiplicity of users. As has been discussed, legislation is not just used by lawyers, but by a host of people and with varying levels of frequency, whether that be for work, personal matters, or simply out of interest. Users include business people, public servants, enforcers, lawyers, judges, politicians, students, and private individuals. These users have different familiarity with the law and different needs in relation to understanding and using it. In order to meaningfully improve legislation, it is vital to understand each user group's different needs and where legislation is currently falling short in relation to them.

B Ethnographic Methods

Designers utilise ethnographic methods to better understand consumers of products, readers of information, and users of systems, and to reveal behaviour patterns and workflows when undertaking specific tasks in specific environments.[101] Such methods include: user journey mapping, which tracks a user through the stages of their experience of a product or interaction to reveal differences between users and opportunities for error or difficulty; shadowing stakeholders to understand their engagement with the product; contextual interviews; expectation maps; and pilot or beta studies.[102]

Insights from ethnographic research will be vital for obtaining meaningful insights into specific problems experienced by different users of legislation, and for determining focus points for development.

C Balancing the Needs of Many: Managing Tension

Not only is legislation accessed by different users, but legislation is also accessed for different reasons; different users access the same Act for different purposes. This has the potential to create difficulty in determining a solution that works for all users of the statute book.

Fortunately, design is predicated on holding in tension different needs and acknowledging constraints on phenomena to be redesigned. [103] Importantly, design acknowledges that there is no such thing as a universally perfect solution, and there is no such thing as a 'finished' product – it is necessary to engage in a process of constant iteration.[104]

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[100] At 58/59.

[101] G Van Dijk "Design Ethnography: Taking inspiration from everyday life" in M Stickdorn and J Schneider (eds) *This is Service Design Thinking* (BIS Publishers, New Jersey, 2011) at 108.

[102] G Van Dijk, B Raijmakers and L Kelly "What are the Tools of Service Design?" in M Stickdorn and J Schneider (eds) *This is Service Design Thinking* (BIS Publishers, New Jersey, 2011) at 150-213.

[103] T Brown above n 98 at 136.

[104] At 145.

D Multi-Disciplinary

Design is fundamentally inter- and multi-disciplinary.[105] It acknowledges the best solutions come from many minds, and therefore places emphasis on partnering with different disciplines. Because of its multidisciplinary nature, as well the four orders of design, design specialisations have emerged, each with a unique literature. The directions for development identified and discussed below will utilise insights from specialisations including information design and architecture; experience and interaction design; and web design.

E Humans First, Technology Second

It is vital to note that this approach is not technocentric. Human-centred design is a far more meaningful driver of innovation than technology, and is not so concerned by the means through which new processes are carried out, but by the experiences of the humans who will ultimately use these processes.[106] Design does, however, nevertheless consider technology to be a useful resource when it is the appropriate tool.

VI Directions for Development

There are a great variety of options for developing a more understandable and usable statute book, a selection of which are explored below. This portion of the paper is intentionally unbounded; with constraints on actors and institutions to be examined in the following section.

It is useful to focus on two key aspects discussed above in relation to the accessibility of legislation: clarity (or understandability), and navigability (or usability). Given that a clear majority of users now access legislation online, discussion revolves around electronic aspects of legislation, but users who prefer to print hard-copies are also considered. Developments are informed by user-research, and many are enabled by technological and digital affordances. Examples are provided where available, with samples from the Australian Federal Register of Legislation, the Canadian Justice Laws Website, The United Kingdom Legislation Website (with changes implemented through the Good Law Initiative), and the State Decoded – a United States-based start-up developing a platform for a more user-friendly method of displaying state codes.

A Plain Language

Although the use of plain language is vital to improve understanding, this aspect has received much attention, and a transition to plain English is already well underway in legislative drafting.[107] Accordingly, it is useful to spend time exploring other components that individually and collectively hold potential for more understandable and usable legislation.

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[105] Buchanan, above n 88 at 17.

[106] Hagan, above n 82, at ch. 4.

[107] G Palmer, above n 35, at 14.

B Visualisation

Information design fundamentally seeks to communicate information in an understandable way, for correct interpretation by intended audiences.[108] It differs from graphic design in that it seeks to present information for improved cognition, rather than beautifully or artistically.[109] Visualisation (that is, the use of visual aids such as layout and diagrams) is consistently reported in information design research to enhance users' cognition of texts.[110] Particularly complex Acts can be immensely confusing for users, and visualisation can provide a effective way of displaying different aspects of legislation. Many different methods of visualisation exist, from layout, to use of colour, to the inclusion of diagrams, illustrations, and flowcharts.

4 Layout

According to Rob Waller of the University of Reading's Simplification Centre, layout is an "important infrastructure for reading in an age when few make time to engage with long linear texts".[111] Much research has been undertaken on comprehension of texts when structural elements are laid out in certain ways. The nature of the reader's task is important; effective layout differs for different kinds of reading. For example, readers of novels engage in what is known as 'close' reading – in this context, the traditional layout of a novel (that is, simple, linear text) is appropriate.[112] In contrast, 'strategic' reading (reading to solve a problem or achieve a goal, for example, studying) requires different reading tactics.[113] The process of 'strategic reading' usually involves seeking out and assessing cross-references, annotating texts, and multitasking while reading, and readers benefit from information broken into chunks, with headings, illustrations, notes, and study aids.[114] Accordingly, textbook designers have learned to utilise certain structures and layouts to assist learners.[115]

Reading legislation is a strategic reading exercise, because readers study Acts in order to solve legal problems. Thus, at a graphic level, layout can be used to improve comprehension and assist readers in their problem-solving process.[116] In Waller's prototyped Education Act below, he uses layout elements including columns, lines, and a technique known as 'glossing', to separate provisions and display 'hidden' information in a more accessible and

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[108] R Pettersson "Information Design – Principles and Guidelines" (2016) 29 Journal of Visual Literacy 167 at 183.

[109] S Pontis "Defining Information Design" (11 February 2015) Mapping Complex Information <sheilapontis.wordpress.com>.

[110] Curtotti and McCreath, above n 70 at 3.

[111] R Waller "Graphic literacies for a digital age" in A Black, P Luna, O Lund and S Walker (eds) *Information design: research and practice* (Routledge, London, 2017) at 177.

[112] At 185.

[113] At 197.

[114] At 197.

[115] At 198.

[116] At 198.

user-friendly way.[117] Similar to techniques used by textbook designers, glosses making documents easier to understand through amplification, while retaining the integrity of the original text. Glosses help readers understand the text and give them a sense of support by defining terms, explaining exceptions and answering anticipated questions.[118] Typically glosses take the form of side-notes, footnotes or text boxes.

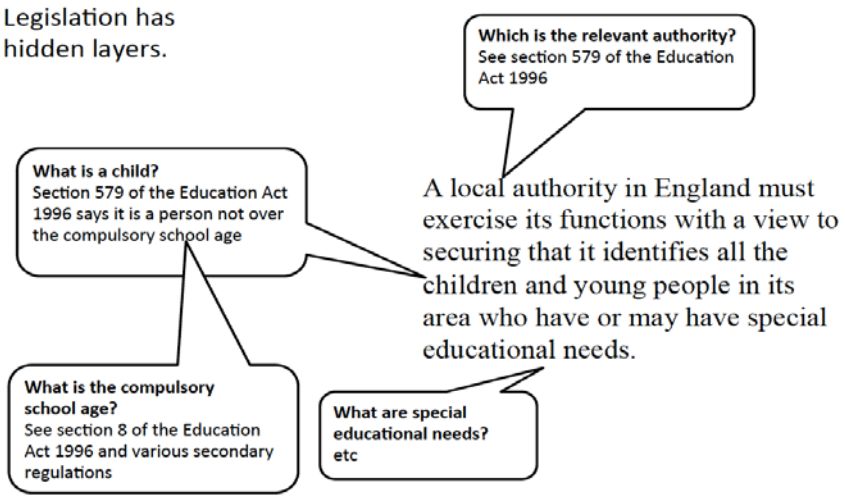
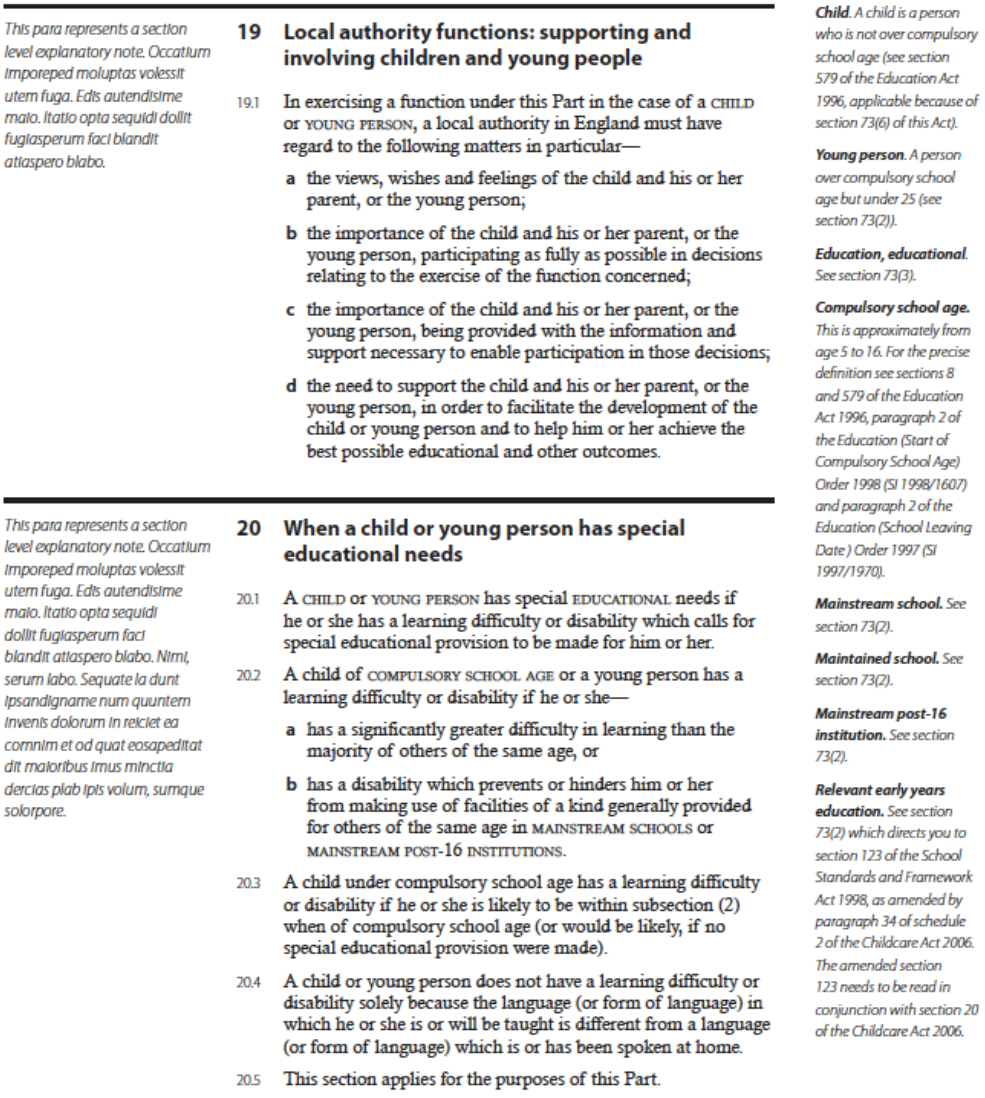


Figure 14: Waller's "hidden layers"

[117] R Waller *Layout for Legislation* (Simplification Centre, University of Reading, 2015).

[118] R Waller *Simplification: What is gained and what is lost* (Simplification Centre, University of Reading, 2011) at 15; and Waller, above n111 at 197.



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19 Local authority functions: supporting and involving children and young people

19.1 In exercising a function under this Part in the case of a CHILD or YOUNG PERSON, a local authority in England must have regard to the following matters in particular—

a the views, wishes and feelings of the child and his or her parent, or the young person;

b the importance of the child and his or her parent, or the young person, participating as fully as possible in decisions relating to the exercise of the function concerned;

c the importance of the child and his or her parent, or the young person, being provided with the information and support necessary to enable participation in those decisions;

d the need to support the child and his or her parent, or the young person, in order to facilitate the development of the child or young person and to help him or her achieve the best possible educational and other outcomes.

