

In Confidence

Office of the Attorney-General

Chair, Cabinet Legislation Committee

## **Legislation Act 2012: Revision Programme for 53<sup>rd</sup> Parliament**

### **Proposal**

1. This paper seeks approval of the attached statute revision programme for the 53<sup>rd</sup> Parliament, and notes the proposal to develop the necessary systems and capability for dual language drafting and to draft a revision Bill in English and te reo Māori as a dual language revision drafting pilot.

### **Executive Summary**

2. As Attorney-General, I am required under the Legislation Act 2012 to prepare and consult publicly on a 3-yearly programme of statute revision for each new Parliament. After Cabinet approves the programme, I must present the programme to the House of Representatives.
3. The revision process is designed to maintain the currency of legislation and improve access to the law. Selected Acts are updated to make them more accessible. Limited minor changes to legal effect are permitted under the revision powers. Four statutorily-appointed lawyers must certify, for each Bill before its introduction, that the Bill does not change the substantive effect of the law. The parliamentary process is streamlined under the Standing Orders of the House of Representatives (Standing Orders).
4. The PCO and departments have prepared the attached revision programme of 10 revision Bills. The PCO and departments have refined how Acts are selected and this new programme will focus on revising individual Acts or smaller groupings. Some Bills on the last programme will be carried over.
5. I propose that a revision Bill be drafted in English and te reo Māori as a dual language revision drafting pilot to both learn from and to begin to develop the necessary capability, capacity, and processes for greater use of dual language drafting in the future.
6. I considered the representations made as a result of public consultation on the programme. These did not justify any change to the draft programme. The PCO will work with departments to decide the best timing for their revision Bills.

### **Background**

7. The Legislation Act 2012 (the Act) requires the Government to systematically revise New Zealand's Acts to improve access to the law. The revision process involves updating and re-enacting the law to make it clearer and easier to read and understand, without making any changes to its substantive legal effect.

8. As Attorney-General, I am required to prepare and consult publicly on a 3-yearly programme of statute revision for each new Parliament. The programme must set out new and ongoing revisions and those revisions that are expected to be enacted during the parliamentary term. I must present the programme to the House of Representatives after the Government has approved it.

## **Comment**

### ***Revision Bills – purpose and process***

9. The revision process is designed to improve the legislative framework and coherence of Acts in New Zealand. Systematic revision is essential to maintain the currency of the law, which improves clarity and access.
10. The statutory revision powers allow revision Bills to combine or divide Acts, omit redundant and spent provisions, and renumber and rearrange provisions. Changes in language and format produce a clear, consistent, gender-neutral, and modern style of expression, and generally better express the spirit and meaning of the law.
11. The revision powers permit minor changes to the law to:
  - 11.1. clarify Parliament's intent, resolve ambiguity, or reconcile inconsistencies
  - 11.2. update references to monetary amounts to reflect Consumer Price Index changes (excluding references to jurisdictions, or offences or penalties)
  - 11.3. update provisions to reflect technological changes if those amendments are consistent with the spirit and meaning of the law
  - 11.4. relocate general principle matters in Acts and detail in secondary legislation.
12. Suitable candidates include older or heavily amended Acts containing outdated language and a mix of drafting styles. They may apply widely and affect many New Zealanders. Related rules may be scattered across several Acts, adding to the complexity of legislative regimes and compliance costs.
13. The PCO works closely with administering departments as issues emerge. If issues are substantive, a Bill may be converted to a rewrite and reform Bill. The PCO seeks public and targeted submissions on an exposure draft of each Bill before introduction. Bills must be certified before introduction by a retired High Court Judge, currently the Hon John Priestley CNZM QC, the President of the Law Commission, the Solicitor-General, and the Chief Parliamentary Counsel.
14. The certifiers must be satisfied that the statutory revision powers have been exercised appropriately and the revision Bill does not change the effect of the law, except in the limited ways authorised by section 31(2A). The certifiers may require a Bill to be changed before certifying it.

