



Electronic legal deposit: the New Zealand experience

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193 — *e-Legal deposit: from legislation to implementation; from ingest to access* — Bibliography Section with IFLA-CDNL Alliance for Digital Strategies Programme (ICADS), Information Technology, National Libraries and Knowledge Management

Abstract:

E-legal deposit underpins the National Library of New Zealand's approach to collecting, preserving and making accessible New Zealand's published documentary heritage in electronic formats. The nature of the electronic legal deposit provisions are outlined, including the access provisions that are established by those provisions. The Library's approach to selection of electronic publications is explained. The changes required to systems, business processes, staffing and organisational structures are outlined. The paper concludes with the ongoing challenges and opportunities that have arisen from the extension of the legal deposit provisions.

Since the early 1990s, the National Library has aspired to collect New Zealand publications regardless of format. Our Collections Policy reflected that aspirational goal, although prior to the implementation of our National Digital Heritage Archive, the Library lacked the systems and processes to enable the routine collection and preservation of such material. We knew what we wanted to do, but we needed a legislative mandate, as well as a new system and new processes to support collection and preservation of these electronic publications.

Background

The National Library of New Zealand has responsibility for administering legal deposit for New Zealand, although the legislative mandate for legal deposit long

predated the formation of the Library. In its early years the Parliamentary Library administered legal deposit and that continued even after the formation of the National Library from the amalgamation of the Parliamentary Library, the National Library Service and the Alexander Turnbull Library in 1965.

When the Parliamentary Library separated from the National Library in 1985, the responsibility for most of the administration of legal deposit remained with the National Library, although the Parliamentary Library continued to receive one copy of every item received under legal deposit and administered legal deposit of New Zealand newspapers. This situation continued up until the National Library Act 2003 became law in May 2003.

For the first 100 years the scope of legal deposit in New Zealand remained unchanged. All that changed with the revision of the National Library Act¹ in 2003. The scope of legal deposit was significantly expanded to include publications in all formats, physical and digital. We refer to this extension to the scope as electronic legal deposit, or e-legal deposit.

This paper outlines New Zealand's experience of this legislation change and of the issues that needed to be addressed before the provisions could come into force. The investment that the Library needed to make in order to implement the expanded legal deposit provisions will be covered, as will the impact of electronic legal deposit on the Library's systems, staff, policies and procedures.

Drivers for legislative change

In the late 1990s public concern was being expressed about some aspects of proposed changes to the structure of the National Library and to controversial comments made outside the Library about the possibility of selling some of the Alexander Turnbull Library collections.

In 2002 continuing public concern about those issues resulted in the Minister responsible for the National Library requesting that work be undertaken to examine the National Library Act 1965 and to develop a policy case for any revisions to the Act that were considered necessary. The work was particularly focused on examining any provisions in the legislation which might be outdated, that failed to reflect current or future requirements, or that did not provide adequate protection to the Library and its collections. This work included consideration of the adequacy of the provisions that provided the mandate for legal deposit.

The work the Minister had requested culminated in a series of discussion papers looking at various aspects of the National Library Act. Discussion paper 2, Aspects of the National Library Act relating to Legal Deposit, was issued in October 2000. The purpose of the discussion paper was to encourage and assist discussion on the future of legal deposit in New Zealand.

It examined the contribution made by legal deposit to the National Library's role of maintaining a comprehensive collection and record of knowledge relating to New Zealand; the respective contributions of the National Library and of publishers to the

legal deposit system; whether there were any grounds for reviewing aspects of the operation of legal deposit in respect of its scope; and the options available for extending legal deposit to cover knowledge recorded in formats not covered by the legislation.

Although the number of responses was fairly small, some submissions noted the value of including a statement about the purpose of legal deposit and most agreed that legal deposit assisted the Library achieve its purpose as set out the Act. In relation to the possible extension of legal deposit, the submissions gave little direction other than agreeing that there was a gap in the provisions and that the gap should be remedied somehow. In addition, some submissions identified other aspects of the regime that were suited to change – the number of copies that publishers were required to deposit, and where those deposited copies should be held. Overall, the work the Minister requested had identified some areas for change, and did indicate some support for the extension of legal deposit to electronic publications.

