Interpretation Act 1999
A Discussion Paper

Introduction

About this paper

This paper seeks your views on the proposal to update and re-enact the Interpretation Act 1999 in the Legislation Act 2012.

The paper contains a mixture of specific proposals and some open-ended questions. We would like you to indicate whether you agree or disagree with the proposals and to suggest any changes. On the matters on which we have raised issues, we are looking for a range of views. Your comments will be taken into account when we make our recommendations to the Government about these proposals.

By way of background, the Law Commission recommended in its 2008 report Presentation of New Zealand Statute Law (NZLC R104, 2008) bringing together in one statute all of the provisions about Acts of Parliament to improve their accessibility.

The majority of the Law Commission’s recommendations were implemented in the Legislation Act 2012. This Act combines the law on legislation contained in the Acts and Regulations Publication Act 1989, the Regulations (Disallowance) Act 1989, and the Statutes Drafting and Compilation Act 1920.

The Law Commission considered that the provisions of the Interpretation Act 1999 should also go into the Legislation Act 2012. The proposals in this paper, therefore, are designed to complete implementation of the Law Commission’s recommendations.

The opportunity is also being taken to propose some minor technical improvements to the Interpretation Act 1999 to address judicial developments, and operational issues identified by the Parliamentary Counsel Office (PCO), since 1999. Two proposals relate to how the interpretation rules apply and to the status of examples (which are increasingly used in legislation today).

The paper also sets out some areas for later consideration and development.

The Government has yet to make decisions on the proposals in the paper but if they are to be progressed, legislation would be required.

Draft provisions, which would implement the proposals, are set out in the Legislation (Interpretation) Amendment Bill in the Appendix to this paper. The Bill also carries forward unchanged most of the provisions of the Interpretation Act 1999. The provisions are inserted as new Part 2A of the Legislation Act 2012 and numbered accordingly. The final Title of the Amendment Bill and its positioning may change.

The paper also seeks your comments about these attached draft provisions, and about any other issues relating to the Interpretation Act 1999 that are not covered by this paper.
How to send us your views

Comments on the issues and proposals in this paper should be sent to the PCO by 5pm on 16 April 2013.

Comments can be:

- emailed to:
  julia.agar@parliament.govt.nz

- posted to:
  Parliamentary Counsel Office
  PO Box 18 070
  Wellington 6160
  Attention: Julia Agar

Any comments that are not made in response to a direct issue and proposal in this paper are also welcome.

Please supply your name and address (including a telephone number or email address where appropriate) so that we can contact you if we need to clarify anything in your comments.

We may wish to publish responses to this paper on the internet. If you do not want your response published, please make this, and the reasons why, clear in your response.
1 Interpretation Act 1999

Background

1.1 The Interpretation Act 1999 (the Interpretation Act) contains the principles and rules for the interpretation of legislation. It replaced the Acts Interpretation Act 1924.

1.2 The Interpretation Act was based largely on the Law Commission’s recommendations in its 1990 report A New Interpretation Act: To Avoid Prolixity and Tautology (NZLC R17, 1990). The Law Commission’s review at that time was comprehensive as the law regarding the interpretation of legislation had not changed substantially for many years.

Reasons for interpretation rules

1.3 The Law Commission noted in its 1990 report that “legislation is central to our legal system. It is the principal source of new law”1. Communicating the law to people in a clear and accessible way is critical so that people can understand it and know how to comply.

1.4 Interpretation statutes in common law jurisdictions, such as New Zealand, Australia, and the United Kingdom, contain principles and rules setting out how legislation should be interpreted. They cover a range of procedural issues and commonly used expressions in legislation. They assist in resolving uncertainties about the meaning of particular legislative provisions.

1.5 Their purpose is to help to keep legislation shorter by defining frequently used terms and expressions so these do not need to be repeated each time that a new piece of legislation is enacted. The language and form of legislation is, as a result, more consistent across the statute book. They contain clear and modern construction rules, such as provisions about dates of commencement, the calculation of time periods, and the effects of repeal, which provide legal certainty.

1.6 An interpretation statute will generally not apply if it is evident in a particular piece of legislation that its provisions override the interpretation statute’s provisions.

Legislation Act 2012


1.8 The Law Commission considered the Interpretation Act would sit more naturally in an Act about legislation in general. The Interpretation Act relates to more than just the interpretation of legislation as it contains standard provisions regarding the commencement and repeal of legislation.

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1 (NZLC R17 1990), at p 1.
1.9 The Law Commission did not review the substantive provisions of the Interpretation Act. Its draft Bill proposed to bring forward the Interpretation Act without any change.

1.10 The Government considered that the Interpretation Act should not be re-enacted without a review of its contents and developments since 1999 to identify, in consultation with all interested people, whether any improvements should be made. This work, however, was not able to be completed before the enactment of the Legislation Act 2012.

The Interpretation Act 1999 today

1.11 It is important that the Interpretation Act continues to be clear and effective. From our review of cases and our application of the Act, we think it generally works well. Its fundamental principles and rules are sound. However, we propose a few fine-tuning improvements and 3 new provisions to clarify the law.

1.12 The paper sets out below the issues and proposals in areas where we think a change is needed. We also discuss those areas which could be set aside for later consideration and development.

2 Areas where change is needed

Application (section 4)

2.1 Section 4(1) provides that the Interpretation Act applies to New Zealand enactments unless the enactment provides otherwise or its context requires a different interpretation.

Issue

2.2 An issue has been identified relating to the application of the Interpretation Act.

2.3 Section 4 refers to the Interpretation Act but does not refer to the provisions of the Act. The concern is that it is unclear whether the provisions of the Act can apply selectively so that some provisions (as distinct from the Act as a whole) can apply even if others are excluded by a contrary intention in an enactment under review.

Comment

2.4 The Act’s predecessor, the Acts Interpretation Act 1924, was clear in its application section that excluding some provisions from applying did not stop other provisions from applying. There was no intention to change this policy when the 1999 Act was passed.

