

Free access online legislation in a federation: Achievements of Australian Governments and issues remaining

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Abstract: This paper** explores the development of government provision of online access to legislation in Australia, including the technologies used in the drafting/publishing process. It focuses on the more recent developments, such as the use of websites as part of the actual legislative process and the near complete demise of paper products. It looks at the conflicts that arise in balancing continuing demands for traditional print-like products and developing more effective online services, and the elusiveness of more collaborative nationwide approaches.

Keywords: online access to law; legal publishing; government publishing

1. History

2. Printing and publishing legislation

Legislative drafting and publishing processes did not dramatically change for most of the 19th and 20th centuries, apart from the advent of linotype then offset printing and the arrival of typewriters of various kinds. Drafters worked in pen or dictated to stenographers until the 1980s. A very small number typed their own work. Typescript was delivered to printers where it was rekeyed by compositors and that was just the first part of a lengthy production cycle. The process was geared entirely 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. Public access came in the form of official printed copies of legislation and Gazettes distributed for sale by government printers and from government bookshops. Commercial publishers also had a role in producing versions of consolidated legislation and at times annual volumes.

The “data” resided in print-based repositories, hot and later cold metal, held closely and firmly by the printers. Printed legislation did not change significantly in form 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 and then sometimes create their own consolidation. 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.

3. Seismic technological shift

The arrival of desktop personal computers and word processing software in the 1980s triggered the rapid decline in traditional typesetting and printing. Legislative documents could now be created, stored and reused on the one site. Drafters started to learn to type. Commercial scale printing was still a challenge as laser printers and high-speed copiers were cumbersome and costly so traditional government printers still controlled final print production.

4. Demise of Government Printing Offices

In 1989 the production process was changed dramatically in NSW as the Government suddenly closed down the Government Printing Office with 800 staff and its vast premises in Ultimo. The PCO redeployed four printing staff and acquired two high-speed copiers to print Bills. A similar process has occurred in most Australian jurisdictions: traditional government printing offices were shut down or radically downsized and printing work contracted out. Aside from the consequences of ideological imperatives, the emergence of desktop publishing technology and availability of high-speed copiers made the role of traditional print shops largely redundant.

With the closure in NSW, the distribution and marketing of paper legislation tended to suffer as that end function became homeless and was moved around within the bureaucracy and partly contracted out. It has been less fragmented and dysfunctional elsewhere.

The sole remaining government printer with the full range of traditional functions is in Western Australia. That organisation has managed to survive and has even taken on the online publishing function by operating the legislation website, in addition to its traditional role.

5. Role of drafting offices

The demise or decline of traditional printers and the introduction of desktop technology also changed the role of drafting offices. They became more responsible for managing the production processes and most significantly, controlling the source data. For drafters they could take ownership of the end to end process and produce typeset quality documents by themselves, without multiple document movements and layers of proof-reading and quality control. Apart from NSW, which took over the entire production process for Bills, the other drafting offices all ended up combining the drafting and print production process right up to the camera-ready stage when documents would be passed to external printers for bulk printing. Drafting offices, reluctantly in some cases, had to increasingly integrate drafting and publishing functions and become one-stop shops and this focused their attention on emerging new technologies and the whole area of public access.

6. 1995 and all that

7. Significance

1995 was a watershed year as a number of events occurred that had a major impact on access to legislation:

- Copyright in NSW legislation waived
- AustLII emerged
- Parliamentary Counsel's Committee IT Forum established
- NSW redesign of legislation
- Victorian Government privatised printing and the Chief Parliamentary Counsel became Government Printer.

8. Copyright

Copyright in NSW legislation was waived in 1995 and it was finally accepted by government that there was not a pot of gold hiding in the sale of electronic legislation. A modest, cost recovery price was set for access to legislative data by commercial re-users and this has not changed over the years. Legislative data has been provided free of charge to other government agencies and AustLII ever since.

9. AustLII and the internet

AustLII was launched in early 1995 and the site initially consisted mainly of Commonwealth legislation, in HTML. This was ground breaking in terms of public access policy and technology as until then electronic legislation was confined to costly commercial services. The Commonwealth's SCALE database, which was well ahead of its time, was already in place within government but didn't go public until early 1997. Internet access was just being widely introduced in the workplace (desktop access for all PCO staff didn't happen until 1997).

