



**Briefing Notes for the Attorney-General
on the Role and Operations of the
Parliamentary Counsel Office**

December 2011

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Executive summary

Background

The Parliamentary Counsel Office (PCO) performs two essential services for executive government. It drafts nearly all Government Bills and Statutory Regulations. It also publishes in hard copy printed and electronic form all Acts, Statutory Regulations, and Reprints of these and provides the mechanism for Parliament to publish, electronically and in hard copy, Bills and Supplementary Order Papers.

PCO counsel also have a key role to play during the passage of a Bill through the House of Representatives and work with select committees, under the relevant Minister's direction, and also the directions of the Select Committee, to produce draft amendments to Bills under consideration. The PCO employs a plain English approach to legislative drafting and exercises controls to ensure consistency of drafting for the statute book as a whole.

The Chief Parliamentary Counsel, as with most other heads of legislative drafting offices in Commonwealth jurisdictions, reports to the Attorney-General as the senior law officer, since the PCO occasionally needs to refer matters of legal principle arising during the drafting process to the Attorney-General. Weekly meetings with the Leader of the House take place during the parliamentary session to assist in the programming of Government orders in the House.

Current drafting

Following decisions by Cabinet in the second half of this year (which required drafting on some matters to proceed over the election period) the PCO has received drafting instructions from a number of departments. We are working to the timetable recorded in the relevant Cabinet minute and have already provided drafts in response in certain areas.

The New Zealand Legislation System (NZLS)

The PCO completed, in January 2008, the Public Access to Legislation Project (now referred to as NZLS). This has delivered a unified electronic drafting and publishing system that counsel in the PCO, legislative drafters in the Inland Revenue Department, and staff in the Office of the Clerk of the House of Representatives can use to draft and amend legislation. This then passes through the Cabinet, Parliamentary, and Governor-General procedures to publication in printed and electronic form (on the legislation website <http://www.legislation.govt.nz/>). The PCO is supported by Unisys New Zealand Limited in the provision of this legislative drafting, publishing, and website supporting system under a contract. That contract is due to expire in 2013. Hard copy printing and distribution of legislation is also provided under a contract with Printlink (formerly SecuraCopy), a trading division of the Blue Star Print Group (New Zealand) Limited. That contract is due to expire on 1 January 2012 and a procurement process is underway to select a service provider under a new contract.

The PCO receives funding via its Vote for these contracts.

Future developments

Legislation Bill

The Legislation Bill, which is designed to modernise the PCO's current governing statute, is currently before the House. This Bill arises from two Law Commission reports (*Presentation*

of New Zealand Statute Law and Review of the Statutes Drafting and Compilation Act 1920¹). Once enacted, it will affect the operations of the PCO.

Statute revision

The Legislation Bill includes provision for the establishment of a three-yearly programme of statute revision.

Pacific Island Support

With the assistance of funding from the New Zealand Aid Programme (NZ Aid), we have established a Pacific Island law drafting facility to provide drafting assistance, training, and mentoring to legislative drafting officials, which is initially focused on support to the Cook Islands, Tokelau, and Niue.

Digitisation of New Zealand historical statutes

The PCO is currently assessing options to convert the collection of historical Acts enacted from 1841-2007 into a fully searchable format integrated with and available on the New Zealand Legislation (NZL) website².

Officialisation of New Zealand legislation

Work continues on making the content of the NZL website an official source of legislation alongside the printed copies we publish. At this stage we are aiming for completion of this work in the 2012/13 financial year. The Legislation Bill provides for the NZL website to be an official source.

Simplification of the New Zealand Legislation system

The PCO has developed a series of work programmes that will allow the simplification and enhancement of the NZL system. These work programmes have two main objectives, one being to make the operating system easier to use and the second to make it easier to carry out future maintenance and enhancements at lower cost.

Relations with other agencies

The PCO plays a key role in turning instructions from central government departments and associated agencies into draft legislation (Bills and regulations) and, accordingly, has extensive links with those agencies' legal and policy teams.

Increasingly, the PCO also has dealings with other agencies, in particular advisory committees for legislation, and especially the Legislation Advisory Committee. The PCO also maintains close links with the 10 Australian drafting offices that together with the PCO make up the Australasian Parliamentary Counsel's Committee, which has a link into the Standing Committee of Attorneys-General (which also includes New Zealand representation). The PCO has developed both training modules and support for Pacific Island nations'

¹Law Commission reports 104 and 107: www.lawcom.govt.nz/project/presentation-new-zealand-statute-law and www.lawcom.govt.nz/project/review-parliamentary-counsel-legislation.