2.5 The 1999 Act is based on the Law Commission’s draft Bill in its 1990 report A New Interpretation Act: To Avoid Prolixity and Tautology which expressly stated that the provisions of the Act apply to every enactment. That wording was not adopted, however, in the Interpretation Bill as introduced in 1997.

2.6 The High Court, in a decision in 2001, noting this issue, has construed the section as providing for selective application but observed it is a pity the legislature did not provide greater clarity on this fundamental point. The High Court also noted it was a central feature of the Act’s predecessor, the Acts Interpretation Act 1924, that its
provisions were generally subservient to the context of the legislation being interpreted.  

**Proposal**

2.7 We propose that section 4(1) be amended to clarify that some or all of the Act may be displaced by provisions or context.

**Status of examples**

2.8 Explanatory provisions, such as examples, are increasingly being put into legislation to help people understand the meaning of provisions. Examples are used to illustrate the operation and application of sections. They can either be simply embedded within sections or set out separately in a narrative form, in boxes, or in smaller type within or after sections.

**Issue**

2.9 Under section 5 of the Interpretation Act, examples may be considered in ascertaining the meaning of an enactment. However, some commentators have raised issues about the status of such examples if there are inconsistencies between a section and its example. There is a concern that examples may constrain our understanding of a provision by not illustrating its wider implications.

**Comment**

2.10 Some statutes deal with this issue by including a special provision describing the status of their examples. They usually provide that these examples are illustrative only and do not limit a provision. Where there is any inconsistency, the provision prevails. However, not all statutes contain these status provisions and there is no rule in the Interpretation Act on this matter.

2.11 Some Australian statutes include status provisions. The Australian Federal Court of Appeal has noted that examples will not be exhaustive and may extend a provision’s meaning. It noted that such examples, therefore, as a matter of law “condition” a provision’s meaning. As a recent New Zealand High Court decision has shown, a legislated example can only condition the meaning of a provision if the status provision allows it to do so and the example is factually relevant.

2.12 We propose a new interpretation rule to deal with the status of examples where a particular statute does not set out their legal effect. This will also avoid the need to repeat a special status of examples provision each time an Act is passed or regulations are promulgated.

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2 *Sisters of Mercy (Roman Catholic Diocese of Auckland Trust Board) v Attorney-General* (High Court, Auckland, CP219/99, 14 December 2001) at [29] per Randerson J.

3 Examples include *Personal Property Securities Act 1999*, s 16(1) and s 52; *Property (Relationships) Act 1976*, s 2B; *Credit Contracts and Consumer Finance Regulations 2004*, r 9; *Employment Relations Act 2000*, s 69E; and *Kiwisaver Act 2006*, s 26.

4 *Personal Property Securities Act 1999*, s 21; *Charities Act 2005*, s 4(3); and *Major Events Management Act 2007*, s 5.

5 See s 15AD of the *Acts Interpretation Act 1901* (Aust) (as substituted in 2011).

6 *Yaraka Holdings Pty Limited v Giljevic* [2006] ACTCA 6 at [87], Madgwick J.

7 *B v The Chief Executive of the Ministry of Social Development* [2012] NZHC 3165.
Proposal

2.13 We propose that a standard provision be inserted in the Interpretation Act to deal with the status of examples.

Commencement of legislation (sections 8 to 10)

Date of commencement of Acts (section 8)

2.14 Section 8 provides that an Act or enactment comes into force on the date stated or provided for in the Act. If there is no date stated, the Act comes into force on the day after assent.

Issue

2.15 An Act may not always provide for the commencement of its commencement section, that is, the section that deals with the commencement of all its other provisions. A commencement section in an Act may provide that the Act (or parts of it) will come into force at a future time by Order in Council. It has been argued that if the Act itself is not in force, the section empowering the Order in Council cannot be either.

Comment

2.16 The earlier Acts Interpretation Act 1924 contained a default rule, section 10A(2) (substituted in 1987), that a commencement provision was deemed to come into force on the Act’s assent date. This was not brought forward into the Interpretation Act. It has been suggested that section 11 of the Interpretation Act may help as that provision provides that a statutory power may be exercised before the enactment comes into force if it is necessary or desirable to bring the enactment into operation.

2.17 Commentators have noted that in an Australian case, where the commencement provision was not in force but purported to proclaim other parts of the Act in force, the court regarded the section as an immediate grant of power. While there do not appear to be any cases on this point in New Zealand, this type of provision is treated as inherently legally effective at the moment that assent is given.

2.18 We propose an amendment to confirm that an Act’s commencement (and Title) sections come into force on the day of assent. This will confirm the self-executing character of the commencement provision and provide legal certainty as to commencement. This rule will not need in future to be repeated in each new Act that Parliament passes.

Proposal

2.19 We propose that section 8 be amended to include a provision ensuring that an Act’s Commencement (and Title) sections come into force on the day of Royal assent.

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8 Fagan v Dominitz (1958) SR (NSW) 122 (NSW SC).
Date of commencement of regulations (section 9)

2.20 Section 9 provides that regulations come into force on the date stated or provided in the regulations. Where there is no date, they come into force on the day after they are publicly notified in the *Gazette*.

**Issue**

2.21 The concern is that some enactments are not required to be notified in the *Gazette* and the default commencement rule in section 9 does not cover their commencement.

**Comment**

2.22 Regulations generally state the date or time they come into force. Regulations in the official publication series do not come into force until at least the 28th day after their making is notified in the *Gazette*. But others must be published on an Internet site and are not required to be notified in the *Gazette*. These enactments are not covered by the default commencement rule in section 9 and when they take effect may currently be unclear.

2.23 We propose that section 9 be amended to include such enactments under its default rule so as to remove any legal uncertainty about when such enactments come into force. The method of public notification will not matter.

**Proposal**

2.24 We propose that section 9 be amended to include in its default rule, enactments or provisions of enactments that are made under an Act, regardless of how they are publicly notified.

