
PERFORMANCE IMPROVEMENT FRAMEWORK

Review of the Parliamentary Counsel Office (PCO)

NOVEMBER 2014

State Services Commission, the Treasury and the Department of the Prime Minister and Cabinet

Lead Reviewers' Acknowledgement

As Lead Reviewers for this Performance Improvement Framework (PIF) Review for the Parliamentary Counsel Office (the PCO) we appreciated the thoughtful and generous input of PCO staff and the Senior Management Team (SLT) in particular. In addition, we had considerable input from a cross section of the PCO's external partners and stakeholders, who were equally committed to building stronger collaboration in the future. We also had the benefit of consultation with officials from the Department of the Prime Minister and Cabinet, the State Services Commission and the Treasury.

We acknowledge the progress already undertaken by the PCO in improving its processes in drafting and access to legislation. The PCO recognised this Review as an opportunity to identify further performance improvements to improve the overall quality of the legislative process. This bodes well for the future.

**Performance Improvement Framework
Review: Parliamentary Counsel Office**

**State Services Commission, the Treasury, and the Department of the Prime Minister and Cabinet
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AGENCY'S RESPONSE

The PIF Review has proven to be a valuable exercise for the PCO at a particularly apposite time.

The results and recommendations from the review have endorsed the direction the PCO has taken over the past six years in both the drafting of, and access to, legislation strategies while suggesting areas where further work and improvements can continue to be made. Taking some of those recommendations forward, as suggested by the Lead Reviewers, will require the PCO, working with the central agencies and others, to adapt its operations further and expand its statutory remit and functions.

I would especially like to acknowledge the work carried out by the Lead Reviewers, whose insights into how we work now and how we can develop further in the future will enable us and our partners to deliver better quality, and easier access to, legislation for New Zealanders.

I am also grateful to the staff of the PCO and the many people associated with us who were interviewed as part of the Review. Their insights into how the PCO's role in the system of developing legislation in New Zealand is operating now and how it could operate in the future will be invaluable in setting the future direction of the PCO.

Guardian or Steward of the Statute Book

The Lead Reviewers have reflected the concerns we and many stakeholders have about the state of the New Zealand Statute Book as a whole and they have proposed the PCO becomes the 'guardian' or 'steward' of the New Zealand Statute Book. In their description of the future state the Lead Reviewers expressed this as:

Development of a clear strategy for modernising and simplifying New Zealand's legislative framework and establishing a legislation revision programme that eliminates obsolete redundant and inconsistent laws.

We share these concerns, particularly at this time when others have also focused on the need to improve the system of law making in New Zealand, legislative design and the state of the Statute Book.¹ Undertaking this role would represent a significant change in emphasis for the PCO which has, until now, concentrated on performing its more narrowly focused, functions under section 59 of our governing Act, the Legislation Act 2012 (the Act). It would, however, be consistent with the purposes of that Act.² The PCO has always sought to develop a true guardianship role and would relish the chance to undertake this wider function. Doing so would need a high degree of support, agreement and engagement from the Executive (in particular the Central Agencies) and Parliament (including the Clerk of the House of Representatives).

A long-term strategy shared by the Executive and the Legislature is needed. This is complicated, involving structural and even legislative changes. That Strategy will require solutions that have the support and commitment of the Central Agencies and Cabinet to succeed.

1 "Regulatory institutions and practices" June 2014, NZ Productivity Commission Report: Government Response to the first stage of the Inquiry into the Whey Protein Concentrate Contamination Incident 11 December 2013: Regulations Review Committee Reports; into the oversight of disallowable instruments that are not legislative instruments, July 2014; and on regulation-making powers that authorise transitional regulations to override primary legislation, 30 July 2014.

2 Section 3 (e) of the Act in particular makes reference to making the New Zealand Statute Book more accessible and easier to read through the specific, and limited, new function of revision.

We propose, as a first step, to bring together a coalition of those involved to develop the broad framework for this Strategy and to produce more detail about what this role would involve and how it could be implemented. We expect this first step could be completed in the current financial year.