This para represents a section level explanatory note. Occatiurn imporeped moluptas volessit utem fuga. Edis autendisime maio. Itatio opta sequidi dollit fugiasperum faci blandit atiaspero blabo. Nimi, serum labo. Sequate la dunt ipsandigname num quuntem invenis dolorum in reiciet ea comnim et od quat eosapeditat dit maloribus imus minctia dercias plab ipis volum, sumque solorpore.

20 When a child or young person has special educational needs

20.1 A CHILD or YOUNG PERSON has special EDUCATIONAL needs if he or she has a learning difficulty or disability which calls for special educational provision to be made for him or her.

20.2 A child of COMPULSORY SCHOOL AGE or a young person has a learning difficulty or disability if he or she—

a has a significantly greater difficulty in learning than the majority of others of the same age, or

b has a disability which prevents or hinders him or her from making use of facilities of a kind generally provided for others of the same age in MAINSTREAM SCHOOLS or MAINSTREAM POST-16 INSTITUTIONS.

20.3 A child under compulsory school age has a learning difficulty or disability if he or she is likely to be within subsection (2) when of compulsory school age (or would be likely, if no special educational provision were made).

20.4 A child or young person does not have a learning difficulty or disability solely because the language (or form of language) in which he or she is or will be taught is different from a language (or form of language) which is or has been spoken at home.

20.5 This section applies for the purposes of this Part.

Child. *A child is a person who is not over compulsory school age (see section 579 of the Education Act 1996, applicable because of section 73(6) of this Act).*

Young person. *A person over compulsory school age but under 25 (see section 73(2)).*

Education, educational. *See section 73(3).*

Compulsory school age. *This is approximately from age 5 to 16. For the precise definition see sections 8 and 579 of the Education Act 1996, paragraph 2 of the Education (Start of Compulsory School Age) Order 1998 (SI 1998/1607) and paragraph 2 of the Education (School Leaving Date) Order 1997 (SI 1997/1970).*

Mainstream school. *See section 73(2).*

Maintained school. *See section 73(2).*

Mainstream post-16 institution. *See section 73(2).*

Relevant early years education. *See section 73(2) which directs you to section 123 of the School Standards and Framework Act 1998, as amended by paragraph 34 of schedule 2 of the Childcare Act 2006. The amended section 123 needs to be read in conjunction with section 20 of the Childcare Act 2006.*

Figure 15: Waller's Prototype Education Act

Page layout can also be treated diagrammatically, for example through the use of columns to express conceptual relations between sections of text. Such techniques have been used in the simplification of contracts, with studies showing visually-designed text improves both speed and accuracy in answering questions.[119] Figure 16 below uses juxtaposition to contrast the rights of the customer and the firm, making them easy to compare, and giving equal respect to both parties in the relationship.[120]

[119] H Haapio and S Passera "Visual Law: What Lawyers Need to Learn From Information Designers" (2013) VOXPOPULII <blog.cornell.edu>.

[120] R Waller, H Haapio, and S Passera "Contract simplification: the why and the how" IACCM (24 July 2017) <journal.iaccm.com>.

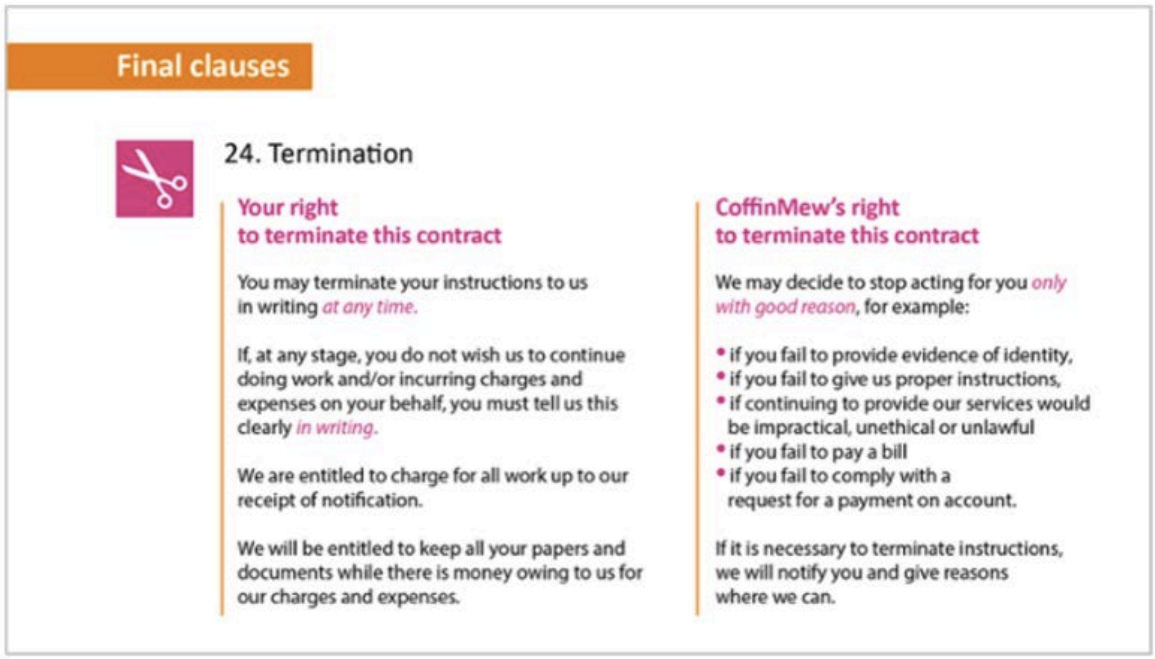


Figure 16: Clause 24

Both examples (Figures 16 and 17) use icons to indicate the topic of the section. Below, correct and incorrect options are easily recognisable through tick and cross symbols, and icons, bullets and horizontal dividing lines articulate the text structure.[121]

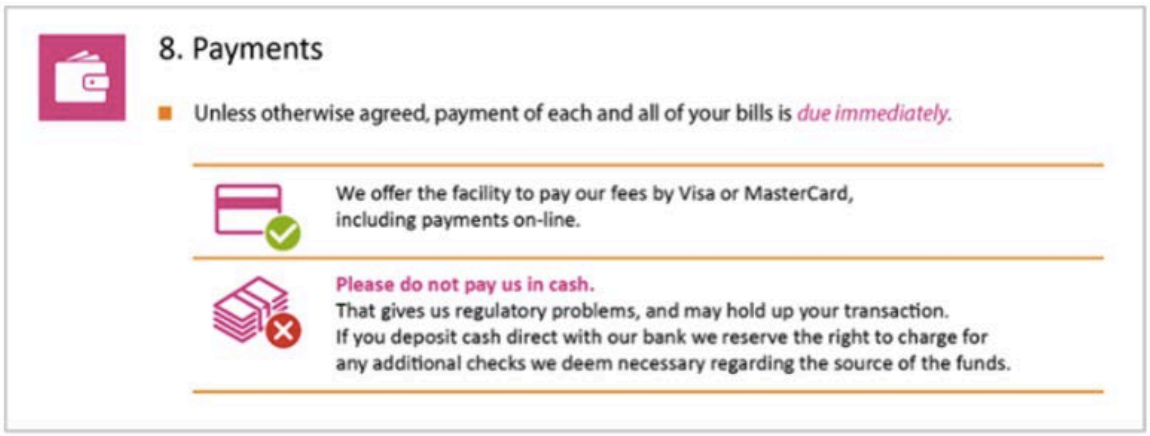


Figure 17: Clause 8

Glosses and layout clarify the meaning of hard copy text, as well as electronic content, however, the electronic realm is more interactive, and is not constrained by the physical limits of a piece of printed paper.[122] Online legislation therefore holds more opportunities for improving clarity than fixed layout elements; these are discussed in greater detail below.

[121] Waller et al., above n 120.

[122] Waller, above n111 at 182.

5 Diagrams

Another method of visualisation is the use of flowcharts and diagrams. In 1993, the Law Commission considered "a great deal more use" could be made of flowcharts because they:[123]

> …are particularly effective at explaining complicated procedural matters; in showing interrelationships between different elements in a statute; in answering specific questions, especially those relating to entitlements and liabilities; in reducing the amount of information which a user must remember at any one time, and in giving a quick overview of a statute.

Fundamentally, diagrams are designed for clarity, and simplified documents often use diagrams to explain difficult concepts, or decision structures.[124] The below examples, from legal designers Haapio and Passera, demonstrate the way contractual processes and conditional text can be explained in chart form.[125]

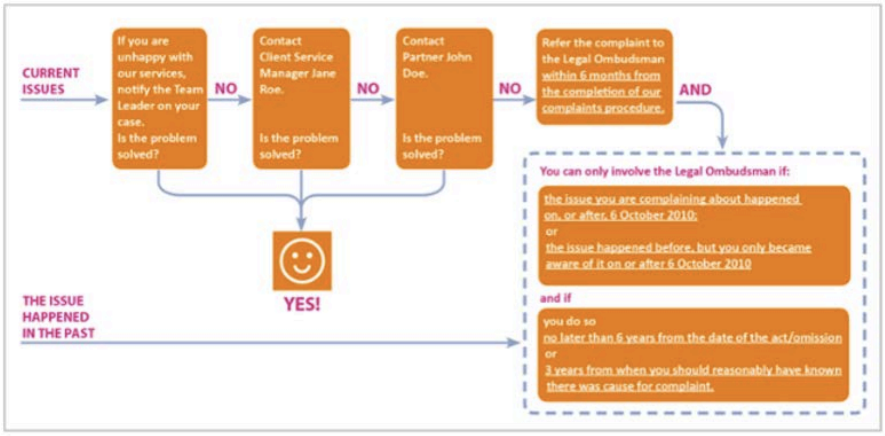
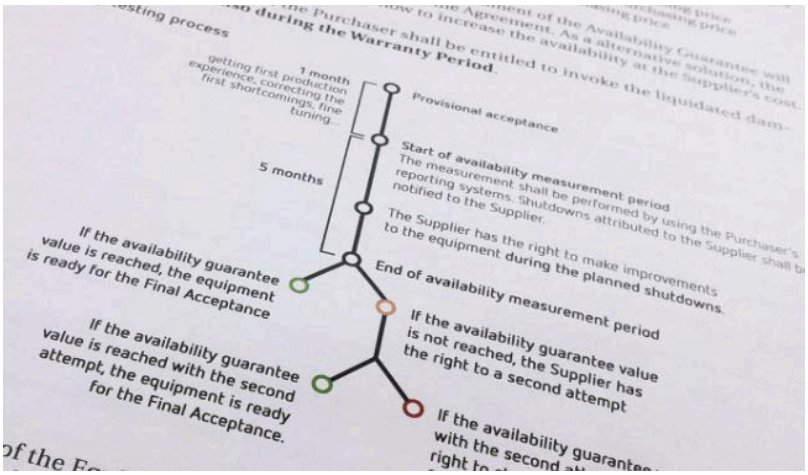


Figure 18: Illustrated Contractual Dispute Process [126]



[123] NZLC R27 above n 61 at [43].

[124] B Tversky "Diagrams" in A Black, P Luna, O Lund and S Walker (eds) *Information design: research and practice* (Routledge, London, 2017) at 354.

[125] Waller at al., above n 120.

[126] Waller at al., above n 120.

Figure 19: Illustrated Availability Testing Process [127]

In the context of legislation, flow charts can be used to illustrate the overall scheme of an Act to assist with overall navigation, or to explain processes set out or required by a provision or set of provisions. Below is an effective example of a flowchart that sets out an overall process for applying for a motorbike licence in the United Kingdom.[128] While this is not provided alongside the regulations, this would be an effective aid to include alongside the legislative text.

