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**ENHANCING ACCESSIBILITY: AN OBJECTIVE
ASSESSMENT OF THE AVAILABILITY,
NAVIGABILITY AND UNDERSTANDABILITY OF
LEGISLATION**

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Abstract

Accessibility of legislation in New Zealand has been widely impacted since the establishment of the New Zealand Legislation website, which allows free access to primary legislation and some secondary legislation. This paper explores the three factors that are included within the umbrella term of accessibility: availability of legislation, navigability of legislation and understandability of legislation. Availability of legislation is examined through the provision of primary and secondary legislation and the impact of the Legislation Bill on the provision of secondary legislation. Navigability of legislation is examined through the process of finding amendments on the New Zealand Legislation website within the particular piece of legislation. Finally, understandability is studied in terms of readability and whether objectively, legislation has become easier to read from 1841-2018. A series of readability tests have been conducted over five different time periods where significant reprints occurred in New Zealand in order to establish trends and determine whether there has been an improvement in readability over time.

Key words: “Accessibility of legislation” “Availability of legislation” “Navigability of legislation” “Understandability of legislation” “Readability tests”

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I Introduction

Accessibility is a critical aspect of New Zealand legislation. Citizens must be able to obtain, find and understand the law as it applies to them in order to be able to observe the obligations asked of them. Many legislative reforms have been aimed at improving the accessibility of the law to the average New Zealand citizen. However, these legislative reforms beg the question of whether they are sufficient to make the law as accessible as possible.

This paper explores three aspects of access to legislation with a view towards answering whether accessibility has been maximised. The first aspect is availability, which involves provision to the public, and especially to users, of legislation. The second aspect is navigability, which involves users being able to find the law they wish without unnecessary difficulty. The third aspect is understandability, which involves the law, once found, being readily comprehensible to the user.¹

Part II sets out why access to legislation is important in New Zealand's governmental system, which seeks to uphold the rule of law. Part III delves into the availability of legislation in New Zealand. Part IV examines the navigability of legislation, particularly in its electronic form. Part V assesses the understandability of primary legislation in the light of the efforts to make the law more comprehensible. This includes a readability assessment of five different time periods in which legislative reform was undertaken in New Zealand. Part VI concludes that, in terms of readability, more can be done to make legislation truly accessibility to the citizens of New Zealand.

II Importance of Accessibility of Legislation

¹ JF Burrows and RI Carter *Statute Law in New Zealand* (5th ed, LexisNexis, Wellington, 2015) at 155. Although many academic sources have labelled this criterion as clarity, the emphasis should be on the citizen's personal understanding of what the law says, and whether they can clearly ascertain their obligations under the law from a first reading of the provision.

The New Zealand legal system rests on the premise that everyone is presumed to know the law.² A corollary of this is that the law should be readily accessible to the public. Consequently, if the law is poorly expressed, access to justice for citizens is impaired.³ Statutes are public words, which means that they should be relatively easy to understand on the face of their words without reference to other material.

It is essential that the citizen can easily understand the expression of the law.⁴ Otherwise, they will not know the implications of the law on their rights, obligations and interests. Citizens cannot simply plead ignorance of the law, regardless of how inaccessible the law is. This principle, *ignorantia juris non excusat*, is codified in the Crimes Act 1961.⁵ A person who is unaware of the law may not escape liability for violating the law merely because the person was unaware of its content.

An understanding of the law by the citizens it governs is fundamental to upholding the rule of law.⁶ This is because with an understanding of the law, citizens being governed by the law know what is required of them which empowers them to act accordingly. Without this understanding, a breach of the law is more likely.

III Availability of Legislation

The availability of legislation has changed dramatically since the move towards its online provision. All primary Acts, and a large portion of secondary legislation, is available online on the New Zealand Legislation website (NZL website). From 6

² Burrows and Carter, above n 1, at 155.

³ Jessica Jenkins “The Evolving Accessibility of New Zealand Law: Redesigning Legislation for Understanding and Empowerment” (LLB (Hons) Dissertation, Victoria University of Wellington, 2017) at 30.

⁴ Pascoe Pleasence, Nigel J Balmer and Catrina Denvir “How People Understand and Interact with the Law” (Research Paper, Legal Education Foundation United Kingdom) at 25.

⁵ Crimes Act 1961, s 25.

⁶ William Dale *Legislative Drafting: A New Approach* (Butterworths, Great Britain, 1977) at 1.

January 2014, the NZL website became an official source of legislation, which places official up-to-date legislation in the hands of New Zealanders at “no cost”.⁷

This electronic availability of legislation has allowed greater access to legislation than ever before. The figure below illustrates the increasing number of monthly visitors to the New Zealand legislation website (NZL website) from 2013-2017.⁸



Figure 1: Average Monthly Visitors to the New Zealand Legislation Website from 2013-2017

Hard copies of legislation are still available in libraries, bookshops, and chronologically ordered bound volumes.⁹ Before 5 August 2013, Acts had to be printed, published, and made available for purchase by the public at designated outlets at a reasonable price.¹⁰

A Availability of Secondary Legislation

In New Zealand, unlike for Acts, there is no single online database for all secondary legislation. This means that secondary legislation is less accessible than primary legislation. This is problematic because secondary legislation fills in the details that

⁷ Beehive “Official legislation online today” (press release, 7 January 2014).

⁸ Parliamentary Counsel Office *2017 Annual Report: Report of the Parliamentary Counsel Office for the Year Ended 30 June 2017* (Parliamentary Counsel Office, October 2017) at 20.

⁹ Burrows and Carter, above n 1, at 172.

¹⁰ At 157.

enable the achievement of the objectives of primary legislation.¹¹ Efforts are underway to include a greater range of legal instruments in the secondary legislation collection that is currently available at <www.legislation.govt.nz>.¹²

An example which illustrated the lack of availability of secondary legislation is the Productivity Commission's inquiry into regulatory regimes in New Zealand. This inquiry found that the volume and complexity of the stock of regulation in New Zealand poses challenges to people wanting to understand what their regulatory obligations are, and for ministers and central agencies to manage the system.¹³

Another example of the lack of availability of secondary legislation is the Government inquiry into the whey protein concentrate incident, or the botulism scare. The process for review of dairy regulations proved difficult due to the 12,000 pages of tertiary instruments, which were complex and incoherent.¹⁴ The inquiry was unable to find all of the secondary legislation that applied to the dairy factor, and there was no way of establishing if all the regulations were found.

This lack of availability of secondary legislation is indicative of a wider problem that will occur in New Zealand without an accessible online database for secondary legislation. The position before the law is not complete without access to secondary legislation. The Court observed that "to a worryingly large extent, statutory law is not practically accessible today, even to the courts whose constitutional duty it is to interpret and enforce it."¹⁵

¹¹ Dean R Knight and Edward Clark, *Regulations Review Committee Digest* (6th ed, New Zealand Centre for Public Law, 2016) at 2.

¹² Legislation Bill 2017 (275-2), cl 5 see the definition of "legislation; cl 68(1)(c).

¹³ New Zealand Productivity Commission *Regulatory Institutions and Practices* (June 2014) at 397.

¹⁴ Government Inquiry into the Whey Protein Concentrate Contamination Incident *The WPC80 Incident: Causes and Responses* (November 2014) at 85.

¹⁵ *R v Chambers* [2008] EWCA Crim 2467, [2008] All ER (d) 170 (Oct) at [64].

1 Legislation Bill: New Zealand's Steps to Address Secondary Legislation Availability

The lack of availability of all secondary legislation is being addressed. The Legislation Bill aims to place secondary legislation in one easily accessible free online database, similar to the database available for primary legislation.¹⁶ The main reform in this Bill is to deliver better access to New Zealand by requiring that secondary legislation to be easily identifiable and available to the public online. The ultimate goal is that anyone, be they members of the public or government officials, can confidently access the entire collection of New Zealand's secondary legislation from an authoritative source. The Bill will "streamline the process for the notification, publication, and presentation of the secondary legislation".¹⁷

The Legislation Bill addresses the concerns raised in the above inquiries by requiring the Parliamentary Counsel Office (PCO) to publish all secondary legislation as well as Acts with legal effect to be published in one place.¹⁸ As illustrated in the above examples, businesses would benefit in being able to easily find the law that applies to their sector and can ensure that it is complete.¹⁹ A citizen can also search for secondary legislation that enables accessibility of law that affects people in their day-to-day lives.

In addition, the legislative disclosure requirements of the Legislation Bill provide for more Parliamentary and public scrutiny of legislation to enhance the overall quality of legislation.²⁰ The disclosure requirements require information about the policy background of the legislation, the quality procedures that have been carried out on the legislation, and any provisions that are, in the chief executive of the PCO's opinion, unusual or involve matters that calls for particular attention.²¹ This may include "inconsistencies with the New Zealand Bill of Rights Act or provisions that

¹⁶ Parliamentary Counsel Office "What the Access Project is Doing." <www.pco.govt.nz>.

¹⁷ (5 December 2017) 726 NZPD 699.

¹⁸ Legislation Bill, cl 68.

¹⁹ New Zealand Productivity Commission, above n 13, at 63.

²⁰ Legislation Bill, cl 100.

²¹ Clause 103.

retrospectively alter rights, freedoms or obligations, or could result in the compulsory acquisition of property”.²²

However, although primary legislation is widely available, and there are mechanisms in place to address the lack of a central repository for secondary legislation, this does not necessarily mean that it is simple to navigate or easy to use or understand.

The availability of legislation will be vastly improved by the provision of all secondary legislation on the same database. New Zealand has achieved availability of primary legislation on a free-to-use database and availability of secondary legislation is provided for in the Legislation Bill.

IV Navigability of Legislation

Navigability of legislation has two aspects. The first aspect concerns that the location of the relevant law itself is easy to find. The second aspect concerns the ease of moving around within a particular piece of legislation, given the medium presented. To achieve navigability of legislation, both aspects must be fulfilled.²³ For present purposes, this section on navigability will discuss whether the relevant law is easy to locate. The second aspect of navigability will be examined in Part V.

Navigability has an emphasis on the user’s ability to find the law they are looking for with as little difficulty as possible.²⁴ Knowledge that a relevant piece of legislation exists in the first place, knowing where to look for it, and being sure that one has found all the relevant law on the subject will maximise the user’s accessibility to legislation. Navigability can be improved for example, if the citizen is not required to search through several Acts through which the law on a subject is scattered. This issue is slightly improved by the ability to search for subject matter on the NZL website.

²² (5 December 2017) 726 NZPD 693.

²³ Law Commission *Presentation of New Zealand Statute Law* (NZLC R104 2008) at 18.

²⁴ At 18.

The law on a particular topic may not be so easily found as it can be spread over many Acts, the titles of which may not seem to relate to the particular topic. This is “legislative sprawl” and this may mean that laypersons do not gain a complete picture of their position in the law when only reading the most obvious Act that is on the particular topic. Therefore, an important Act on the topic may be completely overlooked because “in many circumstances, users will not know what Act they are looking for or when it may have been passed”.²⁵ There is no way for a person to be sure that they have found all the Acts that are relevant to their position even after they have located several Acts.²⁶

A Navigability of Amendments on the New Zealand Legislation Website

Amendments may lead to problems with navigation. New sections are added, existing sections are altered or replaced, which means that amendments make little sense when read on their own. The principal Act must also be read to see how the amendments enacted but not yet in force fit into the principal Act and change the meaning of the whole Act.²⁷

If the amendments cannot be read in conjunction with the principal Act, then this may lead to confusion as a person’s position under the law would change, but they are unaware of such a change. Navigability can be improved by adding notes that the section will be amended in the future at the bottom of the relevant section. This practice already exists for amendments that have already been incorporated.²⁸ This suggestion is explained below.

To illustrate an example of confusion that can be caused by amending Acts, a search of the Education Act 1989 on the NZL website provides a warning that “some amendments have not yet been incorporated”.

²⁵ At 39.

²⁶ At 40.

²⁷ At 19.

²⁸ Parliamentary Counsel Office “What’s on the site and how it works” New Zealand Legislation <www.legislation.govt.nz>.

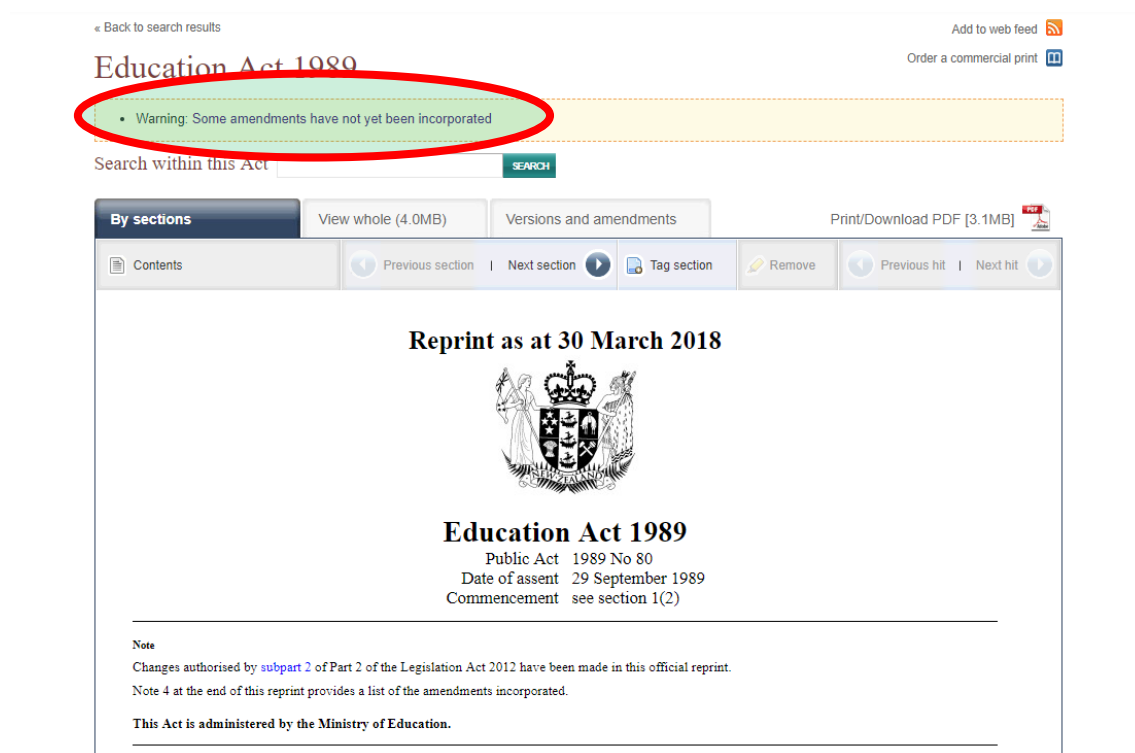


Figure 2: Education Act 1989, the user is warned at the top of the webpage that some amendments have not yet been incorporated

Following this link takes the user to a page which has four Acts which amend the principal Act but are not included in the principal Act because they are not yet in force.