15. Revision Bills are placed on the Legislation Programme. As the Bills cannot make substantive changes to the law, they are exempt from the usual Regulatory Impact Analysis and Legislative Disclosure Statement requirements. However, they are vetted under the New Zealand Bill of Rights Act 1990. When a revision Bill has been certified, the Chief Parliamentary Counsel provides the Bill and certificate to me for introduction.
16. The parliamentary process is streamlined under Standing Orders. The default procedure omits the usual first and third reading debates. The special nature of revision Bills, and the restraints and checks on their preparation, justify the reduced parliamentary scrutiny.
17. The Business Committee is, under a recent change to Standing Orders, able to extend a select committee's powers, which would enable it to recommend that changes in an SOP be incorporated in a revision Bill. This would enable the Bill to contain low-level policy changes that are limited and uncontroversial, but outside the scope of a revision Bill on introduction. The Government will establish the practice of introducing an SOP, when appropriate, with a revision Bill to include minor policy changes.

### ***Revision programmes 2015–2017 and 2018–2020***

18. The Contract and Commercial Law Act 2017 consolidated and revised 12 general contract and commercial Acts. The Act won the 2017 WriteMark Award for the Best Plain English Legal Document. The judging panel said "The revised Act is a great step forward in New Zealand for plain English legislation. And the intended audience has a much clearer picture of contractual law in NZ".
19. The Partnership Law Act 2019 modernised the Partnership Act 1908, and it applies widely to over 64,400 GST-registered unincorporated partnerships, and an unknown number of non-GST-registered unincorporated partnerships.

### ***Next revision programme 2021–2023***

20. In preparing the programme, the PCO's initial work involved assessing older Acts against the following criteria to identify candidates for administering departments to consider. The PCO selected Acts that:
  - 20.1. are outdated in language and drafting style, heavily-amended, contain a mix of styles, obsolete provisions, or complicated numbering
  - 20.2. contain related areas of law, which would be easily blended into one Act
  - 20.3. are in frequent use or apply widely, affecting a significant sector of the public
  - 20.4. contain settled policy and are unlikely to be proposed for substantive amendment during the revision process
  - 20.5. would be more easily accessible if revised.
21. As Acts can only be put on the programme with the support of administering agencies, the PCO prepared the draft programme in consultation with departments. The draft programme contains 10 revision Bills.

### ***Continuing work on Bills on the last programme***

22. With the Ministry of Justice's support, 3 revision Bills from the last programme – the Civil Liability Legislation Bill, Land Valuation Proceedings Bill, and Summary Proceedings Bill – will be continued under the new programme.
23. The drafting of the Civil Liability Legislation Bill and the Summary Proceedings Bill started under the previous programme. Public consultation on the Land Valuation Proceedings Bill has been completed, and the intention is to finalise the Bill for certification before introduction this year. The Ministry of Justice has some proposals for small, uncontentious procedural changes, which may be appropriate for the new revision SOP mechanism.

### ***Some Bills will not be carried over***

24. Several Bills will not be continued under the new programme. The Parliament Bill, the Overseas Investment Bill, and the Electoral Bill will not be carried over as they have substantive issues that cannot be resolved in a revision Bill. A substantive review of the Electoral Act 1993 is likely in the near future.
25. Work on the Bills of Exchange Bill, Employment Law Bill, and Energy Bill will also not continue. The Bills of Exchange Bill contains complex, specialised banking law and would require significant resources for little gain. The large consolidations (the Energy Bill and the Employment Bill) have highlighted the difficulty of revising several Acts that, on closer scrutiny, cannot be easily blended. The new programme will focus on individual Acts or smaller groupings.

### ***Public consultation on the draft programme***

26. The PCO undertook a 6-week public consultation on the draft programme earlier this year. The 5 public submissions received raised no issues that should require a change to the programme. Two submissions proposed revising the Fencing Act 1978, the Impounding Act 1955, and the Land Transport Act 1998. These Acts would not be suitable candidates at this time because policy work may be required or is underway, or departments have other priorities. These Acts may be considered next time.
27. Te Puni Kōkiri (TPK) supports the proposal to develop the necessary systems and capability for dual language drafting and to draft a revision Bill in English and te reo Māori, but recommends that the 2 Bills that were envisaged in the consultation draft as candidates are removed from the programme. Instead, TPK will work with PCO to identify a suitable Bill for Cabinet to consider adding to the revision programme at a later stage.

### ***New revision Bills***

#### ***Commerce Bill***

28. The Commerce Act 1986 is heavily amended with many repealed provisions, which have made it progressively more difficult to read. It applies widely for the benefit of consumers, and the public view it frequently on the NZ Legislation

website. The Law Commission recommended revising this Act in 2008. MBIE, in consultation with the Commerce Commission, agrees that there is a need for this Act to be revised. MBIE has advised that it would not be in a position to resource the work until 2023.