²www.legislation.govt.nz

legislative drafters and is a member of the Commonwealth Association of Legislative Counsel.

As part of the PCO's function in providing access to legislation, it has developed good working relationships with the New Zealand Law Society and the New Zealand Law Librarians' Association. The PCO also has a formal role in drafting rules of court and therefore has regular contact, via the Rules Committee, with the judiciary.

The PCO has developed a series of inward and outward secondments with key stakeholders, including the Department of Labour, the Ministry of Economic Development, and the Law Commission. The PCO is providing limited assistance to the Office of Treaty Settlements through a roster of counsel providing training assistance on legislative process on a trial basis. The PCO is often visited by staff from overseas drafting offices and provides examples of best practice drafting processes.

Bill Moore
Acting Chief Parliamentary Counsel

1 Constitution and functions

1.1 Constitution of the Parliamentary Counsel Office

The PCO is constituted as a separate office of Parliament by the Statutes Drafting and Compilation Act 1920 (the current Act). The current Act provides for separate divisions to undertake the drafting of legislation and the compilation of legislation.

The current Act provides that the PCO is under the control of the Attorney-General, or if there is no Attorney-General, the Prime Minister. The reason for providing for the Prime Minister to have control of the PCO was to avoid the effect of the powers of the Attorney-General being exercisable by the Solicitor-General if the office of Attorney-General becomes vacant.³ On the introduction of the Bill in the Legislative Council, the Attorney-General, Sir Francis Bell, referred to the fact that the PCO was being established as an office of Parliament “and should be removed from the Public Service”, the objective being to emphasise its independent role.

The PCO is not part of the Public Service under the State Sector Act 1988. It is thus not under the direct control of the State Services Commissioner. However, the PCO is part of the State services within the meaning of the State Sector Act and, as such, is subject to certain provisions of the Act. These include sections 57 to 57C of the Act, which relate to the setting and enforcement of minimum standards of integrity and conduct.

The Statutes Drafting and Compilation Act 1920 is due to be repealed by the Legislation Bill (which was reported back from the Regulations Review Select Committee in November 2010 and is awaiting a second reading).

Key policy decisions implemented in the Legislation Bill include the following:

- the PCO will be required to publish legislation electronically as well as in printed form
- the PCO will be able to issue official versions of legislation in electronic and printed form (being versions that are presumed to be correct)
- the PCO’s reprinting powers will be enhanced to enable the PCO to correct obvious errors and (if authorised by Order in Council for the purpose) to renumber older legislation
- a 3-yearly programme of systematic revision of Acts will be established
- legislation providing for the disallowance of subordinate legislation will be modernised and existing Acts will be consequentially amended to specify whether particular subordinate legislation is disallowable
- enabling powers and related processes will be provided to enable certain kinds of subordinate legislation to incorporate material by reference
- outdated aspects of the Statutes Drafting and Compilation Act 1920, particularly those relating to the appointment of counsel and the organisational

³ See the speech of the Attorney-General, Sir Francis Bell, on the Second Reading of the Statutes Drafting and Compilation Bill 1920: *New Zealand Parliamentary Debates 1920, Hansard* vol 188, 745.

structure of the PCO, will be replaced by modern legislation that continues the PCO as a separate statutory office.

The Legislation Bill implements the majority of the legislative recommendations made in the Law Commission reports—

- *Presentation of New Zealand Statute Law*, October 2008 (NZLC R104);
- *Review of the Statutes Drafting and Compilation Act 1920*, May 2009 (NZLC R107).

I would be very keen to see this Bill (which sets the future direction for the Parliamentary Counsel Office) pass through its remaining stages as early as possible in the term of this Parliament and, if at all possible, before 1 July 2012.

1.2 Functions

The Statement of Intent for the PCO for 2011/16 states that the outcome of the PCO is contribution to parliamentary democracy under the rule of law.⁴ The PCO seeks to achieve this outcome in two ways. The first way is by ensuring that the legislation that it drafts, that Parliament enacts, and that the Executive makes in the exercise of delegated law-making powers, is effective, based on sound legal principles, and clear. The second way is by making legislation available to the public. This is reflected in the two principal functions of the PCO and the output classes of Vote: Parliamentary Counsel. These functions are the drafting of legislation and the publication of legislation.

