



PARLIAMENTARY
COUNSEL OFFICE

TE TARI TOHUTOHU
PĀREMATA

Strategic Intentions

for the period

1 July 2020 to 30 June 2024

2020
to 2024

Strategic Intentions of the
Parliamentary Counsel Office
Te Tari Tohutohu Pāremata
for the period 1 July 2020
to 30 June 2024

Presented to the House of Representatives
under section 39 of the Public Finance Act 1989

November 2020
Wellington, New Zealand

ISSN 2382-1973 (Print)

ISSN 2382-1981 (Online)

This document is available on the Parliamentary Counsel Office website:

pco.govt.nz



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Chief Parliamentary Counsel statement of responsibility

In signing this statement, I acknowledge that I am responsible for the information on strategic intentions for the Parliamentary Counsel Office. This information has been prepared in accordance with sections 38 and 40 of the Public Finance Act 1989.

Signed:



Fiona Leonard
Chief Parliamentary Counsel

Ministerial statement of responsibility

I am satisfied that the information on strategic intentions prepared by the Parliamentary Counsel Office is consistent with the policies and performance expectations of the Government.

Signed:



Hon David Parker
Attorney-General

Introduction from the Chief Parliamentary Counsel

Over the four years covered by this Strategic Intentions document (SI), the Parliamentary Counsel Office (PCO) will continue to deliver its two outputs of Law Drafting and Access to Legislation. We will draft the Government's legislation programme and ensure that current legislation is readily accessible to the public.

This document sets out the strategic objectives the PCO intends to achieve, or contribute to, over the next four years. One of the key strategic challenges during this period will be supporting the Government's legislative response to the COVID-19 pandemic while ensuring we are well positioned to deliver the Government's legislative programme and meet the future needs of users of our services. Although the response to the COVID-19 pandemic has presented many challenges and will continue to do so, it also allows the PCO to increase its collaboration with agencies and other stakeholders. As a result, the PCO can better assist agencies to improve stewardship of their legislative and regulatory systems.

The PCO's main focus is our role as steward of New Zealand's legislation. Though we are only one of many contributors to the legislative system, our expertise and purpose allow us to play an important leadership role. One major initiative is making all secondary legislation available online. Other significant initiatives include writing laws in plain language, increasing the use of standard provisions in legislation, and increasing the PCO's capacity in the use of te reo Māori. We have identified a number of initiatives designed to help ensure that legislation is accessible, fit for purpose, and constitutionally sound.

Other areas of focus for the organisation are enhancing the support provided to Pacific Island nations and to the Legislation Design and Advisory Committee (LDAC).¹

Our strategic challenge is to ensure we have the capability and capacity, and the technical systems, to deliver high-quality legislation that is accessible to all users.

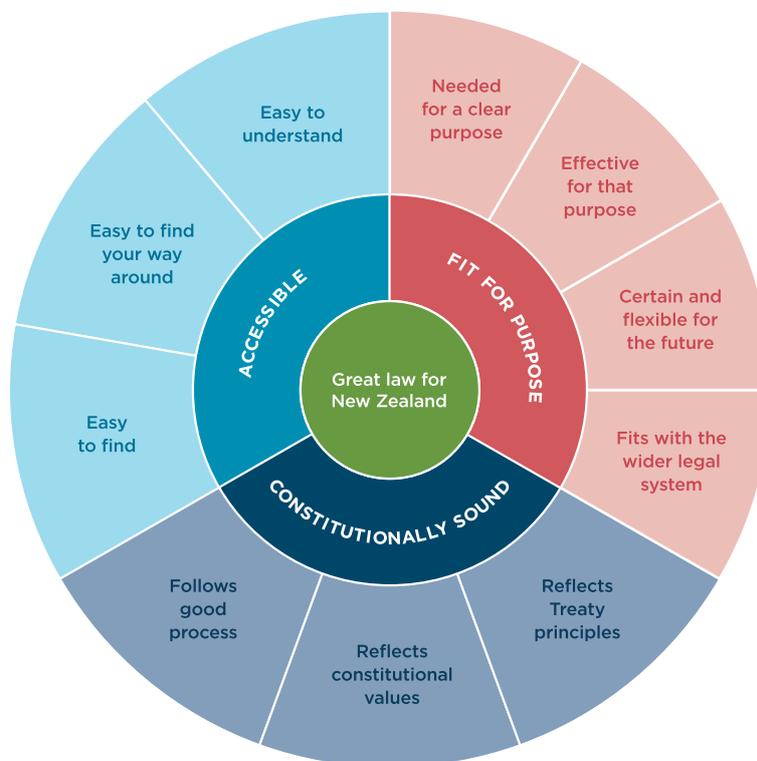
¹ The LDAC was established by Cabinet in 2015. Its role is to improve the quality and effectiveness of legislation by advising on design, framework, constitutional, and public law issues arising out of legislative proposals and Bills. The LDAC is responsible for the Legislation Guidelines, mandated by Cabinet, which are a tool to guide good legislative practice.