29. The NZ Law Society (NZLS) opposes the revision of the Commerce Act 1986. It expressed concern that the Act uses inherently technical and sometimes non-intuitive concepts, and rewriting it could generate new sources of uncertainty and, therefore, litigation. The NZLS notes that becoming familiar with new structures, nomenclatures, and numbering systems will be costly. It thinks that much of the law is fairly well settled on those parts of the Act that have been litigated heavily, and revising it could generate new uncertainty.
30. The PCO is aware of these issues and would take them into account in revising the Commerce Act 1986. For instance, the PCO would pay close attention to preserving existing case law. Provisions that are already clear and well-understood would not be substantially re-drafted. The PCO considers that many parts of the Act are neither clear nor well-understood, and that there would be significant benefits to revising the Act that go well beyond re-numbering. Issues would not arise as often if the Act were less complex and drafted in plain language. For example, the recently introduced Commerce Amendment Bill seeks to clarify the Act's application to land, which confuses stakeholders. Minor errors and inconsistencies are frequently identified that could be more easily avoided in a simpler Act.

### ***Disabled Persons Community Welfare Bill***

31. The Disabled Persons Community Welfare Act 1975 is an important Act that is administered jointly by the Ministry of Social Development (MSD) and the Ministry of Health. The departments support this Act being put on the programme. More than half of the Act has been repealed. The remaining provisions (primarily administered by MSD) need updating. Some are complex and contain inaccessible language. MSD has advised that the Act contains outdated definitions of disability and disabled people, and outdated references (for example, to sheltered workshops that have been discontinued) and outdated concepts, including seeing disability as a medical rather than environmental concept.

### ***Flags, Emblems, Military Decorations, Distinctive Badges, and Names Protection Bill***

32. The Flags, Emblems, and Names Protection Act 1982 is expressed in outdated language. The Act has 27 sections. Combining it with the related Military Decorations and Distinctive Badges Act 1918 that contains a few remaining special rules about military badges and decorations would improve their accessibility. The Ministry for Culture and Heritage and the Ministry of Justice administer the 1981 Act and the Ministry of Defence administers the 1918 Act. All agencies support the proposal.

### ***Housing Bill***

33. The Housing Act 1955 is an important Act that provides for the development of State housing and related matters, including the acquisition of land, disposal of State housing land, and easements over that land. Its language and form are outdated and it contains obsolete references to repealed Acts. Officials advise that Te Tūāpapa Kura Kāinga-Department of Housing and Urban Development (HUD) and Kāinga Ora-Homes and Communities use the Act daily. HUD has advised the age and nature of some amendments mean that there is a degree of ambiguity in its interpretation. HUD considers benefits would include clarifying roles and responsibilities, the interface with related Acts, and the removal of obsolete provisions.

### ***Juries Bill***

34. The Ministry of Justice agrees that the Juries Act 1981 is a good revision candidate. The Act applies broadly, is heavily-amended, and needs modernising. The Ministry has advised that resources could be available for this work after the work on the Land Valuation Proceedings Bill and the Summary Proceedings Bill is completed.

### ***Maori Purposes Bill and Maori Trust Boards Bill***

35. These Bills were included in the programme to be drafted in English and te reo Māori as a way of developing the systems and capability for dual language drafting.
36. However, TPK and PCO now consider that a more suitable Bill of wider interest would be a better vehicle. I recommend that these 2 Bills are removed from the programme. I will propose to Cabinet at a later time that a suitable alternative Bill is added to the programme after the programme is adopted. This will allow time for TPK to consult relevant stakeholders, and for the PCO to undertake the public consultation that is required before a revision programme is amended.

### ***Tax Administration Bill***

37. Inland Revenue has proposed including the Tax Administration Act 1994 on the programme. The Act is critical to the administration of a large proportion of New Zealand's revenue. Heavily amended since enactment, the Act is a mix of different drafting styles and outdated language, and its structure lacks coherence. Inland Revenue considers modernising the Act will provide a coherent framework, and will improve accessibility for its users.
38. The Chief Parliamentary Counsel is responsible for preparing revision Bills in accordance with the revision programme and section 31 of the Legislation Act 2012, and PCO prepares the Bills in consultation with departments. However, as Inland Revenue drafts most tax legislation and the work requires tax expertise, the department will draft this Bill. However, it will work closely with PCO to remove unnecessary differences in drafting style between the Tax Administration Bill and other revision Bills, and to benefit from the process efficiencies that the PCO has learned from drafting revision Bills.

