

The long march: pen and paper drafting to E-publishing law¹

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This paper examines the development of one-stop legislative drafting and publishing offices in New South Wales and Australasia generally.

It explores the changing technologies and policies that have affected drafting offices over the last 30 years. It focuses on the consequences for public access to law, the status of paper versus online documents, as well as the resource requirements and the general pros and cons for legislative drafting offices embracing the combined roles of data creator, manager and publisher.

Part 1: Drafting to publishing legislation—the long march

1880-1980 pens and hot metal

The legislative drafting and publishing process was largely the same for the century, and even longer, leading into the 1980s. It came with its own tempo: a generally leisurely one where legislative counsel used a pen or dictated their work. The documents languished in the in-trays of typing pools and compositors and went through a labyrinth

¹ This is an edited version of a paper given at the CALC conference held in Hong Kong in April 2009.

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of printing production processes at an industrial strength Government Printing Office. The process was characterised by multiple handling and transformations, each one introducing a new element of risk and requiring formal proofreading or close inspection. The process was geared solely to producing a paper publication, generally a B5 pamphlet, folded and stitched, later to be sewn and bound as an annual collection in a cover of buckram or half calf.

The data resided in print-based repositories, hot and later cold metal, held closely and firmly by the printers. Management of the production process required significant interaction by both the drafting office and the Parliament with the printers. Printed legislation did not significantly change in appearance during this period and users needed the skills of a law librarian to use various tables and guides to work out the status and currency of the law. Records in drafting offices were entirely paper-based and featured paste-ups of amended legislation and elaborate card systems.

There was very little difference across the Australian jurisdictions as the technology used for print production was so industrial in scale, and controlled by centralised printing offices.

1980s: technology stirs

Electronic typesetting and word processing systems emerged in the 1980s although these were proprietary and relatively expensive. In New South Wales a shared Data-General/Penta system was installed by the Government Printing Office (GPO) in the Parliamentary Counsel's Office (PCO). GPO trades people worked in the PCO and formatted documents that had been key stroked by typists and other support staff. The system was linked to the head office 2 kilometres away and the documents were proofed back to the PCO where they were proofread and sent back for revision and final printing. The first fax machine was installed to speed up the transmission of proofs. This shared system was refined and extended and senior legislative counsel started using it. All drafting counsel who could not already do so were bussed to the local technical college to learn to touch type.

One benefit of the shared system was that it focussed attention on the typography of legislation and some of the unnecessary complexity. For example, sidenotes were removed and collected as historical endnotes and the dual pagination of annual volumes was abandoned. It also brought new skills in terms of IT and printing technology into the office. One of the early experts in electronic printing technology from the GPO has been the New South Wales IT Manager at PCO for the last 20 years. There was a similar cross-over in personnel in some other jurisdictions.

1990s: technology unleashed

The arrival of desktop personal computers and word processing software marked the

rapid decline in traditional typesetting and printing. Legislative documents could now be created, stored and reused on the one site. Bulk printing was still a challenge as laser printers and high-speed copiers remained cumbersome and costly.

In the case of New South Wales, the production process changed dramatically in 1989 when the Government of the day suddenly closed down the GPO (with 800 staff and vast premises on what is now part of Darling Harbour entertainment and tourist precinct). In 1989 the PCO redeployed 4 staff from the GPO and acquired two high-speed copiers to print Bills. These were heavy behemoths that cost a fortune and needed constant servicing.

During the early 1990s the PCO developed a legislative drafting and publishing system using WordPerfect 5.1 and CAPS (a Unix-based typesetting system) to produce legislative documents for printing, using the in-house copiers. This still involved double handling and the checking of “proofs”. The advent of a Windows based version of WordPerfect and the development of in-house styles and templates enabled the PCO to abandon the CAPs system and the dual process. Full formal proofreading in pairs was at last buried. The PCO no longer employed a team of part-time readers but the staff establishment was already shifting from one of mainly legislative counsel and a small team of general support staff to a dual focussed establishment of legislative counsel and publishing specialists and support staff with well developed IT skills.

Two other features also emerged at this time: the redesign of printed legislation and the creation of an electronic collection of legislative data. In New South Wales, both features were aided by having control over the technology and production processes. The redesign of printed legislation (in 1995) coincided with a high point of interest in plain language, and New South Wales piggybacked on this to simplify the layout of legislation and make it more navigable.³ The timing of this review meant it was entirely focussed on the paper presentation and not the online rendering. Several of the new features (particularly clause numbering and headers) were adopted in other jurisdictions.

The legislative data collection (in WordPerfect) was built up throughout the '90s so that it began to replace the traditional A3 paste-up master sets of current legislation as the “source of truth” for the PCO. The data was captured and maintained in an up-to-date state by a group of 4 staff and used as the source for paper reprints and for drafting purposes. From 1995 the source data was also made available for sale and reuse. The complete lock-in with WordPerfect became a restriction as the volume of data grew and the product lost its place in the market (most Australian jurisdictions migrated from WordPerfect to Word during the 1990s).