10. Parliamentary Counsel's Committee IT Forum

The first meeting of the annual IT Forum was held in Sydney. This involved key staff from Australian and New Zealand jurisdictions meeting and exchanging experiences and expertise. Coincidentally, the guest speaker at that first meeting was Andrew Mowbray who demonstrated the early AustLII.

Another portentous event came from a member of staff from Queensland who explained at length to a sceptical audience that a product called PDF would be the way of the future.

The Forum has helped to exchange ideas and share technology. Many jurisdictions in Australia and beyond are now using drafting templates designed by the Commonwealth PCO. Offices provide assistance to each other in evaluating systems and in the periodic and painful data migrations (for the unfortunate Word users). In the more enlightened XML world, the NSW office has made its DTDs freely available and these have been adapted by the South Australian office and are currently being considered by Queensland. Unfortunately, the level of collaboration has not been sufficient to arrive at a single approach or system that could be used by all jurisdictions.

11. Beyond WordPerfect

By the end of the millennium, drafting offices were mostly abandoning WordPerfect for Word or, in the case of Tasmania and NSW, planning to

develop more bespoke systems based on non-proprietary data formats such as SGML or XML¹ that were more suited for online publishing.

The latter part of the 1990s saw the implementation in Tasmania of the highly sophisticated Enact system based on SGMLi and its point-in-time website and NSW had embarked on a project to develop an SGML-based system. By the turn of the century other jurisdictions were developing websites based on PDF and RTF.

12. Eighteen years on: achievements and current position

13. Technological state of play: XML-based systems

Only three of the nine drafting offices in Australia have implemented SGML/XML-based drafting and publishing systems; Tasmania, New South Wales and South Australia. The other offices use Word and PDF for drafting and publishing. Queensland uses FrameMaker and PDF and is planning an XML-based project. The three XML-based offices each had a compelling reason or business case to migrate to this technology:

- Tasmania had almost zero technology in its drafting office in the early 1990s and its legislation was not being consolidated. This led to judicial and public criticism and surprisingly they selected a highly innovative system that automated consolidation.
- NSW had all of its legislative data in a clearly obsolete format (WordPerfect 5.1).
- South Australia also had its legislative data in WordPerfect 5.1.

The main benefits associated with XML-based publishing are:

- Better online public access
- Streamlining of in-house processes for both 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 although the costs have been high. In the case of South Australia, that office has not had sufficient funds to develop a source website that maximises the value of their XML data.

¹ See [The EnAct System](#)

Unfortunately, the freedom from proprietary software has only only partly realised as the surrounding systems are highly bespoke and proprietary.

14. Source websites

The drafting offices in all jurisdictions effectively operate source websites although the West Australian site is hosted and branded by the State Law Publisher. Apart from an attempt by that organisation to commercialise online access, all source sites have always provided free access. The URL's for these appear in the table in section 3.5.10 below and an extensive set of links appears on the NSW website.

15. Breadth and depth

All jurisdictions have built up extensive collections of historical material over the last 20 or so years, covering the static as made legislation as well as consolidated in force versions of Acts and subordinate legislation. Point-in-time consolidations are available from most sites, usually starting from the early 2000's but some jurisdictions have back-captured selected titles. NSW has all versions of the Crimes Act 1900 back to the 1975. All jurisdictions are keen to have complete as made collections and Victoria, NSW and WA have completed that task for Acts and back capturing projects for Acts or Gazettes are underway everywhere.

16. Currency and main formats

The ideal situation for online access is for the document to be available on the day it is created or the day a triggering event occurs. Most jurisdictions have built up their in-house resources and skills to maintain turnaround times of less than five days. Victoria claims to have its material online on the day and NSW gets most of its material online within one to three days. Most sites rely on PDF as the principal format, with options to select a Word version or in some cases an automated HTML version (Commonwealth and WA).

17. Authorisation

18 . Why authorise online content?