### ***Valuers Bill***

39. Land Information New Zealand and the Valuer-General support the revision of the Valuers Act 1948, which provides for the registration of land valuers and established the New Zealand Institute of Valuers. Revising the Act would be useful as it is related to the Land Valuation Proceedings Act 1948, which is being carried over from the last programme.

### ***Dual language revision Bills***

40. The PCO and TPK consider that there would be value in introducing a revision Bill as a dual language Bill. Building our capacity to legislate in te reo Māori is vital to recognise the status of the language. It gives practical effect to the Crown's commitment to work in partnership with iwi and Māori to actively protect this taonga for future generations, as is required by Te Ture mō Te Reo Māori 2016 Māori Language Act 2016. It is also needed to meet the rising expectations of Parliament, Māori, and the general public that legislation should begin to be enacted in both English and te reo Māori.
41. Over the last 10 years, Parliament has enacted 3 dual language apology Bills (the Mokomoko (Restoration of Character, Mana, and Reputation) Act 2013, Te Ture Haeata ki Parihaka 2019 Parihaka Reconciliation Act 2019, and Te Ture kia Unuhia te Hara kai Runga i a Rua Kēnana 2019 Rua Kēnana Pardon Act 2019) and one general Act (Te Ture mō Te Reo Māori 2016 Māori Language Act 2016). From these Bills, we have already learned some of the changes in process and skill needed to legislate effectively in te reo Māori.
42. However, it requires significant work to develop our experience and capacity to legislate more regularly in te reo Māori, to develop the supporting resources, and to develop the specialist workforce needed to do this work. It is essential that when the Government proposes te reo Māori in legislation, this is done credibly and without creating unnecessary risk. The PCO and the agencies are not currently in a position to do this. We need to take deliberate steps to proactively build this capacity in several phases.
43. The PCO and TPK, therefore, propose that the work on a dual language revision Bill be done as a pilot, with the explicit objectives of learning and enabling the resource implications to be assessed. The PCO and TPK will work on this pilot with Te Taura Whiri i te reo Māori (Te Taura Whiri), the Crown Law Office, Office of the Clerk, and Department of Internal Affairs (Translation service). The involvement of key Māori experts in te reo Māori and law would also be needed to co-design both the overarching language strategy for dual language legislation and the processes needed to support dual language drafting in practice.
44. The dual language revision drafting pilot will enable the Government to understand more about the opportunities, challenges, costs, and risks in dual language drafting in New Zealand. In the process, we can begin to grow capability from the current low base.
45. Revision Bills provide the ideal format to develop the capability, capacity, and processes that are needed for dual language drafting:

- 45.1. Revision Bills are re-enactments of the existing law (with only limited minor amendments) so provide the rigour and processes to satisfy Parliament that there is no change in legal meaning.
  - 45.2. The drafting approach will be to undertake the work in a way that is consistent with Te Ture mō Te Reo Māori 2016 and that will promote legal equivalence between the English and te reo Māori texts. The revision process, including certification before introduction, will help ensure the 2 versions are legally equivalent, lowering any risk of inconsistency in legal effect.
  - 45.3. The revision process allows both English and te reo Māori texts to be revised, enabling changes in the approach of the English draft that will make it easier to align the texts.
  - 45.4. The process does not involve new policy or policy-driven timetables, enabling a more systematic approach needed at this early learning stage.
46. This pilot will lay the foundation stone for a phased approach to dual language legislation. Dual language legislation will require significant changes in process, and have substantial cost implications for the PCO as well as departments and the Office of the Clerk. Given the very limited experience to date, and the very limited current capability within the relevant institutions, it is difficult to begin to estimate the costs. However, whatever decisions are taken about legislating new Bills in both languages, it seems highly likely that existing legislation would need to be re-enacted in dual languages through the revision programme. A pilot in this area, therefore, has the additional benefit of building capability, and assessing resourcing implications, for that programme in future.
47. I recommend that the results of the pilot be reported back to Cabinet to enable us to proactively consider the next phase for building the capability, capacity, and processes across agencies for legislating in te reo Māori.