³ *Review and redesign of New South Wales legislation: A discussion paper*. A joint project of the Parliamentary Counsel's Office and the Centre for Plain Legal Language. June 1994.

1995 milestones

1995 was a significant year for New South Wales as copyright in legislation was waived and it was finally accepted by the Government that there was not a pot of gold hiding in the sale of electronic legislation. A modest, cost recovery price was fixed for access to legislative data and this has not changed much since. More significantly, the Internet was becoming widely accessible and [AustLII](http://www.austlii.edu.au/austlii/)⁴ launched its free online services. Similarly, the Commonwealth's in-house electronic access system SCALE, which was very advanced for the time, was planning to go live to the web the following year. In 1995, the first meeting of the annual IT Forum was held at which staff from Australian and New Zealand legislative drafting offices met and exchanged experience and expertise.

Also in 1995, the Victorian Government privatised its printing operations. The Chief Parliamentary Counsel formally has the title and role of Government Printer,⁵ although the work of bulk printing and distribution is all performed externally via contracts with commercial organisations. This is, we believe, quite unique, but combining the two roles is quite logical if the function of the Government Printer is to only publish legislation and the Chief Parliamentary Counsel just directs the outsourced production work.

Late 1990s: online access and publication arrive

Internet access and e-mail were introduced in New South Wales and all staff given access by 1997. (This facility, especially e-mail, is now so integrated and central to core business that I suspect staff would go into shock and would have to be sent home if it failed for more than a couple of hours. A back-up email server is being planned.)

The latter part of the 1990s saw the development in Tasmania of the highly sophisticated Enact system based on SGML⁶ and a growing interest in bespoke systems for legislative drafting and publishing that were more suitable for online publishing and not locked into proprietary word processing software. Legislative drafting offices started developing websites and thinking about the long-term management of their data.

XML based systems

In the last 12 years, only four of the 10 legislative drafting offices in Australasia have implemented SGML/XML-based drafting and publishing systems: Tasmania, New South Wales, South Australia and New Zealand. These four systems each strongly reflected the state of technology at the time of their planning and development, as well as the business

⁴ <http://www.austlii.edu.au/austlii/>

⁵ See Victorian *Constitution Act 1975*, section 72 (1A). <http://www.dms.dpc.vic.gov.au/>

⁶ See [The EnAct System](#)

drivers and the resources peculiar to each office concerned.

XML business drivers

The four XML-based offices each had a compelling reason or business case to migrate to this particular technology:

- Tasmania had almost zero technology in its legislative drafting office in the early 1990s and its legislation was not being updated in printed form. This led to judicial and public criticism.
- New South Wales had all of its legislative data in a clearly obsolete format (WordPerfect 5.1) and that had major limitations for online publishing (i.e. its HTML capacity).
- South Australia similarly had its legislative data in WordPerfect 5.1.
- New Zealand had the legacy of a series of unusual arrangements with commercial printers and legal publishers that restricted its operations and public access to legislation. A very clear New Zealand public policy agenda on public access and copyright was an important driver.

XML pros and cons

The main benefits associated with XML-based publishing systems are:

- Better online public access
- Streamlining of processes for both legislative drafting and publishing
- Portability, inter-usability and longevity of data
- Freedom from proprietary software.

Most of these benefits, especially for public access, online publishing and automation can be amply demonstrated in the four cases, although the costs have been high in some quarters. The freedom from proprietary software is only partly realised in most cases as the surrounding systems are highly bespoke and proprietary.

These projects have, in the main, been more complex and time consuming than expected. They have a marked tendency to be expensive. It is clear that there is only a very small pool of suitably qualified specialists available to undertake development work. There is also a need to have in-house expertise to drive and assist in the development and maintenance of these systems. Another major factor in implementing XML is the ability to control the document. In cases where the source document has to be passed around different agencies, the number and nature of the different stakeholders are likely to compound the complexity of the project. This perhaps explains why the other Australasian jurisdictions have been slow to implement similar projects, although there

are a growing number of XML-based systems in North America and elsewhere. In the meantime the non-XML offices have developed very sophisticated word processor based drafting and publishing systems (all using Microsoft Word except Queensland, which uses 'Framemaker').

