

Briefing to the Incoming Attorney-General

Introduction

1. The Parliamentary Counsel Office (PCO) occupies an important place in the law-making system:
 - It delivers an essential service to Government and the public by drafting and publishing laws.
 - More fundamentally, it supports the Attorney-General's focus on the rule of law and the public's need for fit for purpose, constitutionally sound, and accessible legislation.
2. The size and scope of laws has increased significantly over recent decades. At the same time, the issues being regulated have grown in complexity – particularly as a result of the speed of technological change and global interconnectivity. Advances in technology are creating new possibilities, and expectations, about how legislative data can be used and re-used. We also expect more from our laws. We want simple, principles-based legislation that can be easily understood. We want flexible legislation that adapts to changing circumstances. But we also call for predictability and certainty, which often results in increased prescription. We expect faster, more responsive decision-making in law-making. But we need inclusive processes, including proper consultation and transparency, in the law-making process.
3. In this context, having fit for purpose laws that are constitutionally sound and easy for the public to find, use, and understand is both more difficult, and even more important, than ever.
4. PCO, in its overarching role as steward of New Zealand's legislation, is focussed on meeting these challenges and opportunities. Our central position, as a dedicated drafting and publication office directly under the Attorney-General's control, is vital in this role. Through PCO, legislative expertise is consolidated, common approaches can be applied across New Zealand's legislation, and support for best practice on designing legislation can be provided to the public sector. Issues of legislative quality and accessibility can be looked at from a system-wide perspective and with a focus on the ordinary person using laws. A proactive approach can be taken to the longer-term issues, independent of particular policy initiatives.
5. Part A of this *Briefing to the incoming Attorney-General* sets out the key objectives for New Zealand's legislation and how we work to support the Attorney-General in this context. (More detailed information is in the Appendices.) Part B contains information on current and longer-term emerging challenges and opportunities.

Part A: How PCO supports the Government's legislative goals

PCO's core role is delivering the Government's legislative priorities

6. PCO's primary functions are to draft legislation to implement the Government's legislative programme and to publish legislation online to enable the public to easily find and use New Zealand's laws:
 - We draft Government Bills, including amendments made to them at select committee and Committee of the whole House (other than the Inland Revenue Bills drafted by the Inland Revenue Department).
 - We also draft much of the secondary legislation made by core Government (Legislative Instruments). However, the majority of secondary legislation is drafted and made by

over 100 bodies (ministries, agencies, and professional bodies) and by local authorities (as bylaws).

- We currently publish all Acts, Bills, and secondary legislation drafted by PCO (but not other secondary legislation) on the New Zealand Legislation website www.legislation.govt.nz (NZL website).

7. More detailed information on the nature and scope of PCO's role is set out in the Appendices.

PCO's core role needs to be seen as part of its broader stewardship role

8. PCO's role in drafting and publishing legislation is carried out as part of its broader stewardship role for New Zealand's legislation. This requires proactive management and planning for the medium- to long-term of the laws of New Zealand for the benefit of current and future users.

9. This stewardship role demands more than technical expertise and legislative excellence. It requires PCO to take a leadership role in developing and promoting shared goals for New Zealand's laws across the government system. Moreover, although PCO has a leadership role, it is not the sole legislative steward. Chief executives of government departments are charged, under section 32 of the State Sector Act 1988, with responsibilities of stewardship for the legislation they administer. The Regulatory Quality Team at Treasury promotes regulatory stewardship initiatives. Crown Law plays a vital role in supporting the rule of law and better decision-making. The Legislation Design and Advisory Committee focuses on supporting better legislative design.

10. Effective stewardship requires PCO to collaborate with these and other key participants in the legislative system.

In this stewardship role, PCO has defined shared goals for legislation

11. In its stewardship role, PCO has looked at how to define a shared goal with others in the legislative system. We have defined that goal as having great laws for New Zealand.

12. For law to be great, it must be *fit for purpose*, *constitutionally sound*, and *accessible* for users, both current and future:



Fit for purpose: Laws should be necessary, and effective, for their purpose. Laws need to provide certainty as to legal rights and obligations, but also have sufficient flexibility to adapt to the future. They need to integrate both with the wider statute book and the legal system generally.

We focus, in drafting, on finding the best legal mechanism to implement the Government's intentions with minimum risk of unintended consequences. Government departments often seek early design input from PCO, and we can be heavily involved (even before instructions are received) on these issues. Throughout the drafting process, parliamentary counsel work closely with government departments who have the policy and legal expertise in the particular subject matter. This is backed up by additional quality assurance processes later in the process (peer review and proofreading) that focus on legal workability and minimising the risk of errors.

Constitutionally sound: High-quality legislation is also critical to the functioning of New Zealand's democracy. Laws that overreach can do significant harm by inhibiting freedoms or undermining important values or institutions of our society. It is increasingly important to check how proposals interact with the Treaty of Waitangi and post-settlement obligations well in advance of legislation being developed so that risks can be identified and proactively managed. Following a good process for making law supports the legitimacy of that law, and increases public confidence in the system more generally.

PCO embeds these concerns in its drafting, but also by working with others. For example, we work with the Ministry of Justice on vetting under the New Zealand Bill of Rights Act 1990, with Crown Law on issues that raise Crown legal risks, with both Crown Law and the Office of Treaty Settlements on Treaty issues, and by providing the secretariat to the Legislation Design and Advisory Committee (see more at paragraph 18). The extensive role that parliamentary counsel play in drafting and advising on select committee amendments supports Parliament's scrutiny of legislation.

Accessible: If laws cannot be found or understood, the rule of law risks being undermined. PCO publishes primary legislation and all secondary legislation that it drafts on the NZL website.

We seek to draft in plain language that ordinary users can understand. We have a number of tools that we are using to systematically bring legislation into a simpler and more coherent framework (see more at paragraphs 14 to 17).

The NZL website is a critical tool to provide one central place for access to New Zealand's laws. The PCO has a strong focus on maintaining the durability of this asset and incrementally improving it for the public, particularly through increasing the extent of secondary legislation that can be found on or via the website (see more on the Access to Secondary Legislation project at paragraphs 21 and 22).