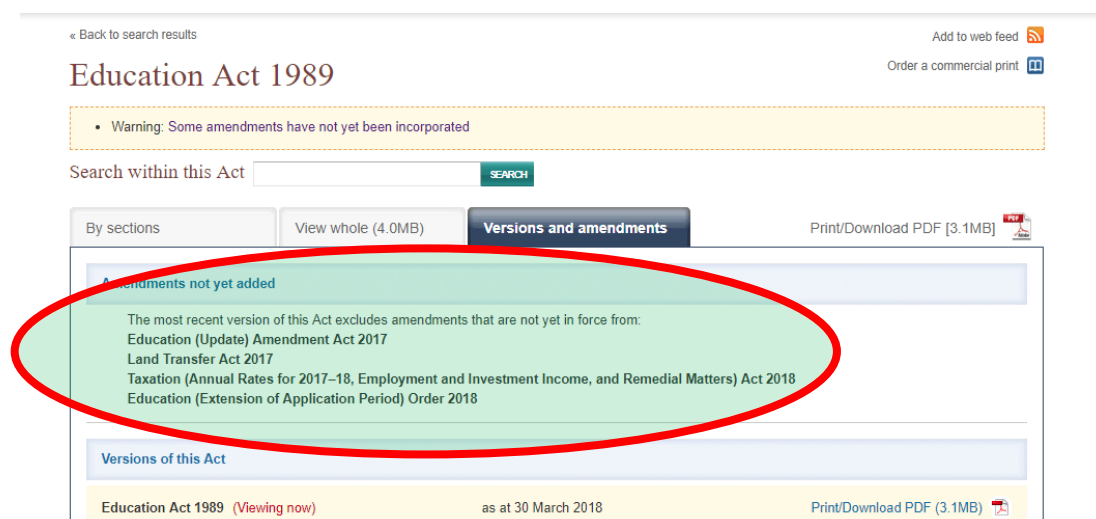





Figure 3: Amendments not yet incorporated into the Education Act 1989

In order to understand which amendments are being added into the principal Act, the user must click into the particular amendment and understand that the grey boxes are to be included under certain sections of the principal Act.

Add to web feed 
Order a commercial print 

Education (Update) Amendment Act 2017

Search within this Act

By sections | View whole (595KB) | Versions and amendments | Print/Download PDF [806KB] 

Contents | Previous section | Next section | Tag section | Remove | Previous hit | Next hit

4 New Part 1AA inserted
After [section 1](#), insert:

Part 1AA

Early childhood and compulsory education: statement of National Education and Learning Priorities

1A Minister may issue statement of National Education and Learning Priorities

(1) The Minister may, by notice in the *Gazette*, issue a statement of National Education and Learning Priorities for the early childhood and compulsory education sectors.

(2) A statement issued under this section—


- (a) must be consistent with the objectives set out in subsection (3); and
- (b) may include statements of the diversity of education provision; and
- (c) must specify the date on which it comes into effect; and
- (d) remains in effect for a period of 5 years unless earlier withdrawn or replaced by notice in the *Gazette*; and
- (e) must be published on an Internet site maintained by the Ministry.

(3) The objectives of the system for education and learning that is provided for in the specified Parts (that is, early childhood and compulsory education) are—


- (a) to focus on helping each child and young person to attain educational achievement to the best of his or her potential; and
- (b) to promote the development, in each child and young person, of the following abilities and attributes:
 - (i) resilience, determination, confidence, and creative and critical thinking;

Figure 4: Amendments are within the grey box to be inserted into the Education Act 1989, which is the principal Act

A method to make legislation more easily navigable would be to include the grey boxes of the section to be inserted into the principal Act itself. This would allow the user to understand that the principal Act would be changed and which sections would be changed with additional provisions added. A user would be able to read the new section of the Act and understand when it would be coming into force instead of clicking through multiple pages, an issue that arises under legislative sprawl.

◀ Back to search results Add to web feed 

Education Act 1989

Order a commercial print 


- Warning: Some amendments have not yet been incorporated


Search within this Act SEARCH

By sections


View whole (4.0MB)


Versions and amendments

Print/Download PDF [3.1MB] 

 Contents

⏪ Previous section | Next section ⏩

 Tag section

 Remove

⏪ Previous hit | Next hit ⏩

Part 1AA

Early childhood and compulsory education: statement of National Education and Learning Priorities

Part 1AA: inserted, on 19 May 2017, by [section 4](#) of the Education (Update) Amendment Act 2017 (2017 No 20).

1A Minister may issue statement of National Education and Learning Priorities

(1) The Minister may, by notice in the *Gazette*, issue a statement of National Education and Learning Priorities for the early childhood and compulsory education sectors.

(2) A statement issued under this section—

- (a) must be consistent with the objectives set out in subsection (3); and
- (b) may include statements of the diversity of education provision; and
- (c) must specify the date on which it comes into effect; and
- (d) remains in effect for a period of 5 years unless earlier withdrawn or replaced by notice in the *Gazette*; and

Figure 5: Current New Zealand Legislation website display of s 1A of the Education Act 1989. A grey box is added to the image to illustrate the suggestion of including amendments in the principal Act

The grey box could be inserted into the principal Act to show that this is an amendment coming into force. Although this particular amendment is already in force, the grey box inserted above shows what the legislation website display would be if this amendment is yet to be enacted. This would assist navigability of legislation by allowing the user to view the amendments within the principal Act on the same webpage. This would reduce the amount of pages a user has to click through before finding out their position under the law.

However, this suggested solution is only feasible if entire sections are inserted into, or being replaced in, the principal Act. Many changes in amendment Acts are to clarify specific words within sections, rather than the section as a whole.²⁹ This insertion of a grey box, or crossed out words, to indicate amendments of the principal Act for particular words will likely confuse the reader. If words are deleted by the amendment, then this would have to be crossed out for the amendment to be coherent to the reader.

²⁹ For another example, see Education (Update) Amendment Act 2017, s 8.



Figure 6: Section 7 of the Education (Update) Amendment Act 2017 deletes words from the principal Act

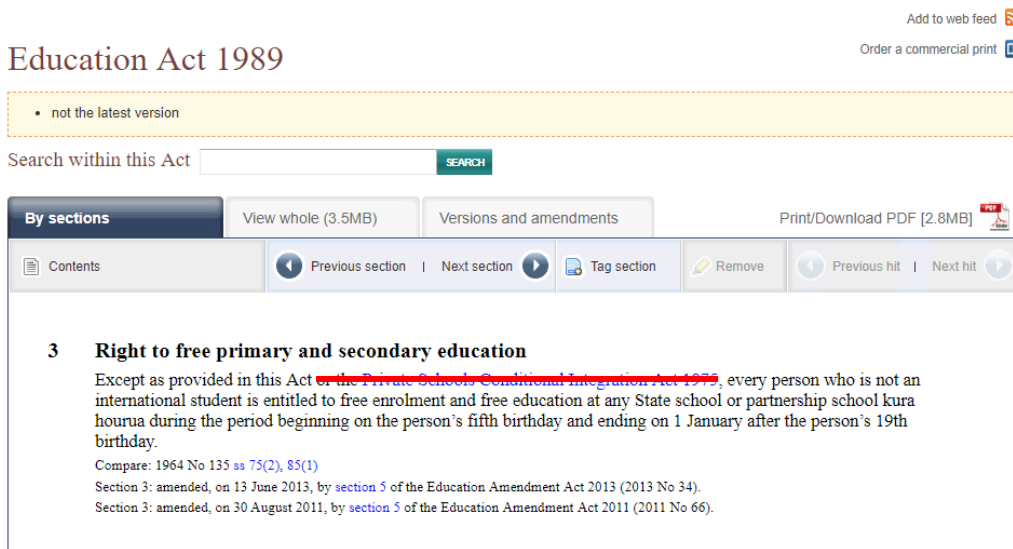


Figure 7: The proposed change for surgical amendments to the section, although this is merely illustrative because s 7 of the Education (Update) Amendment Act 2017 has come into force

Therefore, a consistent solution for all types of amendments is to insert an annotation at the bottom of the section to be amended to warn the reader that the particular section will change in the future that links to the amending provisions in the relevant amending Act. Currently, sections that have already been amended include the history notes at the bottom of the amended section. There are no notes to indicate future amendments to be made to the particular section. For the reader to distinguish between the amendments already made and the amendments to be made, the annotation stating that amendments are to be made should be in a different colour. This would assist the reader in navigation within the Act by being able to click into the particular section and find out what changes are to be made to that section. This is compared to the current position, where

the reader must click into the amendment Act, read where the amendment is supposed to be placed within the principal Act, then go into the principal Act to see where the change is to be made.

The screenshot shows the 'Education Act 1989' page. At the top, there is a warning box: 'Warning: Some amendments have not yet been incorporated'. Below this is a search bar and navigation options like 'By sections', 'View whole (4.0MB)', and 'Versions and amendments'. The main content area displays 'Section 3: Right to free primary and secondary education'. Below the section title, there is a list of amendments, with the first three highlighted in a light green box:

- Section 3: amended, on 19 May 2017, by section 7 of the Education (Update) Amendment Act 2017 (2017 No 20).
- Section 3: amended, on 13 June 2013, by section 5 of the Education Amendment Act 2013 (2013 No 34).
- Section 3: amended, on 30 August 2011, by section 5 of the Education Amendment Act 2011 (2011 No 66).

Figure 8: Amendments to be made to the particular section should be placed with the other history notes within the section. These should be distinguished by having the notes for future amendments in a different colour

Annotations on the bottom of each section will enhance navigability by allowing the user to trace the history of the section and any future amendments to the section with warnings on the same webpage. This enhances navigability within the section, once the relevant law is found. A user will be alerted to the changes that are going to be made to the provision and whether this will affect their position under the law.

B Revision and Consolidation of Legislation

Navigation of legislation is also improved by revisions. The purpose of consolidation or revision of legislation is to simplify legislation in New Zealand because many Acts are difficult to find or understand.³⁰ Many Acts are old and their language and drafting styles are outdated. Understandability is also improved by revision of heavily amended and obsolete or repealed provisions, this will be discussed in Part V.

³⁰ Law Commission, above n 23, at 118.

Consolidating Acts bring together scattered relevant law or amendments together in one statute.³¹ No changes are made to the provisions, except for possibly changing the title of the Act and section numbers within the consolidated Act. Consolidation does not change the law, but simply replaces it in a form that makes it more accessible to the reader. Navigability is improved by reorganising an Act to make its content clearer.³²

Revisions, compared to consolidations, re-enact earlier law.³³ Revision powers are provided for in the Legislation Act 2012.³⁴ The purpose of revision is to re-enact the law, in an up-to-date and accessible form, the law previously contained in all or part of one or more Acts, but revision is not intended to change the effect of the law.³⁵ However, a revision bill can make amendments to clarify Parliament's intent or reconcile inconsistencies.³⁶ The original provision can be modified using different words, but is not meant to change the effect or meaning of the original provision.³⁷ Therefore, a revision is not meant to make major policy changes to the law, but is instead aimed at improving the accessibility, particularly the navigability and understandability, of the law.³⁸

1 Potential Issues with Revision of Legislation

The Law Commission has noted that as legislation is being passed at a high volume and speed, a revision “could never be more than a still picture of a moving scene”.³⁹ This is because the revision bill becomes the new principal Act and amendments are likely to be passed changing the new principal Act. Therefore, any effective process of revision would have to be continuous in order to keep pace with new developments. Although

³¹ Burrows and Carter, above n 1, at 167.

³² At 167.

³³ Law Commission, above n 23, at 102.

³⁴ Part 2 sub-pt 3.

³⁵ Legislation Act 2012, s 29(2).

³⁶ Sections 31(2)(i) and 31(2)(j).

³⁷ An example of a revision Bill is the Contract and Commercial Law Act 2017. This is discussed below.

³⁸ Geoffrey Palmer “Law Making in New Zealand: Is there a Better Way?” (2014) 22 *Waikato L Rev* 1 at 33.

³⁹ Law Commission, above n 23, at 106.

resource limitations, such as the vast amount of proposed amendments within any given year, may prevent revisions programmes from being continuous, this should not discourage the PCO from prioritising Acts suitable for revision.⁴⁰ This is because there is a marked difference in improvement of navigability, having similar Acts grouped together, and also understandability as illustrated by readability scores. This which is assessed below using the Contract and Commercial Law Act 2017 (CCLA).

Revision bills may also be complex, rather than achieving simplicity, if fundamentally different provisions are together in a single Act. This is because the title of the revision bill may not encompass all the subjects of the sections within the new Act if it covers many aspects to that particular topic of legislation. It must also be ensured that moving provisions from one Act to does not affect the scheme of either Act. Changes of wording also must not change the content of the law. Another issue with revision bills is that it may disturb familiarity, by the change of section numbers. However, overall the Law Commission notes that the above drawbacks are greatly outweighed by the benefits of revision bills.⁴¹ For example, a great benefit of revision bills is that readability is increased by clarifying Parliamentary intent.⁴²

2 *Parliamentary Counsel Office Revision Programme for 2018-2020*

The Law Commission and PCO's findings in *Presentation of New Zealand Statute Law* found that the state of New Zealand's statute law is untidy because of historical drafting.⁴³ The Law Commission recommended a systematic revision of Acts to make them more coherent, as no such comprehensive revision has been done for nearly one hundred years.⁴⁴ The PCO has recently adopted its second revision programme in the wake of this recommendation.⁴⁵

⁴⁰ New Zealand Parliament "Proposed members' bills" <www.parliament.nz>.

⁴¹ Law Commission, above n 23, at 106.

⁴² Readability tests will be used to assess the Contract and Commercial Law Act 2017 below.

⁴³ Law Commission, above n 23, at 6.

⁴⁴ At 44.

⁴⁵ Parliamentary Counsel Office "Revision Bill Programme 2018 to 2020" <www.pco.govt.nz>.

Reasons for the Acts to be revised in the second revision programme include heavily amended and repeal provisions, complexity of the legislative regime, assisting future substantive reform, out of date language, and age of the principal Act.⁴⁶ Some of the Acts were chosen because of the particular importance and interest that laypersons have in being able to understand these Acts and their rights, for example, the Accident Compensation Revision Bill, and the Employment Law Revision Bill.⁴⁷

Readability tests were undertaken to test whether the readability of the CCLA has improved compared to the Acts which were repealed by this revision. Although revision assists with navigability by allowing a user to go to one Act to find the law on the same topic rather than several, revision also improves understandability by clarifying Parliamentary intent and simplifying provisions. This particular revision Act will be discussed in Part V.

In conclusion, navigability of legislation can be improved by refining the display of sections to be amended on the NZL website. This should be done to alert the user that a particular section will be amended in the future and can click on a direct link to the amending section. A user will gauge a more complete picture of their obligations and rights under the law by being aware of changes that will be made to the relevant provision. This suggestion would better uphold navigability of legislation by being able to easily find the amendments to a provision. Revision is also an important aspect of navigability by updating legislation to include amendments, clarify Parliamentary intent and grouping legislation of the same topic together. Revision will be discussed with reference to data on readability of the CCLA in Part V.

V Understandability of Legislation

It is strange that free societies should ... arrive at a situation where their members are governed from cradle to grave by texts they cannot comprehend.

⁴⁶ Parliamentary Counsel Office “Revision programme” <www.pco.govt.nz>.

⁴⁷ Parliamentary Counsel Office, above n 45; Employment New Zealand “Employment Law” (2018) <www.employment.govt.nz>.