Government Bills and Statutory Regulations

The PCO drafts Government Bills and Statutory Regulations. The drafting of Bills includes drafting amendments required by select committees and by Ministers at the committee of the whole House stage. The PCO also drafts other instruments, such as appointments of, and terms of reference for, Royal Commissions and Commissions of Inquiry under the Commissions of Inquiry Act 1908, regulations under the Royal prerogative relating to medals and honours, the exercise of the Governor-General's powers under section 406 of the Crimes Act 1961 (which relates to applications for the exercise of the prerogative of mercy), and certain constitutional documents.

Local and private Bills

The PCO examines and reports on local Bills and private Bills. This involves providing drafting assistance to local authorities and their legal advisers in the case of local Bills and to the promoters and their legal advisers in the case of private Bills. In most cases, this involves providing drafts or redrafts of Bills.

Members' Bills

At the direction of the Attorney-General, the PCO provides drafting assistance for Members' Bills. The practice of Attorneys-General is to direct the PCO to provide drafting assistance for a Member's Bill if it is reasonably clear that there is likely to be sufficient support in the House for the Bill to pass. The Education (Freedom of

⁴ See *Statement of Intent for the period 1 July 2011 to 30 June 2016 (p9)*. The Australian Commonwealth Office of Parliamentary Counsel has a similar objective: parliamentary democracy and an effective statute book.

Association) Amendment Act 2011 is a recent example of a Member's Bill that, with the approval of the Attorney-General, had considerable drafting input from the PCO. The PCO can expect to receive directions to draft up to about five Members' Bills a year.

Publication of legislation

The second function of the PCO is to make legislation available to the public. Under the Acts and Regulations Publication Act 1989, the Chief Parliamentary Counsel is responsible for the publication of:

- Acts of Parliament
- Statutory Regulations
- reprints of Acts and Statutory Regulations (with their amendments incorporated)
- reprints of Imperial Acts that have effect as part of the law of New Zealand.

The PCO publishes copies of Acts and Statutory Regulations in paper-back format. Acts are generally published and provided for sale at designated bookshops and to subscribers within 10 working days of assent and Statutory Regulations are published and provided for sale at designated bookshops and to subscribers within five working days of being made. Since the successful implementation of the New Zealand Legislation system in January 2008, which integrated the drafting, processing, and publishing functions, Acts are now available on the New Zealand Legislation website within five working days of assent and Statutory Regulations are available on the website within one day of the date they are notified in the *New Zealand Gazette*.

The PCO also publishes annual bound volumes of Acts and Statutory Regulations. The annual volumes are published in the first half of the following year, usually in April or May. The PCO expects, in a typical year, to publish up to four volumes of Acts and up to six volumes of Statutory Regulations. It is anticipated that up to four volumes of Acts and six volumes of Statutory Regulations will be published for 2011.

The PCO also makes copies of Government Bills and Supplementary Order Papers available to the House and for purchase by the public.

Reprints of legislation

The function of the Compilation Department (under the 1920 Act) has been delivered by the production of compiled reprints of Acts and Statutory Regulations with their amendments incorporated. These are published individually in pamphlet form.

Other PCO legislation publications

The PCO also publishes annually the *Tables of New Zealand Acts and Ordinances and Statutory Regulations, and Deemed Regulations in Force*.

1.3 Funding

The PCO is funded by annual appropriation. The Attorney-General is the responsible Minister for Vote: Parliamentary Counsel.

In relation to the 2011/12 financial year, Vote: Parliamentary Counsel comprises two Output Classes that directly reflect the statutory functions of the PCO. These are listed below, together with the appropriation (GST exclusive) for the 2011/12 financial year for the two Output Classes:

Output Class—Law Drafting Services

2011/12 appropriation \$9.595 million (45.2% of the Vote)

Output Class—Access to Legislation

2011/12 appropriation \$11.646 million (58.8% of the Vote).

The appropriation for Output Class—Law Drafting Services includes \$0.380 million that has been identified as savings for return to the Crown.

These savings were as a result of four PCO staff being seconded to the Department of Labour and the Ministry of Economic Development and those agencies reimbursing the PCO for a portion of the remuneration costs. In addition, the New Zealand Aid Programme at the Ministry of Foreign Affairs and Trade will be reimbursing the PCO for costs relating to the provision of legislative drafting assistance to Pacific Island nations.

Changes to the 2011/12 baseline will be incorporated into the 2011/12 Supplementary Estimates process in May 2012.

1.6 Performance Information for Appropriations

A copy of the Performance Information for Appropriations, which includes specific performance measures and standards for the 2011/12 year, is attached as **Appendix 1**.

2 Organisation

2.1 Organisational structure

The organisational structure of the PCO is set out in **Appendix 2**.