Nature and scope of functions

The PCO is constituted as a separate statutory office by the Legislation Act 2012 (the 2012 Act). We are under the control of the Attorney-General or, if there is no Attorney-General, the Prime Minister.

The PCO is not part of the Public Service under the Public Service Act 2020, and so is not under the direct control of the Public Service Commissioner. However, we are subject to certain provisions of that Act, including those that relate to setting and enforcing minimum standards of integrity and conduct.

The PCO’s vision is “Great law for New Zealand”. Great law must be fit for purpose, constitutionally sound, and accessible.



PCO outputs

The PCO’s single departmental output-expense appropriation consists of two distinct but complementary activities: Law Drafting Services and Access to Legislation. These deliver different parts of the same service to the Government, Parliament, and the public. They also enable us to deliver the Government’s legislation programme and ensure that legislation is available to the public.

The nature and scope of the functions relating to these activities are set out on the following pages.

Law Drafting Services

The Legislation Act 2019, which was enacted in October 2019 but is yet to come into force, will replace the Legislation Act 2012. The PCO will continue to have responsibility for drafting Government Bills, including amendments required by select committees and ministers, and secondary legislation² made by Order in Council (known as legislative instruments under the Legislation Act 2012). The Inland Revenue Department (IRD) will continue to draft Bills it administers—but not secondary legislation.

The PCO is also responsible for developing three-yearly programmes of statute law revision for the Attorney-General to present to each new Parliament. The purpose of revision is to make New Zealand's Acts easier to read and understand. We achieve this by rationalising targeted Acts, removing inconsistencies and overlaps, repealing obsolete and redundant provisions, and modernising expression, style, and format. The substantive law is not changed. The revision programme is one way the PCO seeks to improve access to legislation and so achieve its vision of "Great law for New Zealand".

Over the next four years, we will work to ensure the revision process is effective. For example, during the drafting and passing of the first revision Bill, we identified small improvements to the process that we will make through the Legislation Act 2019.

The PCO will also work collaboratively with departments to help their chief executives carry out their legislative stewardship responsibilities under section 12(1)(e) of the Public Service Act 2020. We will support them to rewrite legislation that is old, outdated, or heavily amended but does not qualify for inclusion in the revision programme as it involves changes to policy or substantive changes to the law. The PCO will also provide a legislative vehicle in the form of Statute Laws Revision and Repeal Bills for agencies to make technical, short, and non-controversial amendments with limited policy implications and to repeal obsolete provisions. This will improve the quality of legislation by helping ensure that any legislation an agency is responsible for is fit for purpose.

The PCO's law drafting services are part of the process of implementing new policy or changes to policy through enactment of legislation. Our first involvement with new legislation is during development of the Government's legislation programme, which establishes priorities for proposed legislation. The PCO's advice at this stage, particularly in relation to complexity and size of legislative proposals, enables the Government to more efficiently and effectively manage the legislation programme.