— FAR Bennion⁴⁸

In order for a person to be able to understand what conduct is required of them, legislation must be drafted in plain language to be precise and unambiguous.⁴⁹ Plain language is “straight-forward prose, carefully written with its readers’ needs in mind”.⁵⁰ Accessibility of the law to citizens requires the law to be fair and unambiguous.⁵¹ However, to govern future conduct sufficiently, legislation must include some degree of detail, which may compromise plain language if that detail is complex. This is a fine balance to be struck for legislative drafters. Drafting should be consistent with Lord Bingham’s now famous formulation of the elements of the rule of law: “The law must be accessible and so far as possible intelligible, clear and predictable”.⁵²

Although many sources cite the term “clarity” for the accessibility, clarity varies for different users of legislation. For example, clarity for laypersons without any legal training will be very different from clarity for lawyers. Therefore, “understandability” is the better term to use, as noted by the Law Commission.⁵³ The law, once found, should be understandable to the user.⁵⁴ Understandability is assessed in terms of objective readability using readability testing in subpart F below.

A Use of Plain Language

Plain language is essential to the user’s understanding of the law. Simplicity and clarity of language are essential. Legislation drafting should be done with the user in mind, but this should not be at the expense of precision. Three factors which contribute greatly towards effective communication are: good organisation of material; simple sentence structure; and careful word choice.⁵⁵

⁴⁸ FAR Bennion *Bennion on Statute Law* (3rd ed, Longman, Great Britain, 1990) at 10.

⁴⁹ Burrows and Carter, above n 1, at 107.

⁵⁰ Margaret McLaren “The Case for Plain Legal English in New Zealand” (1992) NZLJ 167 at 167.

⁵¹ At 167.

⁵² Thomas Bingham “What is the Law?” (2009) 40(3) VUWLR 597 at 600.

⁵³ Law Commission Act 1985, s 5(1)(d).

⁵⁴ Law Commission, above n 23, at 14.

⁵⁵ Law Commission *Legislation Manual – Structure and Style* (NZLC R35, 1995) at 35.

The use of plain language can depend on the audience that the statutory drafter is addressing. This will determine the facilities likely to be available to that audience in applying and construing the legislation.⁵⁶ Judges and lawyers will need to use legislation to resolve disputes over its interpretation. Many Acts will be used by governmental departments and local authorities in administering the legislation. Ministers and members of Parliament are also users of legislation, who may want legislation to be passed quickly even without perceived understandability of language. Plain language will need to be at its simplest for the public, where they may have an interest in learning about their rights in particular fields. For example, legislation about family, employment, health and safety, dispute resolution, and property should be written for the layperson as the layperson is the one who is being asked to observe these laws.

Therefore, in amending statutes for understandability, legislation with the most use by the general public should be prioritised over technical statutes in order to uphold the rule of law and allow citizens to observe their obligations.

1 Factors Which Assist Plain Language

Seven factors which contribute to New Zealand's progress towards plain language are discussed below. Some of these factors will be relevant in testing the readability of the text in the following section.

Firstly, New Zealand statutes have been said to have a good logical structure.⁵⁷ The PCO has noted that organisation of material is essential, for example; substantive matters should come before procedural matters so the reader can find what they are looking for, universally applicable provisions should come before limited application provisions and the general should come before the particular. In addition to this, the

⁵⁶ Burrows and Carter, above n 1, at 130.

⁵⁷ For example, the Income Tax 2007; (25 October 2007) 643 NZPD 12741.

arrangement of material should always be consistent. If the reasons for that particular order are the same, this order should be followed elsewhere.⁵⁸

However, amendments of statutes may compromise the logical structure of the particular Act.⁵⁹ This is because sections of Acts are inserted using a combination of letters and numbers to fit within the existing Act.⁶⁰ Examples of this are s 707ZZZZA of the Local Government Act 1974 (repealed) and s 69ZZZE of the Health Act 1956. In this instance, an order can be made to authorise reprinting of the legislation with numbering, rather than letter and number combinations.⁶¹ Another option is to revise the entire statute.⁶² Otherwise, a decimal system would be more effective for future amendments, as this would reduce confusion with the letter-number combination. A logical structure will assist with understandability by making clear to the user the order of the provisions. This can also assist in navigability by allowing the user to locate the provision more easily.

Secondly, in 1996, the PCO announced a number of ways to get rid of surplus words, effective from 1 January 1997.⁶³ Since 1997, Acts are drafted in the present tense, instead of future tense and a mandatory requirement is indicated by “must” or “may” rather than “shall”.⁶⁴ The language used in some statutes is simple, modern and free from technicality.⁶⁵ Direct language would assist in understandability by including only the most essential words and removing words that may cloud its meaning.

Thirdly, to make a provision more readable and therefore, more easily understandable, long sentences are broken up into numbered or lettered paragraphs. Therefore, it is

⁵⁸ Parliamentary Counsel Office “PCO Plain Language Standard” <www.pco.govt.nz> at 3.11.

⁵⁹ *Commissioner of Inland Revenue v Grant* (High Court, Auckland CIV 2009-404-7388, 25 May 2010) at [3].

⁶⁰ Burrows and Carter, above n 1, at 116.

⁶¹ Legislation Act, s 25(2).

⁶² Legislation Act, s 31.

⁶³ Burrows and Carter, above n 1, at 128.

⁶⁴ At 128. For further examples, see this page.

⁶⁵ For an example, see the Education Act 1989, s 78CA.

uncommon to find unbroken texts of more than five lines in most modern Acts.⁶⁶ Although they may not be shorter in total length, they are much easier to read because the text has been broken up into discrete units of meaning.⁶⁷ This assists understandability by indicating to the user that there are many interrelated parts to the provision and splitting up a list into discrete units that are more easily discernible.

Fourthly, most modern Acts have “purpose” or “object” sections at the beginning of the Act, or sometimes at the beginning of each part of the Act and this can assist in the interpretation of the Act.⁶⁸ This assists in understandability because the reader can gain a clear idea of what was meant to be achieved before proceeding to the substantive sections of the legislation.⁶⁹

Sixthly, once within the statute, the particular format assists the user in being able to locate particular information within the text. Since 2000, statutes include a new typeface, a new positioning of section headings, running heads, the use of Arabic rather than Roman numerals in part headings and the placement of section and subsection numbers in the margin. These changes all assist readability by being able to locate the relevant section.⁷⁰

Seventhly, recent Acts use a number of devices, including flowcharts, examples, and tables, designed to make provisions more easily understandable, especially to non-legally trained persons.⁷¹

Flowcharts are used to assist in understanding a procedure that has to be followed, or the scheme of part of an Act.⁷² The Law Commission considered that flowcharts are

⁶⁶ For an example, see the Contract and Commercial Law Act, s 155.

⁶⁷ For example, compare the Sale of Goods Act 1908, s 28 with the Contract and Commercial Law Act, s 155.

⁶⁸ For an example, see the Employment Relations Act 2000, ss 7, 12, 31 and 60; Interpretation Act 1999, s 5.

⁶⁹ Burrows and Carter, above n 1, at 123.

⁷⁰ Law Commission *The Format of Legislation* (NZLC R27, 1993) at 4.

⁷¹ Ross Carter and Matthew Green “Explanatory Provisions in Legislation” (2007) NZLJ 359 at 364.

⁷² Some examples include the Criminal Records (Clean Slate) Act 2004, s 3; Income Tax Act, s BC5.

effective in explaining complicated procedural matters, showing the interrelationships between different elements in a statute and giving an overview of the statute.⁷³

Examples are given of the operation and application of sections, of which the Personal Property Securities Act 1999 contains many.⁷⁴ It can be made clear that if there is inconsistency between the example and the provision, then the provision prevails.⁷⁵ If there is no specific provision within the Act, the Legislation Bill states that the example does not limit the provision.⁷⁶

Tables are also another way to present information in statutes in a simple manner. For example, in the Administration Act 1969, s 77 compares “how the person or people intestate leaves” with how the estate is to be distributed.⁷⁷

These factors all assist in the understandability of legislation. It is more likely that modern legislation is more readable than historical legislation, however it is observed below that this is not true.

B Readability Tests of Legislation

In the United States (US), a similar project developed empirical insights into the characteristics of law that may make it easy or hard to read for its users. This study provides quantitative validation that non-lawyers are a substantial audience for legislative materials.⁷⁸ Preliminary results show the wide spread of readability in legal sentences, which highlight the fact that there is no inherent reason why legislative sentences must be difficult.⁷⁹

⁷³ Law Commission, above n 70, at 15.

⁷⁴ For an example, see Personal Property Securities Act 1999, s 52.

⁷⁵ Section, 21(2).

⁷⁶ Legislation Bill, cl 23.

⁷⁷ For another example, see the Crown Entities Act 2004, s 7(1).

⁷⁸ Michael Curtotti and others “Citizen Science for Citizen Access to Law” (2015) 3 Journal of Open Access Law 1 at 1.

⁷⁹ At 7.

Readability tests assess the two underlying predictors of reading difficulty: semantic content (vocabulary diversity) and syntactic structure (sentence length).⁸⁰ Reading materials should be written for its audience. Therefore, law should be written with a citizen service orientation, it is a service provided to its end ‘users’ and should be optimally designed to meet the needs of its users.⁸¹ Readability tests are aimed at assessing the objective understandability of the text and may not be suitable for the numbering system that is inherent in legislation.⁸² Therefore, readability tests are conducted to assess whether the text of the law itself is objectively understandable. These tests can be used to examine whether readability scores have improved over time over the major legislative reprint periods. The specific readability tests used are described in Appendix B.

C Process for Undertaking Readability Assessments

To undertake readability tests of legislation, an advanced search for each time period was conducted, the method is set out in Appendix A. The search is limited to public Acts due to their wide applicability to New Zealand citizens.⁸³ Two hundred results were displayed per page and the first ten Acts encountered were tested.

In testing for readability, section and subsection numbers, and title sections were excluded to account for the purpose of readability tests, which was test the readability of the sentences. Where colons, semi-colons or other formatting is used to separate subsections, these will also be adjusted in the readability tests to make the legislation read like a sentence. Speech marks were also omitted. Preambles, interpretation, purpose and repealed sections were omitted from the readability tests. Short titles and long titles were also omitted. This was done to test the substantive provisions of each

⁸⁰ At 10; R Timothy Rush “Assessing Readability: Formulas and Alternatives” (1985) 39 *The Reading Teacher* 274 at 274.

⁸¹ At 9.

⁸² Mostafa Zamanian and Pooneh Heydari “Readability of Texts: State of the Art” (2012) 2 *Theory and Practice in Language Studies* 45 at 50.

⁸³ Parliamentary Counsel Office “Glossary” New Zealand Legislation <www.legislation.govt.nz>.

Act. The annotations for amendments made at the bottom of sections on the NZL website were also omitted for testing purposes.

To test the understandability of legislation, fifty different Acts from five different time periods will be tested using readability tests from <www.readabilityformulas.com>. This website provides seven different tests that only tests excerpts between 150 and 3,000 words, so only excerpts of Acts could be tested.

The specific time periods were chosen because major reprints were undertaken during those periods. The text of the law was taken as displayed on the NZL website, rather than the text of the law as it originally stood. This is to analyse readability in light of legislative changes to be more understandable to the current user. This testing was done to see whether there has been an improvement in readability over time and whether modern drafting practices have made a difference in readability.

D Ideal Readability Test Scores

The Flesch Reading Ease Score indicate that the higher the reading score, the easier a piece of text is to read.⁸⁴ Although a score between 1-10 is usually generated, it is possible to generate scores above and below these figures. The table below provides a key to convert a score into the readability of the text:⁸⁵

90-100	Very Easy (Can be understood by 10-11 year olds)
80-89	Easy (Conversational)
70-79	Fairly Easy
60-69	Standard (Can be understood by 13-15 year olds, plain language)
50-59	Fairly Difficult
30-49	Difficult

⁸⁴ Ruth Colmer “The Flesch Reading Ease and Flesch-Kincaid Grade Level” Get Your Readability Score <www.readable.io>.

⁸⁵ Readability Formulas “The Flesch Reading Ease Readability Formula” <www.readabilityformulas.com>.

0-29	Very Confusing (Can be understood by 22 year olds)
Below 0	Impossible to Comprehend

Figure 9: Flesch Reading Score conversion table for level of readability

Text intended to be read by the general public should aim for a score of around 60.

Examples of the Flesch Reading Ease Score of common texts are illustrated in the table below:⁸⁶

Style	Flesch Reading Ease Score	Average Sentence Length in Words	Average No. of Syll. Per 100 Words	Type of Magazine	Estimated School Grade Completed	Estimated Percent of U.S. Adults
Very Easy	90 to 100	8 or less	123 or less	Comics	4th grade	93
Easy	80 to 90	11	131	Pulp fiction	5th grade	91
Fairly Easy	70 to 80	14	139	Slick fiction	6th grade	88
Standard	60 to 70	17	147	Digests	7th or 8th grades	83
Fairly Difficult	50 to 60	21	155	Quality	Some high school	54
Difficult	30 to 50	25	167	Academic	High school or some college	33
Very Difficult	0 to 30	29 or more	192 or more	Scientific	College	4.5

Figure 10: Flesch Reading Ease Score of various groups of reading materials

Readability scores of other texts were conducted when the Flesch Reading Ease Score was developed, illustrated in the figure below:⁸⁷

⁸⁶ William H DuBay *Smart Language: Readers, Readability, and the Grading of Text* (Impact Information, Costa Mesa (California), 2007) at 31.

⁸⁷ Rudolf Flesch *How to Write Plain English: A Book for Lawyers & Consumers* (HarperCollins, United States, 1979) at ch 2.

Comics	92
Consumer ads in magazines	82
<i>Movie Screen</i>	75
<i>Seventeen</i>	67
<i>Reader's Digest</i>	65
<i>Sports Illustrated</i>	63
<i>New York Daily News</i>	60
<i>Atlantic Monthly</i>	57
<i>Time</i>	52
<i>Newsweek</i>	50
<i>Wall Street Journal</i>	43
<i>Harvard Business Review</i>	43
<i>New York Times</i>	39
<i>New York Review of Books</i>	35
<i>Harvard Law Review</i>	32
Standard auto insurance policy	10
<i>Internal Revenue Code</i>	minus 6

Figure 11: Flesch Reading Ease Score of specific reading materials

Other tests used include the Gunning Fog Index, where a score of 5 is readable, 10 is hard, 15 is difficult and 20 is very difficult.⁸⁸

The Flesch-Kincaid Grade Level, Coleman-Liau Index, SMOG Index, Automated Readability Index, and Linsear Write Formula scores generated are equivalent to a US grade level of education. A text to be read by the public should aim for a score of around

⁸⁸ Readability Formulas “Automatic Readability Checker” <www.readabilityformulas.com>; Richard C Wydick “Lawyer’s Writing” (1980) 78(5) Mich L Rev 711 at 714.

eight, which is equivalent to 13-14 year old persons.⁸⁹ The below conversion chart will assist in converting a score, which is equivalent to a US grade level, to an age bracket.⁹⁰

Kindergarten	5-7 years old
First Grade	6-7 years old
Second Grade	7-8 years old
Third Grade	8-9 years old
Fourth Grade	9-10 years old
Fifth Grade	10-11 years old
Sixth Grade	11-12 years old
Seventh Grade	12-13 years old
Eighth Grade	13-14 years old
Ninth Grade	14-15 years old
Tenth Grade	15-16 years old
Eleventh Grade	16-17 years old
Twelfth Grade	17-18 years old
College	18-22 years old

Figure 12: Table converting United States grade levels into age brackets as results are given in grade levels

Although the scores from <www.readabilityformulas.com> are given in grade levels, these have been converted into age groups according to the above table.