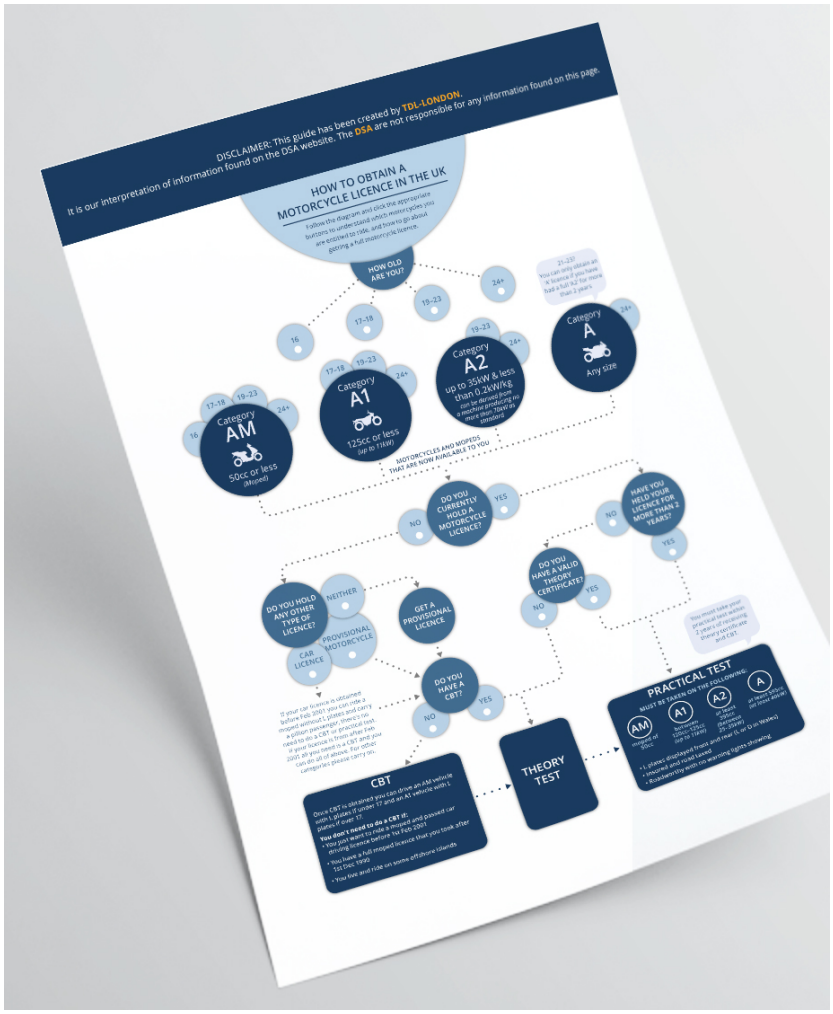


Figure 20: Motorcycle Licence Process [129]

The rough prototyped flowchart below shows the way in which a set of provisions can be illustrated diagrammatically. This chart illustrates the process for assessing whether a contractual term is unfair under provisions in the Fair Trading Act, and could be designed to be interactive in a digital context.

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[127] Waller at al., above n 120.

[128] TDL Creative "How to Obtain a Motorcycle Licence" <tdl-creative.com>.

[129] TDL Creative, above n 128.

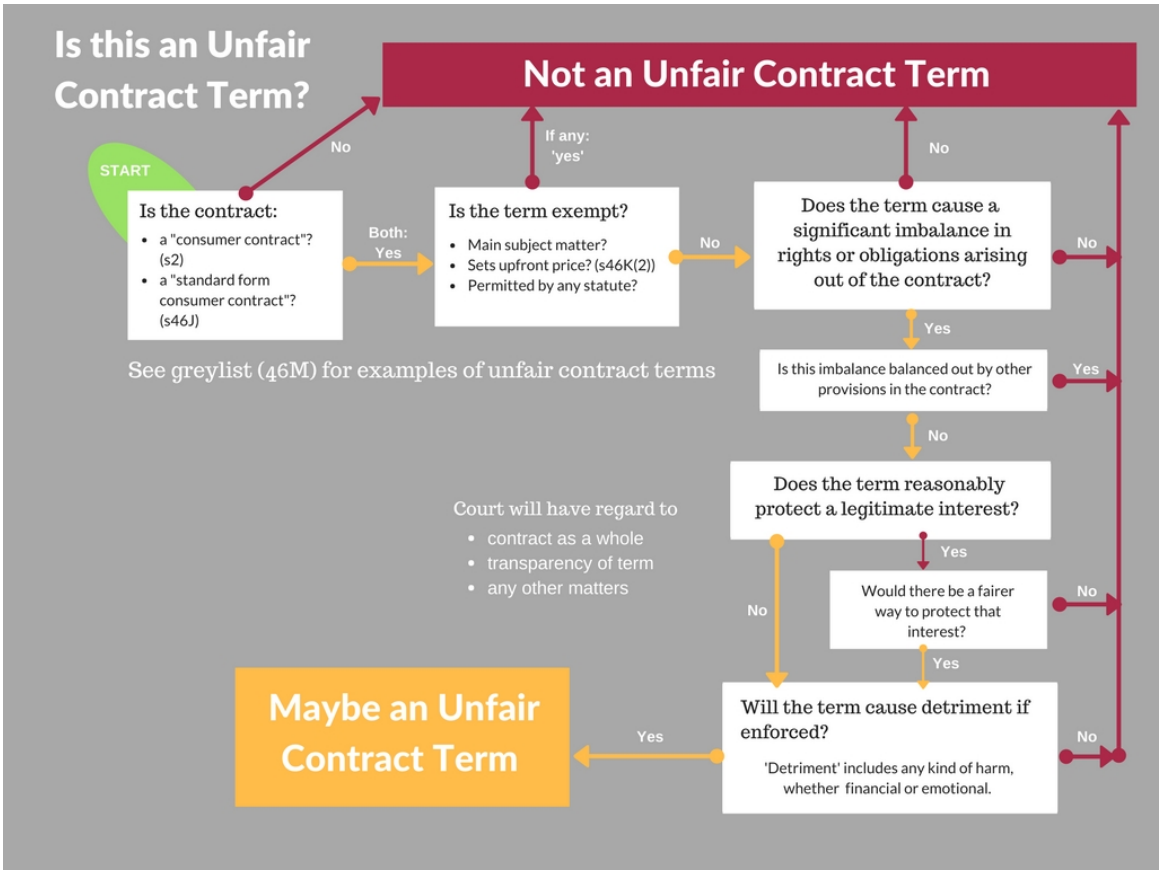

Figure 21: Prototyped Unfair Contract Term Assessment Diagram

It is possible that the creation of visualisations such as the examples above may require an increase in human capital at the drafting stage (although it is quite possible that drafters already sketch out such processes when drafting bills), and it could possibly require time for typesetting once the content of the bill has been affirmed. Given that other New Zealand government agencies employ in-house graphic designers, the employment of in-house PCO information designers is something that could be considered. The importance of the understandability of legislation justifies such a cost.

C Electronic Glosses (Pop-ups and Windows)

Digital platforms are particularly well-suited for supporting strategic reading, given the flexible, interactive, and buildable nature of websites, and functions that can not only aid close reading, but also skimming, searching and scanning.[130] One such function is the "pop-up" or "hover-over" window. Pop-ups are a key function available on the State Decoded platform; throughout the respective state code, any time a defined word appears in the code, a pop-up definition is provided.[131]

[130] Waller, above n 6 at 182.

[131] The State Decoded <statedecoded.com>.

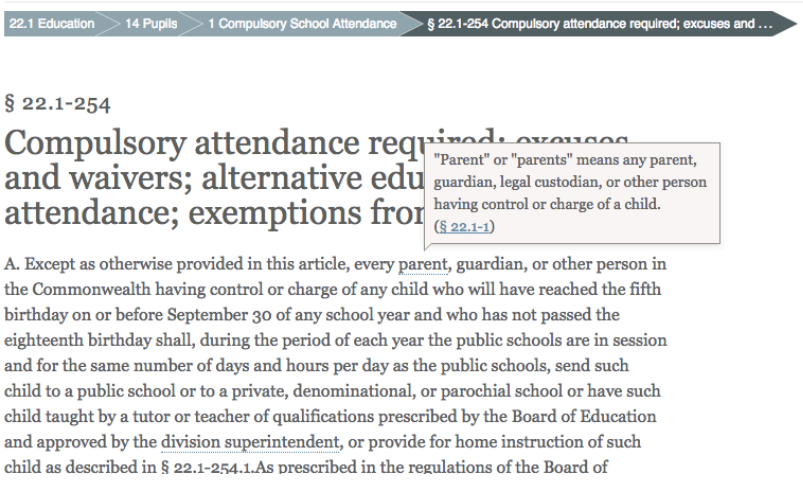

Figure 22: Virginia Decoded Pop-up

In 1993, the Law Commission recommended that where defined words are included in legislative text, this should be made clear.[132] This recommendation has never been implemented, possibly because of the added length or 'noise' to a statute. New Zealand users would benefit from pop-ups where defined words are included (whether defined in the statute itself or the Interpretation Act).[133] These are a similar concept to 'glosses', but in contrast to printed glosses, they give users the choice to use them, and do not distract from the primary text, or take up room. Pop-ups can also provide hyperlinks for quick navigation to linked sections. Below is a rough prototype of pop-up functionality on the current legislation website.

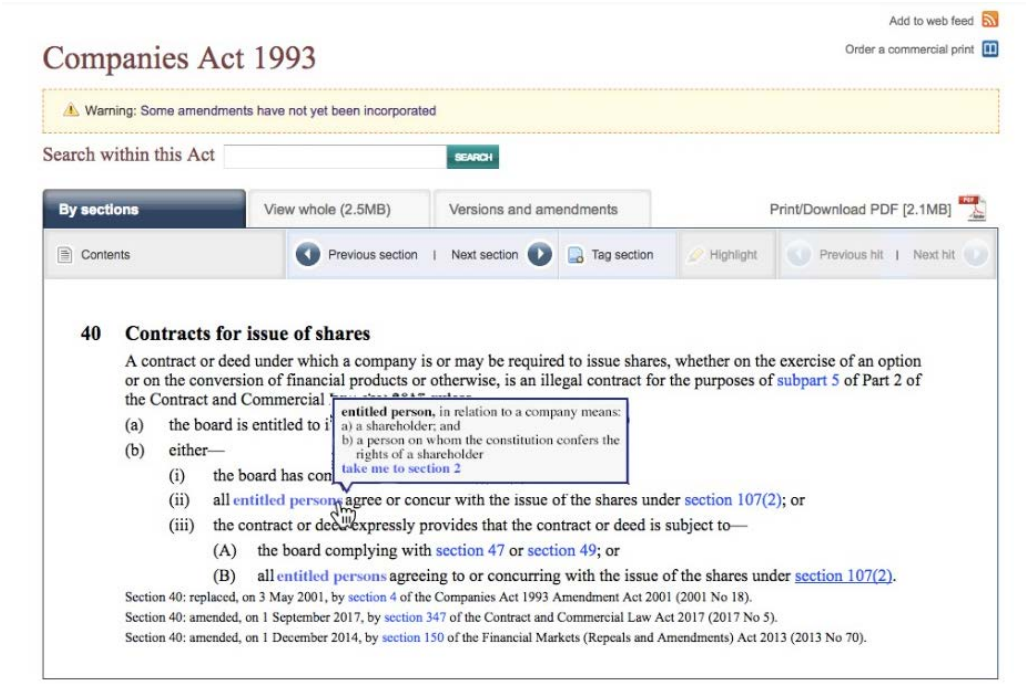

Figure 23: Prototyped Pop-up Definition of "Entitled Person"

[132] NZLC R27, above n 61 at 10.

[133] The Interpretation Act is soon to be absorbed into the amended Legislation Act 2012.

A more complex example is the provision of the Residential Tenancies Act identified earlier in this paper. Where an answer is not straight forward, pop-ups could also provide explanation and assistance to help users figure out the relevant period in their case.