Although five of the nine jurisdictions 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 online version, especially as traditional libraries are so expensive to maintain and paper legislation is becoming less accessible. In NSW, law libraries are reducing in number and in some sad cases major holdings have been sent to the tip and this is perhaps where the local expectation and interest in authorised versions has come from.

19. Background to NSW content authorisation

NSW drafters have used online content since the mid-1990s when a comprehensive collection 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. The use of online source material by drafters removed the need to manually maintain paste-up mastersets of all items of principal legislation. With the launch of the official legislation website in 2001 drafters were provided with a download facility to be able to directly reuse source data from the website into their documents without reformatting.

The process of maintaining the source data in SGML and its automated publication to the website in HTML was used for seven years before the content was formally authorised in 2008². 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

²<http://www.legislation.nsw.gov.au/> see "About".

including extensive audit trails and a “confirm bot” that verifies that online publication has taken place.

20. What is authorised?

In Australia, not surprisingly, there is more than one approach: those that have taken the bold step of authorising an entire category of material as appearing on screen; those that indicate what is authorised by stating so in the actual text of individual documents; and those that have merely authorised the in-house database of legislative content (with an obligation to make it accessible on a website).

21. Australian Capital Territory

The ACT was the first Australian jurisdiction to authorise its online legislation, in September 2001, and it now authorises onscreen and downloaded versions in PDF³. 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. This means that the printed download is the equivalent of a paper reprint correct as at the date the consolidation was compiled, which is the situation on the other sites providing PDF documents. The ACT uses digital signatures on its documents and site authentication software (Adobe digital signatures and the VeriSign SSL certificate).

³ ACT [Legislation Act 2001](#), section 24(1): Authorised electronic versions

An electronic copy of a law, republication or legislative material is a 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.

22. Commonwealth

The Acts Publication Act 1905⁴ section 4 states that Acts on the Acts database declared by the First Parliamentary Counsel are complete and accurate records. While there is an obligation to make the database publicly accessible, the online versions are not all given authoritative status yet, but those which have been are prominently stamped with the Australian map and red tick logo.

Under the Legislative Instruments Act 2003, section 22⁵, instruments are registered in the Federal Register of Legislative Instruments (FRLI) and they have no force unless registered and PDF versions that are marked on the site with the Australian map and red tick logo are authoritative.

4 [□]Section 4 and 5 of the Commonwealth [Acts Publication Act 1905](#): 4 Acts database

(1) The First Parliamentary Counsel may cause to be maintained an electronic database of:

- (a) Acts as assented to; and
- (b) compilations of Acts.

(2) The First Parliamentary Counsel may, in writing, declare a database maintained under this section to be an Acts database for the purposes of this Act.

(3) The First Parliamentary Counsel must cause steps to be taken to ensure that Acts and compilations of Acts in an Acts database are available to the public.

(4) A declaration made under subsection (2):

- (a) is not a legislative instrument; and
- (b) must be published in the 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.

5 [□]Commonwealth [Legislative Instruments Act 2003](#), section 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.

23. 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 actually authorise the online versions have not yet been taken⁶.

24. Queensland

Since 29 January 2013 Queensland has been authorising new legislation and current reprints and has a program in place to progressively authorise pre-2013 legislation. At this stage there are no legislative provisions underpinning the process other than section 46A of the Evidence Act 1977. The format used on the legislation website is PDF and the authorised titles are stamped accordingly.

25. Victoria

Since January 2011, PDF versions of as made Victorian legislation have been authorised and consolidations progressively authorised and added to the collection. The titles are individually authorised and carry digital signatures. Authorisation is underpinned by a new Part V of the Interpretation of Legislation Act 1984.

26. New South Wales

The NSW website is the official legislation site and is defined in the Interpretation Act 1987⁷. 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.

⁶ 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.

⁷ Section 21 of the [Interpretation Act 1987](#), definition: NSW legislation website means the website with the URL of www.legislation.nsw.gov.au, or any other website, used by the Parliamentary Counsel to provide public access to the legislation of New South Wales.

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 Act⁸. 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 Act⁹ that the following form of 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, made it clear that the online material has the same weight as the traditional paper versions¹⁰.

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

⁸ See NSW [Interpretation Amendment Act 2006](#).