### ***Departmental support and stewardship***

48. Revision is an ongoing process. Responsible departments will need to provide some policy or legal support as revision Bills are drafted and as they progress through Parliament. This is less support than a department would usually be required to provide when developing policy and legislation. However, it means that progress is subject to their other resourcing priorities.
49. By supporting the programme, departmental chief executives will be upholding the public service stewardship principle under section 12 of the Public Service Act 2020 – to proactively promote stewardship of their department’s legislation. They will also be maintaining the currency of the legislation administered by their agency as required under section 52 of that Act.

### **Consultation**

50. The PCO released the draft revision programme for public submissions from 29 January to 12 March 2021. The PCO received 5 submissions.

51. The advice of TPK and PCO on the 2 Bills that were candidates for the dual language revision drafting pilot is reflected at paragraphs 35 and 36. Consultation has not raised any other issues that require changes to the revision programme. If the Committee approves, I propose to present the programme to the House of Representatives in June.
52. The Ministry for Business, Innovation and Employment, Department of Conservation, Ministry for Culture and Heritage, Ministry of Defence, Ministry for the Environment, Ministry of Foreign Affairs and Trade, Ministry of Health, Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development, Inland Revenue Department, Department of Internal Affairs, Ministry of Justice, Land Information New Zealand, Ministry for Primary Industries, Ministry of Social Development, Te Puni Kōkiri, and the Treasury were consulted as the programme was developed.
53. The Ministry for Business, Innovation and Employment, Crown Law Office, Ministry for Culture and Heritage, Ministry of Defence, Department of Internal Affairs, Ministry of Health, Te Tūāpapa Kura Kāinga - Ministry of Housing and Urban Development, Inland Revenue Department, Ministry of Justice, Land Information New Zealand, Ministry of Social Development, Te Puni Kōkiri, and Ministry of Transport were consulted on this paper. Te Taura Whiri I te reo Māori (Te Taura Whiri), Office of the Clerk, and Department of Internal Affairs (Translation Service) were consulted on the dual language revision drafting pilot. Treasury and Department of Prime Minister and Cabinet were informed.

### **Financial Implications**

54. Not applicable. The proposed revision Bill work, including the dual language pilot, would be done within the PCO's baseline appropriation.

### **Human Rights**

55. Not applicable.

### **Legislative Implications**

56. After the revision programme is presented to the House of Representatives, the Bills on the revision programme will be drafted and prepared for introduction. It is expected that the Disabled Persons Community Welfare Bill, Flags, Emblems, Military Decorations, Distinctive Badges, and Names Protection Bill, Housing Bill, Land Valuation Proceedings Bill, and Valuers Bill will be enacted during the 3-year revision period.

### **Impact Analysis**

57. Not applicable.

### **Publicity**

58. After I present the programme to Parliament, it will be published on the PCO corporate website.

### **Proactive release**

59. I will release this paper proactively, subject to appropriate redactions.

## Recommendations

60. I recommend that the Committee:

1. **note** that the Legislation Act 2012 requires the Government to systematically revise New Zealand's Acts to make legislation more accessible, readable, and easier to understand without changing the substantive effect of the law;
2. **note** that, as Attorney-General, I am required by section 30 of the Legislation Act 2012 to prepare a 3-yearly programme of statute revision for each new Parliament that must be presented to the House of Representatives after the Government has approved it;
3. **note** that I have prepared, and consulted publicly on, a draft of the attached revision programme for the 53<sup>rd</sup> Parliament;
4. **note** that, as a result of the consultation, I recommend that the Maori Purposes Bill and Maori Trust Boards Bill are not included in the programme;
5. **approve** the attached revision programme for the 53<sup>rd</sup> Parliament;
6. **note** the proposal to prepare and introduce a revision Bill in English and te reo Māori as a dual language revision drafting pilot to both learn from and to begin to develop the necessary capability, capacity, and processes for greater use of dual language drafting in the future;
7. **note** that I will recommend to Cabinet that a suitable dual language revision Bill be added to the programme, after TPK has consulted stakeholders, and the PCO has undertaken the public consultation that is required before a revision programme is amended;
8. **direct** the Parliamentary Counsel Office to report back, with input from relevant agencies, on the results of the pilot, options for expanding the practice of dual language drafting, and the resource implications of doing so.

Authorised for lodgement

Hon David Parker  
**Attorney-General**

**Attachment:** Revision programme for the 53<sup>rd</sup> Parliament