E Contract and Commercial Law Act 2017

The first Act to use the Legislation Act revision powers as part of the initial revision programme for 2015-2017 is the Contract and Commercial Law Act 2017 (CCLA).

⁸⁹ Dubay, above n 86, at 73.

⁹⁰ Readability Formulas, above n 88.

This replaced 12 Acts when it came into force on 1 September 2017.⁹¹ Many provisions were renumbered by this revision.⁹²

Some provisions have had its wording simplified, for example, s 28 of the Sale of Goods Act 1908 is now s 154 of the CCLA. Section 28(1) of the Sale of Goods Act 1908 stated:

A writ of execution against good binds the property in the goods of the execution debtor as from the time when the writ it delivered to the sheriff to be executed; and, for the better manifestation of such time, the sheriff shall, without fee, upon the receipt of any such writ, indorse on the back thereof the hour, day, month and year when he received the same: provided that no such writ shall prejudice the title to such goods acquired by any person in good faith and for valuable consideration, unless such person had at the time when he acquired his title notice that such writ or any other writ under which the goods of the execution debtor might be seized or attached had been delivered to and remained unexecuted in the hands of the sheriff.

This section is now replaced by s 155 of the CCLA, which separates s 28(1) into three subsections.⁹³ The first subsection states:

A writ of execution against goods binds the property in the goods of the execution debtor from the time when the writ is delivered to the sheriff to be executed.

This provision shows that revision bills can make the law more readable and therefore, more easily understood by users of the legislation.⁹⁴

Readability test results comparing s 28 of the Sale of Goods Act 1908 and s 155 of the CCLA are illustrated in the table below. Note that for the Flesch Reading Ease Score, the higher the score is, the easier the readability of the text sample.

⁹¹ Legislation Act, s 31(2)(i).

⁹² Contract and Commercial Law Act, sch 3; Mark Williamson and Rachel Taylor “Contract and Commercial Law Act 2017 Comes Into Force.” (22 August 2017) DLA Piper <www.dlapiper.com>.

⁹³ Contract and Commercial Law Act, sch 3.

⁹⁴ Geoff Adlam “First Revision Bill Becomes Law.” (22 February 2017) New Zealand Law Society <www.lawsociety.org.nz>.

Readability Tests Used	Section 28 of the Sale of Goods Act 1908	Section 155 of the Contract and Commercial Law Act 2017
Flesch Reading Ease Score	29.6 Difficult to read	48.5 Difficult to read
Gunning Fog Index	24.3 Very difficult to read	16.9 Difficult to read
Flesch-Kincaid Grade Level	21.8 Grade level: College Graduate and above, 22 years and above	14 Grade level: College, 18-22 years old
The Coleman-Liau Index	9 Grade level: Ninth grade, 14-15 years old	9 Grade Level: Ninth Grade, 14-15 years old
The SMOG Index	12.9 Grade level: College 18-22 years old	11 Grade level: Eleventh Grade 16-17 years old
Automated Readability Index	25.2 Grade level: College Graduate, 22 years old	14.8 Grade level: College Graduate, 22 years old
Linsear Write Formula	30.5 Grade level: College Graduate and above, 22 years and above	18.8 Grade level: College Graduate and above, 22 years and above
<i>Readability Consensus</i>	Grade Level: 20	Grade Level: 14
	Reading Level: Difficult to read	Reading Level: Difficult to read
	Reader's Age: College Graduate, 22 years old	Reader's Age: 21-22 years old (college level)

Figure 13: Readability test comparison between s 28 of the repealed Sale of Goods Act 1908 and s 155 of the Contract and Commercial Law Act 2017

Another example of the improved readability is ss 50-55 of the repealed Sale of Goods Act 1908 compared to ss 191-196 of the CCLA replacing these sections. These two sets of sections outline the remedies available for breach of contract, including claim for price, damages for non-acceptance, damages for non-delivery, specific performance, remedy for breach of warranty, and interest and special damages.⁹⁵ The results of the readability tests of these sections are listed below:

Readability Tests Used	Sections 50-55 of the Sale of Goods Act 1908	Sections 191-196 of the Contract and Commercial Law Act 2017

⁹⁵ Contract and Commercial Law Act, ss 191-196.

Flesch Reading Ease Score	38 Difficult to read	44.7 Difficult to read
Gunning Fog Index	22.5 Very difficult to read	19.8 Difficult to read
Flesch-Kincaid Grade Level	19.1 Grade level: College Graduate and above, 22 years and above	16.1 Grade level: College, 18-22 years old
The Coleman-Liau Index	9 Grade level: Ninth grade, 14-15 years old	9 Grade Level: Ninth Grade, 14-15 years old
The SMOG Index	13.1 Grade level: College 18-22 years old	12.5 Grade level: College 18-22 years old
Automated Readability Index	22.1 Grade level: College Graduate, 22 years old	18.1 Grade level: College Graduate, 22 years old
Linsear Write Formula	27.5 Grade level: College Graduate and above, 22 years and above	23.1 Grade level: College Graduate and above, 22 years and above
<i>Readability Consensus</i>	Grade level: 18	Grade level: 16
	Reading level: Difficult to read	Reading level: Difficult to read
	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old

Figure 14: Readability test comparison between ss 50-55 of the repealed Sale of Goods Act 1908 and ss 191-196 of the Contract and Commercial Law Act 2017

A third example of the improved readability is the comparison between the readability of s 3 of the Wages Protection and Contractors' Liens Act Repeal Act 1987 and the equivalent ss 342-344 of the CCLA.

Readability Tests Used	Section 3 of the Wages Protections and Contractors' Liens Act Repeal Act 1987	Sections 342-344 of the Contract and Commercial Law Act 2017
Flesch Reading Ease Score	18.9 Very difficult to read	40.5 Difficult to read
Gunning Fog Index	30.8 Extremely difficult to read	19.8 Very difficult to read
Flesch-Kincaid Grade Level	27.3 Grade level: College Graduate and above, 22 years and above	19.4 Grade level: College Graduate and above, 22 years and above

The Coleman-Liau Index	7 Grade level: Seventh grade, 12-13 years old	6 Grade Level: Ninth Grade, 11-12 years old
The SMOG Index	15 Grade level: College 18-22 years old	12.5 Grade level: College, 18-22 years old
Automated Readability Index	31.9 Grade level: College Graduate, 22 years old	21.6 Grade level: College Graduate, 22 years old
Linsear Write Formula	40.5 Grade level: College Graduate and above, 22 years and above	28.4 Grade level: College Graduate and above, 22 years and above
<i>Readability Consensus</i>	Grade level: 24	Grade level: 18
	Reading level: Very difficult to read	Reading level: Difficult to read
	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old

Figure 15: Readability test comparison between ss 3 of the repealed Wages Protection and Contractors' Liens Act Repeal Act 1987 and ss 342-344 of the Contract and Commercial Law Act 2017

On average, there has been a significant improvement in readability in all seven readability tests with the revised section in the CCLA. As this sample only tests a few sections, this may not be case for all sections of the CCLA, especially if no rewording of the repealed section was done. However, there is still room for improvement as the reading level required is still markedly higher than for material supposed to be read by the general public, which should be aimed at the readability of a 13-15 year old. The reader's age average of 22 years old for both the repealed Acts and the CCLA are still markedly higher than the age deemed "plain language", which is 13-15 years old.

However, the high reading age may be attributed to the intended user of the CCLA. Many sources on the enactment of the CCLA are directed at commercial entities, rather than to the individual.⁹⁶ This means that this may not be an Act that is intended to be read by the general public and therefore, does not need to be pitched at a low level of readability.

⁹⁶ For example, Laura Littlewood, Anna Buchly and Dean Oppenhuis "A Guide to the Contract and Commercial Law Act 2017" (18 May 2017) Bell Gully <www.bellgully.com>.

Given the marked improvement in readability between the repealed Acts and the CCLA, the PCO should continue with their revision programme. More resources should be directed towards revision of statutes as statutes being prioritised for revision were noted for their particular importance to the general public. Once the user has the law available to them, then finds the relevant Act and then provision, it is particularly important that they are able to understand what obligations they are being asked to observe and what rights they have under the law.

F Readability Testing

1 Legislation Reprints in 1841-1908

The Hon Alfred Domett prepared the first reprint, *Domett's Ordinances*, in 1850 which covered the years 1841-1849. This reprint was made in chronological order, under three main headings. Firstly, Imperial Acts of Parliament, Charters and Royal Instructions. Secondly, Ordinances of New Zealand in force at the date of publication. Thirdly, an appendix which included ordinances repealed, disallowed or obsolete, and Proclamations and Notices under the Charters and Ordinances. The Ordinances in force are also arranged in under three headings of interests which include, public interests (general government), public interests (social economy), and private interests.⁹⁷

In 1885, Wilfred Badger, published a reprint of Acts and ordinances organised chronologically. This reprint was noted to be necessary, as the law was almost inaccessible, even to lawyers.⁹⁸

Given the significance of this particular time period for reprints, data for the readability of ten randomly selected Acts are noted below:

⁹⁷ Law Commission *Presentation of New Zealand Statute Law* (NZLC IP2, 2007) at 87.

⁹⁸ At 87.

Readability Tests Used	(1) Auckland Harbour Act 1874	(2) Cromwell Racecourse Reserve Act 1876	(3) Greytown and Masterton Public Park and Cemetery Reserve Management Act 1875	(4) Lawrence Recreation Reserve Act 1876
Flesch Reading Ease Score	32.9	-2.5	18.8	27.1
Gunning Fog Index	24.9	37.8	27	26.3
Flesch-Kincaid Grade Level	21.7	34.3	24.5	23.9
The Coleman-Liau Index	9	9	10	8
The SMOG Index	13.6	18.4	15.9	14.1
Automated Readability Index	25.9	41.5	28.6	28.4
Linsear Write Formula	31.7	52	35.7	35
<i>Readability Consensus</i>	Grade Level: 21	Grade level: 31	Grade level: 23	Grade level: 22
	Reading Level: Difficult to read	Reading level: Impossible to comprehend	Reading level: Very difficult to read	Reading level: Very difficult to read
	Reader's Age: College graduate, 22 years old	Reader's Age: College Graduate, 22 years old	Reader's Age: College graduate, 22 years old	Reader's Age: College graduate, 22 years old
Size Data				
Number of sections	36	12	27	7
Number of subsections	5	0	0	0

(5) Napier Athenaeum and Mechanics Institute Incorporation Act 1876	(6) Otago Harbour Board Empowering Act 1893	(7) Presbyterian Church Property Act 1885	(8) Taranaki Botanic Garden Act 1876	(9) Wellington College Loan Act 1873	(10) Wellington Reclaimed Land Act 1871
-28.5	-41.5	-6.9	8.1	6.2	-63.6
45	53.7	36.9	33.9	33.5	59.6
41.3	49.6	34.2	30.7	30.5	56.9
10	8	9	8	9	9
23.5	21.6	19.4	17.1	18.2	24.1
49.5	60.8	40.6	36.4	36.1	70.2
65.2	65.6	51.8	46.2		87.8
Grade level: 38	Grade level: 43	Grade level: 31	Grade level: 28	Grade level: 28	Grade level: 50
Reading level: Impossible to comprehend	Reading level: Impossible to comprehend	Reading level: Impossible to comprehend	Reading level: Very difficult to read	Reading level: Very difficult to read	Reading level: Impossible to comprehend
Reader's Age: College graduate, 22 years old	Reader's Age: College graduate	Reader's Age: College graduate	Reader's Age: College graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's age: College graduate and above, 22 years old and above
9	7	42	18	5	28
0	3	10	4	0	0

Figure 16: Readability of ten randomly selected Acts between 1841-1908 from the New Zealand Legislation website

The results of the above findings are graphed below:

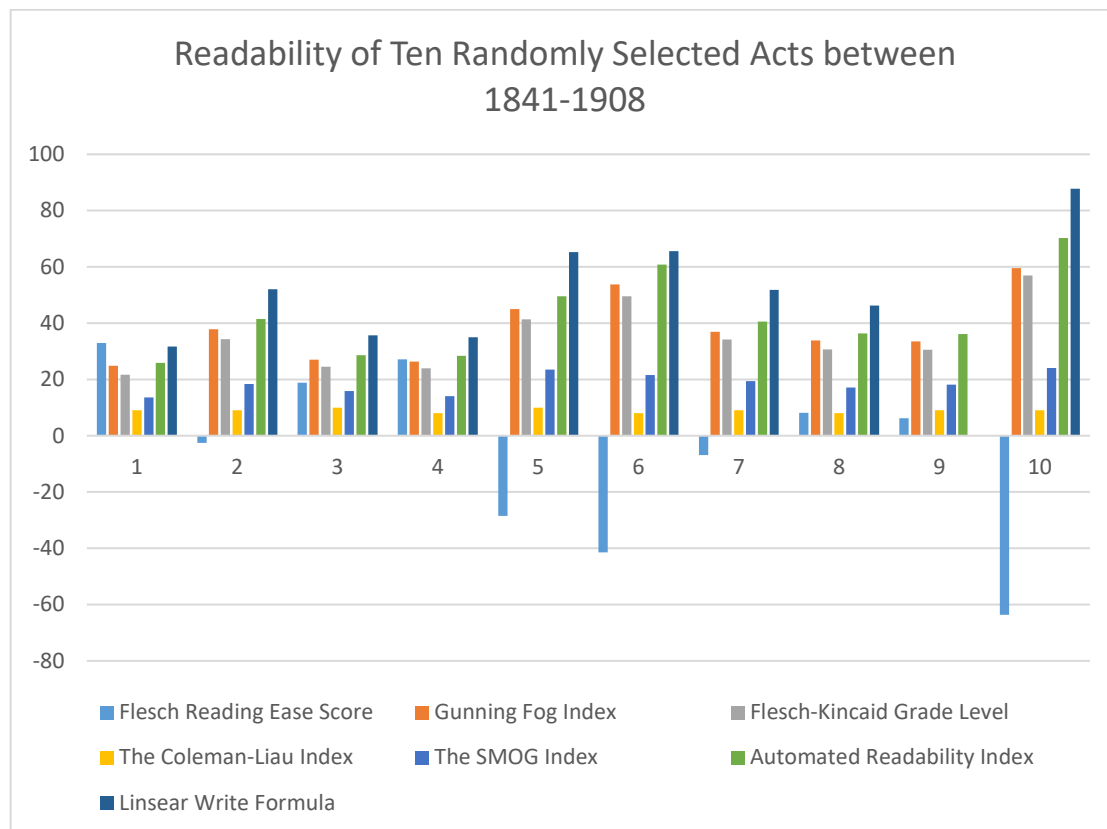


Figure 17: Readability of ten randomly selected Acts between 1841-1908 from the New Zealand Legislation website

The averages of these scores are shown in the table below:

1841-1908	
Flesch Reading Ease Score	-4.99
Gunning Fog Index	37.86
Flesch-Kincaid Grade Level	34.76
The Coleman-Liau Index	8.9
The SMOG Index	18.59
Automated Readability Index	41.8
Linsear Write Formula	52.33333333

Figure 18: Readability average of ten randomly selected Acts between 1841-1908 from the New Zealand Legislation website

Many of the Acts in this time period had negative readability for the Flesch Reading Ease Score which causes a negative result on average for this test. The general public will not be able to read legislation of this time period given the average scores of the other readability tests result in a reading level of a college graduate, or a 22-year-old, rather than a 13-15 year old. Although this is a poor result for readability, this is to be expected for legislation drafted in this time period, given the many developments stated above to improve the readability of legislation.