2.2 Governance and organisational overview

In managing the PCO, the Chief Parliamentary Counsel is assisted by a senior management team comprising a Deputy Chief Parliamentary Counsel, a Chief Information Officer, and a Corporate Services Manager. This team meets fortnightly

and is responsible for setting the strategic direction of the organisation. It deals with matters relating to resourcing, annual budgets, staff appointments, significant operating and personnel issues, the development of policies and practices, risk management, accommodation, and the management of the PCO's finances and expenditure.

The drafting of legislation is undertaken by Parliamentary Counsel and Assistant Parliamentary Counsel. There are currently 25 full-time equivalent (FTE) drafters, grouped into three drafting teams. Each team is responsible for the legislation of a group of government departments and public sector organisations. Each team has a team leader who is responsible to the Deputy Chief Parliamentary Counsel (Drafting) for allocating drafting instructions, monitoring workflows, liaising with instructing departments, and staff supervision and review. The drafting teams meet regularly to discuss drafting issues. The three drafting teams, including the Parliamentary Counsel in each and the departments and agencies for which they draft, are set out in **Appendix 3**.

An Editorial Services team, which also reports to the Deputy Chief Parliamentary Counsel, provides a quality assurance service to the PCO counsel and to the wider office by proofreading and editing all draft legislation as well as some other publications such as our annual report.

Three managers are responsible to the Chief Information Officer for the Prepublication Unit (which provides publication services for legislation), the Reprints Unit (which compiles the reprints of legislation incorporating amendments made since the last reprint and produces the annual tables of legislation in force), and the Information Systems Unit (which provides ICT and records management services for the PCO and is responsible for the provision, with Unisys, of the new legislation system).

The Corporate Services Manager has responsibility for corporate support services, including library, communications, human resources, finance functions, and providing administrative support to the PCO counsel.

The PCO has key relationships with a number of other organisations. The PCO:

- receives a range of services from the Parliamentary Service including accounting and financial reporting services, payroll, and the parliamentary core computing network. Service level agreements are in place to manage the provision of these services
- works closely with the Office of the Clerk of the House of Representatives and has developed a Memorandum of Understanding with that office that, in particular, regulates the access to and use of the new legislation system
- provides access to the legislation system for the drafting unit in the Inland Revenue Department, which is responsible under current arrangements for the drafting of tax legislation

- meets weekly with the Leader of the House (when the House is sitting)
- works closely with the Legislation Coordinator in the Cabinet Office, whose role is to provide support to the Government of the day in developing, monitoring, and modifying the legislative programme, and with the Secretary of the Cabinet Legislation Committee
- has extensive working relationships with all central government departments and agencies in terms of taking instructions from them for the drafting of new and amending legislation and providing links and electronic “feeds” from the legislation website
- fulfils its obligation to publish New Zealand legislation through a contract with Printlink for the printing, distribution, and sale of legislation
- is audited by the Auditor-General. The Auditor-General has appointed Audit New Zealand to perform the audit of the PCO on her behalf. Audit New Zealand also undertakes the annual Departmental Internal Control Evaluation (DICE) review on behalf of the Treasury. There is an Audit and Risk Committee (which includes two externally appointed members and is attended by a representative of the Auditor-General) which meets several times a year to assist the office in assessing risk.

2.3 Law Drafting Services

Introduction

The PCO, which is an instrument of the Executive, is established by the Statutes Drafting and Compilation Act 1920 as the central legislative drafting office. The Inland Revenue Department is currently authorised under that Act to draft revenue Bills. With the exception of revenue Bills, the PCO drafts all Government Bills and all subordinate legislation that is published in the Statutory Regulations series. The PCO also drafts amendments to private and local Bills.

These arrangements (subject to a change of nomenclature used in describing the instruments drafted in the PCO from “regulations” to “legislative instruments”) will continue under the Legislation Bill.

Out of a present total complement of 30 counsel, approximately 25 FTEs are currently engaged to draft legislation as members of one of three drafting teams. This complement of staff is necessary if the PCO is to deliver the level of legislative drafting services provided over the term of the previous Parliament.

Recruitment to fill currently vacant posts may be needed to meet the increased demand (which is expected to occur) and a reduction in the numbers of full-time drafters.