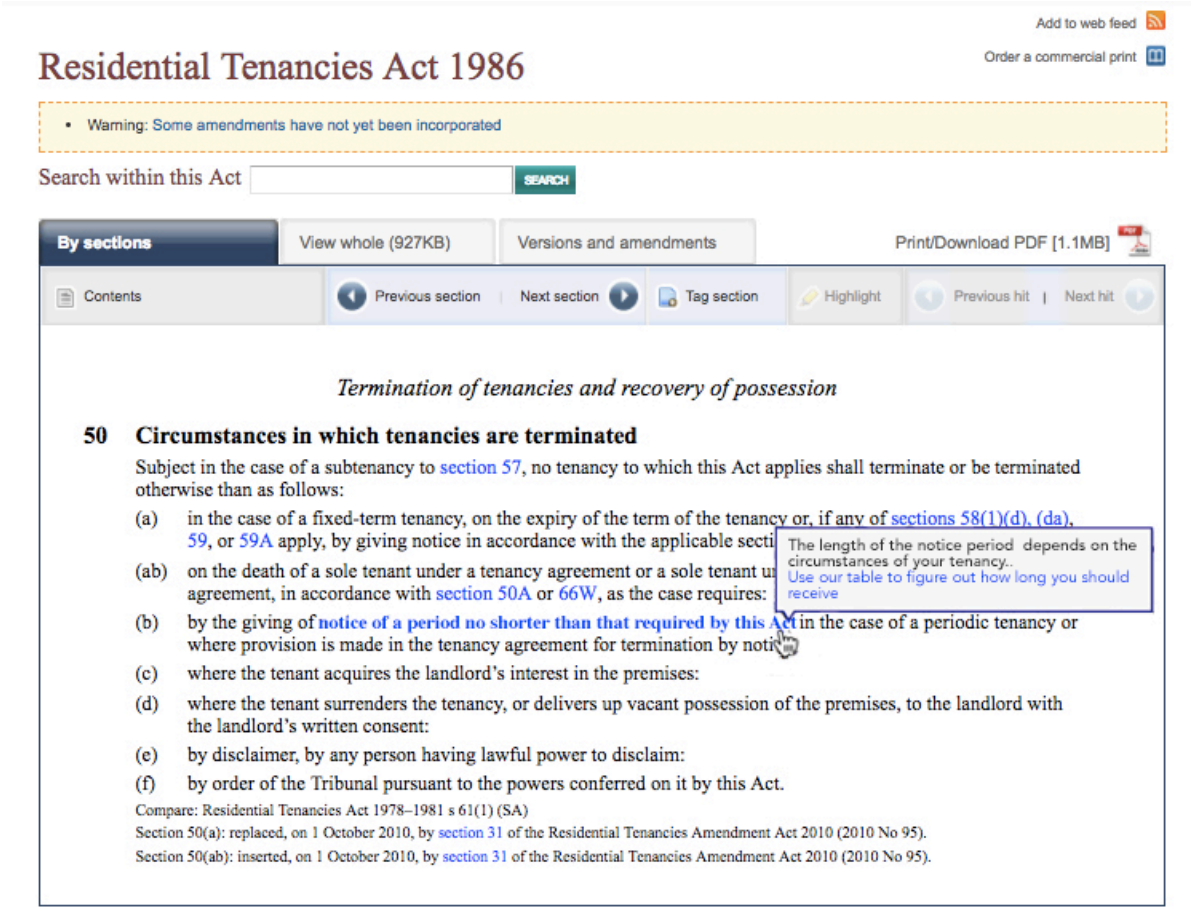

Figure 24: Pop-Up Provides Explanatory Commentary

A similar function is fixed contents windows. Both the Australian Federal Register of Legislation and the Canadian Justice Laws Website provide users with a fixed contents tree on the left of legislation, which helps users to navigate between sections of Acts.

Figure 25: The Federal Register of Legislation

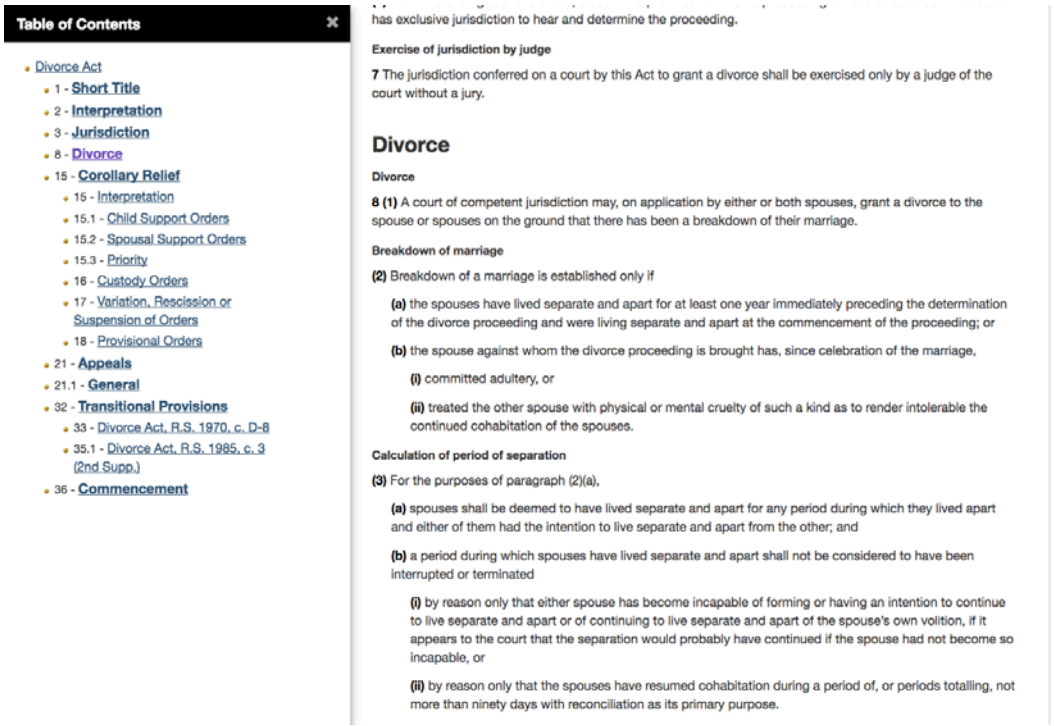

Figure 26: The Justice Laws Website

The State Decoded platform also includes related material, such as court decisions, in panels to the right of provision text. When reading legislation, a lay person, and even lawyers will often have reference to related guidance, and extrinsic aids such as explanatory notes, parliamentary debates and committee reports are also relevant in the context of judicial

interpretation on contested meaning.[134] It would be useful for such information to be accessible alongside the authoritative text of a statute, for easy navigation by users. This need not have an effect on authority, PCO could make it clear (as it already does in the case of examples) that such aids do not have the authority of the main legislative text.

This may require an evolution of PCO's vision, from legislative stewardship to 'guardian of the statute book', charged with 'connecting the dots' to extrinsic aids and external guidance. The United Kingdom now provides this function to a limited extent, with the option given to readers to turn on explanatory notes that appear alongside the legislative text.[135] This is a good example of a 'layered' approach, allowing the user to decide whether or not to use the functionality.

D Typeface

In reference to legislation, an American judge once observed that, "seldom has the art of typography been so successfully diverted from the diffusion of knowledge to the suppression of it."[136] Typeface has been a consideration of the Law Commission in the past, and it is useful to briefly address this design component.

In recent years, largely led by the theory that sans-serif typefaces are more readable on digital screens than serifs, various jurisdictions have moved to presenting legislation in sans-serif typefaces online.[137] This trend is interesting, given that information designers now generally consider sans-serif and serif typefaces to be equally readable due to the general improvement in computer screen resolution in the last decade.[138]

Given the absence of readability implications, designers may choose typefaces for other reasons, such as their connotations, or to distinguish between types of content.[139] For example, people are more accustomed to reading long texts in serif typefaces, given that these are typical in newspapers and novels, and many readers perceive seriffed typefaces as more traditional and legitimate.[140] On the other hand, forms often use sans-serif typefaces because they generally offer more variations in boldness, and look neater as single words or short phrases.[141]

Using a combination can help to distinguish between types of content in complex structured text, such as user-guides or reports. Ordinarily, a seriffed font will be used for the main

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[134] Tanner, above n 10 at 66.

[135] See <legislation.gov.uk>.

[136] *Delancey v Insurance Co* 52 NH 581, 587 (1873) per Doe CJ.

[137] For example, see the Australian Federal Register of Legislation, and the Canadian Justice Laws Website.

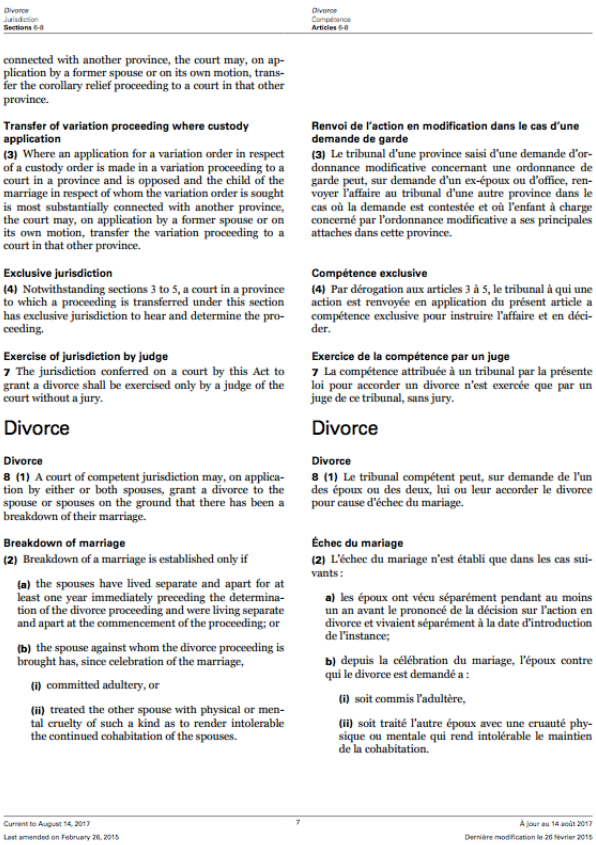
[138] J Nielsen "Serif vs Sans-Serif Fonts for HD Screens" (2 July 2012) Nielson Norman Group <nngroup.com>.

[139] R Waller *Choosing a typeface for reading* (Simplification Centre, University of Reading, 2011) at 7.

[140] Waller, above n 139, at 6.

[141] At 5.

content, with headings in sans-serif, as can be seen in recent changes to Canadian printed legislation.[142] In determining which fonts to use, the question is not 'which typeface should be used', but rather "what set of typefaces, weights, sizes and colours should be used, and for what purpose".[143]



Divorce
Jurisdiction
Sections 6-8

connected with another province, the court may, on application by a former spouse or on its own motion, transfer the corollary relief proceeding to a court in that other province.

Transfer of variation proceeding where custody application

(3) Where an application for a variation order in respect of a custody order is made in a variation proceeding to a court in a province and is opposed and the child of the marriage in respect of whom the variation order is sought is most substantially connected with another province, the court may, on application by a former spouse or on its own motion, transfer the variation proceeding to a court in that other province.

Exclusive jurisdiction

(4) Notwithstanding sections 3 to 5, a court in a province to which a proceeding is transferred under this section has exclusive jurisdiction to hear and determine the proceeding.

Exercise of jurisdiction by judge

7 The jurisdiction conferred on a court by this Act to grant a divorce shall be exercised only by a judge of the court without a jury.

Divorce

Divorce

8 (1) A court of competent jurisdiction may, on application by either or both spouses, grant a divorce to the spouse or spouses on the ground that there has been a breakdown of their marriage.

Breakdown of marriage

(2) Breakdown of a marriage is established only if

(a) the spouses have lived separate and apart for at least one year immediately preceding the determination of the divorce proceeding and were living separate and apart at the commencement of the proceeding; or

(b) the spouse against whom the divorce proceeding is brought has, since celebration of the marriage,

(i) committed adultery, or

(ii) treated the other spouse with physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses.

Divorce
Compétence
Articles 6-8

Renvoi de l'action en modification dans le cas d'une demande de garde

(3) Le tribunal d'une province saisi d'une demande d'ordonnance modificative concernant une ordonnance de garde peut, sur demande d'un ex-époux ou d'office, renvoyer l'affaire au tribunal d'une autre province dans le cas où la demande est contestée et où l'enfant à charge concerné par l'ordonnance modificative a ses principales attaches dans cette province.

Compétence exclusive

(4) Par dérogation aux articles 3 à 5, le tribunal à qui une action est renvoyée en application du présent article a compétence exclusive pour instruire l'affaire et en décider.

Exercice de la compétence par un juge

7 La compétence attribuée à un tribunal par la présente loi pour accorder un divorce n'est exercée que par un juge de ce tribunal, sans jury.

Divorce

Divorce

8 (1) Le tribunal compétent peut, sur demande de l'un des époux ou des deux, lui ou leur accorder le divorce pour cause d'échec du mariage.