Time of commencement of legislation (section 10)

2.25 Section 10 relates to the time, rather than the date, of the commencement of legislation. If an enactment comes into force on a particular day, it comes into force at the beginning of that day. However, if an enactment takes effect from a particular day, it takes effect at the beginning of the next day. An Order in Council (a commencement order) may provide for an Act, or enactments in or made under the Act, to come into force on the same day. In that case, the Act or enactment commences at the start of the day.

**Issue**

2.26 Parliamentary counsel consider the rules relating to commencement order powers and effects should be clarified.

**Comment**

2.27 Commencement orders do not usually contain a clause for their own commencement and they generally come into force on the day after their *Gazette* notification. They have no effect until the dates on which they bring relevant Acts or provisions into effect.

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9 For example, Orders amending the Excise and Excise-equivalent Duties Table and the Tariff, published respectively under s 76C of the Customs and Excise Act 1996 and s 9B of the Tariff Act 1988.
force. They may state a time on a day for an enactment to come into force. They may also be adjusted or revoked before taking effect. These matters are not currently covered in section 10.

2.28 We think that clarifying the current “time” rules in section 10 would provide more legal certainty about the commencement of legislation. We propose carving out the commencement order rules from section 10 into a new provision under which powers to make commencement orders for Acts and enactments would include powers to appoint commencement times as well as dates. We think this provision should also confirm that commencement orders may be amended or revoked before they take effect. This has occasionally been necessary where, for example, the putting in place of complex regulations has taken longer than anticipated.

2.29 The same-day start rule in section 10 would remain in the “time” section because this is about the effect of a commencement order setting out a commencement date. We think it should be expanded, however, to cover stated commencement times as well as dates.

Proposal

2.30 We propose a new section providing that commencement order powers:

- include a power to appoint a date for the commencement of legislation that is the same date as the date of the order; and
- include a power to state a time of commencement on the appointed commencement day; and
- can be exercised more than once to amend, revoke, or revoke and replace an order before it takes effect.

We propose clarifying in section 10 that where a commencement order appoints a time on a day for an Act or an enactment to come into force, the Act or enactment comes into force at that time.

Exercise of powers between passing and commencement of legislation (section 11)

2.31 Section 11 allows certain powers to be exercised before legislation commences where this is desirable or necessary to bring the legislation into operation. For example, these powers allow regulations to be made to support the principal Act or officials to appoint persons to positions or roles to implement the legislation.

Issue

2.32 An issue about the extent of these powers arose in a 2001 case. A majority of the Court of Appeal decided that, where a Registrar of Unions was appointed under the Employment Relations Act 2000 prior to its commencement, section 11 did not then allow the Registrar to exercise registration powers before commencement. The majority considered this was an exercise of a private power under the substantive provisions of the Employment Relations Act 2000.

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10 *New Zealand Employers Federation Inc v NUPE* [2002] 2 NZLR 54 (CA).
Comment

2.33 The general rule is that nothing can be done under an enactment until the enactment has come into force. Section 11 provides an exception to enable administrative machinery or structure to be put in place so that an enactment can operate effectively right from the time when it first comes into force.

2.34 The Court of Appeal discussed in the 2001 case whether the power to register unions fell within the authority under section 11(1)(e) to “do any other act or thing for the purposes of an enactment”. The majority considered this power was not necessary or desirable to getting the enactment ready to operate. It was instead an operation of the enactment’s substantive provisions and the registration was void. A dissenting view was that the Registrar’s power did fall within section 11 and its purpose to have new legislation operating conveniently and effectively from the very beginning.

2.35 The Court noted the unfortunate consequence of its decision and commented that it would be for Parliament to determine whether validating legislation should be enacted. Parliament subsequently passed the Employment Relations (Validation of Union Registration and Other Matters) Amendment Act 2001 to validate the registration of unions before the Employment Relations Act 2000 commenced.

2.36 We propose extending section 11(1) to include a power to confer or impose on a person a right, interest, title, immunity, duty, status, or capacity, for example, an entitlement to be registered under an enactment. This will help enactments to operate effectively from the moment of their commencement and obviate the need for validating legislation. As no right, interest, title, immunity, duty, status, or capacity can accrue or be imposed until an enactment comes into force, there needs to be a “deeming” provision providing that each of them must be treated as if they have accrued or been imposed when the power is exercised. This is consistent with the treatment of powers under section 11(4).

Proposal

2.37 We propose amending section 11(1) to provide that a power in an enactment to confer or impose on a person a right, interest, title, immunity, duty, status, or capacity can be exercised between the enactment’s passing and commencement.

2.38 We further propose that the right, interest, title, immunity, duty, status, or capacity must be treated as having accrued or been imposed to enable the power concerned to be exercised during this interim period but with effect only on and after commencement.

References to latent repealing enactment

Issue

2.39 Complex drafting situations can arise when a new Act is passed to replace another Act, but its commencement is delayed. The new Act is called a latent Act. Latent Acts may often not come into force for some time after enactment and they may commence by Order in Council at an unknown future date. Other new or amending legislation may need to connect with and refer to both the old Act and the new Act and drafting these references to cover the transition from the old Act to the new Act can be difficult.
Comment

2.40 Several approaches have been taken to draft references in other new legislation in the transition period before a new Act comes into force and repeals an old Act.\textsuperscript{11} These have included:

- bringing provisions connecting with the old and new Act into force by Order in Council, so as to enable the commencement dates to be aligned:\textsuperscript{12}
- providing for the other new legislation to operate on specified timing contingencies:\textsuperscript{13}
- referring in the other new legislation to sections or the language of the new Act but requiring those provisions to be read as if referring to or using the corresponding sections or language of the old Act until the new Act commences.\textsuperscript{14}

2.41 Section 22(2) of the Interpretation Act provides that a reference in an enactment to a repealed enactment is a reference to the new enactment that replaces it. Commentators\textsuperscript{15} have suggested adding a new provision that a reference in an enactment to a latent repealing enactment is, until the latter comes into force, a reference to the enactment being replaced. It was noted this may not be consistent with the general rule that bills are drafted based on the law at the time they commence. However, it will facilitate the reference to the sections and definitions of a latent Act until it repeals and replaces the old Act. It will also avoid the need to repeat common provisions to this effect.