The PCO examines and reports on local Bills and private Bills on the Attorney-General's direction. We provide drafting advice and assistance (including preparation of draft Bills) to the promoters of the Bills and their legal advisers. We also examine and draft Members' Bills if directed to do so by the Attorney-General.

² As the Legislation Act 2019 is likely to come into force in the first half of 2021 and as these Strategic Intentions cover the period 1 July 2020 to 30 June 2024, this document refers to secondary legislation and not legislative instruments.

The PCO, with funding from the Ministry of Foreign Affairs and Trade (MFAT) Aid Programme, provides legislative drafting assistance, training, and mentoring to those involved in, or responsible for, drafting legislation in Pacific Island nations. The current five-year memorandum of understanding (MOU) between MFAT and PCO has been in place since 1 January 2017 and is due to expire in 2022. The PCO will work with MFAT to either extend the current MOU or seek agreement to a new one so we can continue helping Pacific Island nations.

The PCO provides the Legislation Design and Advisory Committee (LDAC) website. The LDAC terms of reference include providing advice to departments on the development of legislative proposals.

Access to Legislation

The PCO is responsible for publishing Acts of Parliament (including reprinted Acts), secondary legislation drafted by the PCO (including reprinted secondary legislation), and reprints of Imperial enactments and Imperial subordinate legislation. The PCO also supplies copies of Bills and Supplementary Order Papers (SOPs) to the House.

The New Zealand Legislation (NZL) system is the complete drafting and publishing system used by the PCO. The drafting system is also available to Office of the Clerk and Inland Revenue Department drafting staff. The system enables the PCO to provide public access to up-to-date official legislation in printed form, and in electronic form on the NZL website at www.legislation.govt.nz.

The PCO will ensure that New Zealand legislation (including Bills and SOPs) continues to be readily accessible in a timely manner and in an accurate and authoritative form. It is fundamental to the effective operation of the rule of law in a democracy that the people governed by the law have access to the rules by which they are governed. Continual maintenance and development of the system that we use to draft and publish New Zealand legislation will ensure that we continue to provide good access.

The PCO publishes legislative disclosure statements on the website disclosure.legislation.govt.nz. These departmental documents provide information about the development and content of legislation proposed by the Government. They assist parliamentary and public scrutiny of a Bill or SOP. Disclosure statements are published for all Government Bills (with limited exceptions) and substantive SOPs introduced or released since 29 July 2013. The rules for disclosure statements are proposed to be simplified through the Legislation Act 2019.

PCO's key partners, customers, and stakeholders

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 .
Cabinet Office	The PCO works closely with the Legislation Co-ordinator in the Cabinet Office, whose role is to provide support to the Government in developing, monitoring, and modifying the legislation programme, and with the Secretary of the Cabinet Legislation Committee.
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.
Drafting agencies	The PCO is working with agencies to implement changes to increase accessibility to secondary legislation. We are also increasing our support for their drafting capability through training and other resources.
Government Legal Network (GLN)	The PCO contributes strongly to development of the GLN. The Deputy Chief Parliamentary Counsel (Access to Legislation) is a member of the GLN committee and the PCO is committed to engaging GLN summer clerks and graduates.
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 an MOU (currently under review) with IRD for processing, printing, supplying, and publishing its legislation.
Instructing departments and agencies	The PCO has extensive working relationships with all central government departments and agencies. We take instructions from them for drafting new and amending legislation and providing links and electronic "feeds" from the NZL website.
International relationships	The Chief Parliamentary Counsel regularly liaises with the heads of Australian drafting offices. In addition, the PCO has a significant leadership role in the Commonwealth Association of Legislative Counsel (CALC), with a NZ Parliamentary Counsel currently acting as Secretary of CALC.
Law Commission	The PCO works with the Law Commission on matters of law reform.