Échec du mariage

(2) L'échec du mariage n'est établi que dans les cas suivants :

a) les époux ont vécu séparément pendant au moins un an avant le prononcé de la décision sur l'action en divorce et vivaient séparément à la date d'introduction de l'instance;

b) depuis la célébration du mariage, l'époux contre qui le divorce est demandé a :

(i) soit commis l'adultère,

(ii) soit traité l'autre époux avec une cruauté physique ou mentale qui rend intolérable le maintien de la cohabitation.

Current to August 14, 2017
Last amended on February 26, 2015

7

À jour au 14 août 2017
Dernière modification le 26 février 2015

Figure 27:New Format of Canadian Legislation

In 2000, information designer David Berman prototyped a new format for Canadian legislation, utilising two typefaces on the basis that one would not provide the variety required for the numerous information levels in statutes, but selecting more than two would risk confusion.[144] He used a serif and a sans-serif to create contrast between the law and supporting text.[145] Additionally, while considering it to be a secondary method of distinguishing information, Berman utilised colour to emphasise and associate key pieces of information, and ease navigation through the document. Colour was carefully selected so as

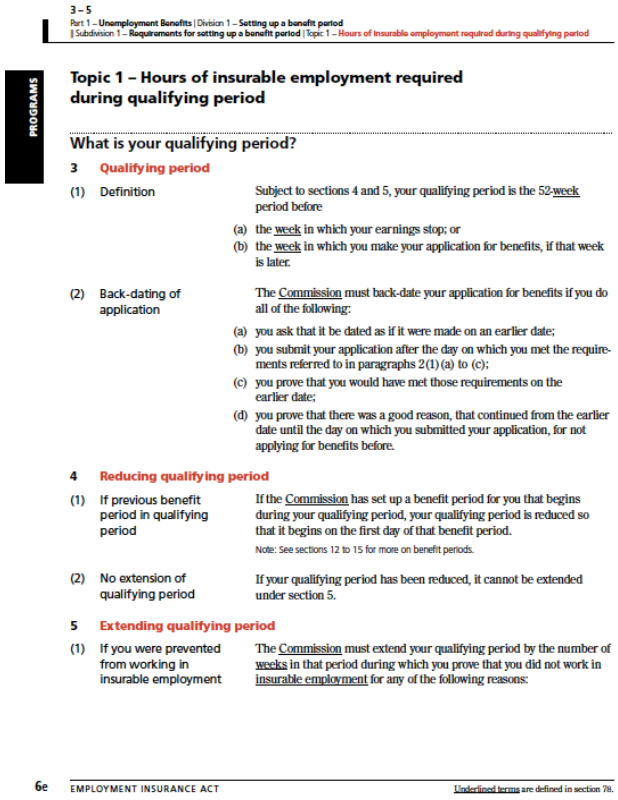
[142] "New Layout for Legislation" (30 June 2017) Justice Laws Website <laws.justice.gc.ca

[143] Waller, above n 139 at 7.

[144] D Berman *Toward a New Format for Canadian Legislation* (Justice Canada Pilot Project, November 2000) at 17.

[145] At 17.

not to distract readers or malfunction when reproduced in greyscale, or fail to accommodate colour blind readers.[146]



3 – 5
Part 1 – Unemployment Benefits | Division 1 – Setting up a benefit period
|| Subdivision 1 – Requirements for setting up a benefit period | Topic 1 – Hours of insurable employment required during qualifying period

PROGRAMS

Topic 1 – Hours of insurable employment required during qualifying period

What is your qualifying period?

3 Qualifying period

(1) Definition — Subject to sections 4 and 5, your qualifying period is the 52-week period before

(a) the week in which your earnings stop; or
(b) the week in which you make your application for benefits, if that week is later.

(2) Back-dating of application — The Commission must back-date your application for benefits if you do all of the following:

(a) you ask that it be dated as if it were made on an earlier date;
(b) you submit your application after the day on which you met the requirements referred to in paragraphs 2(1)(a) to (c);
(c) you prove that you would have met those requirements on the earlier date;
(d) you prove that there was a good reason, that continued from the earlier date until the day on which you submitted your application, for not applying for benefits before.

4 Reducing qualifying period

(1) If previous benefit period in qualifying period — If the Commission has set up a benefit period for you that begins during your qualifying period, your qualifying period is reduced so that it begins on the first day of that benefit period.

Note: See sections 12 to 15 for more on benefit periods.

(2) No extension of qualifying period — If your qualifying period has been reduced, it cannot be extended under section 5.

5 Extending qualifying period

(1) If you were prevented from working in insurable employment — The Commission must extend your qualifying period by the number of weeks in that period during which you prove that you did not work in insurable employment for any of the following reasons:

6e EMPLOYMENT INSURANCE ACT — Underlined terms are defined in section 78.

Figure 28: Berman's prototyped Employment Insurance Act

Today Parliamentary Counsel write legislation in Extensible Mark-up Language (XML), a descriptive language that defines a set of rules for writing documents in a form that is both machine-readable and readable by human users. Drafters use editing software that facilitates writing 'into' the legislative format through use of descriptive tags. Tags are distinguishable from the body content text and invisible to a reader on the legislation website once published, but they are visible to the drafter and instruct the software to carry out certain actions with the text, in accordance with the legislation style guide.[147] XML is used for documents with a long lifecycle, because it means they will be consistently readable and upgradeable.

Given the malleable nature of XML-based legislation, it would be feasible for PCO to experiment with typefaces, and conduct user testing to determine whether certain font combinations aid readers' comprehension. Additionally, it may be possible to enable readers

[146] Berman, above n144 at 21.

[147] Interview with S Murray and J Price, above n 17.

to select a preferred typeface, such as the OpenDyslexic typeface, an option that is currently being worked on by the State Decoded.[148]

Ultimately, typeface alone will not make a prodigious difference to understanding, but coupled with the redesign of other aspects, such as visualisation, it could improve the distinction between different types of information, thereby assisting understanding.

E Tracked Changes

A key challenge faced in pre-legislative stages for both bills and amendment bills is understanding the legal effects that changes or amendments will have on a previous iteration or an in-force principal Act.[149] During the stages of parliamentary legislative scrutiny, it can be difficult for Parliamentarians to keep up with the changes being made, and to understand the effect of what they are passing. This can be complicated further by use of supplementary order papers. It can also be difficult for laypeople or professionals to participate in consultation when it is not entirely clear from the text of an amendment bill what changes will be made.

Tracked changes make the effect of changes much clearer. In the United Kingdom, established as part of its Good Law Initiative, the OPC now produces what is known as a "keeling text" – a marked-up version of the existing principal act, showing the effects an amendment bill would have on its provisions.[150] In the example shown below, changes to the Charities Act 2011 as the result of the Draft Protection of Charities Bill are shown using different colours and strike-through. Amendments, additions, and repeals are all made clear.

[148] The State Decoded <statedecoded.com>.

[149] J Sheridan "Legislation.gov.uk and Good Law" (30 January 2014) Civil Service Quarterly <quarterly.blog.gov.uk>.

[150] OPC, above n3.

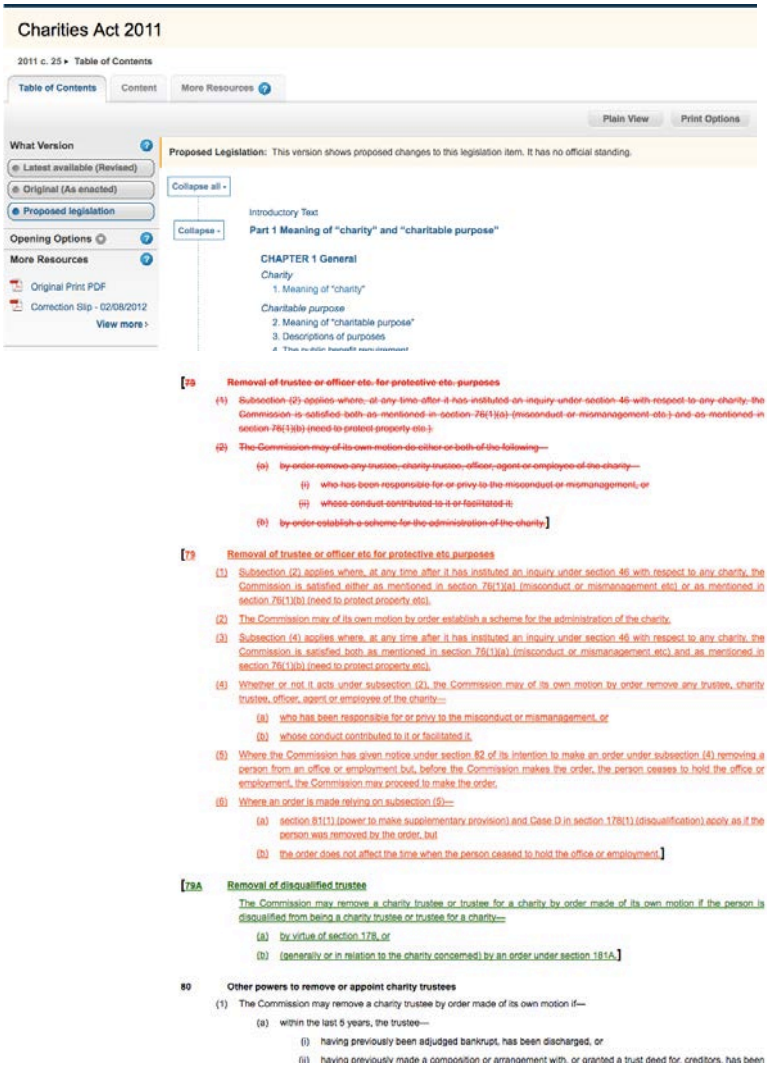


Figure 29: Keeling Text of the Charities Act 2011

Here, technology is a key enabler. Since 1997, the Tasmanian "EnAct" legislative management system has allowed for automatic revision of legislation. During drafting, amendments to legislation are made directly to the latest version of the act using strike through and underline. The software then generates a form of the text of the amending legislation. This saves draftspersons' time, and has the additional benefit of leaving a digital history of tracked changes, which is useful when accessing point-in-time versions of legislation.[151] Such technology has great potential to clarify the effects for any legislation touched by amendments, thereby simplifying the consultation process for bills, and create efficiency benefits for draftspersons.

F Organisation by Subject Matter

The current navigation tools create difficulty for locating all relevant law on a user's problem. One promising development for improving the ability of a user to find all relevant

[151] Law Reform Commission Accessibility, Consolidation and Online Publication of Legislation (LRC IP 11, 2016) at 48.

law, even where titles of Acts are not known, is through classification by subject matter, and progressive narrowing of legislative content.

For many years, American states have structured their legislation in unified codes, organised by subject matter. While codification was suggested by the Law Commission, it considered this to be a long way off, and recommended an index as a more feasible alternative.[152] The classification of New Zealand legislation by subject matter for the purposes of the website is likely to provide the navigability benefits of a code, or a subject-based index, without the need to rework the entire statute book.

The State Decoded platform displays codes progressively, providing an initial overview of all subject headings, and progressively narrowing sections for the user. In this sense, the user is guided through their navigation of the statute book.