⁹ NSW [Interpretation Act 1987](#), section 45C(1)-(5): **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
- (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.

¹⁰ See [M2009-02 NSW Legislation Website: Authorisation of Online Legislation and Online Notification of New Statutory Instruments](#), 23 January 2009.

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.

27. Table - Status of online legislation, formats and source URLs in Australia

Jurisdiction	"Authorised"	Formats	Website URLs
ACT	Yes	PDF, RTF	www.legislation.act.gov.au
Commonwealth	Yes for instruments in PDF on FRLI and Acts in PDF being progressively added.	PDF, Word, HTML	www.comlaw.gov.au
NSW	Yes	HTML, PDF	www.legislation.nsw.gov.au
NT	No	PDF, Word	www.nt.gov.au/dcm/legislation
Qld	Yes	PDF	www.legislation.qld.gov.au
SA	No	PDF, RTF	www.legislation.sa.gov.au
Tas	No (but provided for)	HTML	www.thelaw.tas.gov.au
Vic	Yes	PDF, Word	www.legislation.vic.gov.au
WA	No	PDF, Word, HTML	www.slp.wa.gov.au/legislation

28. Websites as part of the legislative process

Three jurisdictions have effectively built their websites into the legislative process. This is likely to be a trend, given the demise of paper and the desire to have better and faster access to legislation.

29. Australian Capital Territory

Since 2001, the ACT legislation register has been used to notify the making of legislation, replacing the traditional government gazette¹¹. The register includes a very broad range of statutory instruments and related documents. The size and nature of the ACT makes central registration a relatively manageable exercise.

30. Commonwealth

The Federal Register of Legislative Instruments was established in 2005. All statutory instruments of a legislative nature that are made on or after 1 January 2005 must be registered to be enforceable. In addition, all in force statutory instruments that were made before 1 January 2005 must be registered 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.

31. New South Wales

The Notification feature on the legislation website provides official notice of the making of statutory instruments (regulations, rules and environmental planning instruments etc) on the website rather than publication in the paper Gazette¹². The notification page has embedded links to the actual instruments, which are located in the as made database on the website. Notification and the gazettal process will effectively be merged in 2014 when the PCO will become responsible for the Gazette and when that ceases to be a paper-based publication.

¹¹ See “About the register: an overview” under “Information”. See <http://www.legislation.act.gov.au/>.

¹² See <http://www.legislation.nsw.gov.au/> and sections 44 and 45 of the [Interpretation Act 1987](#).

In this area, NSW has not been as bold as the Commonwealth, which requires all instruments of a legislative nature to be notified. NSW has taken a more manageable approach of taking over firstly those instruments drafted by PCO. The NSW approach is intended to bring an increasing number of miscellaneous statutory instruments “into the fold” of online access by way of the notification and proposed online gazettal process rather than by defining what is a legislative instrument and creating a registration system like the ACT or the Commonwealth.

32. NSW developments

33. Maps

Maps in zoomable PDF have been added to new environmental planning instruments for some time. These show land use zoning, building heights etc and are a somewhat novel feature on legislation websites as NSWPCO is the only Australian office that drafts all planning instruments.

34. Bills

Bills which were once only available from the Parliament’s website are now also available on the legislation site. These, in combination with their explanatory notes and any exposure or consultation drafts, help provide a complete history for the enacted legislation. (Only a link to the relevant issue of Hansard is missing.)

35. Web feeds

The website now offers standard or customised feeds using the Atom XML standard web feed. The standard legislation feeds include:
Bills—updates on all consultation drafts of Bills, Bills introduced, amended and passed by Parliament, and Bills assented to
New legislation—New Acts, statutory instruments and environmental planning instruments added to the as made PDF collection
Consolidated legislation—Acts, statutory instruments and environmental planning instruments as they are added to the in force collection and as amended and updated
Publication of the official notification of the making of statutory instruments and other legislative events.

36. Tables

The static, paper-based tables that were once essential to keep up-to-date with NSW legislation were discontinued last year. The main tables were:

- List of Legislation in Force
- Cumulative annual tables of Bills, Acts and statutory rules
- Commencement tables
- Applied laws
- Repealed Acts.