However, there were other more compelling reasons for redrafting the National Library Act. The changes were driven, amongst other things, by the need to strengthen and clarify the relationship between the National Library and the Alexander Turnbull Library; confirm that the collections held by the National Library are documentary heritage and taonga (treasures) for the people of New Zealand; and confirm that the collections of the Alexander Turnbull Library are held in perpetuity. As the Act was being revised to address those concerns, it gave the Library the opportunity to seek the extension to the provisions relating to legal deposit that it desired.

Why seek electronic legal deposit?

Prior to the extension to legal deposit, the Library had to seek permission to copy electronic publications. It was a slow and time-consuming process. Although this was the means by which the Library had done some event harvests of websites of political parties contesting national elections, that approach was unsustainable and did not allow the Library to collect every site or online publication that it wanted. Some publishers simply did not respond to the Library's requests, while others declined to allow their site to be harvested.

Yet the National Library had a goal to collect, preserve and make that material accessible and still needed to describe these materials to meet the needs of New Zealand libraries for descriptive records. It was the new forms of online publication that really challenged the collecting mandate of the Library. When websites became ubiquitous, and use of social media burgeoned, the Library's ability to collect these forms of documentary was significantly challenged.

The National Library saw electronic legal deposit as a means of ensuring that New Zealand's digital heritage would be available in perpetuity. As the then National Librarian, Penny Carnaby noted: "we do not want to fail the future by leaving a gap in New Zealand's history because we were too slow or unwilling to confront the challenge of digital preservation now."

What were the changes to the legal deposit provisions?

As far as the extension to legal deposit was concerned, the proposed revision of the National Library Act was both an opportunity and a challenge in that very few other countries had legislated for electronic legal deposit at that time. There were very few examples of existing legislation that the Library could point out to drafters of the proposed legislation to illustrate how it had been done elsewhere, and certainly no examples from countries from the English or Commonwealth tradition.

The changes to the legal deposit provisions did not focus exclusively on the extension of the provisions, but also addressed some of the points raised in submissions responding to the discussion paper on legal deposit referred to earlier.

For example, a purpose statement was introduced in the new Act. It states:

[Sn]30 Purpose of this Part

The purpose of this Part is to assist in preserving New Zealand's documentary heritage so that it is available, subject to any applicable terms or conditions, for the benefit of New Zealanders.

Another outcome of the change to the Act was that the Parliamentary Library was compensated by Government for the loss of the legal deposit copy and now plays no role in administering the legal deposit provisions.

But the most significant and far reaching change was the extension of legal deposit to electronic publications. A major concern for the Library was that however the extended provisions were worded, it was important to avoid wording and definitions that would rapidly date any new provisions. Fortunately there had been fairly recent changes in legislative drafting practices in New Zealand, which were helpful in addressing this issue. Broad provisions could be included in Acts, with detail within those provisions being specified in secondary legislation. This was the approach taken in drafting the legal deposit provisions.

While the Act provided for the extension of legal deposit to electronic publications, secondary legislation (a Requirement Notice) was required to bring those provisions into force. The National Library's Minister issued two requirements notices; the National Library Requirement (Books and Periodicals) Notice 2004 and the National Library Requirement (Electronic Documents) Notice 2006.ⁱⁱ

As an example, the Act specifies that a publisher gives the National Librarian up to three copies of a book, while the National Library Requirement (Books and Periodicals) Notice 2004 specifies that publishers deposit 2 copies, however if the book costs more than \$1000, only one copy needs to be deposited. The superseded Act did not have the same flexibility – it simply specified 3 copies in every case.