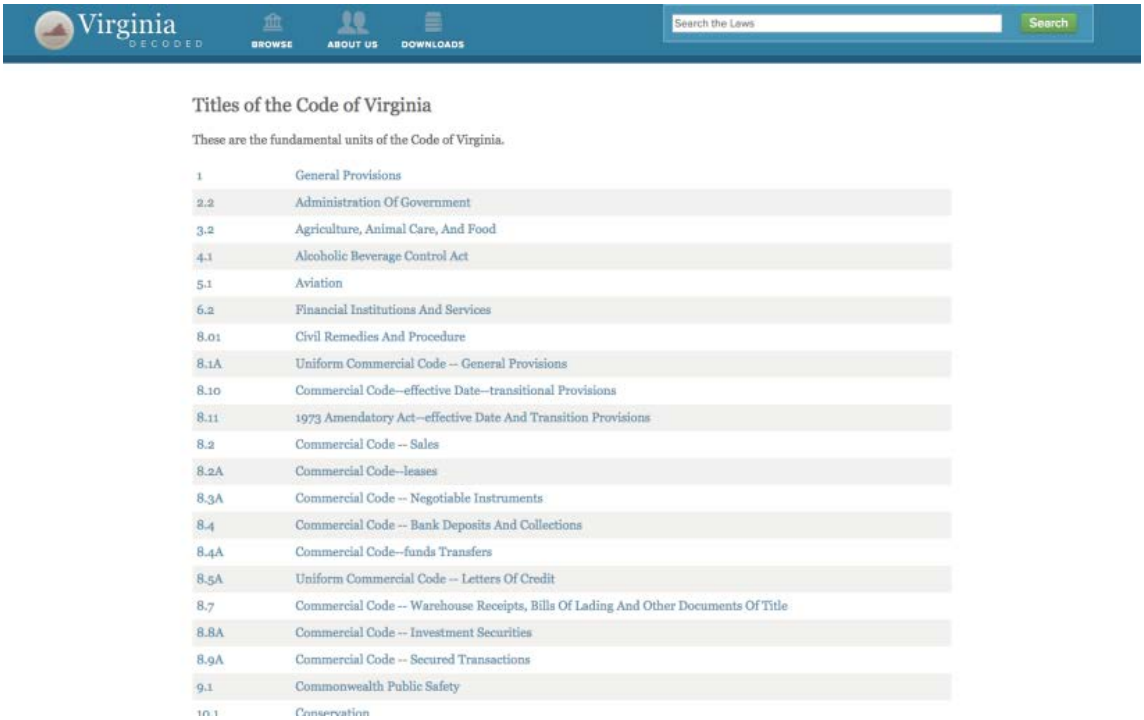


Figure 30: Landing Page for the Virginia Code [153]

[152] NZLC R104 above n 14 at 9.

[153] Virginia Decoded <vacode.org>.

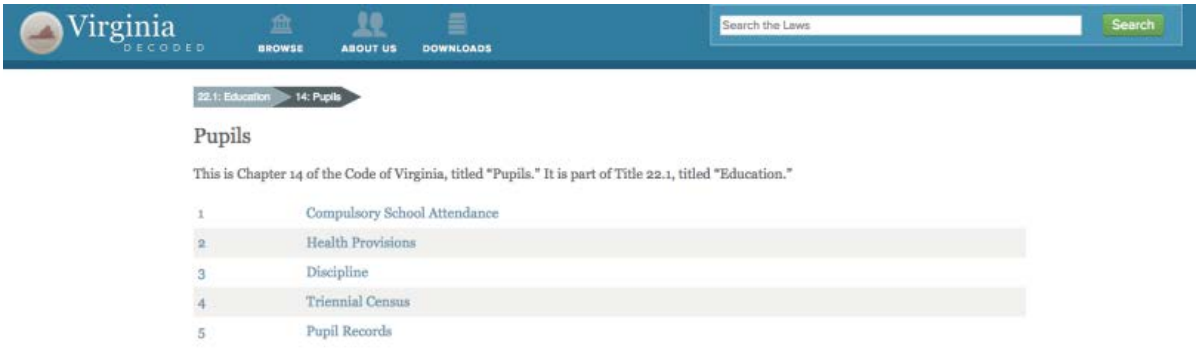


Figure 31: Part Heading, with Section Headings

Similar navigation tools are available on many New Zealand government websites.

Figure 32: Section of MBIE Homepage

The legislation website provides a platform for the organisation of legislation by subject matter, without the need to change the chronological order and title system. A starting point for such a navigation tool may be to develop a classified list of all in-force Acts and statutory instruments, as undertaken by the Irish Law Commission in 2010 in consultation with government departments and users.[154] Additionally, data collected from users could be utilised, such as information that "people who read Act A or B also looked at Act Y or Z".[155] This could be used to classify statutes on the website, as shown in the simple prototype below. Ideally, this would provide progressive narrowing of content, possibly with hover-over explanations for users that desire a brief description of the subject.

[154] Law Reform Commission, above n151 at 14.

[155] National Archives "Big Data for Law" <legislation.gov.uk>.

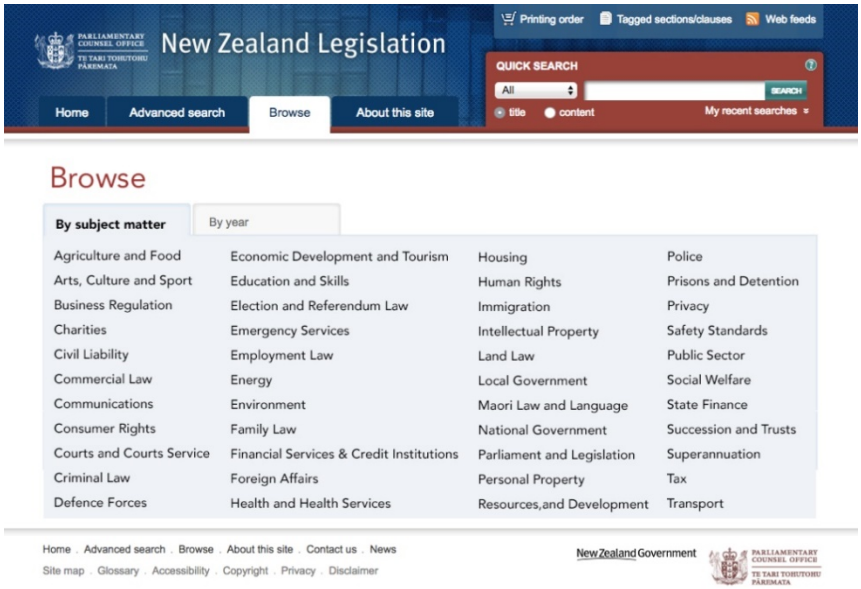


Figure 33: Prototype Browse by Subject Matter. Headings adapted from Irish Law Reform Commission[156]

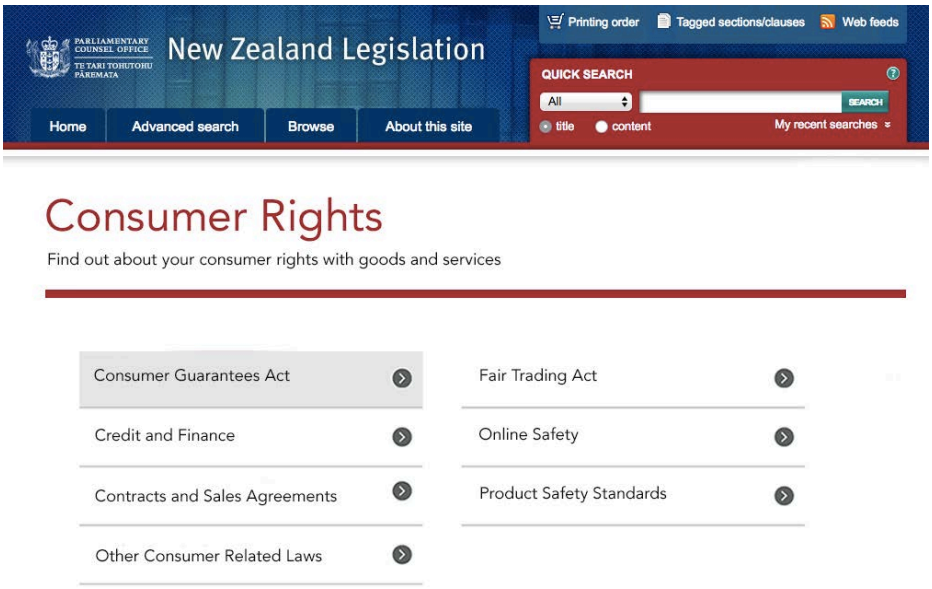


Figure 34: Headings Adapted from Consumer Protection NZ [157]

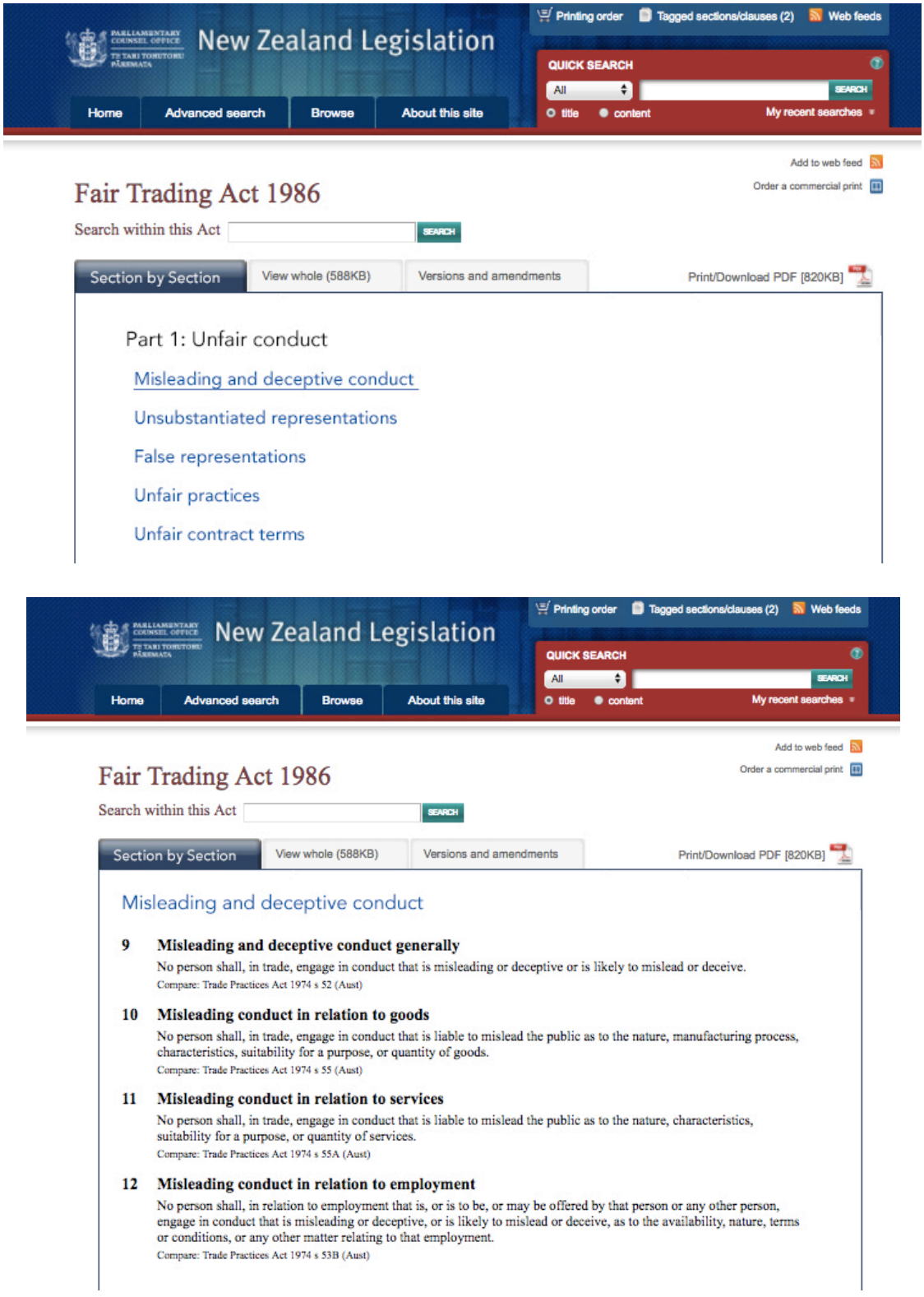
A user could also be helped to progressively narrow content within an Act in the manner of the State Decoded, using the data already present in the XML code. A rough prototype is provided below.