Significant features of our legislative drafting environment include:

- the process of ensuring that Bills are consistent with fundamental legal principles, the New Zealand Bill of Rights Act 1990, other important statutes, the Treaty of Waitangi, and New Zealand's international obligations
- taking account of existing legislation and the common law
- the activities of the Legislation Advisory Committee
- variation in the quality of official policy documents underpinning legislation
- variation in the quality of instructions given to the PCO by departments
- time spent by PCO counsel developing and clarifying legal policy and other preparatory work normally done by departments
- Bills being extensively revised by select committees and sometimes at the committee of the Whole House stage
- the speed at which Bills can proceed through the House, resulting in less time for checking and correcting errors
- restrictive rules governing omnibus Bills, making routine error correction difficult for the Executive
- rules about debating Bills in Parts influence the proper structure of Bills leading to artificial divisions of material.

In essence, legislative drafting involves translating policy decisions into effective, principled, and clear law. This work is not carried out in a vacuum—drafters need to keep up to date not only with changes in the law generally, but also with judicial trends in the interpretation of legislation. Policy decisions are often high-level ones—implementing them in legislation can result in the design of a legislative scheme that can be complex and may involve a number of levels (primary—Acts, secondary—regulations, and tertiary—directions, rules, or standards).

The Government's legislation programme

Bills are drafted in accordance with the priorities that they have on the legislation programme. The procedure for developing the legislation programme each year has involved the Legislation Coordinator in the Cabinet Office sending a circular to all government departments inviting them to submit bids for inclusion in the programme. Responses are sought by about mid-January. The proposed programme for the year is referred to the Cabinet Legislation Committee and then to Cabinet for approval.

The 2011 legislation programme contained five categories of Bills. These were:

Category 1: Bills that must proceed as a matter of law

Category 2: Bills that must be passed in 2011

Category 3: Bills to be passed in 2011 if possible

Category 4: Bills to proceed to a select committee in 2011

Category 5: Bills for which instructions are to be provided to the PCO in the relevant calendar year.

Drafting Bills

The PCO operates on the assumption that it will, in any year, be required by the Government to draft between 60 and 80 new Bills. It expects to examine and draft amendments to up to eight local and private Bills. The number of Bills and Statutory Regulations is difficult to predict with any accuracy. The drafting of legislation is demand-driven and the PCO is a responsive organisation.

The drafting of a Bill begins once the Bill has been included in the legislation programme, policy decisions have been made, and drafting instructions have been given to the PCO. All Bills are drafted in accordance with the priorities assigned to them by Cabinet in the legislative programme for each year. The legislation programme enables the PCO to devote resources to the drafting of Bills according to their importance to the Government as reflected in the legislation programme.

The drafter will initially produce a first draft. Typically, this will involve discussions with the instructing department as the drafting proceeds to clarify issues, refine policy, provide for matters that have not been addressed, deal with changes in policy, and suggest possible alternative approaches. Legislation is drafted in the context of existing legislation, case law, international law, key statutes such as the New Zealand Bill of Rights Act 1990, and the Treaty of Waitangi.

Once a draft Bill has been settled with the instructing department, it will be sent for comment to other departments with an interest in the subject matter. Their points and objections have to be considered and dealt with. Many draft Bills, especially those in the financial sector and those attached to Law Commission reports, are released for public consultation.

The drafting of Bills and regulations generally involves substantial and continuous revision. It is highly iterative. With large and complex Bills, the drafting process can take months and numerous versions can be produced.

When drafting is completed, the Bill is referred to the Ministry of Justice or the Crown Law Office, as the case requires, for advice on compliance with the New Zealand Bill of Rights Act 1990, and subsequently to the Cabinet Legislation Committee and then on to Cabinet for approval.

Parliamentary Counsel attend all meetings of select committees when consideration is given to amendments to Bills and draft the amendments required by those committees. Drafters will, if time permits, usually attend other meetings of select committees to hear from those invited to submit evidence. As with the drafting of a Bill, the drafting of amendments to Bills frequently involves a number of revisions before amendments are finalised. They are incorporated in a “revision-tracked” version of the Bill showing the proposed amendments in a single document.

Parliamentary Counsel always attend the consideration of a Bill at the committee of the whole House stage, draft amendments required by the Minister, and provide advice on drafting issues that arise during the committee stages. Parliamentary Counsel will draft opposition party amendments the Government wishes to adopt.

Parliamentary Counsel also check proofs of the “as reported” copies of Bills to ensure that all amendments made during the select committee have been incorporated. Parliamentary Counsel also provide advice on the commentaries that accompany “as reported” versions of Bills. The Office of the Clerk is responsible for preparing proof assent copies of Acts. Parliamentary Counsel also check the proof assent copy of each Bill to ensure the Bill submitted to the Governor-General for assent incorporates all amendments made to it during the select committee and the committee of the whole

House stage, that section numbering is correct, and that internal cross-references are also correct. This is an important but time-consuming task.