Shift from an “obligation to deposit” to an “obligation to copy”

In framing the new legal deposit provisions, two key concerns of publishers were taken into account. One concern was the possibility that electronic legal deposit would increase publishers' compliance costs. New Zealand publishers have from time to time expressed concern about the compliance costs of the existing legal

deposit provisions for publications in physical formats. In their view, the proposal to extend the legal deposit provisions to electronic publishing had the potential to significantly increase their compliance costs. The other key concern was that electronic legal deposit would have an adverse impact on the commercial interests of publishers if no restrictions were placed on what the Library could do with electronic material received on legal deposit.

To address these issues, a distinction has been made in the Act in the way legal deposit is achieved for different formats of publication. Physical format publications, books, serials, newspapers, DVDs and CDs must still be deposited by the publisher i.e. there is an obligation to deposit. However in relation to online public documents the obligation is placed on the Library to copy i.e. there is an obligation to harvest. Where restrictions prevent the Library from doing so, the Library has been given the power to obtain the assistance of the publisher to enable the publication to be copied. The National Library Act 2003 makes explicit that in relation to copying online publications to meet the legal deposit provisions, the provisions of the Copyright Act 1993 relating to copying do not apply to the National Library.

To address concerns that legal deposit of electronic publications might impact on the commercial interests of publishers, access provisions have been specified in the Act. These access provisions apply to physical as well as electronic public documents. The previous Act made no mention of what the Library could or couldn't do with the material received on legal deposit, although of course it was required to abide by the copying provisions of New Zealand's Copyright Act.

In relation to the use of public documents the National Library Act 2003 states that:

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(3) The National Library may provide not more than 3 copies of a deposited document for use by members of the public (whether at the premises of the National Library or elsewhere) but, except as provided in subsection (4) or with the publisher's agreement, not make the document available on the Internet.

(4) If a deposited document is made publicly available on the Internet by the publisher without restriction on its access or use by members of the public, the National Librarian may make the document available for access and use by members of the public on the Internet (as well as in the manner permitted by subsection (3)).

These provisions revolve around restrictions applied by the publisher. Restriction is defined in the Act so that it is clear that it is any "physical, technical, or mechanical restriction such as a requirement to pay a fee or price, or to use a password or other requirement that prevents or restricts free public access to the document" but not "any legal restriction recorded in or claimed for the public document."

When the Bill was considered and in front of the Parliamentary Select Committee, New Zealand publishers strongly expressed their concerns about the potential for electronic legal deposit to impact on their commercial interests. These access provisions are the way in which Parliament addressed those concerns of publishers.

Reactions to the electronic legal deposit provisions

The legal deposit provisions relating to electronic legal deposit did not come into effect immediately on the enactment into law of the National Library Act 2003. Section 36 of the Act required consultation with publishers of electronic publications. Two rounds of consultation took place, one on a consultation document that sought opinion on what might be included in the Requirement Notice, and the second on an exposure draft of the proposed Requirement Notice.

In the main, submissions focussed on the access provisions in the Act, raised questions about whether or not a particular type of document was covered by the Act, or expressed concerns about the breadth of the definition of public document. Some submissions explored if particular publications covered by the Act could be exempt from deposit.

The ability to exempt public documents from the legal deposit provisions was another of the new features introduced in the Act. It permitted exemption from legal deposit, as long as the criteria for exemption specified in the National Library Requirement (Electronic Documents) Notice 2006, were met. This provision was introduced to deal with two issues, both related to the breadth of the definition of “public document”. To avoid provisions in the Act rapidly going out of date, a broad definition of public document was essential. The broad definition, for example, covers materials collected by other archives (film, radio and television broadcasting) but not the National Library. To avoid duplication of collecting, such archives can and have sought for a particular class of documents and exemption from the requirement to deposit.

The more significant issue however, which significantly delayed the publication of the requirement notice for electronic public documents, was discussion about the perceived conflict between the legal deposit provisions of the National Library and the requirements of the Public Records Act which is the responsibility of Archives New Zealand. Legal advice was required before the issue was resolved and the requirement Notice could be issued.