Proposal

2.42 We propose inserting a new provision that a reference in an enactment to a latent repealing enactment is, until the latent repealing enactment comes into force, a reference to the enactment being replaced.

Effect of repeal on existing rights and proceedings (section 18)

2.43 Under the Interpretation Act (section 17), the repeal of an enactment does not affect an existing right. Section 18 provides in addition:

(1) The repeal of an enactment does not affect the completion of a matter or thing or the bringing or completion of proceedings that relate to an existing right, interest, title, immunity, or duty.

(2) A repealed enactment continues to have effect as if it had not been repealed for the purpose of completing the matter or thing or bringing or completing the proceedings that relate to the existing right, interest, title, immunity, or duty.

\textsuperscript{11} Burrows and Carter, \textit{Statute Law in New Zealand} (4\textsuperscript{th} edition), p 579.
\textsuperscript{12} See Companies Amendment Act (No 2) 2006, s 16.
\textsuperscript{13} See Criminal Procedure (Mentally Impaired Persons) Act 2003, s 2(2) and Health Practitioners Competence Assurance Act 2003, s 2(4).
\textsuperscript{14} See Evidence Act 2006, s 207(1); Property Law Act 2007, ss 369–371; Securities Act (Real Property Developments) Exemption Notice 2007, cl 10(3).
\textsuperscript{15} Burrows and Carter, p 580.
Issue: Scope of section 18

2.44 Section 18 clarifies that, if people have existing rights or interests, their right to commence or complete enforcement proceedings will not be affected when an enactment is repealed. The issue is whether the reference in section 18(1) to the completion of a matter or thing allows any proceedings started under an old Act to be completed after its repeal, regardless of whether it involves rights acquired earlier.

Comment

2.45 Section 18 was intended to bring forward the existing law contained in sections 20(g) and (h) and 22 of the Acts Interpretation Act 1924 (the 1924 Act), with some modification. Those sections provided:

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(g) Any enactment, notwithstanding the repeal thereof, shall continue and be in force for the purpose of continuing and perfecting under such repealed enactment any act, matter, or thing, or any proceedings commenced or in progress thereunder, if there be no substituted enactments adapted to the completion thereof.

(h) Notwithstanding the repeal or expiry of any enactment, every power and act which may be necessary to complete, carry out, or compel the performance of any subsisting contract or agreement lawfully made, entered into, or commenced under such enactment may be exercised and performed in all respects as if the said enactment continued in force; and all offences committed, or penalties or forfeitures incurred, before such repeal or expiry may be prosecuted, punished, and enforced as if such enactment had not been repealed or had not expired.

22 The expiration of an Act shall not affect any judicial proceedings previously commenced under that Act, but all such proceedings may be continued and everything in relation thereto be done in all respects as if the Act continued in force.

2.46 The Law Commission, in its 1987 Preliminary Paper No. 1 Legislation and Its Interpretation, examined the effect of new legislation on things in progress and considered that section 20(g) of the 1924 Act appeared to apply to a wider range of objects than contracts and judicial proceedings (sections 20(h) and 22 of the 1924 Act). The Commission noted that particular transitional provisions in other legislation would prevail and recommended that section 20(g) and (h) matters would be better dealt with under such express transitional provisions. However, as there was concern that transitional provisions may not always cover all situations, the Interpretation Act carried forward sections 20(g) and (h) and 22 of the 1924 Act.

2.47 In some cases, section 20(g) had been examined in combination with section 20(e)(iii). Section 20(e)(iii) provided that the repeal of an Act did not affect any right, interest, or title already acquired, accrued, or established, or any remedy or proceeding in respect thereof. However, some of those cases suggested section 20(g) might have wider application than just the enforcement of acquired rights.

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16 See the explanatory note to the Interpretation Bill 1997.
2.48 In a case where the general interpretation rule in section 20(g) of the 1924 Act was applied, the High Court held that an application for past maintenance filed before the Family Proceedings Act 1980 was repealed could be considered by the Court under that Act. It decided there was nothing in the context of the new Child Support Act 1991 that would make the general interpretation rule in section 20(g) inapplicable and there were no provisions under the new Act dealing with the completion of proceedings under the old Act.\(^\text{17}\) The court considered that an alternative construction was absurd because there would be a lacuna between the old and new Acts. People may not be able to obtain an order for past maintenance under either Act, which would be anomalous and unfair. The court noted the 1924 Act was designed to avoid the retrospective effect of new legislation and to recognise the legitimate expectations of those who have acted or exercised rights pursuant to current legislation. It said that people, in filing proceedings, are exercising their statutory rights in the expectation that their applications will be heard in accordance with the law at the time of filing.

2.49 The Court of Appeal examined the meaning of section 18 in 2001.\(^\text{18}\) The case concerned an application by Progressive Enterprises Ltd for clearance under the Commerce Act 1986 to acquire Woolworths (New Zealand) Ltd. The application was made one day before the new Commerce Amendment Act 2001 came into force with a new, more onerous competition test to replace the old competition test. The Commerce Commission considered the old test applied and this decision was upheld by the High Court. On appeal, the Court considered whether section 18(1) could be read as providing two separate rules, the first relating to the completion of a matter or a thing generally and the second relating to the bringing or completion of proceedings involving an existing right, interest, title, immunity, or duty.

2.50 A majority of the Court of Appeal took a narrow interpretation of the section, holding that section 18 created a single rule and that the completion of a matter or a thing related to the enforcement of existing rights. The Court noted that the policy of the law in relation to transitional provisions was to avoid the unfairness and injustice of the retrospective deprivation of rights or interests, and where none was involved, as the Court held in that case, that policy was not infringed by applying the substantive tests applicable under the new law. The Court held the new test should have been applied.

2.51 Parliament subsequently passed the Commerce (Clearance Validation) Amendment Act 2001 to validate all clearances given after the Commerce Amendment Act 2001 commenced that were decided under the old test. However, the validation did not apply to the clearance given in the Foodstuffs case because the Privy Council noted the case had been the subject of a judicial decision.

