



PCO, 2018

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Project newsletter now available

The PCO has developed a new “*Technical Update*” newsletter especially for key legal and technical officers in agencies that administer primary legislation, and entities that make secondary legislation (“makers”), to keep them abreast of what’s happening in the project. The first issue, just out, includes information about:

- where the project is heading
- progress of the two Bills that will underpin making all secondary legislation easier to find and access
- what the agencies and makers can expect to see and do as the project moves into more intensive planning and engagement activity in the coming months
- the sequencing of the Catalogue as a critical first step on the path to full text publication of all secondary legislation.

If you would like to receive the Technical Update please contact Access2SL@pco.govt.nz.

Secondary Legislation (Access) Bill

The project’s key focus at the moment is on preparing the Bill that will amend empowering provisions across the statute book, to specify which instruments made under them are secondary legislation (and therefore required to be published in accordance with the Legislation Bill). The Secondary Legislation (Access) Bill (SLAB) will make roughly 4,000 amendments to 600 Acts. Because of its size, we have proposed splitting the Bill into two parts.

The first part, comprising amendments to Acts administered by 22 or so agencies, will be ready for introduction as a Bill by the end of June 2019. Right now we are working closely with the agencies that administer primary legislation that will be in the Bill as introduced, to confirm the draft amendments.

The second part will be promoted as a supplementary order paper (SOP) comprising the amendments to Acts administered by the remaining ten or so agencies. The SOP will be referred to the select committee while it is considering the Bill, which is expected to be in September.

The Cabinet paper proposing this two-part approach and seeking policy approvals for the principles on which the SLAB is based is available. [View the Cabinet paper »](#)

Engagement and support for agencies and makers

At the same time, the PCO is gearing up for a round of workshops focused closely on the needs and interests of the many makers of secondary legislation, large and small. The workshops will be hosted by the agencies that administer primary legislation and will be supported by the PCO. Makers attending the workshops will hear directly from the PCO about the Access to Secondary Legislation Project and will be able to discuss with the agency and the PCO the implications for them. Invitations are expected to be issued in April. Interested makers can register their interest with the agency that administers the primary legislation they operate under.

The aim of the workshops is to ensure makers are well informed and prepared to take on their new legal “list duty”. This duty will require them to lodge with the PCO details of all in-force secondary legislation that has been made by them. In the future, they will also be required to lodge details of any new secondary legislation they make at the time that they make it.

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December 2018: Update from the Access to Secondary Legislation Project

Project a key commitment in the Open Government Partnership

We are pleased to note that the Access Project continues to be a key commitment in the *National Action Plan 2018–2020* under the *Open Government Partnership* (OGP).

The OGP is an international agreement by governments to create greater transparency, increase civic participation, and use new technologies to make their governments more open, effective, and accountable.

The Access Project is commitment number 4 of the plan.

Implementation through two Bills

The Access Project will be implemented through two Bills. The *Legislation Bill* creates the concept of secondary legislation and prescribes the requirements for presentation to the House and publication that apply in respect of secondary legislation. This Bill has been reported back to the House by the Justice Committee and awaits second reading.

The second Bill, the Secondary Legislation (Access) Bill (SL(A)B) currently being prepared, will amend provisions in primary legislation that empower the making of instruments with legislative effect. The amendments state that instruments made under the provision are secondary legislation. These are subject to the requirements of the Legislation Bill.

The SL(A)B will amend over 600 Acts. It is expected that the SL(A)B and the Legislation Bill will commence at the same time. We thank all who have been, and continue to be, involved in reviewing the amendments in the SL(A)B.

Transitional arrangements for publication requirements

The Legislation Bill provides transitional arrangements for the publication requirements that will apply to secondary legislation. The primary requirement is that makers of secondary legislation provide information on each instrument that is in force for the PCO to publish on the NZ Legislation website. The backstop deadline for

this requirement is one year after the commencement of the Legislation Bill. However the precise timing of this will vary within the one-year period from agency to agency and Act by Act. The date within the 12-month period will be agreed between the PCO and the relevant agency. This information, when published on the NZ Legislation website, will form a complete catalogue of secondary legislation.

Working with agencies

In November and December we held a series of workshops with key contacts in departmental agencies. At the workshops we introduced the information that will be required to make up the secondary legislation record for each instrument, and when the information will be collected. The attendees were also given an outline of proposed changes to the NZ Legislation website.

The workshops were attended by 35 people from 28 agencies. Their feedback is proving invaluable to the development of the technology to support the project. The workshops were also an opportunity for us to ask how we can better support agencies over the next six months. We gained valuable information that we are using in developing activities to support agencies affected by the change.