Stakeholder	Relationship
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 management and progress of Government legislation through the House.
Legislation Design and Advisory Committee (LDAC)	The PCO provides LDAC with policy and secretariat support.
Office of the Clerk of the House of Representatives	The PCO works closely with the Office of the Clerk and has developed an MOU with that office for processing, printing, supplying, and publishing legislation. This MOU is currently under review. The PCO provides the Office of the Clerk with access to the NZL system to draft Members' Bills.
Pacific Island nations	<p>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 its help on the Cook Islands, Niue, and Tokelau (the three nations within the Realm of New Zealand).</p> <p>The PCO is also involved in the Pacific Islands Law Officers' Network (PILON) and the Pacific Islands Forum Secretariat.</p>
Parliamentary Service	Parliamentary Service provides a range of services including financial accounting services, payroll, and the parliamentary core computing network. MOUs or service-level agreements are in place to manage this.
Regulations Review Committee	The Regulations Review Committee performs an important function for Parliament by reviewing the empowering provisions in Bills and reviewing secondary legislation on the grounds set out in Standing Orders. The PCO has worked closely with the Committee and its advisers on the Secondary Legislation project, and on other cross-cutting issues that affect the delegation of legislative power.
Regulatory Quality Team at Treasury	The Treasury is the lead adviser on regulatory management, focusing on embedding a "regulatory stewardship" approach in government. This 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.
Revera	Revera provides the PCO with infrastructure-as-a-service and desktop-as-a-service products.

Strategic direction

The PCO’s vision is to make great law for New Zealand. In order for New Zealand law to be great it needs to be fit for purpose, constitutionally sound, and accessible to all users, both current and future. The PCO, although not the sole legislative steward, has a leadership role in the stewardship of New Zealand’s legislation for the benefit of both New Zealanders and for those interacting with New Zealand. The PCO has identified seven key initiatives, all of which have the aim of achieving its vision of great law for New Zealand. Over the next four years the PCO will work collectively with other key participants in the wider legislative system to progress these initiatives. The PCO will also continue to ensure it has the capability, capacity, and technical systems to deliver a high quality legislative drafting service and ready access to New Zealand legislation.

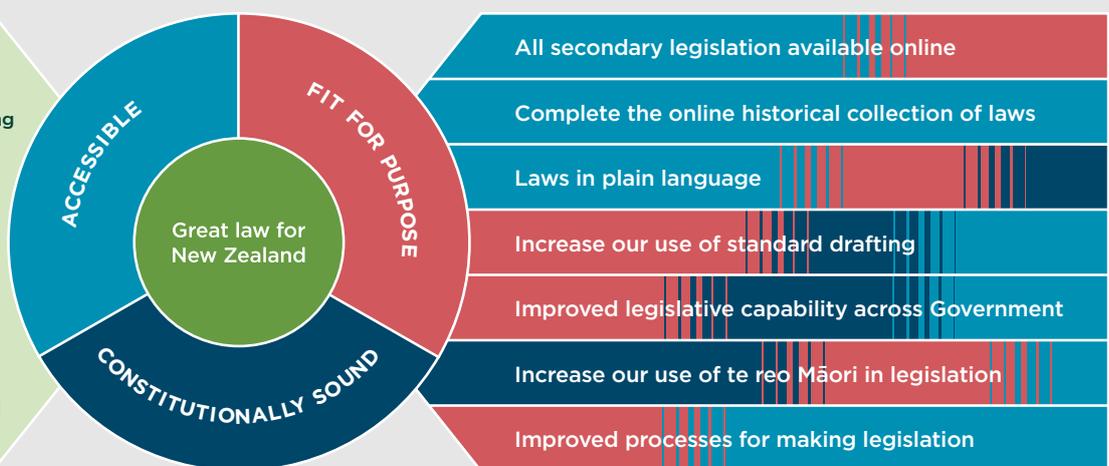
WHAT WE DO:

We work with others to make legislation that is fit for purpose, constitutionally sound, and accessible to all users

CORE BUSINESS:



INITIATIVES:



PCO’s strategic initiatives

The PCO’s strategic initiatives in the short to medium term all aim for New Zealand to be best served by legislation that is fit for purpose, constitutionally sound, and accessible to all current and future users. These initiatives are:

1. All secondary legislation available online

Why is this important?

