Enactment and Publication of Acts

ROYAL ASSENT
Preparation of bill
When a bill (whether a Government, Member’s, local or private bill) has been read a third time, the Clerk prepares it for submission to the Sovereign or the Governor-General for the Royal assent. The Royal assent to the measure is essential to transmute what, up to that point, is a proposal that has been agreed to by one branch of the legislature, into an Act of Parliament and therefore into law.

For this purpose, after the bill’s third reading, the Clerk arranges for it to be reprinted in the form of an Act as it was passed by the House. The reprinted document no longer shows how the bill was amended as it passed through the House. Material struck out during its passage is not shown at all; there is no indication in the text as to what has been added after the bill was introduced and what was in it originally. The bill is printed “fair”, as it will read when it becomes an Act on receiving the Royal assent.

Amendments and corrections
Verbal or formal amendments to the text may be made by the Clerk during the reprinting process. The commonest example of such a formal amendment is the renumbering of the clauses of the bill if, as a result of amendment during its passage, it no longer reads consecutively. Any cross-references are corrected. Other clerical or typographical errors found in the bill may also be corrected at this stage.

A print of a bill that is to be presented for the Royal assent is always checked within the Office of the Clerk and the Parliamentary Counsel Office before proceeding further. It may also be checked by the department whose Minister took charge of its passage.

Authentication of prints
The Clerk must authenticate two prints of the bill in its reprinted form. Occasionally a third print is authenticated if it is intended that the promoter of particular legislation should retain a copy of the bill with the Royal assent recorded on it.)
The Clerk is charged by the House with presenting every bill that it has passed to the Sovereign or the Governor-General for the Royal assent. But constitutional convention requires that in this, as in the exercise of the other constitutional and legal powers and duties of office, the Sovereign or the Governor-General acts only on the formal advice of a Government that is politically accountable to the House of Representatives. Therefore, after authenticating the two prints, the Clerk certifies that the bill has been passed by the House and is awaiting the Royal assent and delivers the bill to the Government for it to tender the formal advice to the Governor-General that the Royal assent should be given.

There are two steps in tendering this formal advice. First, the Attorney-General certifies to the Governor-General that, in the Attorney-General’s opinion, the bill contains nothing that would mean that the Royal assent should be withheld. In the Attorney-General’s absence, an Acting Attorney-General (if there is one) or the Solicitor-General gives the certification. Secondly, the copies of the bill are presented to the Prime Minister (or the most senior Minister available if the Prime Minister is absent from Wellington) for the Prime Minister to sign the formal advice to the Governor-General recommending that the Royal assent be given to the bill. Thus the legal act of assenting to the bill is the Sovereign’s or the Governor-General’s, but the political act of assent to a bill is the Prime Minister’s, and the Prime Minister assumes political responsibility by formally tendering the advice on which the Crown acts.

Presentation of bill

It was formerly the practice for the Governor to attend Parliament House in person on the final day of each session and, before proroguing Parliament, to grant the Royal assent to any bills presented for assent at the time. An Appropriation Bill was traditionally reserved to be presented for assent after all other bills. Since 1875 the Governor has not attended in person to prorogue Parliament or assent to bills, nor is an Appropriation Bill any longer reserved for assent last. Nowadays, when the Attorney-General’s certification has been obtained and the Prime Minister’s advice has been tendered, the Clerk causes the two copies to be presented to the Governor-General at Government House for the Royal assent. Traditionally, the Clerk presents the first bill passed after a new Governor-General has assumed office in person to the Governor-General. Bills are presented for the Royal assent strictly in the order in which they were passed by the House. If the Administrator of the Government is in office, the bill is submitted to the Administrator for the Royal assent.

Giving of the Royal assent

A bill becomes law when the Sovereign or the Governor-General (or the Administrator) assents to it and signs it in token of such assent. The Governor-General completes the Royal assent to a bill by signing the two copies presented (and occasionally a third copy). Usually no particular formality is followed in the giving of the Royal assent. The Governor-General deals with bills submitted for the Royal assent in the same way as other State papers submitted for vice-regal attention. The bill becomes law immediately it is assented to by the Governor-General, but its provisions might not immediately take effect. This depends upon whether it provides for its own commencement. If it does, it takes effect accordingly. If it does not, it comes into effect on the day after it receives the Royal assent.