2 Legislation Revision and Reprints in 1909-1931

The Revision of Statutes Act was passed in 1879 to address the perceived issue that reprinting did not go far enough, and greater powers should be allowed to consolidate provisions and correct errors.⁹⁹ This resulted in the 1908 revision and re-enactment.¹⁰⁰

A series of reprints was undertaken to address the many amendments to the statute book since the 1908 revision. The first of these reprints was in 1931, which was the first truly comprehensive reprint in New Zealand. This was not authorised by an Act of Parliament, but was a joint undertaking by the government and the publishers. A reprint of all the Acts in force was done incorporating amendments and omitting repealed provisions. This reprint did not alter the substance of the Acts, but corrected obvious grammatical errors. The Acts were arranged according to subject matter and annotations of sections were included if there were amendments. Summaries of case law relevant to the particular section was also included.¹⁰¹

Given the significance of this particular time period for reprints, data for the readability of ten randomly selected Acts are noted below:

⁹⁹ Law Commission, above n 97, at 97.

¹⁰⁰ Law Commission, above n 23, at 90.

¹⁰¹ Law Commission, above n 97, at 88.

Readability Tests Used	(1) Ashley River Improvement Act 1925	(2) Bylaws Act 1910	(3) Local Legislation Act 1926	(4) Military Decorations and Distinctive Badges Act 1918
Flesch Reading Ease Score	15.6	25	-50.5	-5.9
Gunning Fog Index	27.7	24.2	54	34.2
Flesch-Kincaid Grade Level	25.3	21.8	51.4	31.5
The Coleman-Liau Index	9	8	8	9
The SMOG Index	17.8	14.2	23.5	20
Automated Readability Index	29	23.7	62.1	35.3
Linsear Write Formula	38.3	30.3	79.4	47.3
<i>Readability Consensus</i>	Grade level: 24	Grade level: 20	Grade level: 45	Grade level: 29
	Reading level: Very difficult to read	Reading level: Very difficult to read	Reading level: Impossible to comprehend	Reading level: Impossible to comprehend
	Reader's age: College graduate, 22 years old	Reader's Age: College graduate, 22 years old	Reader's Age: College graduate, 22 years old	Reader's age: College graduate, 22 years old
Size Data				
Number of sections	22	24	66	7
Number of subsections	27	16	61	5

(5) Public Authorities (Party Wall) Empowering Act 1919	(6) Reserves and Other Lands Disposal Act 1927	(7) Reserves and other Lands Disposal and Public Bodies Empowering Act 1922	(8) Rotoiti Validation Act 1909	(9) Secrets Commission Act 1910	(10) University of Auckland Site Act 1919
0.9	-115.5	-24	9.5	-21.6	39.2
33.5	77.7	43.8	31.6	41.5	17.8
30.3	75.2	41.1	28.5	39	16.8
9	10	10	9	9	9
18.5	30	20.6	17	19.3	13.1
34.5	93.2	49.8	33.6	45.6	18.2
44.9	119.7	62.3	42.2	57	23.3
Grade level: 28	Grade level: 66	Grade level: 37	Grade level: 26	Grade level: 34	Grade level: 16
Reading level: Very difficult to read	Reading level: Impossible to comprehend	Reading level: Impossible to comprehend	Reading level: Very difficult to read	Reading level: Impossible to comprehend	Reading level: Difficult to read
Reader's age: College graduate, 22 years old	Reader's age: College graduate	Reader's Age: College Graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's age: College graduate
5	36	158	6	16	4
6	72	313	6	17	5

Figure 19: Readability of ten randomly selected Acts between 1841-1908 from the New Zealand Legislation website

The results of the above findings are graphed below:

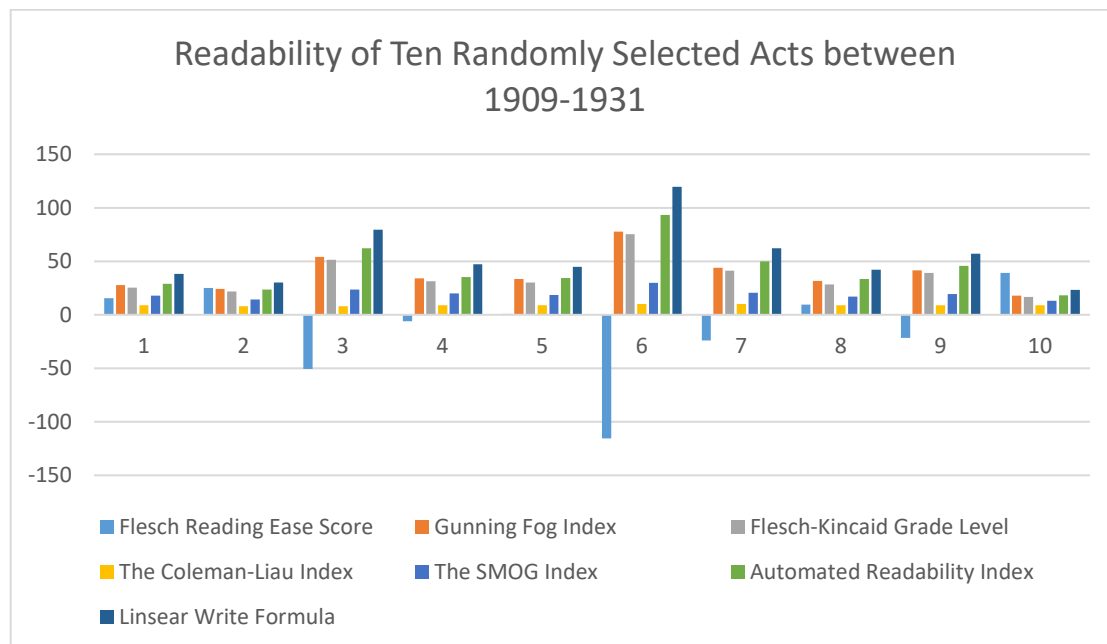


Figure 20: Readability of ten randomly selected Acts between 1909-1931 from the New Zealand Legislation website

The averages of these scores are shown in the table below:

1909-1931	
Flesch Reading Ease Score	-12.73
Gunning Fog Index	38.6
Flesch-Kincaid Grade Level	36.09
The Coleman-Liau Index	9
The SMOG Index	19.4
Automated Readability Index	42.5
Linscar Write Formula	54.47

Figure 21: Readability average of ten randomly selected Acts between 1909-1931 from the New Zealand Legislation website

Analysing the above results, the readability of legislation of this time period has not improved since the period of the previous reprint, 1841-1908. In fact, the readability scores have increased, or decreased for the Flesch Reading Ease Score, indicating that legislation of this time period is harder to read. This may be due to the increase of section numbers for Acts randomly chosen for this time period and an outlier in terms of readability. This score suggests that the PCO should improve on legislation that is still in force from this time period.

3 *Legislation Reprints in 1932-1957*

After many amendments, repeals and enactments of Acts occurred, the 1931 reprint became outdated, therefore the 1957 reprint was undertaken.¹⁰² This reprint incorporated amendments and omitted repealed revisions, much like the 1931 reprint. However, the 1957 reprint was ordered alphabetically, rather than by subject matter. No references to case law were included, but annotations of sections to show amendments were retained. The final volumes of this reprint was not completed and published until 1961, and by the time the revision was completely published, it was four years out-of-date.¹⁰³

Given the significance of this particular time period for reprints, data for the readability of ten randomly selected Acts are noted below:

Readability Tests Used	(1) Adoption Act 1955	(2) Charitable Trusts Act 1957	(3) Education Lands Act 1949	(4) Maori Housing Act 1935
Flesch Reading Ease Score	7.3	-3.6	17.9	-0.3
Gunning Fog Index	33.7	35.4	28.9	33.6
Flesch-Kincaid Grade Level	30.1	31.9	25.9	30.7
The Coleman-Liau Index	8	9	9	10
The SMOG Index	17.7	19.7	15.9	18.5
Automated Readability Index	34.9	36.7	30.3	35.4

¹⁰² RE Owen *New Zealand Statutes Reprint 1908-1957: With Amendments Incorporated* (Government Printer, Wellington, 1958).

¹⁰³ Law Commission, above n 97, at 89.

Linsear Write Formula	45.4	48.2	38	45.3
<i>Readability Consensus</i>	Grade level: 27	Grade level: 29	Grade level: 24	Grade level: 28
	Reading level: Very difficult to read	Reading level: Impossible to comprehend	Reading level: Very difficult to read	Reading level: Very difficult to read
	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old
Size Data				
Number of sections	38	67	29	20
Number of subsections	106	119	38	19

(5) Native Plants Protection Act 1934	(6) New Zealand Council of Law Reporting Act 1938	(7) Primary Products Marketing Act 1953	(8) Reserves and other Lands Disposal Act 1940	(9) Trustee Act 1956	(10) Waitangi National Trust Board Act 1932
20.7	20.7	-15.9	8.1	10	31.5
24.8	25.8	37	30.1	30.1	23.4
22.8	23.2	34.8	28.5	26.4	20.2
10	10	11	9	10	9
15.1	15.9	22.6	18	18	15.3
25.6	26.6	40.4	32.7	29.8	22.6
32	33.4	54.4	42.7	39	29.8
Grade level: 21	Grade level: 22	Grade level: 33	Grade level: 26	Grade level: 25	Grade level: 19
Reading level: Very difficult to read	Reading level: Very difficult to read	Reading level: Impossible to comprehend	Reading level: Very difficult to read	Reading level: Very difficult to read	Reading level: Difficult to read
Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old
10	21	18	28	125	13
7	40	25	57	295	29

Figure 22: Readability of ten randomly selected Acts between 1932-1957 from the New Zealand Legislation website

The results of the above findings are graphed below:

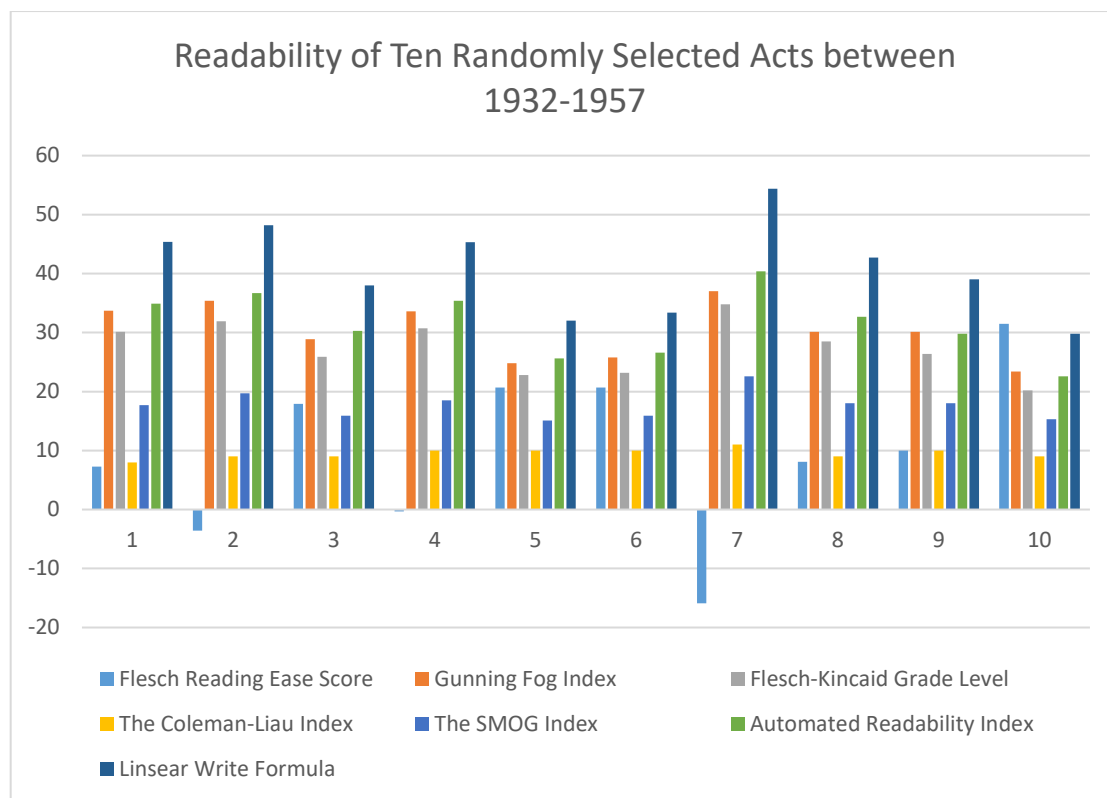


Figure 23: Readability of ten randomly selected Acts between 1932-1957 from the New Zealand Legislation website

The averages of these scores are shown in the table below:

1932-1957	
Flesch Reading Ease Score	9.64
Gunning Fog Index	30.28
Flesch-Kincaid Grade Level	27.45
The Coleman-Liau Index	9.5
The SMOG Index	17.67
Automated Readability Index	31.5
Linsear Write Formula	40.82

Figure 24: Readability average of ten randomly selected Acts between 1932-1957 from the New Zealand Legislation website

Readability for this time period has improved, although not significantly. Legislation from this time period is still not able to be understood by the general public. A slight

improvement can be observed by the Flesch Reading Ease Score where the score is now positive, indicating that legislation of this time period is not impossible to comprehend, but rather very difficult to understand.

4 *Legislation Reprints in 1958-1999*

Since the 1957 reprint, Acts were reprinted on an individual basis depending on whether there had been heavy amendments to the particular Act. From 1957 to 1979, reprinted Acts were published as part of the annual volumes of Acts.¹⁰⁴

In 1979, the *Reprinted Statutes of New Zealand* begun, which published volumes of reprinted Acts that had general application, with the intention that every public Act would be available in a form that was not more than ten years old. However, this was not completed because of the significant volume of legislation and rate of amendment. This was arranged chronologically so that reprints made in the same period were in the same volume.¹⁰⁵

Given the significance of this particular time period for reprints, data for the readability of ten randomly selected Acts are noted below:

Readability Tests Used	(1) Antarctic Marine Living Resources Act 1981	(2) Constitution Act 1986	(3) Decimal Currency Act 1964	(4) Domicile Act 1976
Flesch Reading Ease Score	14	17.3	0.4	35.7
Gunning Fog Index	26.9	22.8	33.2	21.4
Flesch-Kincaid Grade Level	24.1	22.8	30	17.5
The Coleman-Liau Index	10	10	9	9
The SMOG Index	17.6	17.6	19.7	14.2
Automated Readability Index	26.7	24.7	33.9	18.4
Linsear Write Formula	35.2	33.4	45.7	24.7
<i>Readability Consensus</i>	Grade level: 23	Grade level: 22	Grade level: 28	Grade level: 17

¹⁰⁴ Law Commission, above n 23, at 91.

¹⁰⁵ Law Commission, above n 97, at 89.