A review by the Regulations Review Committee in 2014 found that the current law on delegated legislation in New Zealand was inadequate. There was confusion about what constitutes secondary legislation and what instruments Parliament may oversee through the disallowance process. Also, users had difficulties finding secondary legislation.

The objective in this area is to implement the Regulations Review Committee's recommendations. The direct benefits include certainty about where people can find current New Zealand legislation, and ease in accessing it. There is also improved parliamentary oversight of secondary legislation, which results from a clear legal framework. More indirectly, both the clarity and the greater scrutiny are expected to act as catalysts for agencies to exercise better stewardship of—and ultimately improve—their legislative and regulatory systems.

Achievements so far include:

In 2016 the PCO established a project to implement the RRC recommendations.

To make the necessary legislative changes, the project reviewed the statute book to identify every empowering provision in primary legislation. This revealed more than 2500 empowering provisions and potentially tens of thousands of items of secondary legislation.

The Legislation Act 2019 was enacted in October 2019 to establish the legal framework for delivering the benefits of the project. An accompanying Secondary Legislation Bill (which amends every legislative empowering provision across the statute book) was introduced in 2019, referred to the Regulations Review Committee, and reported back to the House on 10 June 2020.

What outcome will we achieve during this four-year period?

Over the coming four years, the PCO will continue to support the passage of the Secondary Legislation Bill through the House, and the implementation of it as well as relevant parts of the Legislation Act 2019.

This will establish with certainty what constitutes secondary legislation and remove the current ambiguity about what instruments Parliament can disallow. We will work with the more than 100 makers of secondary legislation to evaluate the various options for further implementing the Legislation Act 2019 in relation to those possible tens of thousands of pieces of secondary legislation.

2. Complete the online historical collection of laws

Why is this important?

The NZL website already provides a comprehensive collection of in-force Acts and

legislative Instruments and Bills current from 2008. This project aims to expand the collection by including older Bills and legislation that is no longer in force. These historical collections, which the PCO earlier provided to the New Zealand Legal Information Institute to host on their website (nzlii.org), are very high-use collections. This indicates that they are a valuable resource for users.

Achievements so far include:

The PCO has completed the scanning of three significant historical collections:

- Acts 1841–2007
- Statutory Regulations 1936–2007
- Bills before the House (all stages) 1854–2007.

What outcome will we achieve during this four-year period?

The PCO intends to host these significant historical collections on the NZL website. The measure of success of this initiative will be the proportion of these three collections that are freely accessible to all users on the NZL website.

3. Laws in plain language

Why is this important?

The law needs to be accessible to those who are governed by it. If laws cannot be understood, the rule of law is undermined. Laws need to be expressed clearly, concisely, and consistently.

Achievements so far include:

With help from plain language experts, the PCO has developed a plain language strategy supported by a plain language standard and checklist. The strategy is to reinvigorate a plain language culture at the PCO and support our vision of “Great law for New Zealand”. The strategy promotes the drafting of laws that are fit for purpose, accessible, and legally effective. It is also consistent with the PCO’s purpose set out in the Legislation Act 2019: to promote high-quality legislation for New Zealand that is easy to find, use, and understand.

The approach of the strategy envisages:

- a plain language standard
- training everyone to meet the standard
- expecting everyone to meet the standard
- supporting everyone to meet the standard
- measuring how well we have met the standard.

The plain language standard sets out five key elements of a plain-language document:

- The purpose of the document is clear.
- The whole document supports the purpose.
- The structure and layout of the document are clear and logical.
- Headings are useful and aid navigation.
- The tone is consistent throughout and supports the purpose.

We have plain language champions for each business unit. We have also held a number of training workshops on particular elements of plain language, and presentations to staff on the plain language standard and checklist.

Key plain language documents are now available on the PCO's website, to promote transparency. We also share resources with other drafters of legislation, including a list of plain language alternatives to outdated and more complex words.

Another significant achievement was the 2017 Writemark Plain English Award for Best Plain English Legal Document. We won this award for our revision of 13 contract and commercial Acts in the Contract and Commercial Law Act 2017, as part of the PCO's first revision programme.