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4 SO 315.
5 (1958) 318 NZPD 1856.
6 Cabinet Office Cabinet Manual 2008 at [1.17].
7 Constitution Act 1986, s 16.
8 Interpretation Act 1999, s 8.
The Sovereign has given the Royal assent in person. Her Majesty Queen Elizabeth II became the first Sovereign to do so on 12 January 1954 when she assented to the Judicature Amendment Act 1954. Her Majesty has since assented to other bills passed when she has been present in New Zealand.

Refusal of the Royal assent

There is no longer explicit statutory recognition of a power to withhold the Royal assent, as there was in the previous law.9 This was omitted in 1986 as unnecessary. It was felt that to re-enact it then (when New Zealand’s constitutional rules were being restated in modern terms) might suggest that a personal discretion was vested in the Governor-General. But even with the omission of any express statement of the power to refuse to give the Royal assent, it remains the case that a bill does not become law until signed by the Governor-General in token of assent.10

A refusal to assent would be a remarkable—indeed a unique—event in New Zealand. No bill presented to a Governor or a Governor-General has ever been refused the Royal assent in New Zealand, although two Acts were subsequently disallowed by the Sovereign under a procedure that no longer exists.11 In the United Kingdom, which has a comparable requirement for the Royal assent to be given to measures passed by the House of Lords and the House of Commons, the Royal assent has not been refused since 1707.12 The constitutional principle that the Governor-General acts only on the advice of Ministers requires the Governor-General to accept that advice except in the most extraordinary circumstances.

Errors in Acts

Errors made in the course of preparing bills for the Royal assent have led to bills being assented to in a different form from that in which they passed through the House. Such errors have included failure to include an amendment made to the bill as it was passing through the House;13 a printing error resulting in an incorrect figure being subscribed; a renumbering error in a commencement clause resulting in incorrect commencement dates for two subparts;14 and a failure to correct a cross-reference.15 In these circumstances, further legislation has been passed to correct the error made in preparing the bill for the Royal assent.16 Until corrected, the law has been treated as assented to by the Governor-General in the incorrectly prepared bills. In the case of the commencement clause error in the Gas Amendment Act 2004, the validity of the erroneous legislation was also specifically confirmed in the correcting legislation.17

There is only one known case of a corrected bill being resubmitted for Royal assent. A printing error caused two schedules in a bill submitted to and signed by the Administrator of the Government to be printed in portrait rather than landscape, with a consequent loss of text. Corrected copies of the schedules were resubmitted to the Administrator. The Administrator certified confirmation that they formed part of the assented bill. The date of assent remains the date of original signing.18

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9 New Zealand Constitution Act 1852 (UK), s 56.
13 (1872) 12 NZPD 18, 221–222 (Sharebrokers Bill).
16 Sharebrokers Act Amendment Act 1872, s 2 (correcting an error in the Sharebrokers Act 1871); Electoral Amendment Act 1996, s 2 (correcting an error in the Electoral Amendment Act (No 2) 1995); Crown Entities Act 2004, s 201(1) (correcting an error in the Gas Amendment Act 2004).
17 Crown Entities Act 2004, s 201(2).
Under the Legislation Act 2012 the Chief Parliamentary Counsel can now make limited editorial changes to reprints of legislation. Such changes must be noted in the reprint. In a recent example, a failure to correct a cross-reference in a bill for Royal assent was remedied using these powers, avoiding the need for correcting legislation.

In Australia, the Governor-General has rescinded a purported assent to an Act that did not include all of the material agreed to by both houses of the legislature in the print submitted for the Royal assent. However, given that under Australia’s constitution the agreement of both houses is a requirement for enacting law, it may be that the bill as assented to was not a valid Act or at least not as regards the unagreed material. In these circumstances the rescission of the Royal assent would merely acknowledge an already existing invalidity. Indeed this could be seen as an example of a situation in which the Royal assent is purportedly given to an instrument that has not been passed by the legislature at all. Thus, also in Australia, where the Governor-General gave the Royal assent to a bill that had not been passed by one house of the legislature, the assent was cancelled when this was discovered. It would seem that in such circumstances the assent would be a nullity and that this would also be the case in New Zealand.

PROMULGATION OF ACTS

No special formalities are prescribed for promulgating the fact that the Royal assent has been given to a bill and that that bill is now an Act of Parliament. The Governor-General formerly advised the House by message of this fact and the message was read to the House by the Speaker, but this practice was discontinued in 1985.