Drafting Statutory Regulations (to be renamed legislative instruments under the Legislation Bill)

The PCO operates on the assumption that it will draft between 300 and 400 Statutory Regulations in a calendar year. Consequently, about 40% of the drafting resources of the PCO at any time is committed to the drafting of Statutory Regulations. This continues even when Parliament is not sitting.

Regulations vary in size and complexity. Issues relating to the powers in the empowering Act often arise during the drafting of Statutory Regulations and other delegated legislation and Parliamentary Counsel advise on these issues in the course of their drafting work.

Statutory Regulations and other delegated legislation are sometimes dismissed as unimportant by commentators. That is wrong. Delegated legislation is a critical component of most legislative schemes and often has the most direct impact on the citizen, whether individual or corporate. The consequences and costs of poorly drafted delegated legislation can be just as significant as for Acts of Parliament. For these reasons, the same degree of skill and care is required to draft delegated legislation as for primary legislation.

There is no annual legislation programme for regulations, not least because some of them will be new following the passing of a new or amended empowering Act the passing of which cannot be assumed at the beginning of the year. The drafting of regulations requires the authority of a Minister. Policy decisions underlying proposed regulations will have to be obtained from the relevant Cabinet committee and from Cabinet before drafting can proceed. However, if the regulations are merely routine, they can be drafted on the instructions of the responsible Minister without the need to get Cabinet committee and Cabinet approval.

The drafting process for regulations is much the same as for Bills. The *Cabinet Office Manual* requires that all regulations submitted to Cabinet be certified by a Parliamentary Counsel as being in order for submission to Cabinet. This means that the Parliamentary Counsel must be satisfied that the regulations can lawfully be made and that there are no grounds on which the Regulations Review Committee might draw them to the attention of the House with the risk of disallowance under the Regulations (Disallowance) Act 1989. The Parliamentary Counsel certifies whether, in his or her opinion, the regulations can be validly made. The Parliamentary Counsel does not assess litigation risk to the Government in proceeding to make regulations where there is an issue of the power to make the regulation.

In cases where it is not possible to provide an unqualified certificate, advice is given to the Attorney-General setting out the reasons for the qualification. A copy of the advice is sent to the Minister responsible for the regulations. The Crown Law Office may also be asked to advise on the issue.

All regulations are referred to the Cabinet Legislation Committee for consideration before they are submitted to Cabinet for reference to the Executive Council.

Plain language drafting

It has been the PCO policy since 1999 to draft legislation in a plain language drafting style. It is generally accepted that persons affected by legislation need to understand their rights and obligations under it. However, a drafter's ability to use plain language in drafting is constrained in practice by external factors such as:

- policy or drafting changes needed in order to gain political support in an MMP environment
- drafting specialist legislation (such as rules of court and customs tariffs) where technical language is unavoidable
- drafting Treaty settlement legislation, the terms of which are negotiated between the Crown and the claimants
- the pressure of time available for drafting.

A change in format for amending terminology approved last year is being introduced for Bills introduced in the new Parliament. That revised format and the changes it makes is set out in **Appendix 4**.

Revenue Bills

As a result of the passage of the Statutes Drafting and Compilation Amendment Act 1995 and the making of the Inland Revenue Department (Drafting) Order 1995, all Revenue Bills are currently drafted in the Inland Revenue Department Tax Drafting Unit. The PCO, however, still drafts amendments to the Student Loan Scheme Act 1992 and the Child Support Act 1991. The PCO will also draft parts of revenue Bills that will not become Acts administered by the Inland Revenue Department.

2.4 Access to Legislation

New Zealand Legislation system

In November 2007, the PCO completed a project that implemented an integrated drafting and publishing system. The aim of the project was to make public access to up-to-date official legislation in both printed and electronic form freely available via a website. The project involved the implementation of an XML-based drafting and publishing system in the PCO, and a website providing free public access to Bills, Acts, Statutory Regulations, and Supplementary Order Papers.

The New Zealand Legislation System is the core part of the PCO's day-to-day business activity, being used for both the drafting and publishing of legislation. The New Zealand Legislation System is supported and maintained by Unisys at its Kapiti Data Centre.

Publication of legislation

The PCO's own Prepublication Unit (PPU) has responsibility for all of the prepublication and publication functions from an external provider (Legislation Direct).