PCO has specific functions designed to support these goals

13. As well as embedding these objectives in PCO's core drafting and publication work as described above, PCO has a number of specific functions that support them.

Simplifying and modernising laws through revision and rewrites

14. The Attorney-General has a role under Part 2 of the Legislation Act 2012 to prepare, and consult publicly on, a draft revision programme for each new Parliament and, with Cabinet's approval, to present it to the House. To support this role, PCO develops the revision programme in consultation with agencies.

15. Revision is a process for making New Zealand law more accessible. Old, heavily amended, and scattered Acts are able to be tidied up and put into clearer, up-to-date language and format, but without being substantively changed. The result is law that is easier to understand and use. Streamlined House procedures for revision Bills ensure that progress on the House's other work is not affected.
16. A new revision programme is needed for the 52nd Parliament. A draft programme has been developed by PCO in consultation with agencies for public consultation. We will provide you with a fuller briefing on this draft programme.
17. In addition to the revision programme, PCO has been actively encouraging progress on "rewrites" or "revision plus" projects. These are Bills rewritten using the usual House processes, but ensuring that legislation is replaced and modernised when amended (rather than additional complexities just being grafted on to old law). The PCO also uses its editorial powers under the Legislation Act 2012 to correct minor obvious errors that would otherwise undermine the ability to search for and understand legislation.

Supporting better design through the Legislation Design and Advisory Committee

18. The Legislation Design and Advisory Committee (LDAC) improves the quality and effectiveness of legislation by advising departments on legislative design and constitutional and public law issues in the LAC Guidelines (2014 edition). The PCO provides the secretariat, legal, and policy support for the LDAC. There has been significant work over this year in updating the LAC Guidelines and in reviewing the first 2 years' operation of LDAC. Further material about LDAC is in Appendix 3. LDAC will provide you with a separate briefing on its activities.

Supporting Treaty settlements through the Treaty programme

19. The PCO works closely with the Office of Treaty Settlements (OTS) and the Minister for Treaty of Waitangi Negotiations to progress the Bills required to implement Treaty settlements. This is a significant aspect of enabling the Crown to meet its commitments to its Treaty partner. This important work is programmed through the OTS Governance Board and supported through processes where PCO drafts in parallel with the negotiation of the settlement deed. The development of standard clauses for Treaty Bills has been vital in ensuring our ability to manage the drafting workload and ensure that iwi are treated consistently.

PCO also has new strategic initiatives to advance these goals further

20. The PCO has 7 new strategic initiatives which are designed to further advance the stewardship goals. These are captured in a diagram in Appendix 2 and summarised below.

Strategic initiative 1: Making all secondary legislation accessible from one place online

21. The secondary legislation that PCO drafts (ie, Legislative Instruments) is published in consolidated form on the NZL website. The majority of secondary legislation drafted and made by other agencies is not published in a single place or consistent manner. Various inquiries and reviews have called for this body of law to be made more accessible. The Access to Secondary Legislation project seeks to address this. The necessary legislative changes to enable this will be made by the Legislation Bill (introduced in June 2017), together with its future companion Bill to consequentially amend all empowering provisions for secondary legislation (expected to be introduced next year).
22. PCO is in the early stages of trialling technology. For the first time, we are beginning to identify the scale and variety of the legislation that exists, the variety of ways in which it is currently

made available to users, and the degree of change necessary across agencies. We will brief you more on what PCO is discovering.

Strategic initiative 2: Completing the online historical collection of laws

23. All in force Acts and Legislative Instruments are available on the NZL website in up to date form. This initiative seeks to complete that collection by adding all historical Acts back to 1841, plus historical Bills and Legislative Instruments.

Strategic initiative 3: Drafting laws in plain language

24. The use of plain language in legislation is at the heart of the rule of law. PCO focuses on the users of laws. These users are ordinary people who expect to access the law online and, when accessed, understand it, as well as lawyers and administrators. This focus on ordinary users has been a long-held practice of PCO, but we have recently reviewed our use of plain language and developed a plain language standard and checklist. We are now taking further steps to reinvigorate PCO's plain language use through resources, training, and our quality assurance processes.
25. As part of our stewardship role, PCO has made the new plain language standard available to other agencies that draft legislation and has also provided some training. The standard is also available to the public online.

Strategic initiative 4: Using more standard provisions in legislation

26. The PCO is committed to reducing unnecessary complexity in New Zealand's legislation. Increasing the use of standard provisions and approaches in drafting will make it easier for users to understand, and find their way around, legislation. PCO is developing more standard clauses (similar to those used in Treaty Bills) and supporting guidance for both drafters and agencies instructing the PCO.
27. The PCO expects that greater standardisation will also give wider opportunities to build understanding about common concepts across legislation, foster a more systematic approach to resolving legislative issues, lower the risks of unintentional error, and increase efficiencies in producing legislation. This will improve legislation's fitness for purpose. Looking out to the future, greater standardisation may assist use (and re-use) of legislative data through technological developments.

Strategic initiative 5: Improving legislative capability across the Government and more widely

28. The PCO already provides a range of training to instructing departments, agencies carrying out their own drafting, and (together with the Office of the Clerk) in Parliament. The PCO is proposing to develop a strategy setting the purpose, priority, and approach of PCO's education and information activities to build awareness of what makes good legislation within the wider public sector, and to broaden the understanding of legislation by the public generally.
29. The PCO is also continuing to develop and implement its own systems to ensure that knowledge and information can be easily stored and shared across the organisation and with our key partners.

Strategic initiative 6: Increasing capacity in the use of te reo Māori in legislation

30. In 2016, Te Ture mō Te Reo Māori/the Māori Language Act was enacted, the first Act to give effect to substantive Government administrative policy in both Māori and English. There is a growing demand from Ministers, Parliament (particularly the Māori Affairs Committee), and the

public for dual language legislation. In addition, there is an increasing use of te reo Māori words and tikanga concepts in mainly English language legislation.

31. The PCO has embarked on a strategy to increase PCO's capacity, and to provide effective supporting processes and resources, for dual language legislation and providing advice on the incorporation of Māori cultural concepts and te reo Māori phrases into English language legislation.