	Reading level: Very difficult to read	Reading level: Very difficult to read	Reading level: Very difficult to read	Reading level: Difficult to read
	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's Age: College graduate, 22 years old
Size Data				
Number of sections	17	34	34	14
Number of subsections	30	62	11	10

(5) Equal Pay Act 1972	(6) Maritime Crimes Act 1999	(7) Ombudsmen Act 1975	(8) Treaty of Waitangi Act 1975	(9) Wages Protection Act 1983	(10) Wellington Airport Act 1990
-40.1	-21.7	26.4	8.2	14.5	23.5
48.7	42.3	21.4	30.3	29.7	23
45.1	38.8	20	28.1	26.8	20.5
10	9	10	9	9	9
24.7	21.4	16.6	19.1	16.1	16.3
53.9	45.1	22.2	32.1	31	21.1
71.5	59.3	29.4	43.3	39.1	29.2
Grade level: 41	Grade level: 35	Grade level: 20	Grade level: 26	Grade level: 24	Grade level: 19
Reading level: Impossible to comprehend	Reading level: Impossible to comprehend	Reading level: Very difficult to read	Reading level: Very difficult to read	Reading level: Very difficult to read	Reading level: Very difficult to read
Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old
22	35	42	32	23	15
50	72	125	84	28	56

Figure 25: Readability of ten randomly selected Acts between 1958-1999 from the New Zealand Legislation website

The results of the above findings are graphed below:

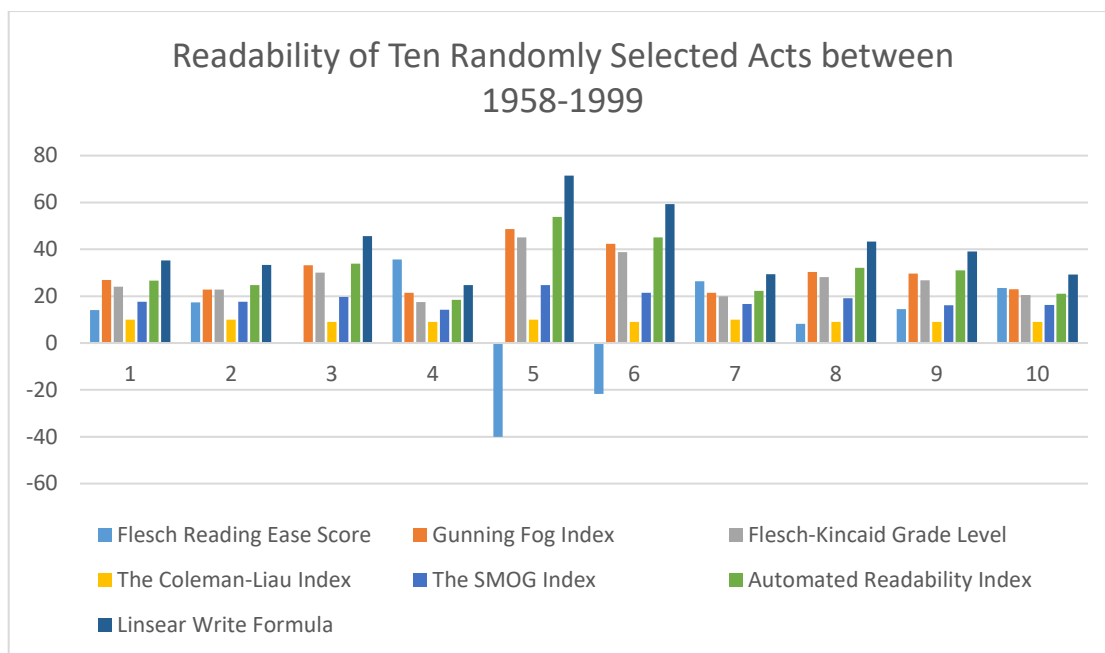


Figure 26: Readability of ten randomly selected Acts between 1958-1999 from the New Zealand Legislation website

The averages of these scores are shown in the table below:

1958-1999	
Flesch Reading Ease Score	7.82
Gunning Fog Index	29.97
Flesch-Kincaid Grade Level	27.37
The Coleman-Liau Index	9.4
The SMOG Index	18.33
Automated Readability Index	30.91
Linsear Write Formula	41.08

Figure 27: Readability average of ten randomly selected Acts between 1958-1999 from the New Zealand Legislation website

Readability scores for this period still have not improved. Results are similar to the previous reprint period of 1932-1999.

5 Legislation Reprints in 2000-2018

Reprints are now completed on an individual basis by the PCO. Reprints incorporate all amendments made to the legislation up to the date of reprint. Acts which have had many amendments and are much-used are chosen for reprint.¹⁰⁶

Given the significance of this particular time period for reprints, data for the readability of ten randomly selected Acts are noted below:

Readability Tests Used	(1) Brokering (Weapons and Related Items) Controls Act 2018	(2) Care of Children Act 2004	(3) Coroners Act 2006	(4) Employment Relations Act 2000
Flesch Reading Ease Score	25.1	14.3	-7.9	-3.7
Gunning Fog Index	24	30.1	37.3	33.7
Flesch-Kincaid Grade Level	20.9	26	33.4	28.9
The Coleman-Liau Index	9	9	10	12
The SMOG Index	15.4	18.2	21	21.8
Automated Readability Index	22.2	29.5	38.7	32.2
Linsear Write Formula	29.7	39.7	51.7	44.9
<i>Readability Consensus</i>	Grade level: 19	Grade level: 25	Grade level: 31	Grade level: 28
	Reading level: Very difficult to read	Reading level: Very difficult to read	Reading level: Impossible to comprehend	Reading level: Impossible to comprehend
	Reader's age: College graduate, 22 years old	Reader's age: College graduate	Reader's age: College graduate	Reader's age: College graduate, 22 years old
Size Data				
Number of sections	44	201	162	475
Number of subsections	87	496	400	1248

(5) Environmental Protection Authority Act 2011	(6) Human Tissue Act 2008	(7) Outer Space and High-altitude Activities Act 2017	(8) Radiation Safety Act 2016	(9) Returning Offenders (Management and Information) Act 2015	(10) Victims' Orders Against Violent Offenders Act 2014
26.4	-23.7	-35.4	16.7	9.9	11.2
19.7	42.2	44.3	26.5	30.2	28.8
17.9	38.7	41.2	22.8	26	25.4
11	9	12	11	8	10
14.7	22.2	25.3	17.2	19	18.3

¹⁰⁶ Parliamentary Counsel Office "Reprints" <www.pco.govt.nz>.

18	44.9	48.8	25.2	27.9	28.3
23.2	59.5	65.8	32.8	39.3	37.7
Grade level: 17	Grade level: 35	Grade level: 39	Grade level: 22	Grade level: 24	Grade level: 24
Reading level: Very difficult to read	Reading level: Impossible to comprehend	Reading level: Impossible to comprehend	Reading level: Very difficult to read	Reading level: Very difficult to read	Reading level: Very difficult to read
Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old	Reader's age: College graduate, 22 years old
55	97	93	99	37	30
110	197	242	267	59	69

Figure 28: Readability of ten randomly selected Acts between 2000-2018 from the New Zealand Legislation website

The results of the above findings are graphed below:

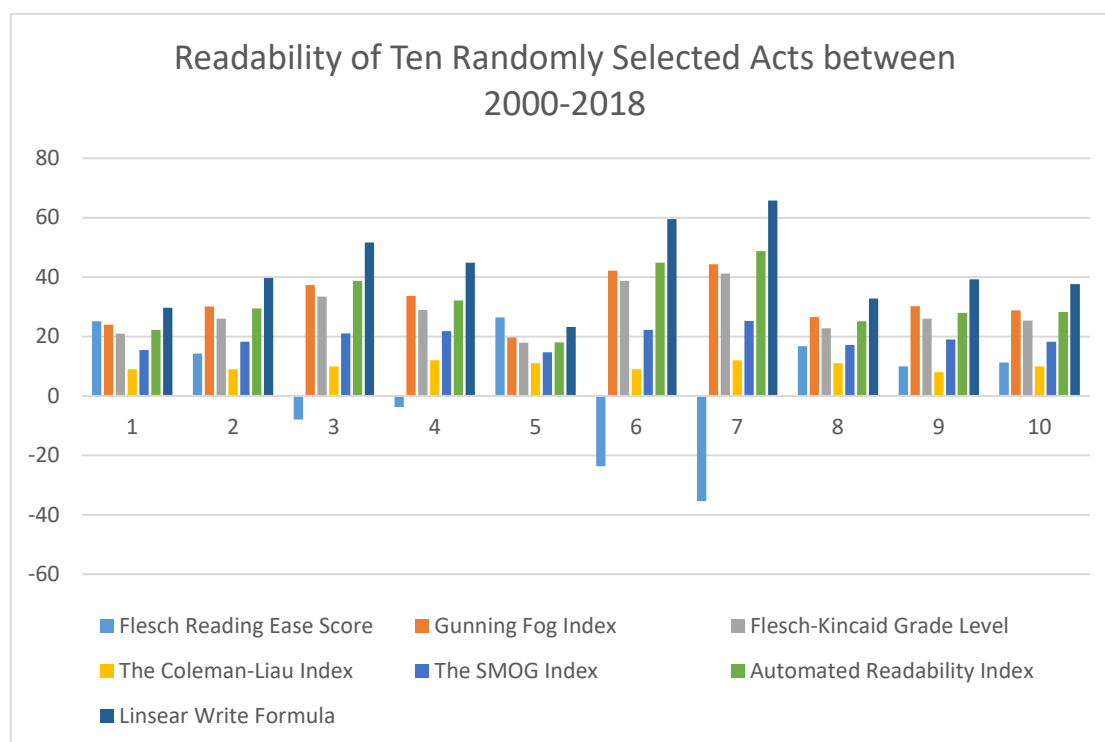


Figure 29: Readability of ten randomly selected Acts between 1958-1999 from the New Zealand Legislation website

The averages of these scores are shown in the table below:

2000-2018	
Flesch Reading Ease Score	3.29
Gunning Fog Index	31.68
Flesch-Kincaid Grade Level	28.12
The Coleman-Liau Index	10.1
The SMOG Index	19.31
Automated Readability Index	31.57
Linsear Write Formula	42.43

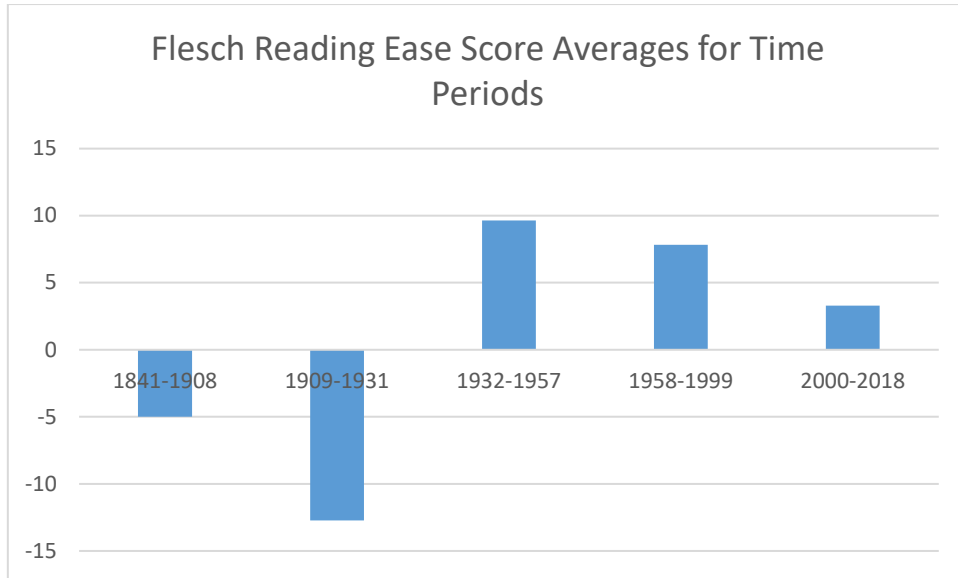
Figure 30: Readability average of ten randomly selected Acts between 2000-2018 from the New Zealand Legislation website

Modern legislation has not improved since the last period in terms of readability scores. Legislation remains difficult to understand in terms of the above readability scores. This result may be perplexing given the many efforts by the PCO to draft legislation in plain language and use shorter sentences by splitting up sections into subsections.

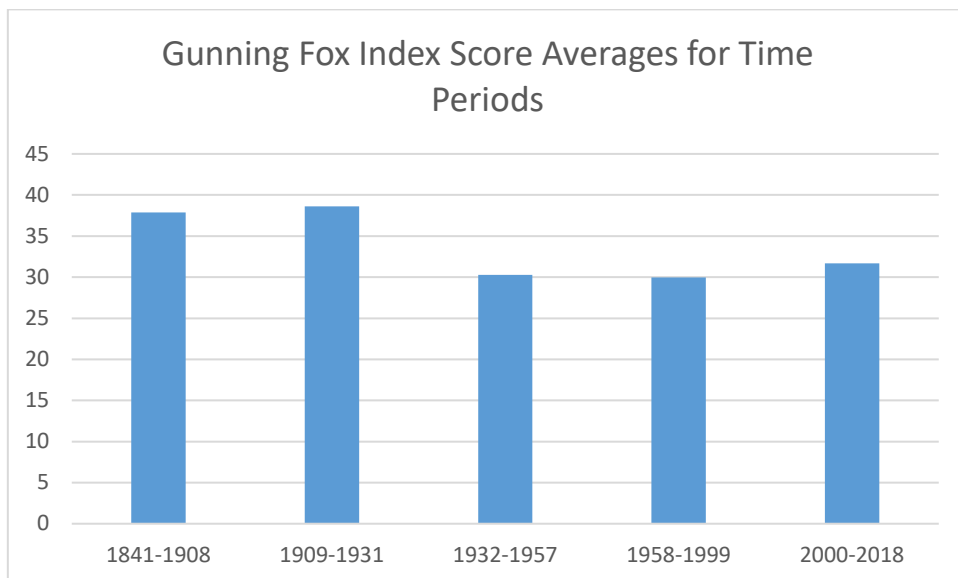
6 Conclusions from Readability Testing of Effect on Understandability

The averages of each time period are organised by readability test in the below tables and graphs:

Flesch Reading Ease Score	
1841-1908	-4.99
1909-1931	-12.73
1932-1957	9.64
1958-1999	7.82
2000-2018	3.29