The small PPU team is responsible for:

- preparing Bills and Supplementary Order Papers for introduction to the House
- working with the Office of the Clerk to provide printed copies of subsequent Bill versions to the House
- publishing copies of Bills, Supplementary Order Papers, Acts, Statutory Regulations, and reprints of legislation in paper-back form
- publishing electronic copies (both PDF and HTML) of Bills, Supplementary Order Papers, Acts, Statutory Regulations, and reprints of legislation to the New Zealand Legislation website
- ensuring the published legislation is printed and then available for sale at specific bookshops and to subscribers.

The PPU supports the publishing requirements of the PCO, Office of the Clerk, IRD, and other government agencies and departments. To ensure that the publishing requirements of the House are met (on behalf of the Office of the Clerk) the PPU is also required to work parliamentary sitting hours when the House is sitting.

Reprinting of legislation

The reprinting of legislation is undertaken by a small team of reprints officers (six FTEs). New Zealand legislation has been consolidated (or revised) and reprinted since the 1850s. A consolidation is an enactment that rationalises the law on a particular subject and is re-enacted by Parliament. A reprint simply republishes a particular enactment with all its amendments incorporated, but the enactment is not re-enacted by Parliament. Reprints published by the PCO have official status under the Evidence Act 1908 as authoritative statements of the law.

The last consolidation of the New Zealand statute book was conducted in 1908. Reprints of all Public Acts were published in 1931 and 1957. Reprints of individual statutes and some regulations were published between 1958 and 1979 in the annual volumes. The Law Commission has commented adversely on the cluttered state of the statute book after a century without a full consolidation.

Since 2003, Acts and regulations have been reprinted and published in individual paper-back form in accordance with the PCO reprints policy and an annual reprinting programme. The reprints policy is based on similar policies in Australia. The annual reprinting programme is settled following consultation with a wide range of users of legislation, including the judiciary, the New Zealand Law Society, community groups, librarians, and government departments. The programme now aims to reprint more regulations than has traditionally been the case. Reprinting regulations is important because regulations can often have more direct impact on the public than statute law.

Copies of the PCO reprints policy and the reprinting programme for 2011/12 are attached as **Appendix 5**. The Reprints Unit is also responsible for the process of officialising all Acts and Statutory Regulations in force. Officialisation of legislation from 2011 to 1979 is complete, and from 1841 to 1978 is expected to be completed by 30 June 2013.

The greater availability of legislation in electronic form has resulted in a drop in demand for printed copies of reprints. The Legislation Bill (once enacted) will give

the website (when completely officialised) equivalent official status to the printed Statutes and regulations.

3 Relations with external agencies

3.1 Instructing departments

The PCO works closely with instructing departments and agencies to improve the quality of draft legislation. Drafting legislation is a team effort and the role of departmental officials is critical to the success of the drafting process. Departmental officials are provided with copies of the PCO's *Guide to Working with the Parliamentary Counsel Office* to assist when instructing Parliamentary Counsel to draft legislation. This guide aims to help departments to work effectively with the PCO, particularly when giving instructions and responding to drafts. PCO staff also provide seminars and other assistance to departments.

Parliamentary Counsel provide advice to departments:

- in the course of the development of policy for legislation
- in the pre-instruction phase
- during the drafting phase
- at other times when required.

The subject matter of advice given by Parliamentary Counsel varies enormously. The context in which advice is sought is generally a specific piece of existing legislation or proposed legislation, but may include questions of drafting practice, the application of the LAC Guidelines, general legal principles, Cabinet procedure, parliamentary procedure, the effect of court decisions, and statutory interpretation.

3.2 Legislation Advisory Committee

The Chief Parliamentary Counsel is also a member of the Legislation Advisory Committee (LAC), a committee established by the Minister of Justice in 1986. LAC members are appointed by the Attorney-General. The LAC advises the Government on good legislative practice, scrutinises the legislative work of the Government, and makes submissions to select committee where the LAC considers it appropriate. Parliamentary Counsel assist the LAC to achieve its outcomes.

3.3 Law Commission

The PCO maintains a constructive relationship with the Law Commission as evidenced by the current secondment of a counsel to the Law Commission to assist the President with drafting projects. Two other counsel have been assisting another Commissioner with drafting projects. Examples of legislation that arose from Law Commission proposals and were drafted by the PCO include the Search and Surveillance Bill, the Alcohol Reform Bill, and the Members of Parliament (Remuneration and Services) Bill 2011.

3.4 Rules Committee

Rules of practice and procedure for the Supreme Court, Court of Appeal, High Court, and District Courts are made by the Governor-General by Order in Council with the concurrence of members of the Rules Committee.