156 Law Reform Commission "Classified List of Legislation" (2016) Law Reform Commission <lawreform.ie>.

157 Ministry of Business Innovation and Employment "Consumer law and your rights" <consumerprotection.govt.nz>.


New Zealand Legislation
Printing order
Tagged sections/clauses (2)
Web feeds
QUICK SEARCH
All
SEARCH
title
content
My recent searches
Home
Advanced search
Browse
About this site
Add to web feed
Order a commercial print
Fair Trading Act 1986
Search within this Act
SEARCH
Section by Section
View whole (588KB)
Versions and amendments
Print/Download PDF [820KB]
Contents
Preliminary Matters:
Purpose
Interpretation
Application of Act
Functions of the Commission
Part 1: Unfair conduct
Part 2: Consumer information
Part 3: Product Safety
Part 4: Safety of services
Part 4a: Consumer transactions and auctions
Part 5: Enforcement and remedies
Part 6: Miscellaneous provisions
Schedule 1
Schedule 2
Schedule 3


New Zealand Legislation
Printing order
Tagged sections/clauses (2)
Web feeds
QUICK SEARCH
All
SEARCH
title
content
My recent searches
Home
Advanced search
Browse
About this site
Add to web feed
Order a commercial print
Fair Trading Act 1986
Search within this Act
SEARCH
Section by Section
View whole (588KB)
Versions and amendments
Print/Download PDF [820KB]
Contents
Preliminary Matters:
Purpose
Interpretation
Application of Ac
Functions of the
This part prohibits traders from conducting business in certain ways
Part 1: Unfair conduct
Part 2: Consumer information
Part 3: Product Safety



G Search Functionality

In recent decades, an in-depth literature has grown on "relevancy" as part of the academic field of 'information retrieval'. 'Relevance' is defined as the practice of returning search

results that most satisfy the user's information needs. [158] Upon request, the search engine guides users toward data and related research they could not easily find on their own.

In the context of legislation, a search tool should deliver simple, relevant results for users who are not familiar with legislation, as well as more refined results for expert searchers such as lawyers, who for example, may wish to be provided with historical as well as currently in-force results. This capability is already partially available, with 'advanced search' available for expert users, however the tool could be improved through the ability to search terms, subject areas, and questions (rather than specific words or titles), suggested search terms (such as in a drop-down menu), and the provision of related results and commentary.

It may be helpful for PCO to engage a retrieval consultant on how to best optimise site searches. An excellent search tool along with classification by subject will likely make a comprehensive index redundant, and will be more helpful in the long-term, given that a search engine does not require manual updating with every new legal development.

H Automation and Machine-Readability

The growing capability of internet platforms holds promise for even more innovative approaches to designing and presenting information. Implementation of many of the options discussed above are likely to require an increase in human capital, which could act as a barrier for development. It has been suggested, however, that computers may be taught to derive such visualisations and aids from the legislative code itself. For example, the State Decoded is currently working on a 'definition scraper' which automatically 'collects' the definitions from the relevant sections of each act for use in pop-ups, as opposed to a person building the function manually.[159]

Developments are also happening locally. Funded by the New Zealand Law Society, James Every-Palmer is currently researching the development of smart contracts, and the potential the technology may hold for legislation in the context of the digitalisation of law.[160] He considers there to be significant potential for law to be drafted as machine-readable code, thereby enabling a computer to generate simple diagrams that illustrate processes set out in provisions, for increasing readers' comprehension. He provides an example using s 11 of the Limitation Act 2010, setting it out in written form, in logic code, and as a flowchart.[161]

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[158] M Michaels, A Colcord and S Wilkey (eds) *Relevant Search* (Manning Publications, New York, 2016) at [1].

[159] The State Decoded, above n148.

[160] J Every-Palmer QC, "Smart Contracts": Automated Self-Executing Contracts" (presented at Legalwise Seminar, Wellington, April 2017).

[161] At 4.

11 Defence to money claim filed after applicable period

(1) It is a defence to a money claim if the defendant proves that the date on which the claim is filed is at least 6 years after the date of the act or omission on which the claim is based (the claim's **primary period**).

(2) However, subsection (3) applies to a money claim instead of subsection (1) (whether or not a defence to the claim has been raised or established under subsection (1)) if—

(a) the claimant has late knowledge of the claim, and so the claim has a late knowledge date (*see* section 14); and

(b) the claim is made after its primary period.

(3) It is a defence to a money claim to which this subsection applies if the defendant proves that the date on which the claim is filed is at least—

(a) 3 years after the late knowledge date (the claim's **late knowledge period**); or

(b) 15 years after the date of the act or omission on which the claim is based (the claim's **longstop period**).

Figure 35: Section 11 as Existing Written Code

```
If Date(File) – Date(Act or omission) < 6 years
    Then Return ("No limitation defence because within primary period")
    Else If [no late knowledge]
        Then Return ("Limitation defence because outside primary period and no late knowledge")
        Else If Date(File) – Date(Late knowledge) >= 3 years
            Then Return ("Limitation defence because outside late knowledge period")
            Else If Date(File) – Date(Act or omission) >= 15 years
                Then Return ("Limitation defence because within late knowledge period, but outside long stop")
                Else Return ("No limitation defence because within late knowledge period and within long stop")
```

Figure 36: Section 11 as Logic Code

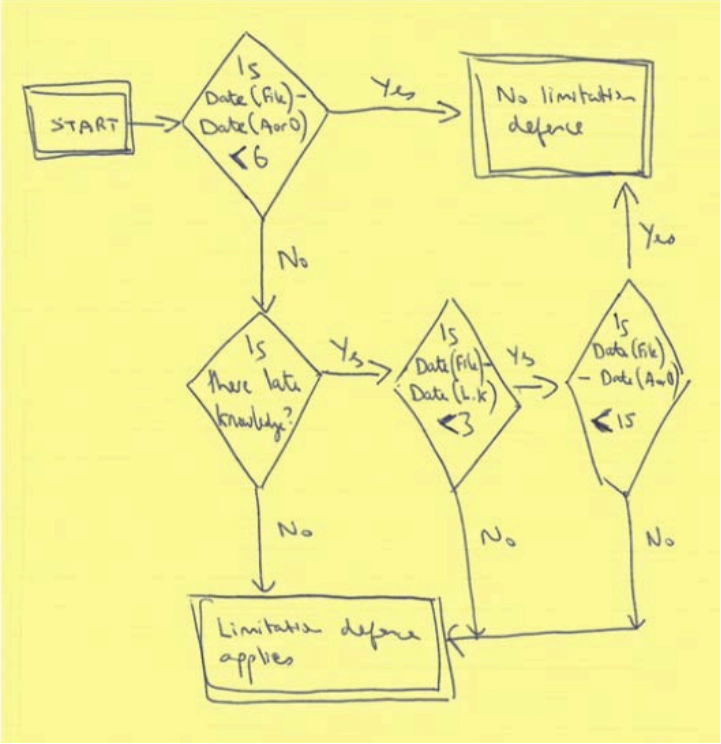

Figure 37: Section 11 as a Flowchart

He considers the logic behind this singular provision is "too trivial for its automation to be useful in practice by itself, but it might be very useful if all the limitation rules were included", and that "while there would be a lot of work involved up front, there could be a massive time saving every time that a lawyer or lay person had to determine a limitation question." [162]

Such a capability could be used effectively within a 'drill-down' context. An existing example of drill-down content is the Creative Commons licensing system, which uses simple icons on content-creator's webpages that can be clicked to reveal a plain-language written version of the relevant license. [163] If additional information is required, the full text is also upon clicking again. The information is layered: there is the traditional Legal Code (the "lawyer readable" version), the Commons Deed (the "human readable" version, acting as a user-friendly interface to the Legal Code), and the "machine readable" version of the license.[164] The use of such layering may enable legislative provisions, or collections of provisions, to be visualised in multiple different ways. For example, one user may be able to view a flowchart, while another can "click down" to view the ordinary legislative 'code', thereby enabling the user to view the level of detail they require.

[162] Every-Palmer, above n 160, at [14].

[163] Haapio and Passera, above n119.

[164] Haapio and Passera, above n119.

Beyond the generation of diagrams, Every-Palmer considers it would be "straightforward to write a program that accepted the three key parameter dates and then advised whether there was a limitation defence available and why".[165] Taking this a step further, he imagines "a world where regulations were accessible in a machine friendly way so that a building design application could check building code compliance or an accounting application could check a tax rate in machine to machine communication."[166] In this way, legislation moves toward the use of artificial intelligence, potentially in the form of a 'bot' that could be interacted with in order to find answers to legal questions. A useful step would be to develop a prototype for such a capability.

I Statute Architecture

The term "statute architecture" refers to the order of the legislative scheme itself, and relates to both clarity and navigability in equal measure. Legislation should, as far as possible, accord with the order in which a reader seeks the information, thereby maximising clarity and minimising convoluted journeys through statutes.[167]

While the functionality offered by digital platforms holds promise for assisting a user to navigate through a scheme, for example by allowing users to tag and reorder sections, improving statute architecture is unlikely to be fully "solvable" by technology, but to ultimately come down to statutes' drafting. Earlier in the paper we explored the example of the Accident Compensation Act. In his article, Marten provides several alternatives that would alter the order of provisions to create a more logical and clear 'roadmap' to the scheme.[168] It is clear from his recommendations that even considering restructuring an Act requires an excellent working knowledge of provisions and how they are to be applied to a variety of situations, as well as the order in which they are used.

Although the options explored above have been "front-end" solutions, statute architecture ultimately requires "back end" solutions, involving improved processes in the drafting of a bill, and pre-legislative scrutiny. Many recommendations can be made on improving the process for drafting bills, however this cannot be done without reference to some of the most entrenched constraints on the legislative process.

VII Considering Constraints

There is great opportunity for legislation to be more understandable, usable, and empowering, however, the complex overall context in which legislation is produced creates challenges for doing so. Below, several main constraints will be briefly discussed, with the purpose of determining which constraints may be addressed, and considering changes that may

[165] Every-Palmer, above n 160 at 4.

[166] At 4.

[167] NZLC R104, above n 14, at 46.

[168] Marten, above n 26, at 224.

nevertheless be achieved within fixed constraints. Discussion is separated into procedural constraints, institutional constraints, and traditional constraints on conceptions of legislation.

A Procedural Constraints

Legislation is the product of many minds and hands.[169] Sound policy development and decision making are foundations of good legislation.[170] Legislative schemes stem from original policy, worked on by in-house policy advisors, sometimes across several departments, often with differing priorities.[171] If policy-makers don't have a clear understanding of what an Act is to achieve or how it will do so, this creates difficulty for drafting clear, understandable schemes. Parliamentary Counsel are not involved from the inception stages of a legislative scheme, to the detriment of legislative quality when instructions are given without an initial assessment of the existing legal context, and within tight time constraints.[172]

Time constraints are a widely-acknowledged issue in the law reform process. Unlike federal systems, where authority to legislate is devolved, New Zealand's Parliament legislates on all matters, including those on the government's annual legislation programme, members', local, private and revision bills.[173] While much has been written about the strain on Parliamentary time,[174] it is arguable that time constraints on Parliamentary Counsel are even greater. PCO is involved in the drafting of nearly all government bills,[175] is required to redraft bills during their journey through the House, and must also balance other projects such as revision and consolidation, and the Access Project.[176] Thus, drafters and supporting staff have a bursting workload. The three-year electoral cycle can also create systemic strains, causing bills to be rushed through. [177]

Ideally, significant time would be devoted to planning, drafting, and refining the provisions of a bill prior to introduction, but time constraints often force drafters to cut planning and refining stages short to quickly find something that "works" despite being unpolished.[178] Drafters also work with changing policy. The drafting of legislation is highly iterative.[179] Often issues are only identified when drafting starts. Every revision of a bill can reveal new

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[169] Tanner, above n 10 at 54.

[170] At 58.

[171] OPC, above n27, at 2.

[172] At 27.

[173] Tanner, above n 10, at 51.

[174] Productivity Commission, above n 92, at 418

[175] With the exception of tax statutes, which are drafted by the Inland Revenue Department.

[176] Tanner, above n 10, at 54.

[177] G Palmer "Law Making in New Zealand: Is there a better way? [Harkness Henry Lecture]" (2014) 22 Wai L Rev 1 at 6.

[178] Office of Parliamentary Counsel *Reducing complexity in legislation* (June 2016) at 20.

[179] Tanner, above n 10, at 65.

problems, and changes in policy must be accommodated. Drafters therefore grapple with continuous redesign, and coupled with time constraints, an environment is created where drafters are forced to settle for 'good-enough'.[180] However, this creates problems downstream; experience shows basic statute architecture needs to be right by its first introduction, as after that it is too late to change.[181]

B Institutional constraints

A transition to the proposed legislative paradigm, along with development of the "front-end" solutions explored above, would constitute a significant undertaking. At present, several agencies have roles in relation to legislation, but their overlapping nature creates uncertainty around who might lead the charge on such an effort. There are also limitations on agency capacity.