Strategic initiative 7: Improving the processes for making legislation

32. The PCO will look for opportunities to improve the systems for making legislation and to work with other agencies to improve the efficiency and effectiveness of the law-making process. (For example, we recently made a submission to Parliament's Standing Orders Committee on the Standing Orders review on the benefits of having a 24-hour notice period for substantive Supplementary Order Paper (SOP) amendments to legislation.)

PCO supports the Attorney's focus on the rule of law

33. As the principal legal adviser for the Government, a key focus for the Attorney-General is whether legislation upholds the rule of law.
34. PCO supports your role by reporting to you if significant legal risks emerge in drafting that you may wish to address with other Ministers. In practice, these issues are most likely to arise in a number of contexts:
 - We alert you if there are legal issues on proposed legislation that we think will seriously impact on the quality of the law, have broader implications across the statute book, or give rise to Crown legal risk.
 - We alert you if final quality assurance processes (peer review and proofreading) have not been undertaken on any Bill (so giving rise to risk to the Crown). This is most likely to arise if there is significant timing pressure before a Bill is introduced into the House.
 - The PCO certifies to the responsible Minister that secondary legislation drafted by PCO is within the empowering provision in the Act or alerts them to any risks that the secondary legislation is either not clearly empowered or may give rise to concerns for the Regulations Review Committee. Where these risks are high, we will alert you of our concerns before the relevant Cabinet Legislation Committee meeting.
 - We assist Crown Law in maintaining the register of Crown legal risk in relation to legislation by identifying Acts that create risk.
 - The Cabinet Manual requires policy to be approved before PCO may draft on instructions. However, the current protocol permits drafting in advance of policy approvals with your approval. If requests for your approval are made under this protocol, we provide you with advice on whether drafting in advance of approvals is the best way to ensure legislation can be achieved in time while minimising risks.
35. More generally, we provide proactive support in the following ways:
 - Assisting you to report to Parliament on an annual basis on the number of Acts that have been enacted but not yet brought into force (latent legislation). This initiative is intended to ensure that government departments are regularly asked to justify whether legislation should be brought into force or repealed. In addition, we have worked with Treasury to run a Statutes Repeal Bill to repeal laws on this list that are no longer needed. Over the last four years, the number of Acts on this list has steadily reduced.
 - Preparing a revision programme for adoption by the new Parliament (as referred to above at paragraphs 14 to 17).
 - Monitoring for opportunities to reduce complexity in legislation and enhance stewardship.

What are our other key relationships?

36. As discussed above, PCO is not the sole legislative steward and so we need to work collaboratively with others to support their roles in delivering the stewardship goals. A full picture of our key relationships is set out in Appendix 4. We have highlighted some below.
37. **Leader of the House:** PCO supports the Leader of the House's role in managing the House's business by:
- providing up-to-date information on the likely time needed to draft Bills and amendments and the readiness of Bills to progress in the House. This may affect legislation that Ministers are seeking to introduce or progress in the House, but is also valuable in assisting the Leader of the House to settle the legislative programme for the Government at the beginning of each year
 - advising if quality assurance processes have not been undertaken on Bills (so giving rise to risks to the Crown)
 - advising on other risks around legislation that may impact on the management of the legislation programme or the progress of Bills in the House (for example on proposals to take urgency).
38. **Cabinet Office:** PCO works closely with the Legislation Co-ordinator in the Cabinet Office in reporting to the Leader of the House. PCO and Cabinet Office consider that this support for you and the Leader of the House could be further enhanced if senior PCO officials attended the Cabinet Legislation Committee (as senior officials attend other Cabinet policy committees).
39. **Instructing departments and the Government Legal Network:** PCO works closely with instructing departments in drafting legislation, and so has extensive connections with their legal and policy teams. We produce online and other resources and provide training to departments designed to assist them to work effectively with the PCO, especially when giving instructions and responding to drafts. We liaise with departments on efforts to support their stewardship obligations under section 32 of the State Sector Act 1988.
40. The PCO is also a strong contributor to the development of the Government Legal Network (GLN). The Deputy Chief Parliamentary Counsel (Access to Legislation) is a member of the GLN committee and PCO has made a strong commitment to engaging GLN summer clerks and graduates.
41. **Office of the Clerk:** We have a close relationship with the Office of the Clerk. On a day-to-day basis, we liaise with them on introduction of Bills, in select committees, at the Committee of the whole House stage, and on the preparation of Bills for Royal assent. More generally, we provide opportunities for secondment and training to the Office of the Clerk to support their capability to draft members' Bills. We also work with them on strategic matters, such as the recent Standing Orders review where we recommended changes from the current Part-by-Part debate and a 24-hour notice period for substantive SOPs.
42. **Regulations Review Committee:** The Regulations Review Committee performs an important function for Parliament by reviewing the empowering provisions in Bills and secondary legislation made under Acts on the grounds set out in Standing Orders. The PCO has worked closely with the Committee and its advisers on the Access to Secondary Legislation project, and on other cross-cutting issues that affect the delegation of legislative power.