2000s: consolidation of paper publishing function

The falling cost of technology, for printers, copiers and PCs, assisted in the movement of legislative drafting offices into the publishing sphere. This also made the long decline of traditional Government printing operations permanent, especially as the work of printing and distribution succumbed almost everywhere to the fashion for contracting out this function to private sector companies.⁷ The practice of legislative drafting offices being responsible for publication right up to final printing from camera-ready copy is now the rule⁸

Table - Drafting and paper publication software and end stages (2009)

| Jurisdiction | Production software | Final paper publication stage |
|------------------------------|----------------------------|---|
| Australian Capital Territory | Word, PDF | Camera-ready + bulk prints some Bills |
| Commonwealth | Word, PDF | Postscript file for Bills, PDF for all else |
| New South Wales | SGML, FrameMaker, PDF | Camera-ready + bulk prints all Bills |

⁷ New South Wales still has a Government Printer. The office holder is one of about 5 staff employed in the Department of Commerce who compile the NSW *Government Gazette* and manage the contracts for printing and distributing paper legislation. The sole robust Government Printer in the region is the State Law Publisher in Western Australia, which not only publishes all legislative publications but also controls and manages the WA legislation website.

⁸ For a detailed comparative table on printing arrangements across the jurisdictions see page 77 of *Legislative drafting in Australia, New Zealand and Ontario: Notes on an informal survey*. Nick Horn. 2003.

http://www.opc.gov.au/calc/docs/Article_Horn_informalsurvey_2005.pdf

| | | |
|--------------------|------------------------|---|
| Northern Territory | Word, PDF | Camera-ready |
| New Zealand | XML, Arbortext, PDF | Camera-ready |
| Queensland | FrameMaker, PDF | Camera-ready |
| South Australia | XML, XMetaL, Word, PDF | Camera-ready |
| Tasmania | Enact, Word, PDF | Camera-ready |
| Victoria | Word, PDF | Camera-ready |
| Western Australia | Word, PDF | Word to SLP for Bills and instruments, PDF for reprints |

2000s: consolidation of online publishing

The current decade has featured the consolidation of online publishing by legislative drafting offices and the expansion of resources for that function. All Australasian jurisdictions are now providing free public online access to legislation and most of them are directly operating legislation websites (see table in Part 2).

2009 and beyond: online legislation and integration

The integration of drafting and publishing functions and the ascendancy of online access to legislation make the overall management role of legislative drafting offices more complex from an IT perspective. Making a legislation website a part of the legislative process (the ACT Register, the Commonwealth's FRLI and New South Wales Notification) adds another layer of responsibility and IT anxiety to legislative drafting offices. Records management and the tracking of documents through the external legislative process as well as the in-house drafting stages are challenging. These activities can also be linked to work measurement and the incessant requests from treasury types for "outputs", KPIs, page counts, turnaround times and the more ominous "savings dividends". With the growth of IT and related budgets there are expectations focussed on the IT function itself, with demands for security systems, benefits realisation registers, business continuity plans: something new every 12 months to distract management.

The solution for most of these integration requirements in New South Wales has been LEGIS (Legislation Information System). LEGIS is an integrated system for drafting, storing, tracking and publishing legislation. It is intended to be a cradle to the grave repository for New South Wales legislation. It contains legislation in draft, passage and

enacted form together with a comprehensive history of events. In addition to legislative documents, it is also used to store the cabinet minutes, instructions and emails associated with those documents. For management purposes, it can be used to track work through all stages, measure workloads and turnaround times. It provides assistance when balancing staff workloads and allocating new tasks to staff members. For public access purposes, the system has the capacity to generate all kinds of catalogues and tables relating to legislation.

LEGIS drives the legislation website and tracks the online publication of individual instruments. Its content is entirely searchable within the office and every document, movement and event has an audit trail.

Other jurisdictions have or are developing similar, interlocking systems for recording and reporting. The OWLS system in Western Australia comes to mind and the ACT have long had a life-cycle automation management system on the drawing board.

The spread of these types of systems seems inevitable as the software becomes more accessible and online expectations grow. They are, however, remarkably complex and the legislative drafting process rarely follows the linear and predictable path that IT developers expect. It is another world compared with the document management systems used in big business that are typically foisted on government.

Geography is destiny?

The various operating environments and political events experienced in the Australasian jurisdictions have also played a part in the development of individual offices and there are some marked differences.

Key elements in the New South Wales experience provide a vivid example of how the environment shapes development:

- Technology early adopters in the 1980s
- Closure of the GPO in 1989
- Control of the document cycle
- Development of in-house IT staff
- Waiver of copyright 1995
- PCO a separate Government department 1991-2006.

These events and circumstances provided the PCO with the opportunities, freedom and resources to develop a wholly integrated operation and develop systems and new “products”. Much of this work has been done on an in-house and incremental basis.

Conclusions on the “one-stop shop” legislative drafting office

The convergence of legislative drafting and publishing brings additional pressures and responsibilities to legislative drafting offices and legislative counsel. Deadlines shrink when it becomes known that the means of production are entirely in-house and you can produce tabling copies of a Bill in less than 60 minutes. (Bulk printing of Bills is not for the faint-hearted and is understandably too industrial for most legislative drafting offices.)

