

Open Government Partnership New Zealand

National Action Plan 2018-2021

End of Term Report

Commitment 4: Making New Zealand's secondary legislation readily accessible

Lead agency: Parliamentary Counsel Office

Objective: To make New Zealand's secondary legislation readily accessible.¹

Ambition: This commitment continues work started in the National Action Plan 2016-2018. The Parliamentary Counsel Office will work with the makers of secondary legislation to gather information about their secondary legislation and make it available via the New Zealand Legislation website (<http://www.legislation.govt.nz/>).

OGP values: Transparency, Technology and Innovation

What we achieved: We facilitated the enactment of new primary legislation (the Secondary Legislation Act 2021 and the Legislation Act 2020), which was necessary to achieve the milestones under this commitment. We worked with administering agencies to identify every empowering provisions in all primary legislation, approximately 2,500 amendments in over 550 Acts (the Secondary Legislation Act 2021). We are planning to commence the legislation in the final quarter of 2021², which is when the provisions establishing the category of secondary legislation will be brought into force. The milestones require the legislation to be commenced before they can be completed. Implementing these initial reforms will establish one unified and simple category of law where previously several overlapping and confusing categories existed. It will make it clear what is in the category of secondary legislation, whether it is subject to Parliamentary oversight, and improve Parliamentary scrutiny of secondary legislation. By defining what secondary legislation is, and standardising the requirements relating to it, the Legislation Act 2019 and Secondary Legislation Act 2021 lay the necessary foundation for future improvements.

Summary:

Milestones		Progress ³
1	Compile a complete list of makers of secondary legislation. ⁴ <i>Start/End dates: 2018-2021</i>	
2	Engage with makers ⁵ of secondary legislation to:	

¹ Local authorities and council-controlled organisations are out of scope.

² The legislation came into effect on 28 October 2021. For secondary legislation made under provisions enacted on or after 28 October 2021, new uniform publishing requirements apply.

³ In the draft self-assessment of the 2018-2021 Plan, we have categorised “underway” milestones as “substantially completed” as they relate to legislation that, as noted above, came into effect on 28 October 2021.

⁴ The compilation of a complete list of makers and the enhancement of the New Zealand legislation website are dependent on the commencement of the Secondary Legislation Act 2021.

⁵ Engagement with makers will continue beyond the scope of this commitment.

	<ul style="list-style-type: none"> encourage them to identify all of their current in-force secondary legislation in preparation for the commencement of the Legislation Act 2019 encourage them to make their current in-force legislation publicly available on a website. <p><i>Start/End dates: 2018-2021</i></p>	
3	<p>Enhancements to the New Zealand legislation website to improve access to secondary legislation by:</p> <ul style="list-style-type: none"> providing links under relevant empowering provisions in Acts (primary legislation) to external makers of secondary legislation: making publication requirements easier for users to see by noting this information under the relevant empowering provisions. <p><i>Start/End dates: 2018-2021</i></p>	

Progress key:



some delays



underway



completed

What we achieved

Milestone 1

Compile a complete list of Makers of secondary legislation

The amendments in the Secondary Legislation Act 2021 are to provisions in principal Acts that delegate the power to make secondary legislation to various people or bodies within the public service (e.g. the Department of Internal Affairs or the Commerce Commission and, outside the public service, to community or professional boards and councils (e.g. the Dental Council or the NZ Racing Board).

We have identified that the power to make secondary legislation has been delegated to approximately 150 bodies in New Zealand. We will be identifying makers of secondary legislation based on the empowering provisions identified in the Secondary Legislation Act 2021. This is often not a straightforward task as the name of the maker is sometimes not stated in the provision itself. While not completed, the work that we have done to prepare has meant that we have a substantive list identified and work is needed to confirm the final bodies.

Milestone 2

Engage with makers of secondary legislation to:

- encourage them to identify all of their current in-force secondary legislation in preparation for the commencement of the Legislation Act 2019
- encourage them to make their current in-force legislation publicly available on a website.