The work we are currently doing within the remit of the Act, with regard to the first Statute Law Revision Programme and other work discussed later in this response, is an important step towards achieving the thematic direction and outcomes proposed by the Lead Reviewers. However, taking the current first triennial programme of revision as an example, it will take the PCO and the departments responsible for the current (in-force) statutes more than 400 years to carry out a complete revision of the Statute Book. A faster revision, let alone delivery of true 'guardianship of the Statute Book', will require:

- the PCO to commit more resources
- Cabinet to mandate certain directions, checks and balances
- Parliament to allocate more parliamentary time and provide a much more expedited process for Revision Bills than the current Standing Orders provide
- the collaboration of instructing agencies and departments in dedicating time and energy to this process.

The Review suggests we carry out a strategic assessment of the current Statute Book to ensure we have a clear idea of which legislation should be reviewed first to obtain the best results. A strategic assessment of this nature requires the involvement and commitment of the administering agencies and their Ministers. We have to draw up a programme in cooperation with those agencies, recognising their respective overall priorities.

As its current contribution to this proposal, the PCO is committed to continuing to take a leadership role in the legislative design and system improvements required by the:

- Government-adopted outcomes from the Productivity Commission report on regulatory institutions and practices
- Government responses in relation to the consolidation and simplification of legislation and regulations as recommended in the first stage of the Government Inquiry into the Whey Protein Concentrate Contamination Incident
- Government responses to the July 2014 Regulations Review Committee reports³
- Government's regulatory reform programme, including enhanced policy and legislative explanatory material currently published by the PCO, as mandated by Cabinet Directions.

We will endeavour to do this work in a way that supports the strategic assessment referred to above, recognising the need to work closely with those involved in leading the Government responses. In addition, we will advise the Attorney-General on options for facilitating greater pace in the future by changes to the pre-introduction scrutiny of government legislation, better assistance to instructing agencies at early stages of legislative design and improvements to House procedure to assist with production of a revised Statute Book. The PCO is not a public service department but occupies a complex and unique statutory position, at once both at the heart of the Executive but also central to

3 See footnote 1: Regulations Review Committee Reports; into the oversight of disallowable instruments that are not legislative instruments, July 2014; and on regulation-making powers that authorise transitional regulations to override primary legislation, 30 July 2014.

Parliament's role in law making and the Judiciary's role in interpreting legislation. It is this overarching location that provides the opportunity, identified by the Lead Reviewers, to fully develop the guardianship role proposed.

Desired future state

We have therefore focused the balance of our agency response on the desired future state set out in the section entitled: *'What will success look like'* whilst taking into account our current mandate, legislation and resources.

In addressing the themes identified, we acknowledge the significance and scale of the changes required over the coming years to achieve this future state for the PCO. We are very keen to institute these changes in cooperation with all the PCO's managers, staff, partners and stakeholders.

Managing the risks to producing quality legislation (primary, secondary and tertiary)

As the review makes clear, the PCO is often hamstrung in its desire to produce high-quality legislation by receiving inadequate drafting instructions from agencies and by the imposition of arbitrarily determined and frequently inadequate timeframes to produce that draft legislation. Since their establishment, we have struggled to meet our quality performance targets, not through a lack of resources but usually through a lack of time for peer-review and other quality checks.

Currently, the PCO runs annual seminars on the legislative process for staff involved in providing drafting instructions, contributes to seminars run by the Legislation Advisory Committee and provides more tailored individual agency-based training sessions. It has been suggested that these seminars and training events (which have always been oversubscribed) should be run more frequently. The PCO will investigate ways of enhancing this programme possibly by focusing on training those in agencies who can then train others and working more with the Government Legal Network to reduce overheads for the PCO from this increased training commitment.

The Lead Reviewers suggest the PCO takes a wider role in educating senior policy and legal managers in agencies about the process and content requirements to ensure that good quality draft legislation is provided. This extends also to Ministers and Select Committee members since it is critical they also know what is required both in terms of the content of the drafting instructions and deliberations on amendments by committees, but also the timeframes needed to ensure that quality legislation can be developed and drafted. The PCO will investigate the best way of carrying out this enhanced education role but I am pleased to note there has already been very good engagement with new Ministers and new members of the 51st Parliament.

The PCO is also keen to develop other processes that can educate and increase the capacity of the system across government. For instance, engaging with agencies early (with the help of the Legislation Advisory Committee on design questions) and making greater use of exposure drafts where these will help manage the process of designing better regulatory frameworks.