The traditional legislative drafting office with a main body of legislative counsel supported by a smaller number of generalist clerical staff has become dual focussed, with establishments that are more equal in overall numbers. Drafting office management and budgets have had to expand to cater for more staff who have specialist skills in IT and publishing production, not just for producing the traditional paper documents but carrying the responsibility for online publication and complex, integrated systems.

Legislative counsel have to become increasingly multi-skilled and this poses difficulties with technophobe counsel who may have a longing for more simple times. New IT systems for legislative drafting and publishing are sometimes accused of stifling drafting creativity. Such systems all have a tendency to impose rules and standards on users. They potentially bring increasing levels of automation and consistency to the legislative drafting “output” but this has to be balanced with ease of use and general acceptance by legislative counsel. Similarly, with integrated systems, legislative counsel are frequently reluctant to embrace activities ancillary to legislative drafting that are now common in document management systems (like recording drafting effort and progress, or even minimal record keeping in some cases).

The continuing march of technology introduces time consuming and complex management issues as it brings overheads in terms of staff, contractors, technical complexity and occasionally enormous costs and setbacks. This has to be balanced against the satisfaction of controlling the life cycle of legislation and being able to provide the best possible legislative drafting services to the Government and public access to the law.

Part 2: E-legislation

Why authorise online content?

Although three legislative drafting offices in Australia have to varying degrees authorised legislative content on their websites there has been little hue or cry about the status of online content. It has not been the subject of significant discussion. The oft-mentioned angst about on-line official versions and possible mistrust by the courts appears to have no basis in fact in our corner of the globe. There is more likely to be a problem with an out-of-date paper reprint.

However, there has been a growing expectation from some users of legislation that formal authorisation be given to the source online version, especially as traditional libraries are so expensive to maintain and paper legislation is becoming less accessible. In New South Wales, law libraries have reduced in number and in some sad cases major holdings have been jettisoned completely. The local expectation and interest in authorised versions has come mainly from the law librarians. This is hardly surprising and there has been a comprehensive study of the subject in the USA by their counterparts. The American Association of Law Librarians analysed the level of authentication of online legal resources across all American States and found that although many had official sites for legislation, not one State met the exacting standard for authenticated legislative content.⁹

New South Wales legislative drafting staff have been using online content since the mid 1990s when the comprehensive collection of Acts and subordinate legislation in WordPerfect 5.1 was first developed. This source material was made available online to the public via *AustLII* and the commercial legal publishers from 1995, although the republished content was not necessarily up-to-date or rendered accurately.

The use of online source material by New South Wales legislative counsel removed the need for the PCO to keep paste-up master sets of all items of principal legislation. The online consolidated versions were accepted as correct for the purposes of amending legislation. With the launch by PCO of the official legislation website in 2001 legislative counsel were provided with a download facility to be able to directly reuse source data from the website into their documents using the new SGML-based legislative drafting and publishing system, without reformatting.

The process of maintaining the source data in SGML and its automated publication to the

⁹ *State-by-State Report on Authentication of Online Legal Resources*. Richard J Matthews and Mary Alice Baish, American Association of Law Libraries. Chicago. 2007, see pages 13, 19 and 21. The report (page 8) uses the following definitions:

An *official* version of regulatory materials, statutes, session laws, or court opinions is one that has been governmentally mandated or approved by statute or rule. It might be produced by the government, but does not have to be.

An *authentic* text is one whose content has been verified by a Government entity to be complete and unaltered when compared to the version approved or published by the content originator. Typically, an *authentic* text will bear a certificate or mark that conveys information as to its certification, the process associated with ensuring that the text is complete and unaltered when compared with that of the content originator. An *authentic* text is able to be *authenticated*, which means that the particular text in question can be validated, ensuring that it is what it claims to be.

http://www.aallnet.org/aallwash/authen_rprt/AuthenFinalReport.pdf.

website in HTML was used for 7 years before the content was formally authorised (or authenticated) in 2008.¹⁰ By that time the reliability of the website and the confidence among users was such that authorisation passed with little fanfare or comment. The online publishing process and website were also reinforced at that time with a new underlying software system including extensive audit trails and a “confirm bot” that verifies that online publication has taken place, and new servers with greater capacity. The website is operated and funded by PCO and the servers are hosted at a secure site used by other Government agencies.

New South Wales legislation website

In terms of public access and acceptance, the website is in the top 20 New South Wales Government websites and receives an average of 400,000 hits per day or over 13,000 visitors (more than most major New South Wales Government departments). Problems and complaints are minimal. Content is updated within 3 working days and the site is replacing the traditional method of gazettal so it is effectively becoming part of the legislative process. Since early 2009, statutory instruments are notified on the site instead of the *Government Gazette* and the text of the instrument is linked. A free, weekly email service is sent to 3,500 subscribers on Fridays, listing the newly notified instruments as well as other legislative events including the passage of Bills.