The PCO has also formed a reference group to support the project, made up of representatives from the Department of Corrections, Land Information New Zealand, Ministry for Culture and Heritage, Ministry of Health, Ministry of Justice, Ministry for Primary Industries, Ministry of Social Development, Ministry of Transport, Pharmacy Council, and WorkSafe New Zealand. The group will provide knowledge and insight to inform how we can better support agencies in meeting their obligations under the Legislation Bill. The group met for the first time on 7 December.

We are also pleased to be working closely with the New Zealand Gazette Office so that our processes and communications align to ensure a smooth transition when the new legislation takes effect.

Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018: transparency requirements

The *Comprehensive and Progressive Agreement for Trans-Pacific Partnership Amendment Act 2018* (CPTPPA) comes into force on 30 December 2018. A lesser-known component of the international agreement (the CPTPP) implemented by this Act is the transparency requirements on States party to the agreement. These requirements are implemented under a new *Part 2A* inserted in the Legislation Act 2012.

Under Part 2A makers of instruments relevant to the CPTPP (as defined in Part 2A) will be required to:

- publish those instruments (CPTPP instruments) on a website maintained by or on behalf of the maker
- forward links to CPTPP instruments to the PCO for publication on the NZ Legislation website
- include in or with CPTPP instruments such details as are necessary to comply with CPTPP obligations.

The PCO proposes to meet its obligations under Part 2A by publishing links as Other Instruments pages on the NZ Legislation website. The agencies that administer CPTPP instruments will email the links to the Publications team at the PCO so that they can set up the new pages. Part 2A also requires the Chief Parliamentary Counsel to issue directions setting out the nature of links that makers must forward to the PCO for publication and the nature of details that must be published in or with the CPTPP instruments. These directions have been drafted and will be available on the NZ Legislation website shortly.

The CPTPPA publication arrangements are an interim measure to comply with CPTPP obligations pending the introduction of the publication requirements under the Legislation Bill. They will be repealed once the transition to the publication requirements under the Legislation Bill is completed.

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September 2018: Update from the Access to Secondary Legislation Project

The Access Project continues to make progress towards its objective, which is “To make New Zealand’s secondary legislation readily accessible”. The aims are:

- to define what secondary legislation is
- to identify the location of all secondary legislation
- to improve access to it through the New Zealand Legislation (NZL) website.

The project will be implemented by two Bills. The first is the *Legislation Bill*, which was reported back by the Justice Committee on 1 June 2018. A key change made by the committee is the inclusion of a new list duty that will apply before the duty to publish secondary legislation in full on the NZL website. This list duty requires makers of secondary legislation to provide the PCO with information about all in-force secondary legislation. The default timing for this is one year after the commencement of the Bills and associated regulations. The list information will be published on the NZL website and will form a complete catalogue of secondary legislation.

The second Bill is the Secondary Legislation (Access) Bill, currently being drafted. It will amend each empowering provision in the statute book to clarify which instruments are secondary legislation. Consultation with agencies is underway to ensure that amendments fully capture changes required to empowering provisions.

In August, the PCO briefed the Regulations Review Committee on the project’s progress, as we do regularly. We have also started discussions with the Legislation Design and Advisory Committee (LDAC) whose Guidelines assist with the development of legislation. The legal research and methodology developed by the Access Project is being made available to LDAC to contribute to future editions of the Guidelines, including guidance for future provisions empowering the making of secondary legislation.

We have identified, and made contact with, over 100 government and non-government agencies that are empowered to make or administer secondary legislation. Our advice to all these agencies is that there are steps you can take now, if you haven’t already:

1. (For departments) Identify all instruments that will be secondary legislation—based on spreadsheets concluded with the Access Project—and ensure your department’s related Crown entities and other bodies are informed.
2. (For all agencies) Make all secondary legislation available online.
3. (For all agencies) Consider publishing consolidations of amended instruments or, better still, revoke and replace instruments that have multiple amendments to form a single current instrument.
4. (For all agencies) Plan changes to the organisation’s scheme of delegation to delegate formal responsibility for notifying legislation to the PCO. A model will be prepared and circulated by the PCO in due course.

The newly-appointed Workstream Lead—Business Implementation will, with the Project Director, engage with all these organisations to help to prepare them for any changes that will affect them as a result of the project

Next steps for PCO

1. We will be inviting chief executives of several departments, Crown entities, and statutory bodies to nominate one of their people to participate in a reference group to assist us in planning and supporting the transition.
2. We will be convening a user group to test the end-user requirements for the lodgement portal.
3. We will shortly send an information pack to agencies, advising what information must be provided by makers of secondary legislation to the PCO to fulfil the list duty.

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June 2018 update: Legislation Bill progresses

On 1 June 2018, the Legislation Bill was reported back to the House after consideration by the Justice Committee. The committee has recommended some changes to the Bill.