43. **Crown Law:** Crown Law’s leadership role for the GLN, and its focus on the rule of law, makes our relationship with Crown Law vital. We are working to increase collaboration on Crown Law advice affecting drafting of legislation and to ensure government departments raise Crown legal risks with Crown Law early in the policy process.
44. **Regulatory Quality Team at Treasury:** The Treasury is the lead adviser on regulatory management, focussing on embedding a “regulatory stewardship” approach in government. The regulatory stewardship approach counters the “set and forget” mind-set, regulatory under-performance, undue burdens on New Zealanders, and sometimes regulatory failure. We work with them to support this stewardship approach, and the Treasury has been helpful in seeking to increase the engagement by agencies with the Access to Secondary Legislation project in particular. The regulatory stewardship strategies that have been published by major regulatory departments present opportunities for the PCO to develop more proactive management of the legislative stock by departments.
45. **The Judiciary:** The PCO supports the constitutional role of the Judiciary directly by assisting the Rules Committee with advice and legislative drafting services. There is an opportunity to enhance and grow these connections to seek broader feedback on drafting practices and engagement on issues around the interpretation of legislation.
46. **Pacific nation relationships:** In 2011, the PCO established a Pacific Island desk to provide legislative drafting assistance, training, and mentoring to Pacific Island nations. The desk operates with funding from the Ministry of Foreign Affairs and Trade. The assistance is focussed on the Cook Islands, Niue, and Tokelau (the three nations within the Realm of New Zealand). Assistance is extended to other Pacific Island nations where resources permit. A key focus in the future is on building the internal Pacific Island drafting capacity.
47. PCO maintains collaborative relationships with Pacific Island nations through its involvement in the Pacific Islands Law Officer’s Network (PILON) and the Pacific Islands Forum Secretariat. This involvement provides opportunities for sharing knowledge and experience on common issues across the Pacific.
48. **International relationships:** The PCO also proactively engages with other drafting offices around the world. In particular, the Chief Parliamentary Counsel regularly liaises with the heads of Australian drafting offices. In addition, PCO has a significant leadership role in the Commonwealth Association of Legislative Counsel (CALC). CALC has a membership of over 400 legislative drafters from Commonwealth countries and organises international professional development conferences for legislative drafters. Two New Zealand parliamentary counsel are currently acting as the Vice President and Secretary of CALC, and PCO provides the technical support for the CALC website.

Part B: Current opportunities and emerging challenges

49. We will provide you with specific briefings on the Access to Secondary Legislation project and other key immediate challenges and opportunities in the next few weeks.

Legislation Bill

50. The new Legislation Bill presents an opportunity to consolidate all the laws on legislation and to enhance the existing settings for stewardship.

51. The current Legislation Act 2012 contains the basic statutory framework for the drafting and access to legislation and Parliament's oversight of secondary legislation. The new Bill is a rewrite of the 2012 Act and—
- includes changes needed for the implementation of the Access to Secondary Legislation project
 - updates and incorporates the Interpretation Act 1999, (currently administered by the Ministry of Justice). The PCO will then take over responsibility for administering those provisions once incorporated. This will support the PCO's focus on enabling the public to understand and use legislation
 - makes changes to increase the availability of information about the development and content of Government legislation (through disclosure statements) to inform parliamentary and public scrutiny
 - make improvements to the 2012 Act, particularly to reflect stewardship initiatives. PCO's stewardship role is reinforced with a new objective for PCO and a new explicit function of providing guidance and other support for, and keeping under review, practices relating to the design, drafting, and publication of legislation. Improvements are also made to the revision powers and procedures.
52. The Bill was introduced shortly before the election and is awaiting its first reading. We will provide you with a further briefing on next steps for the Legislation Bill (together with its future companion Bill, which will make consequential amendments to all empowering provisions for secondary legislation).

Revision programme – scope to grow and develop

53. As mentioned above (see paragraph 15), revision and rewrites of old and heavily amended or scattered legislation are vital to progressively and systematically improve New Zealand's legislative framework. Without this work, legislation will continue to grow in complexity as each amendment is grafted on to the existing structure. This work also provides an opportunity for government departments to exercise stewardship of their legislation, as required by the State Sector Act 1988. Revising Acts using the revision programme does not require significant resource from departments. However, it is dependent on some departmental assistance. More substantive "rewrites" involve more resource, but are a valuable opportunity to make minimum policy changes and update the existing law at the same time.
54. We think there are opportunities to progress this work faster and more effectively, including by dedicating more resource across Government to it. It also needs coordination and commitment across the state sector to proactively improve the existing stock of legislation for users.
55. We are developing options for assessing, and reporting to you on, the current stock of legislation against our goal of legislation that is easy to find, use, and understand.

Emerging challenge and opportunity presented by technology

56. There are rapidly increasing expectations for legislation to be accessed and used in new ways. The PCO is currently undertaking some initial scoping work to assess what ongoing advances in technology may mean for the way in which legislation is made available and accessed. This has implications for the way in which legislation is drafted. The work is directed at ensuring PCO is aligned to work being done by government agencies (in particular, the Department of Internal Affairs) to find innovative ways to deliver services to the public.

Current international trend towards greater transparency and accessibility of law

57. It is an increasing trend for international trade agreements to contain proposed commitments and expectations relating to good regulatory practices and processes, including the transparency and accessibility of the law. The Trans-Pacific Partnership Agreement, for example, contained new transparency publication requirements. The Access to Secondary Legislation project will assist New Zealand to meet these new requirements.
58. Some proposals that relate to the administrative consultation processes and practices of central government entities may not be directly relevant to PCO's responsibilities, but are relevant to PCO's wider interest in lifting the quality of legislative content and design. For example, proposals for releasing exposure draft regulations for consultation. This may benefit legislation design, but may also affect the timing and cost of legislation. When any transparency or access proposals are being negotiated, the potential impact on New Zealand's current processes and practices need to be carefully considered.

Building a coordinated approach to legislative quality

59. There are many initiatives underway at present to support the quality of New Zealand's legislative or regulatory quality. These include the regulatory stewardship initiative by the Regulatory Quality Team at Treasury, the focus on legislative design and key principles of good legislation by LDAC, the requirements for transparency in disclosure statements for new legislation, and Parliament's own initiative to undertake enhanced legislative scrutiny through select committees.
60. The range of initiatives, in itself, recognises that there are ongoing concerns about legislative quality. The challenge is to ensure that these initiatives are well-integrated and effective in practice. We are continuing to develop our thinking on how to improve the coordination of various initiatives and so lift overall effectiveness. If this is an area of interest for you, we would welcome the opportunity to discuss our thinking with you as it develops.

Appendix 1: Nature and scope of PCO's role

Legislative framework

1. The PCO is constituted as a separate statutory office under the Legislation Act 2012. The PCO is under the control of the Attorney-General or, if there is no Attorney-General, the Prime Minister. The PCO is not part of the core Public Service under the State Sector Act 1988, and so is not under the direct control of the State Services Commissioner. However, the PCO is subject to certain provisions of the State Sector Act 1988, including those that relate to setting and enforcing minimum standards of integrity and conduct.