The Rules Committee is a statutory committee established under section 51B of the Judicature Act 1908. The Attorney-General is a member of the Committee *ex officio*. The other members are the Chief Justice, a Judge of the Court of Appeal, the Chief High Court Judge, two High Court Judges, the Chief District Court Judge, two District Court Judges, the Solicitor-General, the Secretary for Justice, and two practitioners. The Committee Chair is the Hon Justice John Fogarty, a High Court Judge based in Christchurch.

The PCO provides legislative drafting assistance to the Rules Committee. An experienced counsel attends its meetings on behalf of the Chief Parliamentary Counsel and drafting work is carried out by one or more drafters, as necessary. This work can impose significant demands on the PCO's drafting resources, as evidenced by the rewrites of the High Court Rules and District Courts Rules, and can be technically difficult compared with other subordinate legislation.

3.5 Drafting assistance to Pacific Island governments

PCO is funded by MFAT New Zealand Aid Programme to provide the equivalent of one FTE in drafting resources to draft or review draft legislation in the Pacific. The focus during the first half year of funding has been to draft a backlog of required Acts for the Cook Islands and to develop a programme of work for both Niue and the Tokelaus.

3.6 Overseas drafting offices

Australia

The Australian Parliamentary Counsel's Committee (PCC's Committee) is a committee of the heads of the Commonwealth, State, and Territory drafting offices in Australia. It meets on a regular basis to deal principally with issues relating to uniform legislation in Australia. The PCC's Committee invites the Chief Parliamentary Counsel to its meetings and sends copies of draft legislation it considers to the PCO. The Chief Parliamentary Counsel tries to attend at least one meeting a year. The PCO has excellent relations with the Australian drafting offices. There is a high level of co-operation with them and a significant amount of information is exchanged.

The PCC's Committee holds an annual Information Technology Forum for the IT personnel in the Australian and New Zealand drafting offices. It provides an opportunity to discuss developments in the technology supporting drafting offices. Staff responsible for the PCO's IT systems and who are also involved with the New Zealand Legislation System attend these IT Forum meetings. Government-owned databases of up-to-date legislation to which the public has access have been available in Australia for many years. PCO staff attended an IT Forum meeting in Melbourne in July 2011.

The Australian and New Zealand drafting offices now hold regular conferences for legislative drafters as part of their continuing professional development. This year's conference was held in Adelaide in August 2011.

Staff secondments and exchanges

The PCO has two Counsel seconded to the Ministry of Economic Development over the election period. There are also two staff seconded to the Department of Labour; one as the Director of Legislation and the other as a solicitor working in the legislation area. The PCO is also running, as a trial, a half day a week clinic at the Office of Treaty Settlements (OTS), which involves one or two Counsel visiting OTS and providing advice on legislative process issues.

The purposes of these secondments are to—

- provide departmental policy and legal staff with assistance in developing new capabilities as instructors
- provide Counsel with experience in working inside government departments, so that they better understand the environment their instructors are working in
- provide assistance to the Government as a whole in developing better and smoother policy making processes.

3.7 Commonwealth Association of Legislative Counsel

The Commonwealth Association of Legislative Counsel (CALC) was established in Canberra in the early 1980s on the initiative of the Australian Office of Parliamentary Counsel. It has a membership of about 400 legislative drafters from Commonwealth countries, including Africa, the Caribbean, the United Kingdom, Canada, India, Asia, and the Pacific (Australia, Pacific Islands, and New Zealand). CALC has a governing Council. The PCO has strengthened its involvement with CALC with the recent appointment of a DCPC, Fiona Leonard, as the CALC Secretary.

Other than the Australian PCC, CALC organises the only professional development conference for legislative drafters. This usually takes place every two years in conjunction with the Commonwealth Law Conference. The next CALC conference is to be held in South Africa in April 2013, and the PCO will be represented by counsel, who will present papers and chair conference sessions.

3.8 Victoria University of Wellington

PCO supports, through the provision of counsel to teach, the Legislation (Laws 323) course at Victoria University of Wellington. This is an optional subject for the degree of LLB taken by 40–60 third- and fourth-year students. PCO has also supported an honours paper through the provision of Parliamentary Counsel in 2011.

The PCO, together with the Office of the Clerk, co-finances work by a post-graduate research student in developing and updating the Regulations Review Digest, an invaluable source of guidance and determinations from the Regulations Review Committee of the House of Representatives. This work is conducted under the

supervision of the Faculty of Laws at Victoria and by counsel from the PCO, and the Clerk Assistant (legal services).