In the period between the passing of the Act and the issuing of the National Library Requirement (Electronic Documents) Notice 2006, the National Library worked with publishers to explain the changes to legal deposit. As part of that work the Library published a Code of Practice, which outlines the Library’s and publishers’ obligations in regards to legal deposit.ⁱⁱⁱ

Implementing the electronic legal deposit provisions

Electronic formats have challenged the Library’s approach to the collection of New Zealand publications. The Library aims to collect publications in physical formats comprehensively. However the sheer volume of electronic publishing precluded that approach. A different strategy guides the collection of online publications. There are four different strands to this collecting strategy.

The first strand is the harvesting of publications on websites. We harvest a copy of these publications, describe them in the National Library Catalogue and store and

preserve these in the National Digital Heritage Archive. Where the electronic publication was made publicly accessible without restriction, the item itself is accessible remotely through the descriptive record in the National Library catalogue.^{iv} Collection Management, the section of the Library that administers legal deposit, undertakes the work of harvesting publications on websites.

The second strand of our collecting strategy is harvesting of websites. Here selection and acquisition are closely linked and the work is undertaken in the Digital Collection Strategy section of the Alexander Turnbull Library, a Library within the National Library. Acknowledging that harvesting of websites cannot be comprehensive; this section has developed guidelines for selection of websites. When a site is selected and the initial harvest is undertaken, the frequency of re-harvest is set. All harvested copies of these websites are accessible remotely through descriptive records in the National Library catalogue.^v

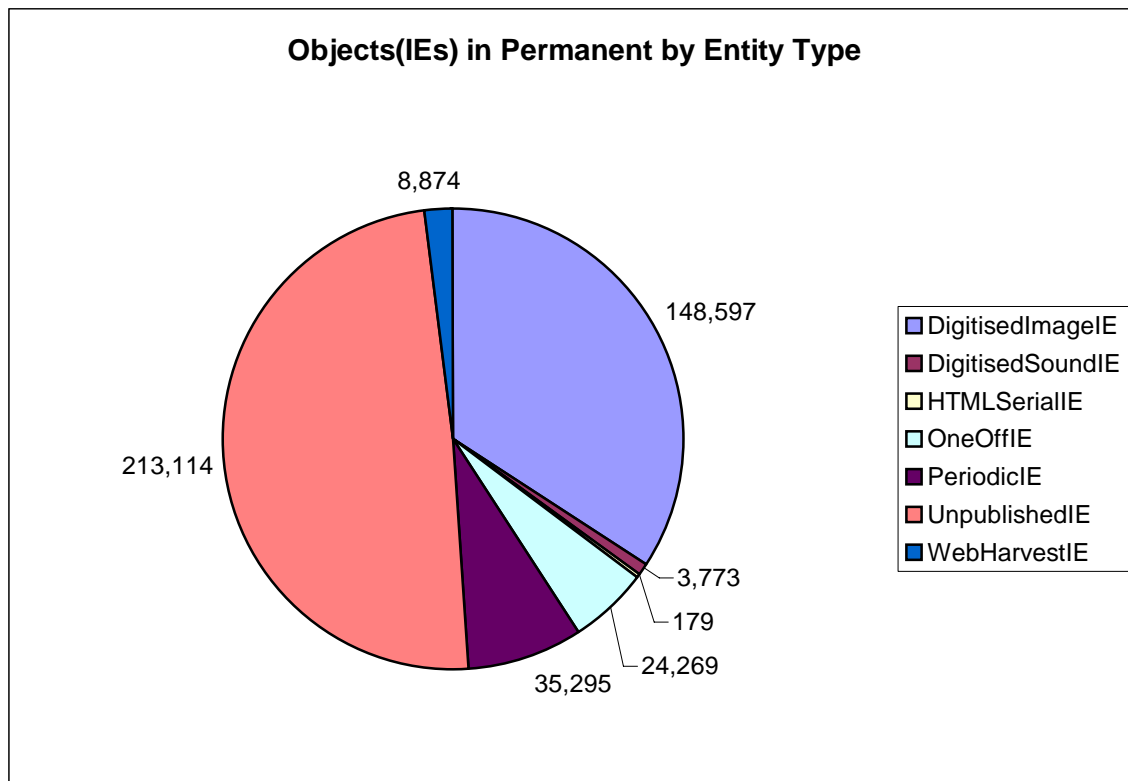
The third strand of our collecting strategy is thematic harvesting (in New Zealand we call this event harvesting). The Digital Collection Strategy section of the Alexander Turnbull Library determines which events it will harvest. Examples are websites associated with central and local government elections, significant national or international sports events which New Zealand organises or participates in, and unexpected events such as the 2010 and 2011 Christchurch earthquakes. Again websites collected during thematic harvesting are accessible through descriptive records in the National Library catalogue.^{vi}