2.52 On appeal, the Privy Council overturned the case on the basis of a transitional provision in the Commerce Amendment Act 2001 that had not previously been considered. It did not examine section 18. The Privy Council observed generally, however, that Parliament could hardly have intended that there could be an application on one basis and a decision on another. It noted the potential for capricious and unfair distinctions if applications that were pending when a new Act commenced were determined under the new test. The commission’s workload and

\(^\text{17}\) Ewart v England [1993] 3 NZLR 489 (HC) at 493.

business efficiency could potentially influence which test applied to applications made on the same day.\textsuperscript{19}

2.53 Section 18 was intended to carry forward the transitional rules under the 1924 Act but, as currently expressed, there has been some uncertainty about its scope regarding the completion of proceedings. Accordingly, we propose clarifying the scope of section 18(1) to provide that the repeal of an enactment will generally not affect the completion of any existing proceedings. We propose omitting the words “that relate to an existing right, interest, title, immunity, or duty”. The nature of the proceedings will be irrelevant.

\begin{tabular}{|l|}
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\textbf{Proposal} \\
2.54 We propose amending section 18(1) to add that the repeal of an enactment does not generally affect the completion of any proceedings commenced or in progress under the enactment and to omit the words “that relate to an existing right, interest, title, immunity, or duty”. \\
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\textbf{Issue: Updating language}

2.55 Some words or terms in the Interpretation Act have been used inconsistently and need updating.

\textbf{Comment}

2.56 Section 18(1) refers to the bringing of proceedings. The term “commencement of proceedings” is more commonly used today and is consistent with section 19(2)(b).

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\textbf{Proposal} \\
2.57 We propose updating section 18, setting subsection (1) out more clearly and shortening subsection (2) to avoid repetition. \\
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\textbf{Enactments made under Acts}

2.58 An Act may amend other Acts and regulations. These changes can be minor and widespread; for instance, updating statutory references as a consequence of the substantive changes in a new Act. Similarly, statutory office names or titles may need changing. These types of consequential amendments are commonly set out in a schedule to an Act. The Human Rights Amendment Act 2001, for example, renamed the Complaints Review Tribunal as the Human Rights Review Tribunal and set out, in a schedule, consequential amendments to other Acts recognising that new name.

2.59 Amendments to other Acts can also be substantive if comprehensive reforms are being made. The preferred practice is to show substantive amendments to other Acts in the body of an Act. However, this is not always the case. The Property Law Act 2007 amended over 40 Acts in a schedule and made some substantive changes to the Personal Property Securities Act 1999. The Employment Relations Act 2000 amended over 50 Acts in its schedule and replaced some important sections in the State Sector Act 1988.

\textsuperscript{19} \textit{Foodstuffs (Auckland) Ltd v Commerce Commission} [2004] 1 NZLR 145 (PC).
Issue

2.60 If there is a long period of time between the introduction of a Bill and its enactment, consequential amendments affecting other Acts may be out of date by the time the Act is passed. A new Act may not commence for some time after enactment, particularly if it is introducing complex new policy and administrative infrastructure needs to be put in place.

2.61 The law may not be accessible because people may miss changes to Acts that may or may not be in force that affect other Acts. The Parliamentary Counsel Office publishes each year a Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force, which contains brief references to all amendments. However, until the Acts are reprinted with amendments incorporated, amendments may be missed.\(^\text{20}\)

Comment

2.62 The schedule to the Legislation Act 2012 contains consequential amendments to over 100 Acts, which replace existing references to the Acts and Regulations Publication Act 1989, and the Regulations (Disallowance) Act 1989, and reflect changes to the Parliamentary Counsel Office's publication duties. These amendments, which are not yet in force, are purely consequential amendments that perfect, rather than alter substantively, parliamentary enactments. Parliamentary counsel checked and updated these amendments before the Legislation Act 2012 was passed because it had been introduced as a Bill in June 2010.

2.63 We think that being able to make consequential amendments by statutory instruments, such as regulations, to other such statutory instruments is desirable because this would help perfect or implement an enactment in a flexible and timely way. We are not proposing that Acts be amended by subordinate legislation. For example, regulations under a principal Act could amend regulations under other Acts in order to update references to offices or titles changed by the principal Act. Changes would be able to be made quickly, keeping provisions up to date. Instruments would also be accessible to people as they are usually gazetted and publicly available for at least 27 days before coming into force.

2.64 This method of making amendments to other enactments is routine in the United Kingdom.

Proposal

2.65 We propose a new provision that provides that an enactment made under an Act may include, if necessary or desirable, consequential amendments to enactments made under other Acts.

Application of legislation to the Crown (section 27)

2.66 Section 27 of the Interpretation Act provides that no enactment binds the Crown unless expressly stated in the enactment.

\(^{20}\) Proprietors of Matauri X Inc v Bridgcorp Finance Ltd [2005] 3 NZLR 193 (CA), [21] and [37].
**Issue**

2.67 If an Act binds the Crown, it is currently unclear whether regulations made under that Act also bind the Crown, because regulations do not generally expressly state that they do so.

**Comment**

2.68 Section 27 was intended to re-enact section 5(k) of the 1924 Act. If an Act was binding on the Crown under section 5(k) of the 1924 Act, any regulations made under that Act were also binding on the Crown, because an Act was defined in section 4 (General interpretation of terms) of the 1924 Act to include all rules and regulations made under it.

2.69 However, under the Interpretation Act, the position is unclear because the definition of Act does not include regulations made under the Act. We propose amending section 27 to clarify that, if an Act binds the Crown, any regulations made under it also bind the Crown.

**Proposal**

2.70 We propose amending section 27 to clarify that no enactment binds the Crown unless the enactment, or the enactment under which the enactment is made, expressly provides that the Crown is bound.

**Definitions (section 29)**

2.71 Section 29 contains standard definitions of terms and expressions commonly used in legislation, which means those terms and expressions do not need to be repeated in new legislation. However, a definition in section 29 does not apply if an Act contains its own definition of a particular term. Some of the section 29 definitions require updating to reflect changes since 1999.