The most significant change was to give makers of secondary legislation a duty to provide information about their in-force secondary legislation to the PCO. The PCO will publish all of this information on the NZ Legislation website. This “list” duty will ensure the early delivery of one of the key benefits of the project—identifying, for the first time, a complete collection of secondary legislation and where it can be found. The Justice Committee also confirmed that secondary legislation made by local authorities is not in scope, and extended this exemption slightly to cover legislation made by council-controlled organisations.

Makers of secondary legislation will have one year from the commencement of the new Legislation Bill to provide their “list” information to the PCO. This deadline may be extended by regulations to a maximum of five years.

The Legislation Bill will be implemented via amendments to existing legislation in the Secondary Legislation (Access) Bill.

The Secondary Legislation (Access) Bill will amend identified empowering provisions (in each Act) so that they clearly state what is legislation. As a result, secondary legislation made under those provisions must be published on the NZ Legislation website and will be subject to oversight by Parliament’s Regulations Review Committee.

The PCO continues to engage with the legal teams in departmental agencies to conclude discussions on empowering provisions in primary legislation that they administer.

Research has identified around 4,000 provisions that empower the making of secondary legislation. Since multiple instruments may be made under a single provision, the research suggests there may be many thousands of items of secondary legislation currently in force.

Over 100 government and non-government agencies have been identified as being empowered to make secondary legislation. The project will continue to engage with these organisations to help to prepare them for any changes that will affect them as a result of the project.

There are three other components required to implement the project:

- a lodgement and publication system for use by departments and agencies when they make secondary legislation
- modifications to the PCO’s publishing system and the NZ Legislation website to enable secondary legislation drafted by departments and agencies to be listed (and ultimately published) on the website, and to simplify, broaden, and improve access
- support to agencies for notifying and (ultimately) publishing instruments, to take advantage of the new centralised publication system.

If your organisation makes secondary legislation, there are some steps you can take now, if you haven’t already:

- locate all the secondary legislation you have made or administer and that is currently in force
- provide members of the public with easy access to that legislation, where practicable through your agency website.

For more information about the proposed “list” duty, read about *what agencies need to know and do*.

- *Read the Legislation Bill*
- *Read the report of the Justice Committee*
- *Read the submissions and advice to the Justice Committee on the Legislation Bill*

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December 2017 update: First reading of Legislation Bill and next steps

On 5 December 2017 the Legislation Bill received its first reading. This Bill, along with the upcoming Secondary Legislation (Access) Bill, provides the statutory structure for ensuring—for the first time—that secondary legislation is readily accessible online.

On behalf of the Attorney-General, Hon Chris Hipkins gave the first reading speech for the Legislation Bill, acknowledging the work of Hon Christopher Finlayson in the previous government. Minister Hipkins emphasised the need for New Zealanders to be able to access the law with ease. He linked this aim to the Government's commitment to open and transparent government.

The ultimate ambition of the Legislation Bill in relation to access is for the full text of all secondary legislation to be published on the *New Zealand Legislation website*. The first step towards this goal is identifying all provisions in primary legislation that may empower the making of secondary legislation. In November the PCO completed the first stage of this analysis, having identified more than 5000 empowering provisions that may have legislative effect.

Legal and policy teams across the public service have been reviewing this analysis of the primary legislation their agency administers, using guidance provided by the PCO. We expect this work to be concluded by the end of January.

The PCO is well aware that, for some provisions, it can be difficult to decide whether they empower the making of secondary legislation or purely administrative instruments. Work is continuing on clarifying where the boundary should be drawn.

The next Bill, provisionally called the Secondary Legislation (Access) Bill, will amend each of the identified provisions in primary legislation to expressly state that they empower the making of secondary legislation. This Bill is expected to be introduced later in 2018.

The next step towards full publication is to locate and identify all the secondary legislation that is made under these empowering provisions. To achieve this, the PCO will be encouraging agencies that make secondary legislation to produce a list of all the secondary legislation made by them that is in force. This information will be made available through the NZ Legislation website.

Another key step is an IT solution to enable direct publication of the full text of secondary legislation onto the NZ Legislation website by agencies via a secure portal. To enable this, a Word template has been developed to guide drafters to produce legislation in a consistent style. Text drafted in this template can be easily converted to XML, PDF, and HTML. This will allow publication of the text in multiple formats, as is currently available for legislation on the NZ Legislation website.

Trials of the drafting template by several agencies have brought positive feedback that it is "just fabulous" and is "making life so much easier". Some instruments drafted using the template have already been made and published online.

Earlier news

- **20 June 2017:** The Legislation Bill is introduced to Parliament.
- **December 2016:** Cabinet approved a proposal for the PCO to develop a system to enable secondary legislation drafted by agencies to be published on the New Zealand Legislation website. Cabinet also approves that a Bill be drafted to implement the project. A team of legal researchers are searching for all provisions in legislation that empower instruments to be made that are legislative in nature.

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