These have been replaced by dynamic tables generated by the user and provide current and point in time views, with the instruments all hypertext linked. The tables are generated from metadata held in the PCO's document management system, which is tightly integrated with the web publishing process. A screen shot showing the tables available is reproduced from the legislation website in Appendix 2.

37. Gazette

The NSW Government Gazette has been published since 1832 and has not changed much from its 19th century journal format. It has gradually lost content as legislation was published separately and government agencies published their material elsewhere. It still contains a wealth of information, mainly quasi-legislative documents dealing with topics like land, mining, agriculture, roads and local government but has been neglected over many years. A decade ago it had over 1,000 subscribers but this has shrunk to only 60 paying customers as it is available online. The paper product is difficult to use in terms of searching and is costly to print and distribute. The publication is currently compiled by a couple of staff in the Department of Premier and Cabinet who were formerly compositors in the old Government Printing Office but this operation will be transferred to the PCO later this year and the online collection added to the legislation website. The paper Gazette will cease at the end of the year and it will become an online publication only. The content will be reviewed and a new form of gazettal incorporated in the legislation website in 2014. As this will be a purely online feature there will be no need to have a weekly journal format with pagination and volume numbers and it will appear as a collection of individual instruments and notices that will be more easily searchable and faster to access. The content review will hopefully also

provide the opportunity to revive its effectiveness as a central repository for quasi-legislative material.

The State Library is currently running a project to digitise its collection of Gazettes back to 1832 and it is hoped that a copy of that material can be added to the legislation website, just like the Acts back to 1824.

38. In the pipeline

Online access for portable devices is currently being investigated as it is clear there is a rapidly growing demand for this service. NSW legislative data is already being used in an App being developed by the Judicial Commission for use on iPads by the NSW judiciary.

39. The end of paper?

One challenge for NSW and the other jurisdictions has been the need to continue serving both classes of legislation user: the paper-based and the online. A small number of users are still firmly wedded to B5 printed and bound versions, even when it is quite easy to download and print up-to-date versions using PDF. This is likely to be a generational issue and the growing cost or the complete demise of paper publications in some jurisdictions will also accelerate the changeover. A side effect of the desire for the traditional looking publication and the lingering demand for paper has helped ensure the primacy of PDF over HTML delivery on source websites.

Subscribers to paper publications have been dropping off every year and this accelerates whenever an online collection is authorised. At the turn of the century, subscriber numbers in NSW were still up around 1,000 for reprints and the Gazette. By 2012 the numbers were well under 100 and dropping by ten percent annually. The same pattern has been repeated in all jurisdictions. NSW has completely stopped the print production of new legislation, reprints and tables. The printed Gazette will cease at the end of 2013 (as an aside it is noted that the Queensland Gazette ceased to be published in paper last year). The only remaining traditional paper publication is likely to be the bound annual volumes of Acts and there are only likely to be 50 or 60 subscribers for what is likely to become a very expensive product. It is noted that when the full suite of printed publications was still available in NSW, the annual cost was about \$10,000.

One grand irony remains in NSW: the actual legislative processes are still all paper-driven, 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-vellum assent copies to the Governor for stamping and signing. E-assent and other electronic legislative processes still seem a way off.

40. Issues and challenges

41. Costs and complexity

A major factor in the slow take-up of more efficient and effective online publishing technology in Australia has been cost. In addition, drafting offices are often under the control of a large department and subject to external IT agendas and policies. Legislative drafting and publishing is a niche specialty and there are very few local IT developers capable of dealing with the complexity involved. Government IT projects tend to be slow and costly and a sophisticated XML-based system, with an extensive data conversion component and an effective website is likely to now cost around four million dollars and have correspondingly high ongoing costs.

42. Lack of consistency or uniform approach

A major lost opportunity and disappointment has been the failure to adopt a single system and approach for drafting and publishing legislation in Australia (think railway gauges). This applies in many areas including IT systems, delivery formats and the approach on authorisation. There was one point in relatively early IT history, when the Tasmanians were developing their system, that could have provided an opportunity to provide a common, state of the art system but that was missed. However, it has to be acknowledged that there is an increasingly collaborative approach now operating across all jurisdictions, at least at the micro level.