We ran workshops for administering agencies and makers to work through the proposed changes, created a reference group consisting of representatives from the public service and professional boards and councils, and sent technical updates to all agencies who we engaged with as part of carrying out this work. We have had engagement with makers of secondary legislation throughout this process and we are planning on increasing our engagement with makers closer to commencement of the legislation. We will be focussing on reinforcing our message to makers of encouraging them to identify their secondary legislation and make it publicly available on a website. Engagement with makers will be ongoing. PCO have established a new team that will be focussed on education and engagement, and they will take this on as part of their new focus.

Milestone 3

Enhancements to the New Zealand legislation website to improve access to secondary legislation by:

- providing links under relevant empowering provisions in Acts (primary legislation) to external makers of secondary legislation;
- making publication requirements easier for users to see by noting this information under the relevant empowering provisions.

On commencement of the legislative reforms, makers of secondary legislation will be required to continue to make their secondary legislation available in accordance with their existing publication requirements.

Currently, publication requirements are diverse and scattered across the statute book and it is unclear what the rules are about Parliamentary scrutiny (ie, disallowance and presentation to Parliament) that apply to different types of secondary legislation.

Accordingly, the first enhancement that we will be introducing to the New Zealand legislation website will be to make this information available to users under the relevant provisions in primary legislation. PCO have almost completed this work. The notes will be visible in primary legislation as it is reprinted from the commencement of the Secondary Legislation Act 2021. The feedback that we have had so far from makers has been very positive.

We will then concentrate on making it easier for users of the New Zealand legislation website to find secondary legislation by providing links:

- from primary legislation to the full text of all secondary legislation published on the New Zealand legislation website; and
- that assist users to find secondary legislation drafted by other agencies.

How we included diverse voices and engaged diverse communities:

Makers of secondary legislation represent many different groups across New Zealand society. Makers have been involved since the start of the work on the legislative reforms and were able to comment on the legislation as part of the Parliamentary process.

As we move to commencement and implementation of the reforms, agencies and makers responsible for secondary legislation will be encouraged to keep their diverse communities informed.

Information about the project is available on our corporate website <http://www.pco.govt.nz/sl/>

We are ultimately aiming to make secondary legislation accessible to all New Zealanders via the New Zealand Legislation website <http://legislation.govt.nz/>

Commitment links:

[Secondary legislation | Parliamentary Counsel Office \(pco.govt.nz\)](http://www.pco.govt.nz/sl/)

[Secondary legislation reforms at a glance | Parliamentary Counsel Office \(pco.govt.nz\)](http://www.pco.govt.nz/sl/)

[Legislation Act 2019 No 58 \(as at 01 July 2021\), Public Act Contents – New Zealand Legislation](http://www.pco.govt.nz/sl/)

[Secondary Legislation Act 2021 No 7, Public Act Contents – New Zealand Legislation](#)

Impacts: [actual and intended]

Implementing the initial reforms will deliver the following benefits:

- resolving the current ambiguity about what secondary legislation is;
- improving public access to secondary legislation that is made by both government and non-government entities;
- clarifying what secondary legislation is subject to Parliamentary oversight through the Parliamentary disallowance process; and
- improving Parliamentary scrutiny of secondary legislation.

What we learned:

We knew there was a lack of transparency about the category of secondary legislation, but we underestimated the complexity of the issues and extent of the confusion. This increased the time and complexity of research, analysis, and engagement with administering agencies to progress and finalise the legislation. It took over 5 years to complete the work to enact the Secondary Legislation Act 2021. However, we also learned the value of that engagement in building a community of makers and the importance of ensuring that they have stewardship of their legislation, including for making it accessible to users.

Where to from here:

Continue the work of encouraging makers of secondary legislation to make sure that they find all of their current in-force secondary legislation and make it publicly available and keep it up-to-date on their websites. Continue to investigate options for improving access to secondary legislation.