What outcome will we achieve during this four-year period?

We intend to:

- provide staff with training, including soft-skills training on giving and receiving peer-review feedback, with a focus on plain language feedback
- review the plain language standard and checklist, and supporting documents
- develop a tool for tracking the use of outdated and more complex words
- continue external reviews of appropriate Bills, particularly draft Bills that have been released as exposure drafts to the public, with a focus on our five key elements of plain language
- show continuous improvement in the use of plain language in legislation
- continue commissioning audits to compare legislation, in order to measure progress.

4. Increase our use of standard drafting

Why is this important?

Increasing the use of standard drafting makes our laws both easier for New Zealanders to use and more legally robust. It makes it easier by reducing complexity for users. Unnecessary and confusing differences within and across laws make it harder for users to find their way around and understand legislation.

It also incrementally makes our laws more legally effective. By focusing our effort on standardising the highest-use legislative provisions, we can invest in resolving the many

recurring legal and technical issues in different contexts, and provide well-tested solutions and guidance for the legislative system to use. This maximises value from improving the effectiveness of a relatively small number of provisions.

The critical strands of this initiative are a culture of valuing consistency across legislation, supported by a programme of work on the highest-use legislative provisions. Under this programme, we review existing precedents on those provisions, find and resolve underlying legal and technical issues, and devise and consult on a new standard. We take the opportunity to build our plain language standard into new standard provisions. This initiative provides both an opportunity to obtain feedback from instructing agencies on how legislative provisions are working in practice and a mechanism to resolve these issues.

Achievements so far include:

- establishing the programme of work and a cycle of projects, supported by an inter-agency advisory board
- developing projects on commencement provisions, transitional and savings provisions, secondary legislation empowering provisions, and infringement offences
- securing legal changes (where needed) to support the standard drafting under way.

What outcome will we achieve during this four-year period?

In the next few years we will complete and publish standard drafting on the highest-use provisions, with supporting frameworks for monitoring use, testing accessibility and effectiveness with users, and resolving ongoing issues. We will then work with instructing and drafting agencies to develop and implement the next programme of work.

5. Improved legislative capability across government

Why is this important?

All government agencies have a statutory responsibility to exercise stewardship over the legislation they administer. Also, many other non-government agencies have delegated law-making powers and drafted a significant amount of secondary legislation. While legislative capability does exist, it tends to be localised and concentrated in government agencies with large legislative and regulatory work programmes.

There is a need for system leadership in order to get meaningful improvement in legislative capability across government. This would also assist in managing risks within the system.

The PCO is uniquely positioned to undertake this leadership role as it is responsible for operation of the end-to-end system of drafting and publishing New Zealand's primary legislation. This also aligns with the PCO's statutory objective to exercise stewardship of New Zealand's legislation as a whole (section 129 of the Legislation Act 2019).

Achievements so far include:

One benefit of the PCO's work with other agencies on secondary legislation is that there is now a shared understanding across the PCO, agencies, and other makers of legislation and the Regulations Review Committee about existing powers to make secondary legislation. Our stewardship role has been elevated by the new requirement in the Legislation Act for the PCO to publish an Annual Legislation Report on the use of exemption powers and any other practices relating to the design, drafting, and publication of legislation that the Chief Parliamentary Counsel thinks fit.

During the PCO's work on secondary legislation, we consulted agencies and makers comprehensively on issues relating to identifying empowering provisions for secondary legislation and distinguishing between which instruments are legislative in nature (and are therefore secondary legislation) and those that are administrative or are more guidance material. This has increased the knowledge and understanding of agencies and makers of legislation as to the nature of legislation.

At the start of the 52nd Parliament, the PCO gave a number of presentations to ministers, new members of Parliament, and ministerial staff on our role and the legislative process.