**Committed for trial and summary conviction**

2.72 Section 29 of the Interpretation Act defines the terms committed for trial and summary conviction.

2.73 We note the Criminal Procedure Act 2011 has introduced substantive changes to the conduct of criminal proceedings and has repealed these "section 29" terms because they will not be used in future. The relevant provisions of the Criminal Procedure Act have not come into force yet.

**Public notification and public notice**

2.74 Section 29 defines the terms public notification and public notice to include notices published in the Gazette or in public newspapers. It is becoming increasingly common with widespread computer use to notify the public of information electronically.

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21 See the explanatory note to the Interpretation Bill 1997.
2.76 Section 29 defines repeal: “repeal, in relation to an enactment, includes expiry, revocation, and replacement”.

2.77 Some United Kingdom statutes, known as Imperial enactments, remain in force in New Zealand. However, they may in future cease to be part of the law of New Zealand by express statutory provision or declaration to that effect.22

2.78 Section 4(4) of the Imperial Laws Application Act 1988 (the 1988 Act) provides that where any Imperial enactment or subordinate legislation ceases to be part of the laws of New Zealand, the Acts Interpretation Act 1924 shall apply as it would apply on the repeal of a New Zealand Act or on the revocation of a regulation made under a New Zealand Act. Section 4(4) of the 1988 Act applies only to Imperial legislation that ceased “on the commencement of this Act” to be part of the law of New Zealand and does not apply to Imperial legislation that ceased to be part of the law of New Zealand after the commencement of the 1988 Act. A similar provision is required so that the Interpretation Act applies to all Imperial enactments that are no longer part of the law of New Zealand.

2.79 We propose extending the definition of repeal to include, in relation to an Imperial enactment that is part of the law of New Zealand, a declaration or other provision to the effect that the Imperial enactment ceases to be part of New Zealand law.

2.80 The definition of working day in section 29 excludes national holiday periods and weekends but does not exclude different provincial anniversary holidays.

2.81 We have identified approximately 200 statutory definitions of working day and business day. While most do not differ materially, some of these definitions, such as the Property Law Act 2007 definition, were enacted to exclude, in addition to the usual holiday periods and weekends, the provincial anniversary holidays. Updating the standard definition will mean that specific definitions will not need to be included each time a new Act is passed.

2.82 We propose a further adjustment to the definition of working day to exclude for any area, conduct, location, or other thing in a province, the day observed as the anniversary of that province.

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22 See, for example, the Property Law Act 2007, s 365, and the Wills Act 2007, s 39.
Meaning of words and expressions used in instruments (section 34)

2.83 Section 34 provides that a word or expression used in a regulation, Order in Council, Proclamation, notice, rule, bylaw, Warrant or other instrument made under an enactment has the same meaning as it has in the enactment under which it is made.

Issue

2.84 There is a concern that, as currently drafted, it may not be clear whether future changes to definitions in the interpretation section of an empowering enactment flow through to a word or expression in instruments made under the enactment.

Comment

2.85 Most Acts have an interpretation section which defines words and expressions used in the Act. Section 34 allows the interpretation section in a particular Act to apply in a subordinate instrument made under the Act.

2.86 An issue has been raised about whether the meaning of a word or expression is determined when the subordinate instruments are made or when they are being examined at a future time. If determined at the time the instruments are made, the definitions in the instrument could be inconsistent with those in the enactment if it is later amended. Meanings of terms could differ in different instruments made under an empowering Act depending on when they were made, which would be confusing.

2.87 While this issue does not appear to have been examined by the New Zealand courts, the Australian cases on the point have been decided differently. In some Australian States, interpretation provisions have been drafted to ensure the meaning of a word or expression in a subordinate instrument follows that in the empowering enactment “as in force from time to time”.

2.88 Any potential uncertainty about the meaning of terms used in subordinate instruments is not desirable. We propose adding the words “from time to time” to section 34 to clarify this matter. This will ensure definitions in the interpretation section of an enactment and its amendments would be applied to instruments made under the enactment regardless of when the instrument had been made.

2.89 We also propose simplifying section 34. The Legislation Act 2012 uses the word instrument to describe a document, or part of a document, that purports to have legal effect. It can be an administrative instrument, such as a ministerial direction that does not create, alter, or remove rights or obligations, or a legislative instrument, such as a notice or a set of regulations made by Order in Council. We think it is no longer necessary to set out the different types of instrument in section 34.

Proposal

2.90 We propose that a word or expression used in an instrument made under an enactment has the same meaning that it has from time to time in the enactment under which it is made.

23 Refer Pearce and Geddes, Statutory Interpretation in Australia (7th edition), pp 226–228.
Time (section 35)

2.91 Section 35 sets out rules for working out when periods of time start and end for the purpose of interpreting various terms in an enactment, unless a contrary intention appears in the enactment. Section 10 applies unless there is a contrary intention. Under section 10, an “enactment comes into force at the beginning of the day on which the enactment comes into force. If an enactment is expressed to take effect from a particular day, the enactment takes effect at the beginning of the next day”.

Issue

2.92 There is concern that some temporal expressions that are used in enactments are not given meanings in section 35.

Comment

2.93 It is important that time periods in legislation are precise so that people can comply with statutory obligations. If there is any uncertainty, the rules in section 35 determine how to calculate time periods when the following temporal expressions are used in enactments:

- beginning at, on, or with a specified day, act, or event
- beginning from or after a specified day, act, or event
- ending by, on, at, or with, or as continuing to or until, a specified day, act, or event
- ending before a specified day, act, or event.

2.94 The courts in Australia have examined how to calculate a time period described as being within a specified number of days of a day or an event (for example, “within 10 working days after 1 April”).24 The cases have held that the period does not include the day or the day of the event and that it starts at the beginning of the next day. This avoids the back dating of a period that would result if a period were to start from the day of an event, because this would mean it started from the first moment of a day even though the event actually started some time during the day. That time would be difficult to identify precisely.