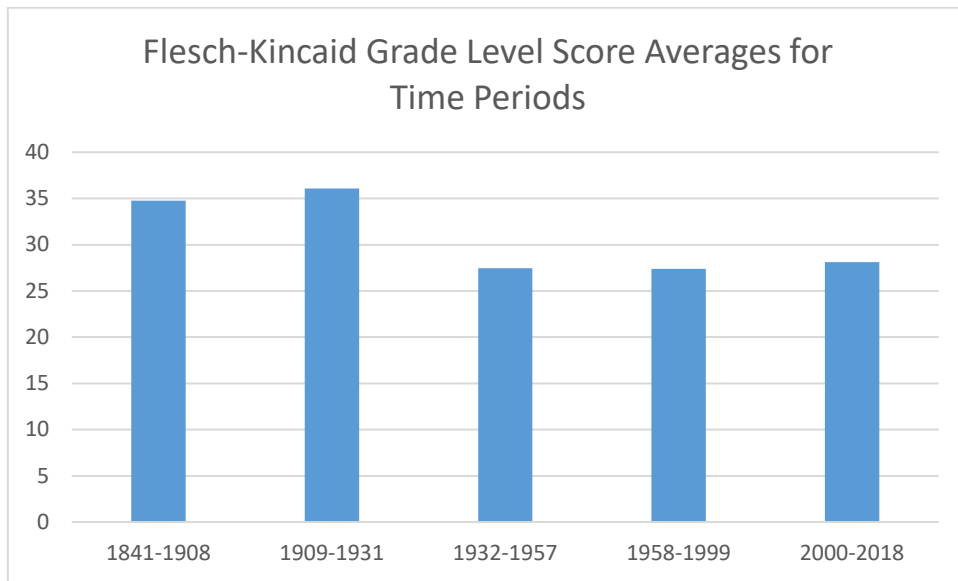


Gunning Fog Index	
1841-1908	37.86
1909-1931	38.6
1932-1957	30.28
1958-1999	29.97
2000-2018	31.68

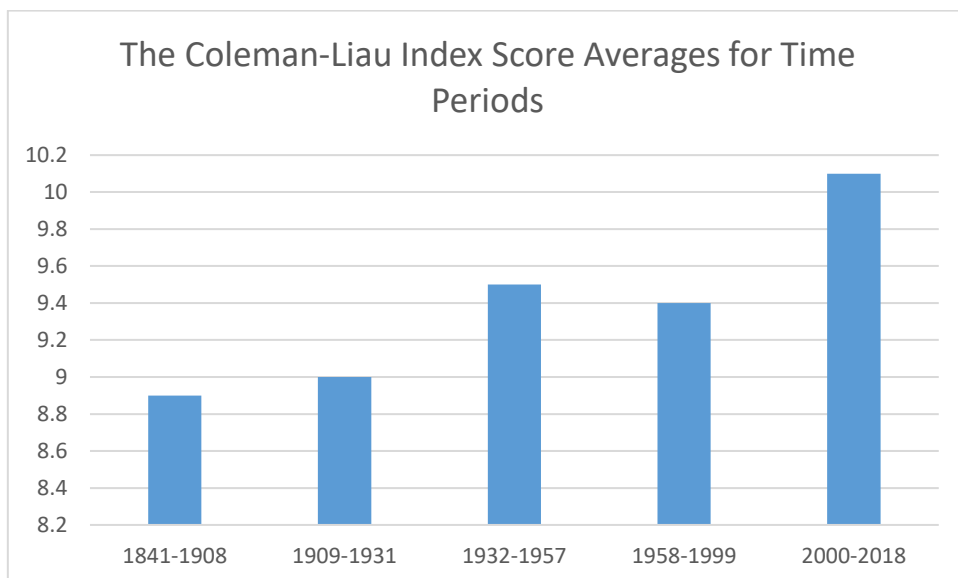


Flesch-Kincaid Grade Level	
1841-1908	34.76
1909-1931	36.09
1932-1957	27.45
1958-1999	27.37

2000-2018	28.12
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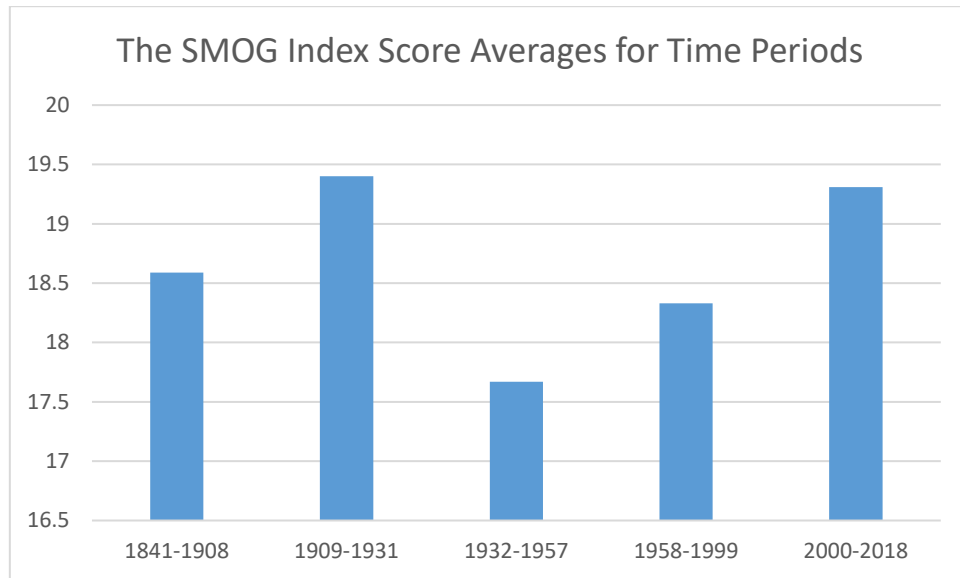


The Coleman-Liau Index	
1841-1908	8.9
1909-1931	9
1932-1957	9.5
1958-1999	9.4
2000-2018	10.1

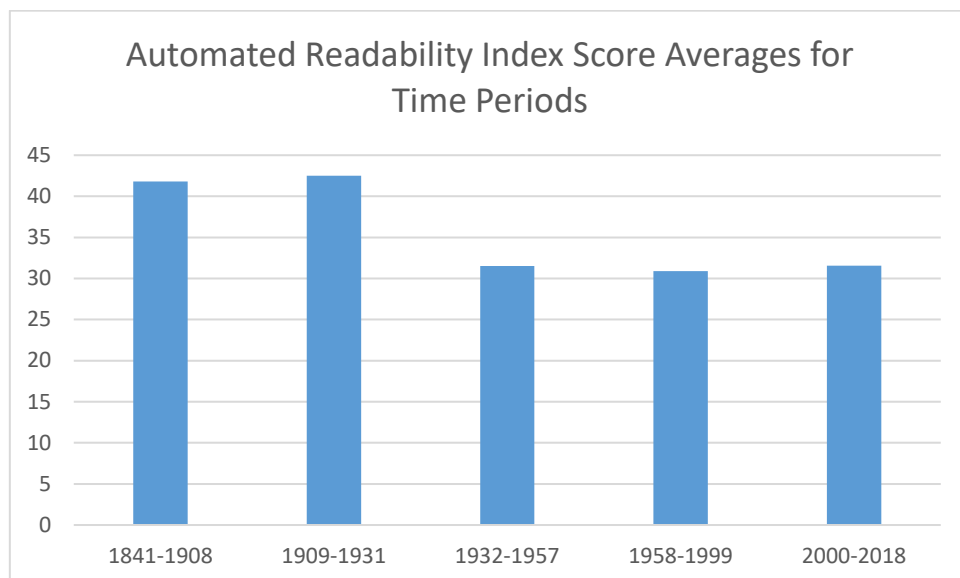


The SMOG Index	
1841-1908	18.59
1909-1931	19.4
1932-1957	17.67

1958-1999	18.33
2000-2018	19.31

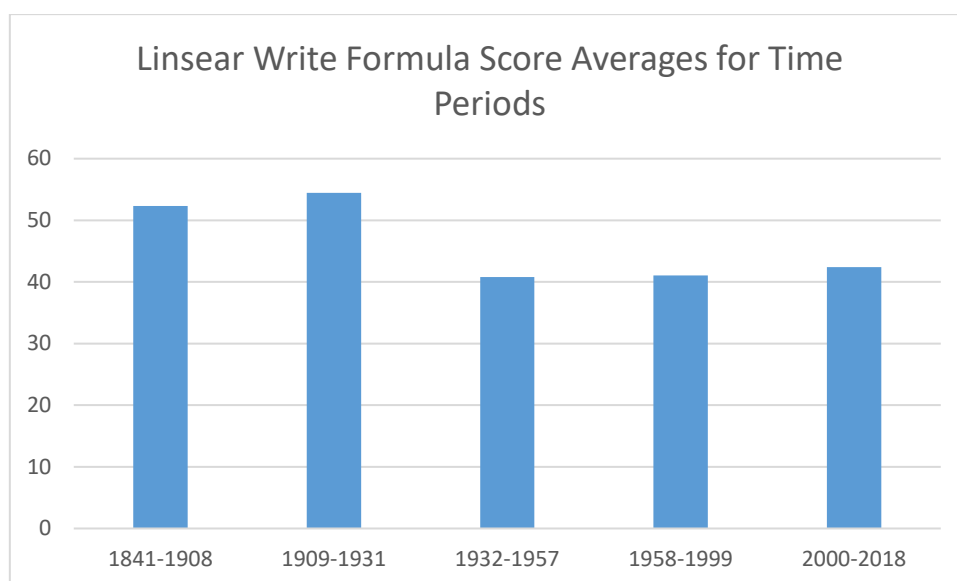


Automated Readability Index	
1841-1908	41.8
1909-1931	42.5
1932-1957	31.5
1958-1999	30.91
2000-2018	31.57



Linsear Write Formula	
1841-1908	52.33333333
1909-1931	54.47

1932-1957	40.82
1958-1999	41.08
2000-2018	42.43



Figures 31-44: Readability averages of ten randomly selected Acts for each time period, organised by readability test

These comparisons confirm what was found in the above sections; that readability has worsened according to some tests, or only improved by a small amount over a century. This may be the case because of the inherent nature of legislation. Legislation, although having a focus on plain language, must be drafted with precision in order to fulfil its role of governing citizens' behaviour. Legislation should be specific and promote certainty so that understandability between different users of legislation is as consistent as possible.¹⁰⁷ If legislation is overly simplistic, legislation may be readable, but not understandable as a whole because different users may interpret provisions differently, giving rise to ambiguity.¹⁰⁸ Legislation may be able to be drafted with the simplicity of a story book, but this is undesirable because this would also result in complexity.

¹⁰⁷ Esther Majambere "Clarity, Precision and Unambiguity: Aspects for Effective Legislative Drafting" (2011) 37(2) CLB 417 at 420.

¹⁰⁸ At 424.

The readability test results are also be biased because a section with multiple subsections is analysed as one sentence, rather than in the legislative format. Many of the readability tests analyse sentence length, which is a possible reason to explain the lack of improvement in readability over the five time periods. Each subsection may be short and understandable by itself, but within a bigger section, the sentence length becomes much longer. This could create skewed results where sections with many subsections were analysed.¹⁰⁹

Although this is a random sample, a suggestion from this is for legislative drafters to discern between legislation that is likely to be used by the general public, and legislation that is likely to be used only by legally trained persons. More resources should be aimed at making legislation that is likely to be used by the general public more understandable to uphold the rule of law. This reason has been noted by the PCO for the selection of bills included in their second revision programme.¹¹⁰

VI Conclusion

Accessibility of legislation has been markedly improved by the invaluable New Zealand Legislation website. In New Zealand, availability of legislation has been achieved through the provision of primary legislation on this website. However, availability will be improved by the Legislation Bill requiring all secondary legislation to be published online, which will allow a more complete picture of the law.

On the New Zealand Legislation Website, although search functions on the website assist with finding the particular Act, once the Act is found, a difficulty arises when amendments are not able to be easily compared to the section in the principal Act. To increase navigability, notes for future amendments should be incorporated at the bottom of each section page, together with the history notes. Notes for future amendments should be marked by a different colour to differentiate between amendments that have already been enacted.

¹⁰⁹ See Appendices A and B.

¹¹⁰ Parliamentary Counsel Office, above n 45.

Understandability has improved for revision Acts, proven by comparing the readability scores between a few sections of the CCLA compared to the sections of the repealed Acts. This shows that the PCO should direct more resources into their revision programme so that the revised Act is more readable to the user than before. However, for a wider selection of Acts throughout five different time periods of major reprints, unfortunately the same result is not observed. This can be attributed to the precision that legislation must be drafted with and it can never be drafted with the same simplicity as a comic book. It is suggested that legislation that is widely used by the general public be prioritised for improvement in terms of understandability.

VII Appendix A

A Search Terms for Legislation Used for Readability Test

The search undertaken on the New Zealand Legislation Website was undertaken on from the period of 25 August 2018 to 30 August 2018, search results may vary at a later point in time. The search is limited to public Acts due to the wide applicability of public Acts to New Zealand citizens.¹¹¹ 200 results were displayed per page and the first ten Acts that I encountered were chosen to be tested for readability.

1 1841-1908

The search for legislation from 1841-1908 returned 79 results.

Advanced search

Search for: Acts Bills Legislative Instruments Other Instruments ?

Title

Content All these words ?

Year eg. 1998; or 1998-2001

Number

Section number

Apply stemming ?

Acts

Type All Public Local Private Provincial Imperial

Status All Principal Acts in force ? Acts not yet in force ? Amendment Acts in force ? As-enacted Acts ? Repealed Acts ?

[Search help](#)

Figure 7: Advanced Search for Legislation from 1841-1908

Auckland Harbour Act 1874, ss 6-17 were tested for readability.

Cromwell Racecourse Reserve Act 1876, ss 2-12 were tested for readability.

Greytown and Masterton Public Park and Cemetery Reserve Management Act 1875, ss 2-20 were tested for readability.

¹¹¹ Parliamentary Counsel Office “Glossary” New Zealand Legislation <www.legislation.govt.nz>.

Lawrence Recreation Reserve Act 1876, ss 2-7 were tested for readability.

Napier Athenaeum and Mechanics Institute Incorporation Act 1876, ss 2-3, then ss 5-9 (s 4 was repealed) were tested for readability.

Otago Harbour Board Empowering Act 1893, ss 3-7 were tested for readability.

Presbyterian Church Property Act 1885, ss 6-19 were tested for readability.

Taranaki Botanic Garden Act 1876, ss 2-18 were tested for readability.

Wellington College Loan Act 1873, ss 2-5 were tested for readability.

Wellington Reclaimed Land Act 1871, ss 4-11 were tested for readability.

2 1909-1931

The search for legislation from 1909-1931 returned 52 results.

Advanced search

Search for: Acts Bills Legislative Instruments Other Instruments [?](#)

Title

Content All these words [?](#)

Year eg, 1998; or 1998-2001

Number

Section number

Apply stemming [?](#)

Acts

Type All Public Local Private Provincial Imperial

Status All Principal Acts in force [?](#) Acts not yet in force [?](#) Amendment Acts in force [?](#) As-enacted Acts [?](#) Repealed Acts [?](#)

[Search help](#)

Figure 13: Advanced Search for Legislation from 1909-1931

Ashley River Improvement Act 1925, ss 2-8 were tested for readability.

Bylaws Act 1910, ss 12-20 were tested for readability. Sections 3-11 were repealed.

Local Legislation Act 1926 ss 2-5 were tested for readability.

Military Decorations and Distinctive Badges Act 1918, ss 4, 4A and 6 were tested for readability. Sections 2, 3, 5 were repealed.

Public Authorities (Party Wall) Empowering Act 1919, ss 3-5 were tested for readability.

Reserves and Other Lands Disposal Act 1927, ss 3-6 were tested for readability.

Reserves and other Lands Disposal and Public Bodies Empowering Act 1922, ss 2-6 were tested for readability.

Rotoiti Validation Act 1909, ss 2-6 were tested for readability.

Secret Commissions Act 1910, ss 3-7 were tested for readability.

University of Auckland Site Act 1919, ss 2-4 were tested for readability.