PCO outputs

2. The PCO's multi-category appropriation consists of two distinct but complementary outputs— Law Drafting Services and Access to Legislation—that deliver different parts of the same service to the Government, Parliament, and the wider New Zealand public.
3. The Attorney-General is responsible for appropriations in Vote Parliamentary Counsel for the 2017/18 financial year covering the following:
 - a total of nearly \$17 million for providing law drafting services. This includes legislative drafting assistance to Pacific Island nations, undertaking 3-yearly programmes of statute law revision, and administering legislation that the PCO is responsible for
 - a total of \$3.5 million for providing access to legislation in both paper and electronic form
 - a total of almost \$3 million for purchasing and developing assets by and for the use of the PCO as authorised by section 24(1) of the Public Finance Act 1989.

What PCO drafts

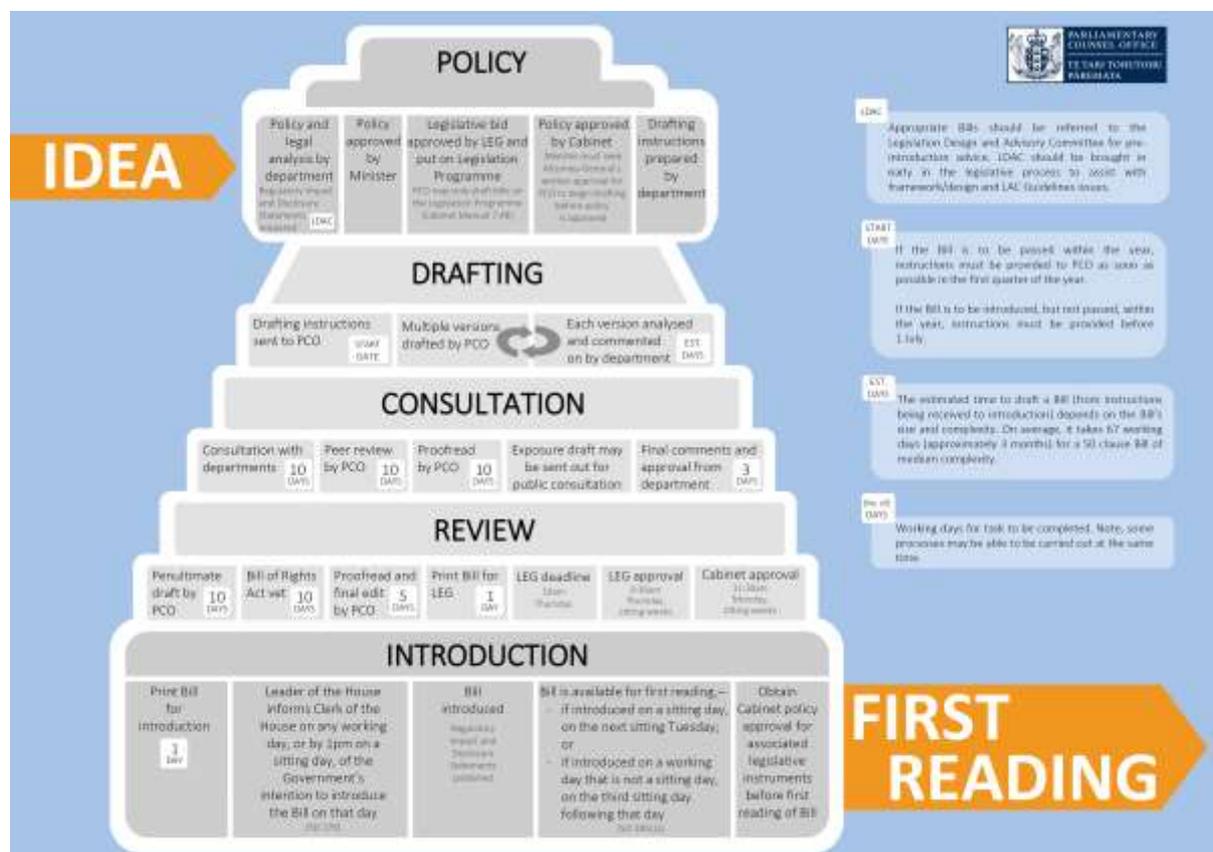
4. **Government Bills and core secondary legislation:** PCO drafts Government Bills and amendments to those Bills required by select committees and Ministers at the Committee of the whole House stage. However, Inland Revenue Department (IRD) drafts Bills that it administers. PCO also drafts much of the core secondary legislation by which Acts are implemented (Legislative Instruments and other important instruments).
5. In practice, we operate on the assumption that we will, in any year, draft between 50 and 70 new Bills and between 300 and 400 Legislative Instruments. However, the numbers are difficult to predict with any accuracy, and numbers do not capture the differences in size and complexity.
6. PCO's drafting work is undertaken by parliamentary counsel and associate parliamentary counsel. Our ability to deliver legislation in good time to meet the Government's legislative priorities is dependent on a number of factors:
 - PCO prioritises its work according to the legislative programme adopted by Cabinet. In recent years, the rigour of the legislative programme has increased, which increases the predictability of work flows for PCO and so the ability to better direct effort both within PCO and government departments to ensure that the right legislation is being prioritised at the right time. The key determinants are realistic timetables in legislative bids, early identification of risks to those timetables, and active management of the legislative programme by the Leader of the House and the Cabinet Legislation Committee.
 - Although parliamentary counsel work in drafting teams that are dedicated to groups of government departments, PCO proactively shifts or combines drafting resource across the office if required. Recently, PCO has also set up an external panel to provide additional drafting resource for peak workflows (largely focussed on assisting with peer review).
 - Drafting legislation is a team effort. The capacity of government departments to provide effective instructions and dedicate time to working with parliamentary counsel on legislation

is critical. Increasingly, PCO is seeking to engage with departments early to assist with design issues.