In 2018 the PCO, in collaboration with the New Zealand Transport Authority, the Electricity Authority, and other makers of secondary legislation, held a Secondary Legislation Conference. Its purpose was to promote a shared understanding of what is required for effective secondary legislation, to facilitate the exchange of knowledge and expertise among drafters of secondary legislation across the government sector, and to impart knowledge on significant drafting issues and changes in publication practice.

What outcome will we achieve during this four-year period?

The PCO will work with other key participants in the legislative process to establish systems and processes for improving legislative capability and managing risk as well as sharing information on best practices.

Further conferences on secondary legislation with other agencies will also be held during this four-year period. We will survey the participants to establish whether attendance has increased their understanding of and ability to support the making of great law. We will also seek feedback from users of a new online tool for departmental instructors, Turning Policy Into Law, including in relation to legislative capability.

6. Increase our use of te reo Māori in legislation

Why is this important?

Increasing our use of te reo Māori in legislation gives practical effect to the Crown's commitment to "work in partnership with iwi and Māori to continue actively to protect and promote this taonga, the Māori language, for future generations" (see s6(2) of Te Ture mō Te Reo Māori 2016/the Māori Language Act 2016).

Using te reo Māori in legislation may involve either incorporating Māori words and phrases into English language legislation or full dual-language legislation. Doing either requires us to build the capability and skills, within the PCO and across the wider legislative system, to use te reo Māori in a way that is accessible, is consistent with the principles of Te Tiriti o Waitangi, is legally effective, and otherwise enhances the language's status.

This is a long-term project which requires us to develop multi-disciplinary skills, underpinned by strong relationships with key partners and extensive engagement inside and outside the government.

Achievements so far include:

- enacting three dual-language apology Acts and one general dual-language Act Te Ture mō Te Reo Māori 2016/the Māori Language Act 2016
- researching overseas approaches to dual-language drafting
- creating a base of te reo Māori terms used in existing English language legislation, with help from the Department of Internal Affairs' Translation Unit
- working with the Office of the Clerk, the Department of Internal Affairs, Te Puni Kōkiri, and Te Taura Whiri to develop insights into the skills and processes that will be needed, based on the experience so far.

What outcome will we achieve during this four-year period?

In the next few years, we will work with key partners to develop and establish an initial model for enacting dual-language legislation, and demonstrate this model in practice.

7. Improved processes for making legislation

Why is this important?

The PCO is constantly seeking ways to improve systems and processes for drafting and publishing law, both by itself and in collaboration, to increase efficiency and reduce risk.

Achievements so far include:

Following a review the PCO and IRD jointly initiated, both agencies have agreed to renew their MOU. This establishes that the PCO is ultimately accountable for the end-to-end systems for IRD's drafting of Bills and the PCO's publishing of them.

The Legislation Act 2019 establishes a new duty on the PCO to report annually on elements of secondary legislation. This report can include other matters related to legislative stewardship.

What outcome will we achieve during this four-year period?

We will adopt a new MOU with IRD, and produce the first four reports under the new duty in the Legislation Act 2019.

Managing functions and operations

The following functions and operations support the PCO in achieving its strategic objectives:

Strategic planning

Each year, the PCO's Senior Management Team (SMT) holds two separate strategic planning days to set its direction for the short to medium term. One planning day focuses on workforce, resourcing, and capability. The second reviews existing projects that support the PCO goal and financial management, and makes strategic choices relating to the delivery of its two strategic objectives: providing high-quality legislative drafting services and ready access to New Zealand legislation.

Annual business planning and budgeting

Each business unit and group within the PCO develops an annual business plan that links to our goal, strategic plan, and initiatives. These plans prioritise the work to be carried out, identify additional personnel or financial resources that may be required, and identify any major risks.

Equal employment opportunities

The PCO has incorporated equal employment opportunities (EEO) into a number of policies and processes, and integrated it into everyday business. An example of the PCO's commitment to increasing female representation at senior levels is that 50% of both its SMT and other managers are female and the majority of its Audit and Risk Committee members are female.

We will continue to meet our responsibilities as an EEO employer and will seek to improve representation of under-represented groups within the PCO and its governance structure.

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