Proposal

2.95 We propose that section 35 be amended to include a provision that whenever legislation expresses a period of time as being “within” a specified number of days of a date or event, the specified date or the day of the specified event is disregarded and the period begins at the beginning of the next day.

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Areas for further consideration and development

Time described in months (section 29)

3.1 Section 29 provides that a month means a calendar month.

3.2 Case law has established a corresponding date rule that will apply as a general rule to determine when a month starts and ends. It has been held that “a calendar month ends at midnight on the day in the ensuing month immediately preceding the day numerically corresponding to the commencing day”.  

Issue

3.3 There has been some confusion about the measurement of time where time periods have been described in months. There is concern that the corresponding date rule may not always help and that it can be difficult to know precisely when a month starts and finishes.

Comment

3.4 The section 29 definition of a month was carried forward from the 1924 Act as recommended by the Law Commission. The Law Commission considered that a calendar month period is simple and relatively easy to calculate. A calendar month is specified to exclude a lunar month, which is measured in periods of four weeks.

3.5 Time is commonly described in legislation in months. The accurate measurement of months may be critical to determining the lawfulness of actions in many different areas, for example, in liquidation, bankruptcy, and property law areas. It is important that these periods can be calculated precisely to provide legal certainty about people’s rights and obligations. However, the different terminology used in enactments to describe periods of months may give rise to problems of interpretation, which may be complicated by uncertainty about how the rules work, and result in differing views about when months start and end.

3.6 The following example demonstrates how the rules may work. Under the Property Law Act 2007, a purchaser may apply to the court for relief against the cancellation of an agreement for the sale and purchase of land where the vendor has peaceably re-entered the land. But the purchaser has to apply within three months after the date of re-entry. If re-entry happened on, say, 14 February, the rule in section 35(2) of the interpretation Act would apply to exclude that day from the period. Section 35(2) provides that if a month is expressed to start after or from a particular or specified day, act, or event, the period starts on the date that follows that day or the day of the act or event. The three-month period would start on 15 February and, applying the corresponding date rule, end at midnight on 14 May.

3.7 People may not be aware of the rule in section 35(2) and they may mistake the commencing day. There can also be confusion about the end point of periods. If the corresponding date rule means that a month that starts on, say, 2 February ends at midnight on 1 March, there may be an issue about whether a month is complete right at the beginning of the last day of the month (1 March in the example) or whether the

26 NZLC R17 1990, 382.
period is completed only at the close or end of that last day (the start of the next day, which is, in this example, on 2 March). The issue, in other words, is whether the period is intended to be a full or a clear month.

3.8 In an Australian case, the High Court discussed the meaning of a requirement to apply for a mining licence renewal “not later than one month before the expiry” of the licence. The wording may seem simple but the High Court was divided about its meaning and whether the date of expiry should be counted as part of the one-month period. The majority included the date of expiry in the calculation and discussed how in doing so a requirement for a clear month was met.

3.9 The House of Lords decision, Dodds v Walker, confirmed the corresponding date rule. The issue was whether an application for a new tenancy, which was required to be made “not less than two nor more than four months after the giving of the landlord’s notice” terminating the tenancy, had been made in time. The landlord’s notice was given on 30 September and the tenant’s application was made on 31 January. The House of Lords held that the application was late because the period started at the end of the date of the service on 30 September, ie at midnight on 30 September/1 October, and ended at midnight on 30/31 January. It is unclear why the last day of the four-month period was 30 January and not 31 January, being the day before the corresponding day of the first day of the four-month period. The timing of a tenancy application was examined in another case (before the Court of Appeal in England) that is also difficult to reconcile with the corresponding date rule.

3.10 Some Commonwealth jurisdictions have adopted detailed provisions on how exactly to calculate or reckon a month. The matter is not entirely obvious, because months of different lengths and leap years mean that there is not in every case a day that corresponds numerically to the commencing day. The Interpretation Act 1984 in Western Australia provides:

62. **Months, reckoning of**

(1) In a written law, **month** means a calendar month, that is to say, a month reckoned according to the calendar.

(2) If a period of one month indicated in a written law begins on any date other than the first day of any of the 12 months of the calendar, it shall be reckoned from the date on which it is to begin to the date in the next month numerically corresponding, less one, or, if there is no corresponding date, to the last day of that month.

For example: a month beginning on 15 January ends on 14 February and a month beginning on 30 or 31 January ends on 28 February (or 29 February in a leap year).

(3) If a period indicated in a written law is of 2, 3 or more months, it shall be reckoned from the date on which it is to begin to the date numerically corresponding, less one, in the second, third, or other successive month thereafter or, if there is no such corresponding date, to the last day of the latter month.

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27 Forster v Jododex Australia Pty Ltd (1972) 127 CLR 421 (HCA).
28 Dodds v Walker [1981] 2 All ER 609 (HL).
29 E J Riley Investments Holdings Ltd v Eurostyle Holdings Ltd [1985] 3 All ER 181 (EWCA, Civil Division).
For example: a period of 6 months beginning on 15 August ends on 14 February and a period of 6 months beginning on 30 or 31 August ends on 28 February (or 29 February in a leap year).

3.11 The Commonwealth Acts Interpretation Act 1901 as amended by the Acts Interpretation Amendment Act 2011 provides:

2G Months

(1) In any Act, month means a period:

(a) starting at the start of any day of one of the calendar months; and

(b) ending:

(i) immediately before the start of the corresponding day of the next calendar month; or

(ii) if there is no such day—at the end of the next calendar month.

Example 1: A month starting on 15 December in a year ends immediately before 15 January in the next year.

Example 2: A month starting on 31 August in a year ends at the end of September in that year (because September is the calendar month coming after August and does not have 31 days).

(2) In any Act, a reference to a period of 2 or more months is a reference to a period:

(a) starting at the start of a day of one of the calendar months (the starting month); and

(b) ending:

(i) immediately before the start of the corresponding day of the calendar month that is that number of calendar months after the starting month; or

(ii) if there is no such day—at the end of the calendar month that is that number of calendar months after the starting month.