- Late changes to policy, either pre-introduction or once legislation is in the House, significantly increase the risk of error and risks of inaccessible or unworkable legislation.
7. The extent of work required for drafting secondary legislation is both significant (requiring about 40% at any one time of the PCO drafting resource) and important. Secondary legislation is a growing component of legislation and often has the most direct impact on the public. PCO and Cabinet Office are seeking to improve the prediction and management of instructions for secondary legislation required to implement new Acts.
 8. **Members' Bills:** PCO also assists on Members' Bills at your direction. Recent practice of the Attorneys-General is to direct 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. These Bills often involve substantial work at the select committee stage given that they have not been through normal policy and drafting processes. This has been a growing aspect of PCO's work over the last parliamentary term.
 9. **Local and Private Bills:** PCO also examines and reports on Local Bills and Private Bills. This involves providing drafting assistance to local authorities and their legal advisers for Local Bills, and to the promoters and their legal advisers for Private Bills. In most cases, this involves providing drafts or redrafts of Bills.

The usual drafting process

10. The following diagram indicates the usual steps in making a Bill, together with some rules of thumb on timing:



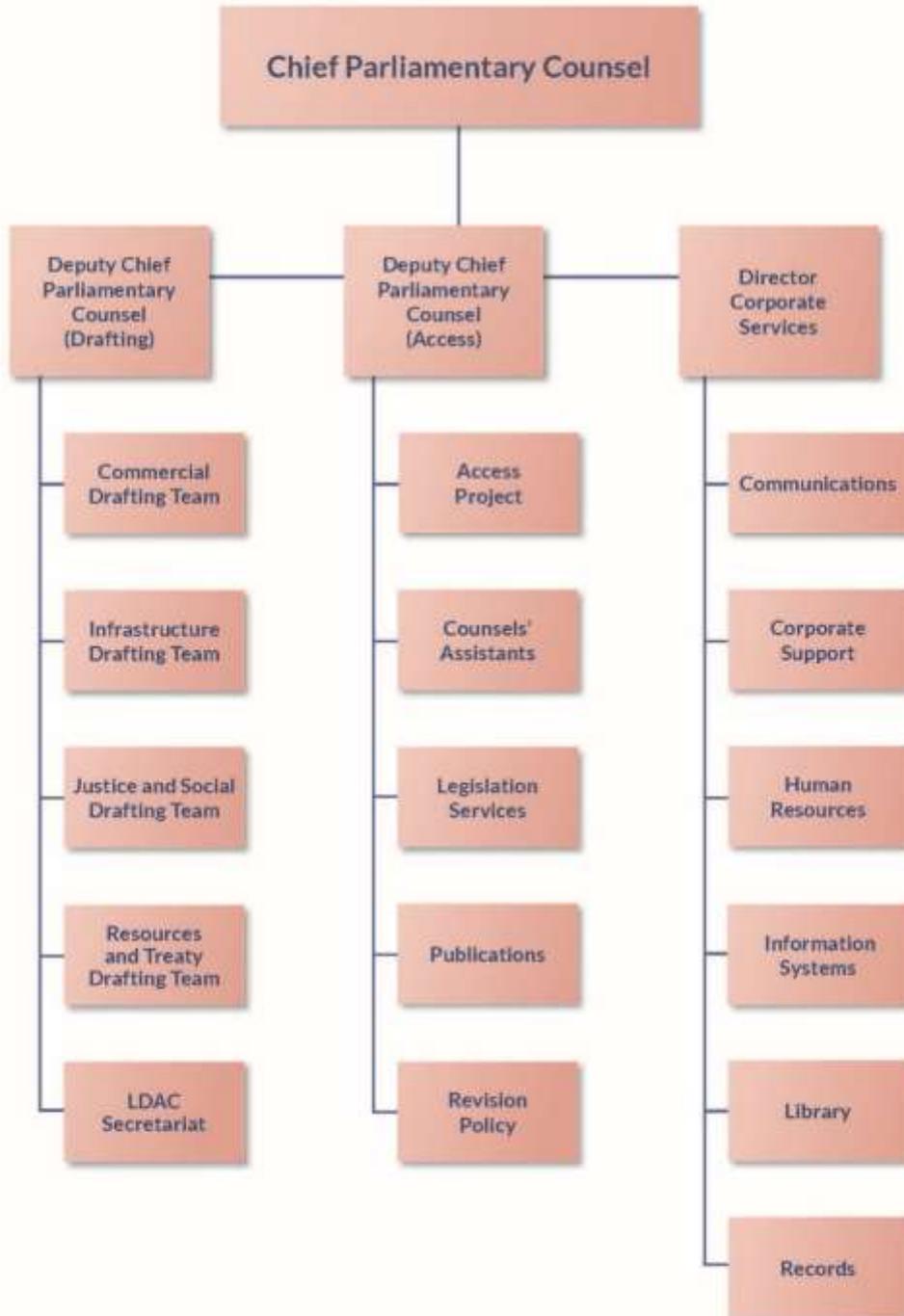
PCO publication role

11. The PCO has an integrated XML-based drafting and publishing system, which provides public access to up-to-date official legislation, in both printed and electronic form.
12. **NZ Legislation website:** The NZL website provides free access to Bills, Acts, Legislative Instruments, and SOPs. The website also provides links to a small proportion of other secondary legislation that is published separately by agencies.
13. **Drafting and publication software:** The New Zealand Legislation System is the core part of the PCO's day-to-day business activity. It is used for both the drafting and publishing of legislation. It is supported and maintained in-house by PCO's Information Services team. Approved providers are engaged to provide specialist skills in areas such as code verification and XS-LFO print style-sheets.
14. The PCO has a disaster recovery plan in place for the New Zealand Legislation System and other IT systems, which includes a back-up site in Auckland, to ensure service delivery risks are mitigated as much as possible in the event of a major incident. The PCO recently successfully re-tested its disaster recovery plan for this system.
15. **Publishing of legislation and supporting documents:** The PCO's Publications Unit (PU) has responsibility for all publication functions, both website-based and printed format (provided by a commercial printer).
16. In addition to publishing Bills, Acts, SOPs, revision-tracked versions, and Legislative Instruments, PCO publishes supporting documents relating to Bills and SOPs, such as the departmental legislative disclosure statements. The PU also supports the publishing requirements of the PCO, Office of the Clerk, IRD, and other government agencies and departments.
17. **Reprinting legislation:** The Publications Unit is also responsible for reprinting legislation. A reprint simply republishes a particular enactment with all its amendments incorporated, but the enactment is not re-enacted by Parliament. As part of the reprinting process, the PCO can correct obvious errors and (if authorised by Order in Council for the purpose) renumber legislation. Reprints published by the PCO have official status under the Legislation Act 2012 as authoritative statements of the law.
18. With the greater availability of legislation in electronic form, people are increasingly obtaining legislation online and the demand for printed copies of reprints has dropped. The NZL website was declared an official source of legislation on 6 January 2014 under section 17 of the Legislation Act 2012. PCO ceased publication of hard copy reprinted legislation at the end of the 2013/14 financial year. We provide a link to a publishing service for those who wish to purchase printed copies online.