43. Elusive content

“Ignorance of the law is no excuse, unless there is no way of finding out what the law is (Berlins, M, 2008)”¹³

¹³ Berlins, M, 2008 *A Kafkaesque excuse for ignorance of the law*, (Online). Available from <http://www.theguardian.com/uk/2008/nov/03/law-kafka-transparency-marcel-berlins>. Accessed: 6 September 2014)

Unfortunately, there are several pockets of legislative material that are not freely available or easy to locate or search from a single site.

44. Miscellaneous statutory instruments

There is a somewhat slippery class of statutory instrument in many jurisdictions. In NSW they 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 drafting office but are usually prepared in Departments and made by Ministers. In NSW they are at least published centrally in the Gazette. However, until 2014 this remains a static form of publication with very limited searchability and indexing. The instruments are hard to locate and even harder to establish if they are current or superseded. Unlike instruments drafted and published by PCO, they often lack formal or unique citation.

As mentioned, the PCO is developing a scheme to make these legislative instruments more accessible by redeveloping the Gazette into an online process rather than a static journal-like publication. They will be brought into the one website and align more closely with the main body of existing instruments.

45. Applied laws

There is an increasing body of legislation made in one jurisdiction and applied in another. Sometimes the law is also enacted in the home jurisdiction so becomes searchable from the one site but this is not always the case unfortunately. A table of applied laws for NSW is available on the legislation website and is reproduced here in Appendix 3.

46. Standards, Codes and Guidelines

In a similar vein to applied laws, there are Australian Standards and other industry or professional codes and guidelines that are referenced in legislation and these are not always readily accessible and sometimes involve payment.

47. Disaggregated local content

In addition to applicable external instruments that are not readily accessible, a couple of source websites do not have all the legislative content under one roof and it is necessary to do separate searches on other sites for Bills or Gazettes.

48. Subject indexes

This is a longstanding area of need in the online legislation sphere, even where 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 item, and even then you may miss relevant items. Subject indexing means that there is a controlled vocabulary as opposed to a natural language vocabulary. A subject index is associated with a subject thesaurus which offers preferred terms and related terms etc.

In the case of early 19th century NSW legislation, it would be ideal 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 1820s - 1840s that would need cross-referenced linking are:

- debtors' relief
- felons
- hulks
- lunacy
- 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 thesaurii are rare. The Victorian PCO has for many years been the lone office producing a detailed subject index in hard copy¹⁴ and this would be invaluable as a dynamic online index with links to the actual legislation. In NSW, this is some way down the "to do" list and would need some special funding, for some one-off IT development and for a permanent indexer to create and keep the content up-to-date.

¹⁴ See [Office of the Chief Parliamentary Counsel, Subject Index](#).

49. Conclusion

The development of online access to legislation by Australian Governments has been slow but steadily incremental. Over the last decade online content has been expanded so several jurisdictions now offer complete collections of as made legislation and all offer some depth of point-in-time consolidations. Websites have been improved and some have been completely rebuilt. Over half of the jurisdictions now authorise online content. There is a kind of consistency across most of the websites in the way the collections are served up and described and the way individual titles have home pages offering status information and downloads. The currency of consolidations has generally improved as offices develop their technology and in-house skills. Across the board, access is free and is likely to remain that way.

However, online access in most jurisdictions is only delivering a static, paper-based product that closely resembles the longstanding paper consolidations or reprints that predated online technology. The majority of sites are based on PDF documents that significantly limit the cross-linking, searchability and speed that online access should provide. Paper legislation is dead in some jurisdictions and dying in others but its legacy is living on.

The ideal scenario where all jurisdictions adopt a uniform technology that enables the best form of online access and where data could be pooled and accessed from a single site is a long way away.

1. Abbreviations and definitions

In this paper:

As made in relation to legislation means the Acts passed by Parliament and the subsidiary legislation made by the Executive Council in their original, static forms (see also **In force**).

Consolidation, in relation to legislation, means a revised version of an Act or other instrument that includes amendments incorporated into the text, with annotations and other status information.

