

Open Government Partnership New Zealand

National Action Plan 2018-2021

Progress report for: January 2020 – June 2020

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

Lead agency: Parliamentary Counsel Office

Objective: To make New Zealand’s secondary legislation readily-accessible¹.

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 on the New Zealand Legislation website (<http://www.legislation.govt.nz/>).

OGP values: Transparency, Technology, and Innovation

Milestones		Progress
1	Compile a complete list of makers of secondary legislation <i>Start/End dates: 2018-2020</i>	
2	Engage with makers of secondary legislation to: <ul style="list-style-type: none"> encourage them to create a list of their current in-force secondary legislation in preparation for the commencement of the Legislation Bill’s “list duty” advise them of additional information about their secondary legislation that will be required to accompany the list encourage them to make their current in-force legislation publicly available on a website <i>Start/End dates: 2018-2020</i>	
3	Creation of technology and processes to enable lodgement and publication of information on the New Zealand Legislation website ² <i>Start/End dates: 2018-2020</i>	

Progress key:



some delays



underway



completed

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

² Note: the compilation of a complete list of makers is dependent on the enactment and commencement of the Secondary Legislation (Access) Bill. The engagement with makers can only move to a requirement for agencies to supply a “list” of legislation to PCO when the Legislation Bill has been enacted and commenced, but engagement will continue beyond the scope of this commitment. The creation of technology and processes will continue to support lodgement and publication will only be required if the Legislation Bill is enacted and commenced.

WHAT WE HAVE BEEN DOING

- Secondary legislation is written by many different entities, as well as the Parliamentary Counsel Office.
- Parliament delegates the power to make secondary legislation to government agencies (eg the Ministry of Business, Innovation and Employment, the Department of Internal Affairs) and the wider state sector (eg the Electricity Authority). Beyond the state sector, Parliament also delegates to a number of boards and councils (eg Racing New Zealand, and professional bodies such as the Dental Council, the Plumbers, Gasfitters and Drainlayers Board, and the Social Workers Registration Board).
- All primary legislation is published and easily accessible in consolidated form on the New Zealand legislation website, but most secondary legislation, as it will soon be called, is not.
- Secondary legislation drafted by the PCO is published in full on the New Zealand Legislation website. Secondary legislation drafted by other bodies—which is the majority—can be much more difficult to find. Some is notified or published in the New Zealand Gazette; some is published on individual agency websites, or in newspapers.
- New primary legislation has been drafted to achieve the milestones under this commitment: the Legislation Act 2019 and the Secondary Legislation Bill (still progressing through Parliament).
- The Legislation Act 2019 legally defines the category of secondary legislation in principle. The Secondary Legislation Bill proposes over 2,500 amendments to more than 550 Acts (primary legislation), determining, definitively for the first time in New Zealand, law that falls into the category of secondary legislation.
- The amendments in the Secondary Legislation Bill are to provisions that delegate the power to make secondary legislation to various people or bodies.
- The Secondary Legislation Bill has progressed through select committee and has been reported back to Parliament (10 June 2020), a major step forward to the achievement of our objectives.
- The commentary to the Secondary Legislation Bill from the select committee provides more information about that process:

<http://www.legislation.govt.nz/bill/government/2019/0199/latest/d20031242e2.html>

- The next stage for the Secondary Legislation Bill is to proceed to the Committee of the whole House stage. Further amendments will be proposed to the Bill at this stage, mostly to make sure that it is kept up-to-date.

- For more information about what happens at the Committee of the whole House stage:

<https://www.parliament.nz/en/get-involved/features-pre-2016/document/00NZPHomeNews201311151/committee-of-the-whole-house>

- Milestones for this commitment will be updated to recognise progress made and lessons learnt and to bring them into line with the Government's decision to decouple reforms rationalising and clarifying the framework around secondary legislation from the future establishment of centralised publication on the New Zealand legislation website.
- This allows the reforms to be accelerated by commencing the legislation sooner, without waiting on the necessary IT and related business systems to be developed to support centralised publication.
- This will deliver the benefits of:
 - resolving the current ambiguity about what is secondary legislation; and
 - clarifying what secondary legislation is subject to Parliamentary oversight through the Parliamentary disallowance process.
- On commencement of the legislative reforms, makers of secondary legislation will be required to continue to make secondary legislation available in accordance with their existing publication requirements.
- Currently these 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) that applies to different types of secondary legislation.
- PCO will make this information clearly available to users on the New Zealand legislation website under each provision in primary legislation that empowers a body to make secondary legislation.
- PCO will also make it easier for users of the New Zealand legislation website to find secondary legislation by providing links within primary legislation:
 - to the full text of all secondary legislation drafted by the PCO; and
 - to direct users to where they can find secondary legislation drafted by other makers.

- It is an election year in New Zealand, which means that Parliament will adjourn on 6 August and no more legislation will be progressed until a new Government is formed.
- It is uncertain whether the Secondary Legislation Bill will progress through to enactment before the election or what the timeline to enactment will be.

HOW WE ARE INCLUDING DIVERSE VOICES

- Makers of secondary legislation represent many different groups across New Zealand society. Makers have been involved since starting the work on legislative reforms and were able to comment on the legislation as part of normal Parliamentary process at the select committee stage.
- We are ultimately aiming to make secondary legislation accessible to all New Zealanders via the New Zealand Legislation website (<http://legislation.govt.nz/>).

HOW WE ARE KEEPING DIVERSE COMMUNITIES INFORMED

- Information about the project is available on our corporate website.
- For more information about secondary legislation <http://www.pco.govt.nz/sl/>
- To see technical updates communicating news and developments in secondary legislation sent to a wide distribution list: <http://www.pco.govt.nz/sl-news/>


WHAT'S NEXT?

- Focus on supporting the Secondary Legislation Bill as it progresses through Parliament.
- Encouraging makers of secondary legislation to make their current in-force legislation publicly available on their websites

LINKS – EVIDENCE OF PROGRESS AND MILESTONES ACHIEVED

- <http://www.pco.govt.nz/sl/>
- <http://www.legislation.govt.nz/bill/government/2019/0199/latest/LMS268928.html?src=qs>
- <http://www.legislation.govt.nz/act/public/2019/0058/latest/DLM7298125.html?src=qs>
- https://www.parliament.nz/en/pb/bills-and-laws/bills-proposed-laws/document/BILL_93428/secondary-legislation-bill

UPDATED MILESTONES FROM JULY 2020

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

³ These milestones are dependent on the commencement of the Legislation Act 2019 and the Secondary Legislation Bill.