Example 1: A reference to 6 months starting on 15 December in a year is a reference to a period starting on that day and ending immediately before 15 June in the next year.

Example 2: A reference to 6 months starting on 31 October in a year is a reference to a period starting on that day and ending at the end of April in the next year (because April is the calendar month coming sixth after October and does not have 31 days).

3.12 In Canada, the Interpretation Act, RSC 1985, provides:

Calculation of a period of months after or before a specified day

28. Where there is a reference to a period of time consisting of a number of months after or before a specified day, the period is calculated by
(a) counting forward or backward from the specified day the number of months, without including the month in which that day falls;

(b) excluding the specified day; and

(c) including in the last month counted under paragraph (a) the day that has the same calendar number as the specified day or, if that month has no day with that number, the last day of that month.

3.13 The rules for calculating time periods measured in months can be confusing, and confirming the corresponding date rule, which is currently set out in case law, in a more detailed calculation provision in the Interpretation Act (illustrated by examples) may assist.

**Question**

3.14 Do you think there should be a provision setting out how monthly periods can be counted and confirming the application of the corresponding date rule? If so, which of the provisions do you prefer? Are there any other provisions you would favour instead and why? Can you provide practical examples of problems with the calculation of monthly time periods and how these matters were resolved?

**Should the Crown be defined?**

3.15 The term “the Crown” is not defined in the Interpretation Act for the purposes of section 27 (which provides that a statute binds the Crown only if such an intention is clear from its terms) or for determining its meaning where it is used in other statutes. The 1924 Act referred instead to Her Majesty, Her heirs or successors.

**Issue**

3.16 The issue is whether there should be a comprehensive definition of the term “the Crown” in the Interpretation Act, because the meaning of this term can cause difficulties.

**Comment**

3.17 “The Crown” means, in its strict legal sense, the Queen in her public capacity as the bearer of governmental rights, powers, privileges and liabilities in New Zealand. The Crown has the legal personality of an individual and is able to own property, to spend money, or to make contracts. The Crown is commonly described as the executive branch of the New Zealand government and may be called the executive, the government, or the administration. However, lawyers usually use the term the Crown.\(^{30}\)

3.18 People can take civil proceedings against the Crown under the Crown Proceedings Act 1950. The Crown is defined in that Act’s interpretation section as follows: “Her Majesty or the Crown means Her Majesty in right of Her Government in New Zealand”.

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3.19 The Crown can also be prosecuted for criminal offences, if clearly provided for in statute. For example, the Crown Organisations (Criminal Liability) Act 2002 allows for criminal prosecutions to be taken against Crown organisations for certain offences. A Crown organisation is defined under that Act to mean a Crown entity, government department, or government-related organisation. The definition cross-refers to definitions in the Crown Entities Act 2004, the Public Finance Act 1989, and the State Sector Act 1988, and government-related organisations are listed.

3.20 There are a number of definitions of Crown across the statute book. If undefined, the question of who is the Crown may not always be clear. The Crown generally includes ministers and government departments that are subject to ministerial direction and that exercise central public authority. It can include departmental officials and also government agents who undertake work on the Crown’s behalf. However, public entities may not be agents of the Crown, despite having governmental functions, if they are not controlled by a minister or described by statute to be an agent. These entities could include school boards, universities, hospitals, regulatory agencies, or public corporations.

3.21 The Law Commission in its 1990 report at paragraph 152 noted that the question of who is the Crown is difficult. It said the Crown “included the Queen’s Ministers and departments of state certainly, but there has been litigation at times about various public bodies claiming to be entitled to the benefit of the provision”. The provision referred to was the predecessor to section 27, which set out a version of the general principle that the Crown is not bound by a statute unless that is expressly stated. The Court of Appeal discussed the meaning of the expression “instrument of the Executive Government” in a 1997 decision and noted relevant matters as “the functions of the body and the extent of control exercised over it by Ministers and other central government agencies.”

3.22 The Law Commission commented again on the issue in a study paper To Bind Their Kings in Chains (NZLC SP6, 2000), noting “that it is a fundamental difficulty that the Crown is a metaphor lacking precise definition. The Crown can mean all or any of

- The Sovereign
- The Governor-General
- The Executive
- A Government department
- A particular public servant or other person exercising a public function.”

3.23 Hogg, Monahan & Wright have noted that the Crown never refers to the legislative branch, despite the Governor-General, as the Queen’s representative, having a legislative role in giving Royal assent to all Bills, nor to the judiciary, which is independent of the other two branches. However, people can take proceedings for relief against “the Government” for breaches of the New Zealand Bill of Rights Act 1990. The Government in that context includes its legislative and judicial branches as well as its executive branch. Action under that Act can also be taken against anyone performing a public function, power, or duty conferred by law. The Act

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protects fundamental civil and political rights in New Zealand, and its application to the three branches of Government may be viewed as appropriate in that context.

3.24 A standard definition of Crown in the Interpretation Act would be a default provision that could apply to interpreting the meaning of the term in other legislation. However, when policy proposals are being developed, the broader issue of whether a default provision is useful or simply unhelpful would also require consideration because of the wide variation of contexts in which the term is used.

**Question**

3.25 We are seeking views on whether you think it is appropriate to include a standard definition of the Crown in the Interpretation Act as a default provision and, if so, how you would define the term (please give reasons). If not, do you think this term should be defined as required in specific policy settings.
Appendix

The Legislation (Interpretation) Amendment Bill would update and re-enact the Interpretation Act 1999. The provisions are inserted as new Part 2A of the Legislation Act 2012 and numbered accordingly. The final Title of the Bill and its positioning may change.

Nearly every new Part 2A provision has a compare note indicating its 1999 Act and 1924 Act equivalents or predecessors. If new Part 2A is enacted, the Legislation Act 2012 as amended could be renumbered via a reprint of that Act (if that renumbering is authorised under the Legislation Act 2012 section 25(1)(b) and (2)).