The Law Commission has the key responsibility of advising on "ways the law can become as understandable as practicable",[182] but is not involved in the day-to-day drafting of bills, and history indicates its recommendations on legislation have been easy to disregard.

The Legislation Design and Advisory Committee's mandate is to improve the quality and effectiveness of legislation, and the Committee has the important advantage of providing guidance to instructors early in the legislative process.[183] Like the Law Commission, however, the Committee only has limited contact with certain bills prior to their introduction, and does not review them during their journey through the House, when significant changes can be made. Bills that have not been consulted on prior to introduction may be reviewed by the External Sub-Committee, who can advise Select Committees on issues of inconsistency with the 2014 Guidelines, but at present, the Sub-Committee's advice is constrained in relation to improving understandability, because the Guidelines don't include practical guidance on use of elements such as flowcharts, or what it means for structure to be 'understandable'.

Ultimately, the creation of understandable and usable legislation will rely upon legislative drafting, with clarity and navigability assisted by website functionality. Both are the responsibility of the Parliamentary Counsel Office.[184] The Office's legislative stewardship focus is consistent with the envisioned paradigm, but at present the organisation lacks the capacity to lead such a transition without an increase in staff and skills. The Office currently comprises four drafting teams, a legislative services unit, a publication unit, and a team of

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[180] At 66.

[181] Palmer, above n177, at 13.

[182] Law Commission Act 1985, s 5(1)(d).

[183] Legislation Design and Advisory Committee "The Role of the LDAC" (18 January 2017) <ldac.org.nz/about/role>.

[184] Parliamentary Counsel Office "Role of the PCO" <pco.govt.nz>.

information technology developers and support staff.[185] Drafting teams have a full schedule of drafting, and other teams do not have large staffs available to work on innovation.[186] There is accordingly little capacity to consider how legislation might be better presented other than incrementally, and few people with the available time and skills required for such developments.[187] Additionally, PCO is limited by funding, and while the Office has some discretion to pursue incremental developments consistent with its legislative stewardship mission, any significant changes require government assent.[188]

All three of these organisations receive their mandate from central government, and are not resourced for this scale of change, so the new approach is likely to require Cabinet confirmation. Establishing a place on the government agenda requires a strong case for change, and this is likely to be complicated by competing priorities for spending across state services, as well as entrenched conceptions of legislation.

C Constraints on Legislation

The New Zealand statute book has several traditional characteristics that may constrain development of more understandable and usable legislation.

Firstly, New Zealand tends to pass big statutes. [189] Geoffrey Palmer suggests that if we did not so, better law would be written in the first place.[190] Because of the significant length of bills, very few drafters know the entire scheme well, which can contribute to illogical structuring of content. This is compounded by the piecemeal nature of amendments. Palmer writes, "We pass big statutes, find we do not like the results, and engage in a constant pattern of amendments whereby the statute risks losing both its principles and its coherence."[191] Amendments are generally written to match the style of the principal act, which itself can be complex and confusing.[192]

Furthermore, the subject matter of legislation is necessarily complex, and legislation must be certain and concise.[193] An argument against plain language has often been that it undermines certainty, and it is likely that such an argument would be launched against developments such as the inclusion of flowcharts or the use of hover-over guidance.[194]

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[185] Interview with S Murray and J Price, above n 17.
[186] Above n 17.
[187] Above n 17.
[188] Above n 17.
[189] Palmer, above n 177 at 4.
[190] At 6.
[191] At 4.
[192] Interview with S Murray and J Price, above n 17.
[193] Tanner, above n 10, at 72.
[194] At 73.

Additionally, government websites must comply with the New Zealand Government Web Accessibility and Usability Standards, allowing content to be usable by all, irrespective of physical or technological impediments.[195] This may impose constraints on more innovative and understandable formats, which may not yet be easily read by screen-readers, however this can be minimised by utilising layered content to allow for a text only version of legislation.[196]

Finally, it is quite possible that conceptions of what statute law "should be" will constrain development. Particularly, lawyers who have been trained to read the current format of legislation and have become accustomed to its conventions, may have entrenched opinions and pose a significant barrier to gaining support for change. This will only be ascertained through ethnographic research.

VIII The Road to Transformation: Recommendations

It is clear the envisioned transformation requires a system-level approach, with changes in both tools and interfaces at the "front-end", and processes and roles at the "back-end".[197] While some of the front-end developments proposed above could possibly be rolled out at an incremental pace by PCO without any back-end changes, this would likely take decades,[198] and fundamentally, would not embrace the user-centred paradigm. Below, focus is placed on back-end solutions and the practical steps that may be taken to effect such a transformation.

Given the consistency of the LDAC and PCO respective organisational missions, and the balance of initial involvement with instructors and ongoing contact with bills, a partnership between the two organisations would create strong leadership for a transformed approach to legislation. A strengthened PCO would be well-placed to take on the principal leadership role, because of the crucial importance of good drafting and the Office's responsibility for <legislation.govt.nz>, with support provided by the LDAC in its advisory capacity.

PCO's mission statement should be reframed to absorb the new paradigm. Currently the Office's Mission "is to provide impartial, high quality legislative drafting services and advice, and to enable easy and free access to the laws of New Zealand".[199] It is suggested this is reframed to "provide impartial high quality legislative drafting services and advice, and to

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[195] Department of Internal Affairs "New Zealand Government Web Standards" (14 January 2014) New Zealand Government Web Toolkit < webtoolkit.govt.nz>.

[196] K Pierce and J Nielsen "Usability Guidelines for Accessible Web Design" Nielsen Norman Group <media.nngroup.com>.

[197] Recognised by the Productivity Commission, above n92 at [16].

[198] Interview with S Murray and J Price, above n 17.

[199] Parliamentary Counsel Office "Strategic Intentions for the period 1 July 2015 to 30 June 2019 Presented to the House of Representatives under section 39 of the Public Finance Act 1989" <pco.govt.nz>.

ensure the laws of New Zealand are accessible, understandable, and empowering for all citizens." This aligns with the expansion of PCO's role, beyond legislative stewardship, to 'guardian of the statute book'; this would enable PCO to provide links to extrinsic aids, and explanatory guidance on the meaning of the statute book.

It is necessary to address some of the key constraints on PCO's capacity. Firstly, the Office requires more funding to increase its capacity for pursuing developments. Improving the functionality of the website will represent a significant investment, and may require an increase in the size of the Publication and Legislative Services Units and IT support staff. It would be beneficial to employ several in-house information designers to advise on the design of provisions to increase understandability, and employ additional staff responsible for compiling and maintaining relevant explanatory material and extrinsic aids. Investment in technology for automation may require a greater initial cost, but this could decrease once automation technology is built.

Gaining the increased funding is likely to require Cabinet confirmation, and therefore a strong proposal must be put together. Ministers respond to evidence, and therefore as identified throughout this paper, it is vital that the approach is led first by insights from ethnographic research, to determine how the spectrum of users experience legislation, and what the impact of this is for productivity and the rule of law in New Zealand. Such research could be undertaken alongside a review of legislation, and could utilise prototypes to confirm whether certain changes such as electronic glosses and visualisation improve users' understandings. While research could be commissioned, it would be beneficial for drafters to be involved, as this would provide tangible insights into their wide spectrum of readers.

With empirical evidence demonstrating the costs of the problem, as well as providing research-based proposals for change, Ministers are more likely to support the transformation. It should be highlighted that the vision of a legislation platform integrated with other New Zealand government and parliamentary websites, built to support and empower users, is consistent with the Government's integrated programme of work to drive digital transformation.[200] It is also consistent with ICT investment focus areas.[201]

Along with the LDAC, PCO should take a collaborative approach to improving legislative quality, engaging with instructing departments early in the inception of a legislative scheme. PCO has already identified that it would be willing to do so.[202] In engaging with instructors, PCO should adopt the role of 'ambassador for New Zealand readers'.

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[200] Government Chief Information Officer "Dashboard 1: The System Change we are seeing" (12 June 2017) ICT.govt.nz.

[201] Government Chief Information Officer "Investment" (12 June 2017) ICT.govt.nz.

[202] Productivity Commission above n 92 at 415.

Consultation with information designers and insights from user-testing should inform a revision of the LAC Guidelines (possibly renamed the Legislation Design Guidelines), to include practical guidance on how to ensure legislative schemes are understandable and usable. This should include advice on utilising mind maps and flowcharts while planning the scheme, a practice which will have the additional benefit of ensuring future amendments are inserted logically. The Guidelines should also endorse the use of visualisations and advise officials on how to select the appropriate visualisation for the provision or provisions. Expanded Guidelines would provide the Committee and Sub-Committee with greater ability to advise instructors and report to Select Committees on the understandability and usability of bills.

As identified above, drafters require more time to work on bills to ensure they are understandable and usable. It would be useful for new governments to publish a three-year legislative programme, in order that PCO can employ the number of draftspersons and staff necessary to ensure all bills receive the quantity of time required. Once a bill is drafted, a second draftsperson should undertake a review for understandability. PCO presently utilises 'plain English champions', and this role could be expanded to encapsulate this greater focus. Alternatively, the Legislative Services Unit (which currently proofreads all Bills) could have the ability to suggest changes to provisions to make them more understandable.

Additionally, it is suggested that the membership of the LDAC or External Sub-Committee should be expanded to include design and plain English specialists, who would add diversity of expertise to the more traditional current membership. It would also be beneficial for the Committee or Sub-Committee to do a final review for understandability following the Committee of the Whole House stage, to ensure any changes made do not harm the understandability of the scheme. It may be possible to give the Committee the power to refuse complicated provisions in bills reviewed, as the Office of Information and Regulatory Affairs has in the United States.[203]

These back-end institutional and procedural changes set the stage for both incremental and breakthrough front-end developments. Overall, it is suggested that a culture of experimentation and constant iteration is cultivated in relation to improving the front-end accessibility of the statute book. Following initial user-research, a prototype statute should be drafted, and retested. The prototyped bill should be selected based on its wide readership. It will likely be necessary to modify the prototype before piloting the prototype statute along with added website functionality. Depending on the success of the pilot, the functionality could be scaled, and it may be useful to begin to roll out changes through the revision project. It is likely that changes will need to be implemented gradually, in order to support users in their transition, with priority placed on those with the biggest impact for the most people;

[203] C Sunstein *Simpler: The Future of Government* (Kindle ed., Simon & Schuster, New York, 2013).

however, this will still be at a quicker pace than current changes, aligned with the new vision of PCO and LDAC. Feedback should be continually sought, with ongoing consultation with representative user groups, and feedback functionality added to the website.

IX Conclusion

New Zealand legislation is currently experienced by many users to be complex, convoluted, hard to find, and difficult to use. This is disempowering, with implications for productivity, and the rule of law. This statute book can be viewed as the product of a long-standing legislative paradigm that has been rooted in tradition, with constrained aspirations of how legislation could be experienced by citizens.

This paradigm is no longer serving New Zealanders (if it ever was). The public does not understand 'legalese',[204] and lawyers can forget how intimidating, complex, and dehumanizing the legal system can be for those who have not been taught to navigate it.[205] With legislation being accessed by more people than ever before, it is no longer enough to simply enhance availability of legislation; the challenge is understandability and usability.[206]

It is time for a revolution in the design of legislation. This new approach must be centred around ensuring the statute book is effective, understandable, and usable for all its varied users. Such a transformation can be effected through various 'front-end' tools and interfaces, including visualisation and electronic glosses, however, to effect system-change, it also requires an evolution in 'back-end' processes that create law.

While the transition requires a leader, responsibility for transformation is not to be borne solely by PCO and the LDAC; we all need to capture this vision for our statute book, taking pride in our law, and demanding more from our legislation.

The time is right for a transition; we have the technology available to deal with complexity, and we are led by a government known as one of the most open and transparent in the world,[207] at the forefront of delivering user-centred digital services.[208] Legislation that represents the new legislative paradigm is not only consistent with this identity, but will increase productivity, and empower citizens, thereby supporting equality before the law in New Zealand.

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[204] L Harris "From legalese to reader ease" (8 November 2016) New Zealand Law Society <lawsociety.org.nz>.

[205] M Hagen Law by Design

[206] Haapio and Passera, above n 119.

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XI Word Count

The text of this paper (excluding table of contents, footnotes, captions, and bibliography) comprises approximately 14,855 words.