In comparison, New South Wales paper legislation is becoming increasingly uncommon and expensive. There are now only approximately 200 subscribers (down from over 1,000 10 years ago) to the main paper products (Reprints of Acts). A full suite of New South Wales printed legislation costs over \$10,000 per year and needs considerable librarianship and shelf space to house. The age-old problems with the currency of paper legislation are also increasing. Consolidated reprints are quickly out of date as major titles are amended so frequently and very few readers understand how to use secondary tables and guides effectively. The printing and distribution of New South Wales legislation has been outsourced for some years and has become an increasingly precarious business operation.

One challenge for New South Wales and other jurisdictions is the need to continue serving both classes of legislation user: the paper-based and the online. The major libraries and some judicial officers are still firmly wedded to B5 printed and bound versions with their traditional secondary tables and guides. This results in two sets of products being produced: one static range of paper products for an ever declining readership and another for a growing number of online users and where there is still scope for considerable development of the “product”. This may take several more years

¹⁰ <http://www.legislation.New South Wales.gov.au/> See 9 February 2009 statistics from the New South Wales Board of Studies (Lyndon.Sharp@bos.New South Wales.edu.au)

to resolve.

What is authorised?

In Australasia we have 2 approaches: those that have taken the bold step of authorising the text as published online; and those that have merely authorised the in-house database of legislative content (with an obligation to make it accessible on a website).

Australian Capital Territory

The ACT was the first Australasian jurisdiction to authorise its online legislation, in September 2001, and it now authorises onscreen and downloaded versions (in PDF).¹¹ While the site identifies the current in force version of legislation, the downloaded PDF is not able to be internally date-stamped with the date of access to the website (the printed download is the equivalent of a paper reprint correct as at the date the consolidation was compiled). The Australian Capital Territory is the only jurisdiction using digital signatures on its documents and site authentication software (Adobe digital signatures and the VeriSign SSL certificate).

Commonwealth of Australia

Recent amendments made by the Commonwealth [Evidence Amendment Act 2008](#)¹²

¹¹ ACT [Legislation Act 2001](#), section 24:

24 Authorised electronic versions

- (1) An electronic copy of a law, republication or legislative material is an authorised version if—
- (a) it is accessed at, or downloaded from, an approved web site in a format authorised by the parliamentary counsel; or
 - (b) it is authorised by the parliamentary counsel and is in the format in which it is authorised by the parliamentary counsel.

¹² Section 4 and 5 of the renamed *Acts Publication Act 1905*:

4 Acts database

- (1) The Secretary may cause to be maintained an electronic database of:
- (a) Acts as assented to; and
 - (b) compilations of Acts.
- (2) The Secretary may, in writing, declare a database maintained under this section to be an Acts database for the purposes of this Act.
- (3) The Secretary must cause steps to be taken to ensure that Acts and compilations of Acts in an Acts database are available to the public.
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(Sch.3, cl 5) states that Acts on the Acts database declared by the Secretary of the Attorney-General's Department are complete and accurate records. While there is an obligation to make the database publicly accessible, the online versions are not given authoritative status. The provisions commenced on 4 December 2009.

Under the Legislative Instruments Act 2003, section 22¹³, instruments are registered in the Federal Register of Legislative Instruments (FRLI) – legislative instruments have no force unless registered – and PDF versions that are marked on the site with a FRLI logo are authoritative.¹⁴

Tasmania

Tasmania took a similar legislative approach to the Commonwealth and authorised electronic versions of legislation on the *database* established and controlled by the Chief Parliamentary Counsel, but the relevant steps to authorise the online versions have not yet

- (4) A declaration made under subsection (2):
 - (a) is not a legislative instrument; and
 - (b) must be published in the *Government Gazette*.

5 **Effect of inclusion in an Acts database**

- (1) An Act in an Acts database is presumed, unless the contrary is proved, to be a complete and accurate record of the Act as assented to.
- (2) A compilation of an Act in an Acts database is presumed, unless the contrary is proved, to be a complete and accurate record of the Act as amended and in force on the day specified in the compilation.
- (3) In any proceedings, proof is not required about the provisions and coming into operation (in whole or in part) of an Act as it appears in an Acts database.
- (4) A court or tribunal may inform itself about those matters in any way it thinks fit.

¹³ Commonwealth Legislative Instruments Act 2003, section 22:

22 The status of the Register and judicial notice of legislative instruments and compilations

- (1) The Register is, for all purposes, to be taken to be a complete and accurate record of all legislative instruments that are included in the Register.
- (2) A compilation that is included in the Register and that relates to a particular legislative instrument is to be taken, unless the contrary is proved, to be a complete and accurate record of that legislative instrument as amended and in force at the date specified in the compilation.

