



PROPOSAL FOR AUTHORISED ELECTRONIC VERSIONS OF COMMONWEALTH ACTS

Introduction

The Attorney-General's Department is proposing legislative amendments to provide for authorised electronic versions of Commonwealth Acts and compilations of Acts. This will improve the accessibility of freely available authoritative information about Australia's laws.

The purpose of this paper is to seek public comments on that proposal.

The *Legislative Instruments Act 2003* confers 'official' status on electronic versions of legislative instruments contained in the Federal Register of Legislative Instruments (FRLI) established under that Act. Through a combination of legislative provisions in the *Acts Interpretation Act 1901* and the *Evidence Act 1995*, similar 'official' status is conferred on printed versions of Acts and legislative instruments printed by the Government Printer.

However, there is presently no 'official' status for electronic versions of Acts, which are available publicly through the ComLaw database maintained by the Attorney-General's Department.¹

Background

There is no one Commonwealth legislative provision that states that a particular version of a Commonwealth Act has official status. Rather, there are a number of legislative rules that collectively confer status on the printed copies of Acts produced for the Commonwealth. These are set out in Attachment 1. The effect of these provisions is that Acts printed by the Government Printer can be assumed to be correct unless the contrary is proven.

The Legislative Instruments Act created FRLI,² which is a register of all Commonwealth legislative instruments³ and compilations of such legislative instruments.⁴ Acts are not covered by the Legislative Instruments Act.

The Legislative Instruments Act provides that FRLI is a complete and accurate record of all original legislative instruments included in it.⁵ Compilations of legislative instruments are taken to be complete and accurate records of such instruments unless proven to the contrary.⁶

¹ www.ComLaw.gov.au.

² s 20.

³ Defined in s 5 to be an instrument in writing of a legislative nature that is made under the exercise of a power delegated by the Parliament. This definition is subject to the various inclusions and exclusions set out in ss 6-9. Regulations are one kind of legislative instrument.

⁴ Compilations show versions of the instruments at different points in time as they are amended.

⁵ ss 22(1).

⁶ ss 22(2).

FRLI is freely available electronically through the ComLaw database. As well as the legislative instruments on FRLI, ComLaw includes, amongst other things, electronic versions of Acts⁷ and compilations of Acts.⁸ However, the ‘authenticity’ guarantees only apply to legislative instruments.

Proposal

Electronic versions of Acts

It is proposed that new legislative provisions be introduced to allow the Department to designate a database of Acts and compilations of Acts, made available to the public, as authoritative. In practice, this would consist of the PDF documents from which printed legislation is produced, which are already available on ComLaw.⁹

Because the assent copy¹⁰ of an Act can only ever be the final arbiter of the contents of an Act, the legislation would provide that electronic versions of Acts are taken to be complete and accurate records of Acts and compilations of Acts unless proven to the contrary. In the rare case of a mistake being made in preparing an Act, a court would be able to receive evidence of this. A court would also be able to receive evidence that an error had been made in producing a compilation.

For compilations, the accuracy would only apply as at the date specified in the compilation, so that checks would still need to be made for amendments that came into operation after that date

Compilations would be required to include notes indicating each Act that amended the principal Act, the date upon which such amendments were made and the amending history of each provision in the principal Act.¹¹

The legislation would specify that, in any proceedings, proof is not required about the provisions of an Act or a compilation as it appears in the database, and a court or tribunal may inform itself about those matters in any way that it thinks fit. They would also create a presumption that, unless the contrary is proved, a document that purports to be an extract from the database is what it purports to be.

The provisions could be based on those applying to legislative instruments in s 22 Legislative Instruments Act.

Printed versions of Acts

As mentioned above, currently, the legislative provisions that give printed versions of Acts and compilations official status are scattered throughout the Acts Interpretation Act and the Evidence Act. It is proposed that new legislative provisions specifically state that printed versions of Acts and compilations of Acts printed by the Government Printer are assumed to be accurate, unless proven to the contrary.¹²

⁷ As originally passed by the Parliament.

⁸ Which incorporate amendments made by the Parliament.

⁹ Although some older Acts and compilations currently available on ComLaw database would need to be re-checked and converted to PDF before they could be included on the authoritative database.

¹⁰ The assent copy is the copy of the Act that is signed by or on behalf of the Governor-General when the Act receives Royal Assent.

¹¹ Similar to the requirements under 35 *Legislative Instruments Act 2003*.

¹² Based on s 22 Legislative Instruments Act. Provisions regarding the contents of printed compilations of Acts are already contained in *Amendments Incorporation Act 1905*.

The new provisions would be inserted into the *Acts Interpretation Act 1901*.

Benefits

The proposed provisions would allow a more readily available authoritative source of Commonwealth Acts and better facilitate the proof of Commonwealth Acts in court, should there be any dispute about that.

Electronic authorised versions of Acts would be available for free for anyone with internet access. This is likely to prove more convenient than having to locate in a library, or alternatively purchase, printed versions of Acts, where the need for an authorised version exists.

Any comments?

If you have any comments on these proposals, please send them to the Attorney-General's Department by 6 February 2006 by email to karen.moore@ag.gov.au or by mail to:

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Current legislation relevant to status of Commonwealth Acts

1. A reference in an Act, instrument or document to a Commonwealth Act properly cited, or to a part or provision of a Commonwealth Act, must be made in accordance with the copy of the Act printed by the Government Printer or purporting to be printed by the Government Printer (s 40 *Acts Interpretation Act 1901*).
2. The date appearing on the copy of an Act printed by the Government Printer, and purporting to be the date of assent, is evidence of that date, and is to be judicially noticed (s 6 *Acts Interpretation Act 1901*).
3. If certain words, such as ‘Government Printer of the Commonwealth’ or ‘Commonwealth Government Printer’ appear on a document, this is taken to be a reference to the Government Printer (s 17A *Acts Interpretation Act 1901*).
4. Any person printing for the Commonwealth Government is taken to fall within the term ‘Government Printer’ (para 17(n) *Acts Interpretation Act 1901*).
5. A court is required to presume, unless the contrary is proved, that a document purporting to have been printed by the Government Printer or by authority of the Commonwealth Government is what it purports to be and was published on the day on which it purports to have been published (s 153 *Evidence Act 1995*).
6. Proof is not required about the provisions or coming into effect of an Act, and a judge may inform himself or herself about those matters in any way that the judge thinks fit (s 143 *Evidence Act 1995*).

There is no requirement for the Government Printer to print all Commonwealth Acts, but the effect of these provisions is that such Acts that are printed by the Government Printer are presumed to be authoritative, unless the contrary is established.

They apply only to ‘printing’ and therefore no equivalent presumptions arise in the case of an Act available electronically.