3 1932-1957

The search for legislation from 1953-1984 returned 142 results

Advanced search

Search for: Acts Bills Legislative Instruments Other Instruments ?

Title

Content All these words ?

Year eg, 1998; or 1998-2001

Number

Section number

Apply stemming ?

Acts

Type All Public Local Private Provincial Imperial

Status All Principal Acts in force ? Acts not yet in force ? Amendment Acts in force ? As-enacted Acts ? Repealed Acts ?

[Search help](#)

Figure 15: Advanced Search for Legislation from 1932-1957

Adoption Act 1955, ss 3-7 were tested for readability.

Charitable Trusts Act 1957, ss 3-5 and 7-8 were tested for readability.

Education Lands Act 1949, ss 7-12 were tested for readability.

Maori Housing Act 1935, ss 3-7 and 9-10 were tested for readability.

Native Plants Protection Act 1934, ss 3-9 were tested for readability.

New Zealand Council of Law Reporting Act 1938, ss 4-8A were tested for readability.

Primary Products Marketing Act 1953 ss 3-5A were tested for readability.

Reserves and other Lands Disposal Act 1940, ss 2-4 were tested for readability.

Trustee Act 1956, ss 13A-13J were tested for readability. Sections 4-13 have been repealed.

Waitangi National Trust Board Act 1932, ss 2-5 were tested for readability.

4 1958-1999

The search for legislation from 1958-1999 returned 433 results. Results were spread over three pages.

Advanced search

Search for: Acts Bills Legislative Instruments Other Instruments ?

Title

Content All these words ?

Year eg. 1998; or 1998-2001

Number

Section number

Apply stemming ?

Acts

Type All Public Local Private Provincial Imperial

Status All Principal Acts in force ? Acts not yet in force ? Amendment Acts in force ? As-enacted Acts ? Repealed Acts ?

[Search help](#)

Figure 16: Advanced Search for Legislation from 1958-1999

Antarctic Marine Living Resources Act 1981, ss 4-7 and 9-11 were tested for readability. Section 8 has been repealed.

Constitution Act 1986, ss 2-9A were tested for readability.

Decimal Currency Act 1964, ss 5-8 were tested for readability.

Domicile Act 1976, ss 3-13 were tested for readability.

Equal Pay Act 1972, ss 2A-4 were tested for readability.

Maritime Crimes Act 1999, ss 3-3B and 4-5 were tested for readability.

Ombudsmen Act 1975, ss 3-10 were tested for readability.

Treaty of Waitangi Act 1975, ss 4-6 were tested for readability.


Wages Protection Act 1983, ss 4-11 were tested for readability (excluding s 6(1) because this is a definition subsection).

Wellington Airport Act 1990, ss 4-7 were tested for readability (excluding s 5 because this has expired).


5 2000-2018

The search for legislation from 2000-2018 returned 313 results. Results were spread over two pages.

Advanced search

Search for: Acts Bills Legislative Instruments Other Instruments 


Title

Content All these words 

Year eg, 1998; or 1998-2001






Number

Section number

Apply stemming 

Acts

Type All Public Local Private Provincial Imperial

Status All Principal Acts in force  Acts not yet in force  Amendment Acts in force  As-enacted Acts  Repealed Acts 

[Search help](#)

Figure 17: Advanced Search for Legislation from 2000-2018

Brokering (Weapons and Related Items) Controls Act 2018 – *Not yet in force*, ss 10-19 were tested for readability.

Care of Children Act 2004, ss 4-7A were tested for readability. Sections 7(8) and (9) were excluded as they are definition sections.

Coroners Act 2006, ss 4-7 and 13-15 were tested for readability.

Employment Relations Act 2000, ss 4-4B and 8-11 were tested for readability.

Environmental Protection Authority Act 2011, ss 7-17 were tested for readability.

Human Tissue Act 2008 ss 14-21 were tested for readability.

Outer Space and High-altitude Activities Act 2017, ss 7-10 were tested for readability.

Radiation Safety Act 2016, ss 8-17 were tested for readability.

Returning Offenders (Management and Information Act 2015), ss 7-15 were tested for readability.

Victims' Orders Against Violent Offenders Act 2014, ss 7-11 were tested for readability.

VIII Appendix B

B Description of Readability Tests Used

The most famous readability test is the Flesch Reading Ease Formula. This formula calculates a score for reading difficulty using average sentence length and average number of syllables per word. The score indicates roughly what level of education someone will need to be able to easily read a piece of text. A score is generated between 1 and 100, but scores can be generated above and below these numbers.¹¹² A higher score indicates easier reading, with a score between 90-100 being understandable by an average 10-11 year old.¹¹³ 13-15 year olds can understand documents with a score of 60-70; and university graduates (above 22 years old) can understand documents with a score of 0-30.¹¹⁴

The second test is the Flesch-Kincaid Grade Level, which is also a famous readability test. This gives a US school grade level, indicating that an average student in that grade

¹¹² Ruth Colmer "The Flesch Reading Ease and Flesch-Kincaid Grade Level" Get Your Readability Score <www.readable.io>.

¹¹³ The readability tests of <www.readabilityformulas.com> give results in United States grade levels. This is converted into ages using the table on the description of The Automated Readability Index (ARI).

¹¹⁴ Readability Formulas "The Flesch Reading Ease Readability Formula" <www.readabilityformulas.com>.

level can read the text.¹¹⁵ A grade level readability score of, for example, 6, is equivalent in difficulty to the average reading level of the trial group who were 11-12 years old when they took the test.¹¹⁶

The third test is the Gunning Fog Index, which is similar to the Flesch-Kincaid Grade Level in that it generates a grade level, typically between 0 and 20. This formula estimates the years of formal education the reader requires to understand the text on first reading. For text to be understood by the general public, a grade of around eight should be aimed for. If a score of above 17 is achieved, then this is taken to have graduate level readability.¹¹⁷

The fourth test is the SMOG Index. Similar to the Flesch-Kincaid Grade Level, it outputs a US school grade level, indicating that an average student in that grade level can read the text. The more polysyllabic words there are, the high the grade level that can understand the text.¹¹⁸

The fifth test is the Coleman-Liau Index. This test is unique in that it does not count the number of syllables as it was argued that counting the number of syllables is inaccurate. Word length in letters was said to be a better predictor of readability than word length in syllables. This index estimates the years of formal education the reader requires to understand the text on first reading.¹¹⁹

The sixth test is the Automated Readability Index. This outputs a number which approximates the grade level needed to comprehend the text. The result is derived from

¹¹⁵ Readability Formulas “The Flesch Grade Level Readability Formula” <www.readabilityformulas.com>.

¹¹⁶ Ruth Colmer “The Flesch Reading Ease and Flesch-Kincaid Grade Level” Get Your Readability Score <www.readable.io>.

¹¹⁷ Ruth Colmer “Readability an the Gunning Fog Index” Get Your Readability Score <www.readable.io>.

¹¹⁸ Readability Formulas “The SMOG Readability Formula, a Simple Measure of Gobbledygook” <www.readabilityformulas.com>.

¹¹⁹ Ruth Colmer “Readability and the Coleman-Liau Index” Get Your Readability Score <www.readable.io>.

ratios representing word difficult, represented by the number of letters per word; and sentence difficult, represented by the number of words per sentence.¹²⁰

The seventh test is the Linsear Write Formula. This formula calculates the United States grade level based on sentence length and the number of words with three or more syllables.¹²¹

¹²⁰ Readability Formulas “The Automated Readability Index (ARI)” <www.readabilityformulas.com>.

¹²¹ Readability Formulas “How to Use the Linsear Write Readability Formula to Grade Your Text” <www.readabilityformulas.com>.

IX Bibliography

A Legislation Used for Readability Tests

These New Zealand Acts are listed in alphabetical order, which is not necessarily the order that the Acts were randomly selected for readability testing.

1 1841-1908

Auckland Harbour Act 1874.

Cromwell Racecourse Reserve Act 1876.

Greytown and Masterton Public Park and Cemetery Reserve Management Act 1875.

Lawrence Recreation Reserve Act 1876.

Napier Athenaeum and Mechanics Institute Incorporation Act 1876.

Otago Harbour Board Empowering Act 1893.

Presbyterian Church Property Act 1885.

Taranaki Botanic Garden Act 1876.

Wellington College Loan Act 1873.

Wellington Reclaimed Land Act 1871.

2 1909-1931

Ashley River Improvement Act 1925.

Bylaws Act 1910.

Local Legislation Act 1926.

Military Decorations and Distinctive Badges Act 1918.

Public Authorities (Party Wall) Empowering Act 1919.

Reserves and Other Lands Disposal Act 1927.

Reserves and other Lands Disposal and Public Bodies Empowering Act 1922.

Rotoiti Validation Act 1909.

Secret Commissions Act 1910.

University of Auckland Site Act 1919.

3 1932-1957

Adoption Act 1955.

Charitable Trusts Act 1957.

Education Lands Act 1949.

Maori Housing Act 1935.

Native Plants Protection Act 1934.

New Zealand Council of Law Reporting Act 1938.

Primary Products Marketing Act 1953.

Reserves and other Lands Disposal Act 1940.

Trustee Act 1956.

Waitangi National Trust Board Act 1932.

4 1958-1999

Antarctic Marine Living Resources Act 1981.

Constitution Act 1986.

Decimal Currency Act 1964.

Domicile Act 1976.

Equal Pay Act 1972.

Maritime Crimes Act 1999.

Ombudsmen Act 1975.

Treaty of Waitangi Act 1975.

Wages Protection Act 1983.

Wellington Airport Act 1990.

5 2000-2018

Brokering (Weapons and Related Items) Controls Act 2018.

Care of Children Act 2004.

Coroners Act 2006.

Employment Relations Act 2000.

Environmental Protection Authority Act 2011.

Human Tissue Act 2008.

Outer Space and High-altitude Activities Act 2017.

Radiation Safety Act 2016.

Returning Offenders (Management and Information Act 2015).

Victims' Orders Against Violent Offenders Act 2014.

B Cases

1 New Zealand

Commissioner of Inland Revenue v Grant (High Court, Auckland CIV 2009-404-7388, 25 May 2010).

Tyler v Attorney-General [2000] 1 NZLR 211 (CA).

2 Australia

X v Australian Prudential Regulation Authority (2007) 226 CLR 630.

3 England and Wales

R v Chambers [2008] EWCA Crim 2467, [2008] All ER (d) 170 (Oct) (UK).

C Legislation

1 New Zealand

Administration Act 1969.

Contract and Commercial Law Act 2017.

Crimes Act 1961.

Crown Entities Act 2004.

Education Act 1989.

Education (Update) Amendment Act 2017.

Employment Relations Act 2000.

Health Act 1956.

Income Tax Act 1976.

Income Tax Act 2007.

Interpretation Act 1999.

Law Commission Act 1985.

Legislation Act 2012.

Local Government Act 1974.

Personal Property Securities Act 1999.

Sale of Goods Act 1908.

Social Workers Registration Act 2003.

Wages Protection and Contractors' Liens Act Repeal Act 1987.

Legislation Bill 2017 (275-2).

2 *England and Wales*

Witnesses (Public Inquiries) Protection Act 1892.

D Books

FAR Bennion *Bennion on Statute Law* (3rd ed, Longman, Great Britain, 1990)

JF Burrows and RI Carter *Statute Law in New Zealand* (5th ed, LexisNexis, Wellington, 2015).

William Dale *Legislative Drafting: A New Approach* (Butterworths, Great Britain, 1977).

William H DuBay *Smart Language: Readers, Readability, and the Grading of Text* (Impact Information, Costa Mesa (California), 2007).

Rudolf Flesch *How to Write Plain English: A Book for Lawyers & Consumers* (HarperCollins, United States, 1979).

E Journal Articles

Thomas Bingham "What is the Law?" (2009) 40(3) VUWLR 597.

Michael Curtotti and others "Citizen Science for Citizen Access to Law" (2015) 3 Journal of Open Access Law 1.

"Language in Law Drafting Laws in Plain English: Can the Drafter Win?" (1988) NZLJ 25.

Esther Majambere "Clarity, Precision and Unambiguity: Aspects for Effective Legislative Drafting" (2011) 37(2) CLB 417.

Yon Maley "The Language of Legislation" (1987) 16(1) Language in Society 25.

Margaret McLaren "The Case for Plain Legal English in New Zealand" (1992) NZLJ 167.

Geoffrey Palmer "Law Making in New Zealand: Is there a Better Way?" (2014) 22 Waikato L Rev 1.

R Timothy Rush "Assessing Readability: Formulas and Alternatives" (1985) 39 The Reading Teacher 274.

Richard C Wydick "Lawyer's Writing" (1980) 78(5) Mich L Rev 711.

Mostafa Zamanian and Pooneh Heydari "Readability of Texts: State of the Art" (2012) 2 Theory and Practice in Language Studies 45.

F Parliamentary and Government Materials

(25 October 2007) 643 NZPD.

(5 December 2017) 726 NZPD.

Beehive “Official legislation online today” (press release, 7 January 2014).

Law Commission *Legislation Manual – Structure and Style* (NZLC R35, 1995).

Law Commission *Presentation of New Zealand Statute Law* (NZLC IP2, 2007).

Law Commission *Presentation of New Zealand Statute Law* (NZLC R104, 2008).

Law Commission *Review of the Statutes Drafting and Compilation Act 1920* (NZLC R107, 2009).

Law Commission *The Format of Legislation* (NZLC R27, 1993).

New Zealand Parliament “Proposed members’ bills” <www.parliament.nz>.

Parliamentary Counsel Office *2017 Annual Report: Report of the Parliamentary Counsel Office for the Year Ended 30 June 2017* (Parliamentary Counsel Office, October 2017).

G Reports

Dean R Knight and Edward Clark, *Regulations Review Committee Digest* (6th ed, New Zealand Centre for Public Law, 2016).

New Zealand Productivity Commission *Regulatory Institutions and Practices* (June 2014).

Pascoe Pleasence, Nigel J Balmer and Catrina Denvir “How People Understand and Interact with the Law” (Research Paper, Legal Education Foundation United Kingdom).

H Dissertations

Jessica Jenkins “The Evolving Accessibility of New Zealand Law: Redesigning Legislation for Understanding and Empowerment” (LLB (Hons) Dissertation, Victoria University of Wellington, 2017).

I Internet Sources

Ruth Colmer “The Flesch Reading Ease and Flesch-Kincaid Grade Level” Get Your Readability Score <www.readable.io>.

Employment New Zealand “Employment Law” (2018) <www.employment.govt.nz>.

Parliamentary Counsel Office “Glossary” New Zealand Legislation <www.legislation.govt.nz>.

Parliamentary Counsel Office “PCO Plain Language Standard” <www.pco.govt.nz>.

Parliamentary Counsel Office “Reprints” <www.pco.govt.nz>.

Parliamentary Counsel Office “Revision Bill Programme 2018 to 2020.” <www.pco.govt.nz>.

Readability Formulas “Automatic Readability Checker” <www.readabilityformulas.com>.

Readability Formulas “The Automated Readability Index (ARI)” <www.readabilityformulas.com>.

Readability Formulas “The Flesch Reading Ease Readability Formula” <www.readabilityformulas.com>.

Mark Williamson and Rachel Taylor “Contract and Commercial Law Act 2017 Comes Into Force.” (22 August 2017) DLA Piper <www.dlapiper.com>.

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