¹⁴ See the FRLI home page at <http://www.frli.gov.au/>

been taken.¹⁵

New South Wales

The New South Wales website is the official legislation site and is defined in the Interpretation Act 1987.¹⁶ Since its launch in 2001, the content has been considered authoritative (even though it had no legislative basis) and used as the sole source of primary online legislative material (data is supplied by the PCO to secondary legal publishers such as AustLII and the commercial law publishers).

However, the step of formally recognising the website in legislation and conferring authorised status for its content was not taken until 2006 by amendments to the Interpretation Act.¹⁷ Typically, the IT project underpinning this small step took far longer to complete than planned, and in October 2008 the Parliamentary Counsel finally certified under section 45C (5) of the *Interpretation Act 1987*¹⁸ that the following form of

¹⁵ Tasmanian [Legislation Publication Act 1996](#), section 6 (10) and (11):

(10) The Chief Parliamentary Counsel may approve the production of copies of authorised versions of Acts or statutory rules and copies of reprints of Acts or statutory rules in electronic or printed form by a person approved in writing by the Chief Parliamentary Counsel for the purposes of production or distribution.

(11) A copy of an Act or a statutory rule or the reprint of an Act or a statutory rule produced under subsection (10) is to contain a statement to the effect that the copy is produced with the approval of the Chief Parliamentary Counsel.

¹⁶ Section 21 of the [Interpretation Act 1987](#), definition:

New South Wales legislation website means the website with the URL of www.legislation.New South Wales.gov.au, or any other website, used by the Parliamentary Counsel to provide public access to the legislation of New South Wales.

¹⁷ See NSW [Interpretation Amendment Act 2006](#).

¹⁸ See NSW [Interpretation Act 1987](#), section 45C:

45C Publication on NSW legislation website

- (1) The Parliamentary Counsel may publish on the NSW legislation website under the authority of the Government:
 - (a) legislation (as originally made or as amended), and
 - (b) other matter (including information relating to legislation and any matter authorised by law to be published on the website).
- (2) Legislation or other matter is published on the NSW legislation website:
 - (a) if it is made accessible in full on that website, or

legislation on the website is correct:

- The ‘In Force’ database of current legislation (HTML format), and
- The ‘As Made’ database of original legislation (in PDF) dated 2000 or later.

The general terms ‘authorised’ and ‘certified’ are used to describe the online content. Supporting documentation, including a Ministerial Memorandum, have made it clear that the online material has the same weight as the traditional paper versions.¹⁹

The In Force collection consists of Acts, regulations and other statutory rules, and environmental planning instruments. This collection is maintained in an up-to-date state within 3 days (although usually within one day) of any additions or amendments. It also contains historical point in time versions (in effect, nothing is removed from the site and all superseded and repealed versions are retained). This collection is in HTML and highly searchable. Titles are all hypertext linked as are regulations etc to their parent Act.

There is sufficient confidence in the process of publishing content from the legislation database to the web that the live version of the document that appears online in HTML on the user’s screen is the certified version. In recognition of the fact that users will print the accessed version for later use, the online rendition is stamped with the time and date accessed by the user, and carries an authorisation statement. Accordingly, an authoritative version of legislation as at the date the website was accessed (not the earlier date when the legislation was last amended) is available to the public.

- (b) if notice of its making, issue or other production is made accessible on that website and it is made accessible separately in full on that website or in any other identified location.
- (3) The date on which legislation or other matter is published on the NSW legislation website is the date notified by the Parliamentary Counsel as the date of its publication (being not earlier than the date on which it was first made so accessible).
- (4) If legislation or other matter cannot for technical or other reasons be published on the NSW legislation website at a particular time, the legislation or other matter may be published at that time in such other manner as the Parliamentary Counsel determines and published on that website as soon as practicable thereafter. In that case, it is taken to have been published on that website at that earlier time.
- (5) The Parliamentary Counsel is to compile and maintain a database of legislation published on the NSW legislation website, and may certify the form of that legislation that is correct.

¹⁹ See [M2009-02 NSW Legislation Website: Authorisation of Online Legislation and Online Notification of New Statutory Instruments](#), 23 January 2009.