After the Royal assent has been given, the Clerk of the House deposits one of the assented copies with the registrar of the High Court at Wellington. The other is retained at Parliament House and eventually transferred to Archives New Zealand. It is not necessary for the text of an Act to be published in the *New Zealand Gazette*, although the fact that the Royal assent has been conferred is advised in the *Gazette*’s parliamentary notices section.

PUBLICATION OF ACTS

Following assent, arrangements are made by the Office of the Clerk and the Parliamentary Counsel Office to make the Act publicly available as soon as possible. The taking of official action in reliance on legislation that has come into force but not been made available to the public will inevitably raise questions as to the validity of that action. Access to the law is regarded as an aspect of the rule of law.

A number is inserted showing the order in which the Act received the Royal assent, a legislative history is added showing the dates on which the bill passed through its principal parliamentary stages and was assented to, and a note is made at the end of the Act showing which department is responsible for administering it. This note is intended to indicate which department would be concerned to initiate or promote an amendment to the legislation should one be contemplated. There is no such note to local or private Acts.

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19 Legislation Act 2012, s 25.
20 Legislation Act 2012, s 27.
22 (21 June 2001) PD HR (Aust) 28261.
24 SO 317.
A copy of every Act must be published in electronic form as soon as practicable after it is enacted. The Attorney-General may also give directions as to the form in which a copy of an Act of Parliament is to be printed. The Chief Parliamentary Counsel is responsible for carrying out the final checking of copies of Acts and for authorising their publication. The Governor-General may by Order in Council authorise or direct the Chief Parliamentary Counsel to arrange for the publication in printed form of any legislation or class of legislation.

The Chief Parliamentary Counsel may issue electronic and printed official versions of legislation. A printed version that is produced directly from an official electronic version is also an official version. An official version of legislation, either as originally enacted, or as a reprint, is taken to set out correctly the text of the legislation. This presumption applies unless the contrary is shown. All courts and persons acting judicially must take judicial notice of all Acts.

These provisions lay down only a presumptive rule that the official version is the statute as passed by the House and given Royal assent. If there were genuine doubt as to the authenticity of the Act or its contents, reference could be made to the copies signed by the Governor-General and held at Parliament House (or Archives New Zealand) and the High Court.

Electronic and loose copies of Acts are usually published within a week of the Royal assent being given. They carry a statement that they are published under the authority of the New Zealand Government. Electronic versions must at all times be accessible, and available for downloading from an Internet site maintained by the New Zealand Government. Official electronic versions of legislation must be made available free of charge.

Printed copies are sold on subscription and from retail outlets operated for the purpose under arrangements with the Crown. The Attorney-General has power to designate places where copies of Acts of Parliament are to be made available for purchase by members of the public, and the Chief Parliamentary Counsel is required to make copies available for purchase there at a reasonable price. But this does not prevent copies being offered for sale at any other place not so designated.

No copyright subsists in Acts of Parliament, so the official publication of legislation does not preclude publication by any other person.

**Reprints of Acts**

Reprints of statutes are now published electronically within 15 working days of the amendment coming into force. The continuous compilation of legislation ensures that the official legislation website provides access to the Act in single-document form, and that it is current at the time it is accessed. The Chief Parliamentary Counsel’s editorial powers have been enhanced in respect of reprints under the Legislation Act 2012. These powers exist in addition to those for the preparation of official versions.
of revision bills—bills that re-enact laws in up-to-date and accessible form without changing their effect.\textsuperscript{42}

Reprints of printed copies of Acts of Parliament in force are made as occasion requires. These arrangements are made by the Chief Parliamentary Counsel subject to any directions from the Attorney-General.\textsuperscript{43} When making such changes in an Act that has been reprinted, the reprint must indicate that the changes have been made and outline, in general terms, what the changes are.\textsuperscript{44}

Comprehensive reprints of legislation in bound volumes were made in 1908 (the public law was completely repealed and re-enacted for the purpose), 1931 and 1957. Between 1979 and 2003 a progressive bound-volume reprint of Acts of general application was carried out, and eventually entirely replaced the 1957 reprint. Local and private Acts have not generally been included in any of these reprints.

\textsuperscript{42} Legislation Act 2012, s 31. See p 375.
\textsuperscript{43} Legislation Act 2012, ss 6(1)(c) and 20(1)(b).
\textsuperscript{44} Legislation Act 2012, s 27.