The last strand of our collecting strategy is whole of domain harvesting. The National Library of New Zealand has commissioned the Internet Archive to undertake two whole of domain harvests on its behalf, one in 2008 and the other in 2010. The first harvest took place over 10 days in October 2008 and collected 4 terabytes of data from more than 100 million urls. The second harvest from 12 May to 5 June 2010 requested 170 million URLs and resulted in the collection of 6.1 terabytes of data. It is likely that the Library will move to an annual cycle of domain harvesting.

Currently the Library's National Digital Heritage Archive contains:

Digital Objects (IEs) in the National Digital Heritage Archive to date by type:

TOTAL: **434101 IE's (900,684 files)**



Note: An Intellectual Entity (IE) is a coherent unit of digital content that makes up a single object. (for example the complete set of files which make up a web site; the complete set of files which makes up an 'issue' of a e-serial, the digitised pages of an album where the IE is the album)

Investing to build capability and capacity

The extension of the legal deposit provisions presented the Library with a significant problem. To enable it to address its expanded digital collecting, preservation and access responsibilities, the Library needed a digital archive and preservation management solution. The Library knew that could not appropriately address its widened mandate within its existing resources. Additional resources were required.

The Library worked on a business case to Government seeking additional resources to enable it to expand its capacity and capability in the area of digital archiving and digital preservation. While primarily required for electronic legal deposit, the Library was also collecting unpublished born digital material and digitising published and unpublished materials that it needed to store and preserve in perpetuity. The Government was persuaded that New Zealand's documentary heritage was not merely at risk of loss, but that some of it had already been lost. The argument was

compelling, resulting in the Government granting NZ\$24 million over a four year period to enable the Library to initiate its National Digital Heritage Archive Programme (NDHA).

The NDHA Programme was charged with delivering technical and business solutions that would enable the Library to collect, preserve, protect and make accessible its growing digital collections in ways that would ensure current and future access for all. The NDHA Programme was not purely about hardware and software. The Programme also delivered new business processes and organisational changes. While the Programme had a four-year lifespan, a component of the increase in funding was ongoing, allowing the Library to recruit additional staff resources to manage the National Digital Heritage Archive, and to implement the extended legal deposit provisions.

At the time the NDHA Programme was initiated, digital preservation management was an emerging field of software development. The Library wanted to work in partnership with software and hardware vendors to develop the digital archive and preservation management system based on the functional requirements that the Library had developed. It selected Ex Libris and Sun Microsystems as its partners to develop the required digital preservation solution, not just for the Library, but with the potential to become a commercial product, which other organisations could also acquire to meet their own digital preservation needs. The outcome is Rosetta, an Ex Libris product that has been successfully sold to other collecting institutions worldwide.

While the digital preservation system is the core of the NDHA, it also includes other applications such as INDIGO and the Web Curator Tool. The NDHA Programme developed INDIGO to enable Library staff to load digital objects into the digital preservation system. The Web Curator Tool for selective web harvesting was developed in collaboration with the British Library.

While the NDHA ensures the integrity and authenticity of digital material acquired through electronic legal deposit, it also integrates with other Library software applications to provide access to its collections. The Library has two collection management systems. The Integrated Library System provides access to the Library's published collections including material acquired through electronic legal deposit, while TAPUHI provides access to the Alexander Turnbull Library's unpublished collections, including those in digital formats.