Table - Status of online legislation, formats and source URLs in Australasia

| Jurisdiction | “Authorised” | Formats | Website URLs |
|------------------------------|---|-----------------|--|
| Australian Capital Territory | Yes | PDF, RTF | www.legislation.act.gov.au |
| Commonwealth | Yes for instruments in PDF on FRLI. Acts database 4 December 2009 | PDF, Word, HTML | www.comlaw.gov.au |
| New South Wales | Yes | HTML, PDF | www.legislation.New South Wales.gov.au |
| Northern Territory | No | PDF, Word | www.nt.gov.au/dcm/legislation |
| New Zealand | Work in progress ²⁰ | HTML, PDF | www.legislation.govt.nz |
| Queensland | No | PDF | www.legislation.qld.gov.au |
| South Australia | No | PDF, RTF | www.legislation.sa.gov.au |
| Tasmania | No (but provided for) | HTML | www.thelaw.tas.gov.au |
| Victoria | No | PDF, Word | www.legislation.vic.gov.au |
| Western Australia | No | PDF, Word, HTML | www.slp.wa.gov.au/legislation |

²⁰ See [New Zealand Legislation website - About this site - current status](#)

Websites as part of the legislative process

Three Australian jurisdictions have effectively built their websites into the legislative process. This is likely to be a trend, given the desire to have better access to legislation and in particular more comprehensive collections of all types of legislation.

Australian Capital Territory

Since 2001, the ACT legislation register has been used to notify the making of legislation, replacing the traditional *Government Gazette*.²¹ The register includes a very broad range of instruments:

- authorised republications of laws currently in force
- Acts as made
- subordinate laws as made
- disallowable instruments as made
- notifiable instruments as made
- commencement notices as made
- resolutions by the ACT Legislative Assembly to disallow or amend subordinate laws or disallowable instruments
- Bills presented to the ACT Legislative Assembly
- notifications of the making of Acts, subordinate laws, disallowable instruments, notifiable instruments and commencement notices
- notifications of the disallowance or amendment of subordinate laws and disallowable instruments by the ACT Legislative Assembly.

The register also includes other material to help legislation users, for example, explanatory statements for Bills, subordinate laws and disallowable instruments and information about legislation. The size and nature of the Australian Capital Territory makes central registration a relatively manageable exercise.

Commonwealth

The *Federal Register of Legislative Instruments* was established in 2005. All statutory

²¹ See “About the register: an overview” under “Information”, available from <http://www.legislation.act.gov.au/>. (Accessed: 20 March 2009)

instruments of a legislative nature that are made on or after 1 January 2005 must be registered on the Federal Register to be enforceable. In addition, all in force statutory instruments that were made before 1 January 2005 must be registered on the Register if they are to remain in force. Sections 5 to 7 of the [Legislative Instruments Act 2003](#) define and describe the very broad range of instruments concerned. The [Legislative Instruments Act](#) and the Register are currently subject to a wide-ranging review.²²

New South Wales

The new Notification feature on the legislation website provides official notice of the making of statutory instruments (regulations, rules and environmental planning instruments etc) on the legislation website rather than publication in the paper *Government Gazette*.²³ The notification page has embedded links to the actual instruments, which are located in the *As Made* database on the website. This feature applied from 26 January 2009 to all environmental planning instruments and from 2 March 2009 for all statutory instruments drafted by the Parliamentary Counsel's Office and made by the Governor (mainly regulations, rules, commencement proclamations and court rules).

Notification enables instruments to be published online on a cumulative basis each week with a permanent archive facility for previous weeks and years. In association with notification, there is a weekly email service listing all instruments notified on the website and other legislation events, which is sent to subscribers on Friday afternoons. This replaced the longstanding Weekly Bulletin service and now has about 3,000 subscribers.

In this area, New South Wales has not been as bold as the Commonwealth, which required all instruments of a legislative nature to be notified. New South Wales has taken a more manageable approach of taking over firstly those instruments drafted in the PCO. The New South Wales approach is intended to enable an increasing number of miscellaneous statutory instruments to be accessed online. This will be achieved by amending the parent Acts on an individual and staged basis (to require notification on the website instead of the *Government Gazette*) rather than by defining what is a legislative instrument and creating a registration system like the Australian Capital Territory or the Commonwealth.

In addition to the *Notification* feature and the weekly email service, the New South Wales PCO has made a series of incremental improvements to the website to provide better

²² Review of the *Legislative Instruments Act 2003* (2008-09). See <http://www.ag.gov.au/lia-review> A report is expected to be tabled in April 2009.

²³ See <http://www.legislation.New South Wales.gov.au/> and sections 44 and 45 of the [Interpretation Act 1987](#).

public access to the law. These improvements are—

- Maps in zoomable PDF have been added to new environmental planning instruments - these show land use zoning, building heights etc (New South Wales is the only Australian office that drafts planning instruments);
- Explanatory notes to Bills are available in the *As Made* collection as these are frequently sought by specialist users;
- Consultation or exposure drafts of Bills are published and retained on the site because they are also hard to track over time.

In an ideal world New South Wales Bills and the associated legislative passage information would also be integrated with the website but the PCO has an informal agreement with the Parliament that the Parliament maintains the definitive website for parliamentary information and Bills and the PCO is responsible for maintaining the website for legislation for its existence after it is enacted.