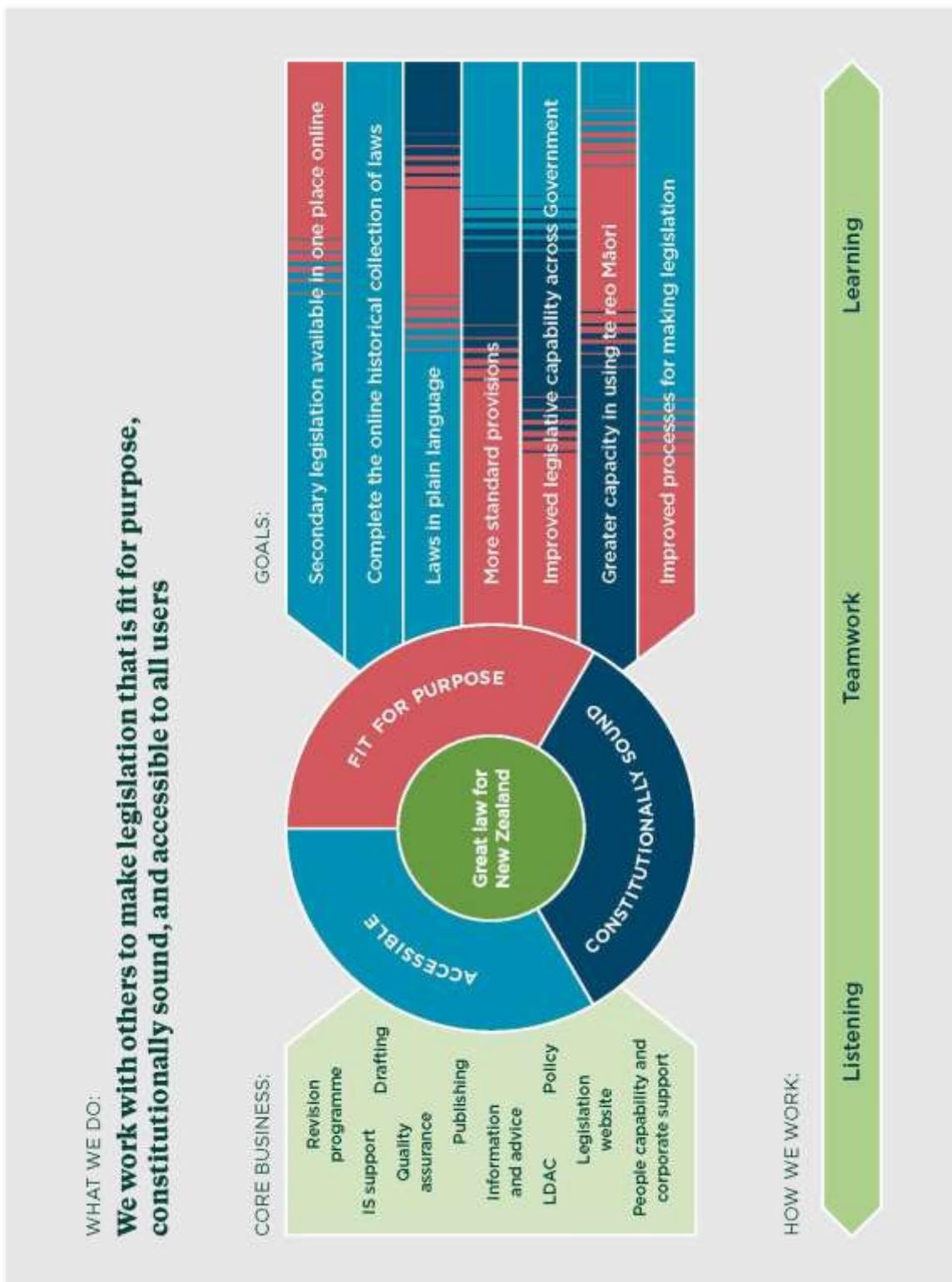
PCO organisational structure

19. PCO organisational structure is set out on the following page:

Organisational structure



Appendix 2: PCO's core business and strategic initiatives



Appendix 3: Legislation Design and Advisory Committee

LDAC was established in 2015 to improve the quality and effectiveness of legislation. It provides advice on design, framework, constitutional, and public law issues arising out of legislative proposals. It is responsible for the LAC Guidelines on Process and Content of Legislation (2014 edition) (the Guidelines), which have been adopted by Cabinet.

LDAC has four core functions:

- advising departments in the initial stages of developing legislation, usually when legislative proposals and drafting instructions are being prepared
- scrutinising and making representations to select committees, through its External Subcommittee, on Bills that raise issues about compliance with the Guidelines
- maintaining and updating the Guidelines, together with supplementary material, for officials who design, develop, and draft legislation
- providing training and education about developing quality legislation consistent with the Guidelines.

LDAC may report to the Attorney-General on departures from the Guidelines in legislative proposals and advise the Attorney-General on any other topics and matters in the field of public law that the Attorney-General from time to time refers to it.

Membership

Members are either ex officio or appointed by the Attorney-General.