The NDHA Programme was also charged with developing workflows and business processes. Business process mapping was used to document existing selection, acquisition, description, and access processes. Once the functionality of the NDHA was known, new and altered business process maps were developed. These business process maps and the training materials developed by the programme were used in retraining staff to manage selection, acquisition and description of material in online formats.

The extension of the Library's mandate also had an impact on its organisational structure. A mixed model developed. Some existing business units took on additional functions, while in other instances new business units or teams were

established. An entirely new unit, the NDHA business unit, was established with responsibility for maintaining the NDHA and for digital preservation policy and practices.

Overall, selection and acquisition functions were more broadly spread across the Library. The Alexander Turnbull Library established new roles, digital archivists, E-Publications Librarians and E-Publications Selectors. The E-Publications Librarians and E-Publications Selectors have responsibility for selection and harvesting of websites. Collection Management, the unit that administers legal deposit of physical format materials, is now responsible for harvesting publications of all kinds from websites, including monographs, serials, and music. The Collection Management unit chose to integrate physical and electronic legal deposit, requiring staff to work with both electronic as well as physical formats. Regardless of who selects or acquires electronic legal deposit material, all published items continue to be described by cataloguers in the Collection Description unit.

Electronic legal deposit – on-going challenges and opportunities

Even with a legislative mandate for electronic legal deposit and a National Digital Heritage Archive in operation, there are ongoing challenges and opportunities that need to be addressed. Some of these challenges and opportunities are specific to National Library of New Zealand; others are faced by any organisation with responsibility for electronic legal deposit.

The National Library of New Zealand will continue to be challenged by issues such as differing interpretations of the legal deposit provisions in its Act and by material created in New Zealand but added to websites hosted offshore. From time to time legal advice is required to interpret the existing legal deposit provision. We also encounter online formats that we would like to collect and preserve, but that the NDHA cannot yet deal with.

As with any system, we need to champion its development. We have an agreed roadmap for the incorporation into the NDHA of agreed features. National Library staff will work alongside other institutions and Ex Libris to specify new requirements that organisations want included in the system.

The most significant opportunity for the Library is to build on its investment in the NDHA. Work is already underway to enhance the NDHA to become New Zealand's Government Digital Archive, supporting the digital preservation requirements of both the Library and Archives New Zealand. Both organisations have a vision for the development of the Archive into the New Zealand Digital Archive that also serves the needs of other collecting institutions in New Zealand.

Conclusion

The extension of legal deposit to include electronic documents assists the Library in collecting, preserving and making accessible New Zealand's published documentary heritage for the benefit of current and future generations. On 12 August 2006 when the requirement notice came into force, the National Librarian acknowledged the significance of it, noting that: "Our published digital heritage will now be catalogued

and safely stored, just as our published print documentary heritage has been for more than 100 years".

ⁱ National Library of New Zealand Te Puna Mātauranga o Aotearoa 2003
http://www.legislation.govt.nz/act/public/2003/0019/latest/viewpdf.aspx?search=ts_act_NATIONAL+LIBRARY_resel&p=1

ⁱⁱ These can be accessed at <http://www.natlib.govt.nz/services/legal-deposit-donations/legal-deposit-intro>

ⁱⁱⁱ <http://www.natlib.govt.nz/catalogues/library-documents/legal-deposit-code-of-practice/?searchterm=code%20of%20practice>

^{iv} For examples of electronic publications harvested under the legal deposit provisions see <http://nzlc.natlib.govt.nz/cgi-bin/Pwebrecon.cgi?BBID=13199200> and <http://nzlc.natlib.govt.nz/cgi-bin/Pwebrecon.cgi?BBID=13501242>

^v For examples of websites harvested under the legal deposit provisions see <http://nzlc.natlib.govt.nz/cgi-bin/Pwebrecon.cgi?BBID=7692773> and <http://nzlc.natlib.govt.nz/cgi-bin/Pwebrecon.cgi?BBID=7690807>

^{vi} For examples of websites harvested under the legal deposit provisions see <http://ndhadeliver.natlib.govt.nz/content-aggregator/getIEs?system=ilsdb&id=1467046>