One great irony remains in New South Wales: the actual legislative processes are still an all paper-driven one, with documents and processes reflecting the 19th century. Ministers sign instruments, and other documents about those instruments; parliamentarians receive their line-numbered printed bills; and liveried attendants deliver pseudo vellums to the Governor for stamping and signing. We seem light years away from e-assent and other electronic legislative processes.

What's still missing from public access?

“Ignorance of the law is no excuse, *unless there is no way of finding out what the law is.*”²⁴

“*Slippery instruments*”: There is a somewhat slippery class of statutory instrument in many jurisdictions. In New South Wales, these instruments have been termed “miscellaneous statutory instruments” and in some other jurisdictions they are known as “deemed statutory instruments”. The instruments are not generally drafted centrally by the relevant legislative drafting office but are usually prepared in Government Departments and made by Ministers. In New South Wales, they are at least published centrally in the *Government Gazette*. However, this is a static form of publication with very limited searchability and indexing. The instruments are hard to locate and even harder to establish if they have been superseded. And unlike instruments drafted and published by the PCO, they often lack formal or unique citation, which of course means

²⁴ Berlins, M, 2008, *A Kafkaesque excuse for ignorance of the law*, (Online). Available from <http://www.guardian.co.uk/uk/2008/nov/03/law-kafka-transparency-marcel-berlins> (Accessed: 18 March 2009) . Emphasis added.

that they are anonymous.

As mentioned, the PCO is developing a scheme to make these legislative instruments more accessible by bringing them into the one website and more resemble the main body of existing instruments.

The lifecycle catalogue: This catalogue is the holy grail of online access for the cognoscenti. It will resemble a definitive table of Acts and subordinate legislation that is not only hypertext linked to the text of the instrument but also yields up the life-cycle events and history. It should replace the static and often bewildering tables and supplements that have traditionally been produced by legislative drafting offices. It should also be “customisable” by the online user to slice into alphabetical or historical chunks and to include or suppress various types of metadata.

Subject indexes: This is a longstanding area of need in the online legislation sphere, even when a sophisticated search engine is available. The problem with full text keyword searching is that you can easily retrieve too much information. Often this sort of search is followed by a lot of browsing through the results list to identify the relevant items, and even then you may miss some of them.

Subject indexing ensures that there is a controlled vocabulary as opposed to a natural language vocabulary. A subject index is associated with a subject thesaurus which provides preferred terms and related terms among other things.

In the case of early 19th century New South Wales legislation, it would be useful if a subject index or at least thesaurus could be created to link the legislation to present day English as well as linking variations in terminology. Some examples from the 1820s to the 1840s that would need cross-referenced linking are:

- colonial distillation / spirits
- debtors’ relief
- felons
- hulks
- lunacy / lunatics
- Masters and servants.

Like language generally, legislation reflects changes in common usage. Citations change completely in some cases. Instruments are remade with new terms and subject-matters. Fashion and lapses of commonsense have dictated some citations that are far from being intuitive or remotely useful over time. Guides in the form of online subject indexes or thesauri are rare. The New Zealand Law Commission has focussed considerable

attention on the topic of subject indexes.²⁵ The Victorian CPCO has for many years been the only office producing a detailed subject index in hard copy²⁶ and this would be invaluable as a dynamic online index with links to the actual legislation. In New South Wales, this is some way down the “to do” list and would need some special funding to provide some one-off IT development and a permanent indexer to create and keep the content up-to-date.

Historical material: There is a growing expectation that the entire statute book should be online, particularly as paper libraries are being dispersed and paper volumes deteriorate. The older material is also of special interest to historians. Several Australasian jurisdictions have active projects underway to capture this material and New South Wales plans to add the 1824-1989 statutes to its existing “*as made*” collection during 2010.²⁷

Why PCOs?

The New South Wales PCO has drafted and published legislation as an integrated service since 1990 when the Government of the day closed the Government Printing Office and more or less forced its hand. The Office has a solid core of in-house editorial and IT experts, in addition to a full complement of legislative drafting staff, who can ensure the quality, integrity and currency of publications and effectively develop these. Similarly, the Office controls the entire document flow from initial draft to enactment and eventual repeal, which is not common. Even so, the general set of characteristics for integrated legislative drafting and publishing, with centralised control over the main body of legislative data is now shared by the great majority of legislative drafting offices.

Unlike many Government agencies in the current era, legislative drafting offices tend to be stable both in terms of function and resources and have the most compelling need for comprehensive and complete legislative records. They have the greatest bank of knowledge about the statute book and the necessary obsession about accuracy and detail. Accordingly, they are the logical keeper and publisher of the laws of the state.

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- ²⁷ Victoria, Western Australia, the ACT and New Zealand have historical statutes capture projects underway.
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