DTD means Document Type Definition. This is a set of rules that define the elements (ie modules or structures) that can be used (and their order or combination) in a particular class of document. DTDs are used as the skeleton or framework for SGML or XML publishing, especially complex legislative and technical documents (“schema” is the term commonly associated with the more recent XML-based publishing or transactions).

HTML means Hyper-Text Mark-up Language. This is the language most commonly used to create documents for publishing on the Internet. It defines the structure and layout of documents using tags and attributes and enables advanced searching and linking. HTML is readily generated from **XML**.

IT means Information Technology.

In force in relation to legislation means legislation consolidated with all amendments and annotations explaining the currency and history of that legislation (see also **As made**).

Metadata means data about data. In the legislative publishing environment it is the critical information about legislative instruments—source, name and instrument type identifiers. It can also include extensive currency and status information about each instrument, including their smallest separate internal components.

PCO means New South Wales Parliamentary Counsel’s Office.

PDF means Portable Document Format. This is a document file format created by Adobe Systems based on its page description language and delivers electronic files that appear exactly as they would on a printed page.

RTF means Rich Text Format. This is a proprietary document file format developed by Microsoft to enable document exchange and reuse between different software platforms.

SGML means Standard Generalised Mark-up Language. This was developed as a non-proprietary mark-up language for complex technical and legal documents. It is an International Standard (ISO8879:1986) but its subsets **XML** and **HTML** are now far more commonly used.

XML means eXtensible Mark-up Language. This is a general-purpose, non-proprietary mark-up language for creating, storing and publishing data. Its primary purpose is to facilitate the sharing of data across different systems, particularly systems connected via the Internet and can readily generate **HTML**. **XML** is a more recent subset of **SGML**.

2. New Online Tables

Tables

A selection of user-generated interactive tables is offered by the NSW Parliamentary Counsel's Office to provide information about the status of Acts, statutory instruments, environmental planning instruments, and associated matters.

The current tables are generated from the constantly updated NSW legislation database and are printable and downloadable in various formats from this website. The following tables are currently available:

Current and Point-in-time Tables

- NSW Public Acts in Force
- NSW Private Acts in Force
- NSW Principal Statutory Instruments in Force
- NSW Principal Environmental Planning Instruments in Force
- NSW Applied Laws in Force
- Uncommenced NSW Acts

Cumulative Annual Tables

- NSW Bills introduced
- NSW Acts assented to
- Commencement Tables for NSW Acts
- NSW Statutory Instruments made
- NSW Environmental Planning Instruments made
- Repealed NSW Acts
- Repealed NSW Principal Statutory Instruments
- Repealed NSW Principal Environmental Planning Instruments

Catalogue of Acts since 1824

- NSW Acts since 1824

Historical archive

- See also Archive of superseded and miscellaneous Tables

Archive of superseded and miscellaneous Tables

The following tables are available:

Superseded Tables

- Legislation in Force 1990–2012
- Monthly Acts Tables 1990–2012
- Monthly Statutory Instruments Tables 1988–2010
- Table of Acts repealed 1986–2012
- Paper Reprints—Acts 1972–2010
- Paper Reprints—Regulations and Environmental Planning Instruments 1972–2010

Miscellaneous Tables

- Deemed Environmental Planning Instruments in force
- Status of Statutory Rules (staged repeal program)

3. Applied Laws

NSW Applied Laws in Force as at 30 April 2013

(Table generated: 30 April 2013 at 16:30)

This table lists laws of other jurisdictions and other statutory instruments that are applied as a law or statutory instrument of New South Wales, as at the above date.

Alphabetical list of NSW Applied Laws in Force

A B C D E F G H I J K L M N O P Q R S T U V W X Y Z

A

Agricultural and Veterinary Chemicals (New South Wales) Act 1994 No 53

Agvet Code set out in the Schedule to the Agricultural and Veterinary Chemicals Code Act 1994 of the Commonwealth and any regulations in force under that Act are applied. Available at www.comlaw.gov.au.

Air Navigation Act 1938 No 9

Any regulations in force under the Air Navigation Act 1920 of the Commonwealth are applied. Available at www.comlaw.gov.au.