Public service members:

- Paul Rishworth QC, Senior Crown Counsel, Crown Law Office (Chairperson)
- Andrea King, Chief Advisor, Ministry of Justice (ex officio)
- Andrea Speir, Manager Legislation, Ministry for Primary Industries
- Anthea Williams, Principal Legal Adviser, Ministry for Primary Industries
- Becky MacNeill, Group Manager, Operational Policy, Ministry for Culture and Heritage
- Cassie Nicholson, Deputy Chief Parliamentary Counsel (Drafting), Parliamentary Counsel Office (ex officio)
- Fiona Leonard, Chief Parliamentary Counsel, Parliamentary Counsel Office (ex officio)
- Geoff Daniels, Principal Advisor, Ministry for Primary Industries
- Jacqueline Derby, Principal Counsel, Parliamentary Counsel Office (ex officio)
- Jason Gough, Senior Crown Counsel, Crown Law Office
- John Sutton, Principal Policy Analyst, Department of Internal Affairs
- Jonathan Ayto, Principal Advisor, The Treasury
- Karl Simpson, Policy Director, Ministry of Business, Innovation and Employment
- Sarah Kerkin, Chief Advisor to the Deputy Secretary, Ministry of Justice
- Stewart Bartlett, Principal Policy Analyst, Ministry of Social Development
- Tania Warburton, Policy Advisor (Legal), Department of Prime Minister and Cabinet (ex officio)
- Wendy Illingworth, Policy Manager, Ministry of Social Development (reserve member)

External Subcommittee members (from outside the Public Service):

- Professor Geoff McLay (Chair), Victoria University of Wellington Faculty of Law
- Professor Andrew Geddis, University of Otago Faculty of Law
- Brigid McArthur, Partner, Greenwood Roche
- James Wilding, Barrister, Clarendon Chambers
- Jeremy Johnson, Partner, Wynn Williams
- Jonathan Orpin, Barrister, Stout Street Chambers
- Kate Salmond, Senior Legal and Policy Advisor, Law Commission
- Māmari Stephens, Senior Lecturer, Victoria University of Wellington Faculty of Law
- Martha Coleman, Barrister, Martha Coleman Barrister
- Matthew Smith, Barrister, Thorndon Chambers
- Megan Richards, Partner, Minter Ellison Rudd Watts
- Rebecca Rose, Senior Associate, Bell Gully
- Sean Kinsler, Associate, Meredith Connell
- Simon Mount QC, Barrister, Bankside Chambers
- Tiana Epati, Partner, Rishworth Wall & Mathieson

Appendix 4: Key relationships

Stakeholder	Relationship
All users of legislation	The PCO provides public access to up-to-date official legislation on the NZL website at www.legislation.govt.nz .
Inland Revenue Department (IRD)	The PCO provides Inland Revenue Department’s drafting unit with access to the NZL system. This unit is responsible under current arrangements for drafting tax legislation. The PCO has developed a Memorandum of Understanding with IRD for processing, printing, supplying, and publishing its legislation.
Cabinet Office	The PCO works closely with the Legislation Co-ordinator in the Cabinet Office, whose role is to provide support to the Government of the day in developing, monitoring, and modifying the legislation programme, and with the Secretary of the Cabinet Legislation Committee.
Leader of the House	The PCO works closely with the offices of the Leader of the House and Deputy Leader of House in assisting with the progress of Government legislation through the House.
Instructing departments and agencies	The PCO has extensive working relationships with all central government departments and agencies in terms of taking instructions from them for drafting new and amending legislation and providing links and electronic “feeds” from the NZL website.
Regulations Review Committee	The Regulations Review Committee performs an important function for Parliament by reviewing the empowering provisions in Bills and secondary legislation made under Acts on the grounds set out in Standing Orders. The PCO has worked closely with the Committee and its advisers on the Access to Secondary Legislation project, and on other cross-cutting issues that affect the delegation of legislative power.
Drafting agencies	The PCO is working with agencies that draft secondary legislation to address the concerns about the inaccessibility of that legislation (the Access to Secondary Legislation project). We are also increasing our support for their drafting capability through training and other resources.
Office of the Clerk of the House of Representatives	The PCO works closely with the Office of the Clerk and has developed a Memorandum of Understanding with that office for processing, printing, supplying, and publishing legislation. The PCO provides the Office of the Clerk with access to the NZL system to draft Members’ Bills.
Office of Treaty Settlements (OTS)	The PCO works closely with the Office of Treaty Settlements, particularly through its membership of the OTS Governance Board, to programme and advance the programme of Treaty Bills.

Crown Law	Crown Law’s leadership role for the GLN, and its focus on the rule of law, makes our relationship with Crown Law vital. We are working to increase collaboration on Crown Law advice affecting drafting of legislation and to ensure departments raise Crown legal risks early with Crown Law in the policy process.
Legislation Design and Advisory Committee (LDAC)	The PCO provides LDAC with policy and secretariat support.
Law Commission	The PCO works with the Law Commission on matters of law reform.
Government Legal Network (GLN)	The PCO is a strong contributor to the development of the GLN. The Deputy Chief Parliamentary Counsel (Access to Legislation) is a member of the GLN committee and the PCO has a strong commitment to engaging GLN summer clerks and graduates.
Regulatory Quality Team at Treasury	The Treasury is the lead adviser on regulatory management, focussing on embedding a “regulatory stewardship” approach in government. The regulatory stewardship approach counters the “set and forget” mind-set, regulatory under-performance, undue burdens on New Zealanders, and sometimes regulatory failure. We work with them to support this stewardship approach.
Pacific Island nations	The PCO provides legislative drafting assistance, training, and mentoring to Pacific Island nations through its Pacific desk. The desk operates with funding from the Ministry of Foreign Affairs and Trade and focuses assistance on the Cook Islands, Niue, and Tokelau (the three nations within the Realm of New Zealand). The PCO is also involved in the Pacific Islands Law Officer’s Network (PILON) and the Pacific Islands Forum Secretariat.
International relationships	The Chief Parliamentary Counsel regularly liaises with the heads of Australian drafting offices. In addition, PCO has a significant leadership role in the Commonwealth Association of Legislative Counsel (CALC), with two NZ parliamentary counsel currently acting as the Vice President and Secretary of CALC.
Revera	Revera provides the PCO with infrastructure-as-a-service and desktop-as-a-service products that include maintenance and support of the NZL system.
Parliamentary Service	Parliamentary Service provides a range of services including financial accounting services, payroll, and the parliamentary core computing network. Memoranda of Understanding or Service Level Agreements are in place to manage the provision of these services.