Australian Crime Commission (New South Wales) Act 2003 No 13

Australian Crime Commission Act 2002 of the Commonwealth and any regulations in force under that Act are applied. Available at www.comlaw.gov.au.

C

Civil Aviation (Carriers' Liability) Act 1967 No 64

Provisions of Parts IV and IVA (other than sections 27, 40, 41 and 41J (8)) of the Civil Aviation (Carriers' Liability) Act 1959 of the Commonwealth and provisions of the regulations in force under that Act are applied in relation to carriage under this Act. Available at www.comlaw.gov.au.

Competition Policy Reform (New South Wales) Act 1995 No 8

Competition Code text, comprising the Schedule version of Part IV and certain other provisions of the Trade Practices Act 1974 of the Commonwealth and any regulations under that Act that relate to those provisions are applied. Available at www.comlaw.gov.au.

Corporations (New South Wales) Act 1990 No 83

Corporations Law set out in section 82 of the Corporations Act 1989 of the Commonwealth before its repeal and any regulations in force under section 22 of that Act before its repeal are applied. Parts of the Australian Securities and Investment Commission Act 1989 of the Commonwealth before its repeal and regulations under section 251 of that Act before its repeal are applied. Available at www.comlaw.gov.au. Section 6 (2) of the Corporations (Ancillary Provisions) Act 2001 provides that, except as provided by sections 6 (1) and 9, those applied laws have no operation of their own force at and after the time when the Corporations Act 2001 of the Commonwealth first came into operation (15 July 2001).

E

Electronic Conveyancing (Adoption of National Law) Act 2012 No 88

Electronic Conveyancing National Law set out in the Appendix to the Act is applied as a law of New South Wales and is in a form that enables it to be adopted as a law of other jurisdictions.

F

Fair Trading Act 1987 No 68

Australian Consumer Law text, comprising Schedule 2 to the Competition and Consumer Act 2010 of the Commonwealth and the regulations in force under section 139G that Act, is applied. Available at www.comlaw.gov.au.

G

Gene Technology (New South Wales) Act 2003 No 11

Gene Technology Act 2000 and the Gene Technology (Licence Charges) Act 2000 of the Commonwealth, and all regulations, guidelines, standards and codes of practice in force under either of those Acts are applied. Available at www.comlaw.gov.au.

H

Health Practitioner Regulation (Adoption of National Law) Act 2009 No 86
Health Practitioner Regulation National Law, as in force from time to time, set out in the Schedule to the Health Practitioner Regulation National Law Act 2009 No 45 (Qld). See Health Practitioner Regulation National Law (NSW).

N

National Electricity (New South Wales) Act 1997 No 20

National Electricity Law set out in the Schedule to the National Electricity (South Australia) Act 1996 (South Australia) and Regulations under that Act. See National Electricity (NSW) Law or www.legislation.sa.gov.au.

National Gas (New South Wales) Act 2008 No 31

National Gas Law set out in the Schedule to the National Gas (South Australia) Act 2008 of South Australia and regulations under Part 3 of that Act are applied. See National Gas (NSW) Law or www.legislation.sa.gov.au.

O

Occupational Licensing (Adoption of National Law) Act 2010 No 100

Occupational Licensing National Law set out in the Schedule to the Occupational Licensing National Law Act 2010 of Victoria is applied. See Occupational Licensing National Law (NSW) or www.legislation.vic.gov.au.

P

Poisons and Therapeutic Goods Act 1966 No 31

Commonwealth therapeutic goods laws, consisting of the Therapeutic Goods Act 1989 of the Commonwealth and all regulations, orders, and manufacturing principles in force under that Act, are applied. See www.comlaw.gov.au.

R

Research Involving Human Embryos (New South Wales) Act 2003 No 21
Research Involving Human Embryos Act 2002 of the Commonwealth and all regulations under that Act are applied. See www.comlaw.gov.au.

W

Water Efficiency Labelling and Standards (New South Wales) Act 2005 No 12
Water Efficiency Labelling and Standards Act 2005 of the Commonwealth and all regulations, guidelines, principles, standards and codes of practice in force under that Act are applied. See www.comlaw.gov.au.