Improving access to, and accessibility of, New Zealand legislation for New Zealanders

The PCO recognises that there is a very positive view held of the LENZ database within the New Zealand Legislation website by the public, lawyers and industry groups. We also acknowledge there are ways we can further refine the 'look and feel' of the database of legislation and the website for easier use. We continue to pursue opportunities to enhance the information accessible via the website and to broaden the scope of that information.

We have recently adopted a new Access to Legislation Strategy, which sets out possible future enhancements. This strategy was consulted outside the PCO since the legislation website is a significant intellectual property asset owned by government that can continue to be developed for the benefit of New Zealanders, businesses and communities.

We are evaluating feasible investments within our current Appropriation that will enhance access to, and understanding of, legislation and the law (including judicial decisions). This may include linking legislation in the database to Court judgements currently published by the Ministry of Justice or to legislative documents currently published in the New Zealand Gazette or on agency websites and to other information relevant to draft and in-force legislation the Government or private sector bodies produce.

Organisational development – completing the shift to a professional services firm model

The Review acknowledges the significant progress the PCO has made in the past few years in moving away from the ‘Barristers’ Chambers model’ for organisational structure, governance and work allocation that was the tradition for many legislative drafting offices.

We will also continue our efforts to strengthen leadership, governance and management capabilities across the PCO, to meet increasing demands. As the Review indicates, this will mean continuing to develop the current operating model for the PCO to reflect a ‘professional services model’ which enshrines a culture of ‘one office - one voice’. We are particularly aware of the risk that the PCO may, on occasions, present differently to different agencies, when individuals respond to drafting instructions.

The secondments that the PCO has initiated over the past few years have proved invaluable in both educating our drafters on the policy and instructing process that goes on in the instructing agencies and also enabling the PCO to educate its instructors about what is required by the PCO. In addition, inward and outward secondments to Australian and United Kingdom drafting offices have provided us with insights into best practice elsewhere. We will continue, and look to enhance, this secondment programme, within our available resources. Having been involved from the start, the PCO will continue to contribute to the development of the Government Legal Network. This provides the PCO with access to both Chief Legal Advisers and their legal staff; an important entry point into instructing agencies.

We recognise the importance of getting greater cohesion in the advice that we give and in our drafting styles, whilst recognising the inevitable differences that occur when drafting legislation in different areas of the law and in response to Ministerial, parliamentary and agency-specific instructions. This will be addressed by a combination of in-house training and education and greater senior parliamentary counsel oversight. To this end, the PCO will further enhance its development and implementation of standard legislative provisions, the application of its peer review processes and the recently piloted team-drafting approach. We will also examine whether there are further refinements to the already comprehensive drafting and style manuals used within the PCO.

Whilst acknowledging more needs to be done to measure efficiency as well as effectiveness in the drafting of legislation, we know this has proved to be an unresolved issue for Australian and Commonwealth law-drafting offices. The PCO’s SMT will review the wider use of time recording as a management tool to investigate if it provides good quality efficiency information about drafting, given the variables present in that environment. To date, time recording has been used on a limited basis for specific drafting projects or for ‘pilots’. The PCO is also committed to better processing and analysing data that is held within current LENZ and LEGTRACKING systems, to use it for strategic information management purposes.

The physical layout of the PCO accommodation (inherited from previous tenants many years ago) has become a barrier to greater collaboration and discussion amongst our staff. We are aiming to make significant but economic changes to the layout of our accommodation as part of our landlord's major ceiling works in 2015. The opening up of the floors and better collocation of business units will aid in achieving collaboration, along with more usable meeting areas and updated facilities.

We also acknowledge the importance of succession planning in a small office like the PCO which, in certain respects, relies upon specialist staff with skills acquired over a long period that are not readily to be found outside the PCO. The PCO will continue to actively manage, develop and find other ways to recruit and encourage retention and succession for the key specialist and leadership positions.

Third tier management across the PCO has been significantly broadened since 2008 and there has been investment in leadership and management training (from internal and external sources including the LDC, ANZSOG and VUW)⁴. We will continue to use secondments as an effective way of exposing managers and possible successors to greater and more varied experience.

Tracking progress towards our goals

To see whether we are making progress in achieving our desired future state, we need to track and monitor our progress. By the end of FY 2016/17 the PCO will:

- have developed in concert with the Central Agencies, Parliament and other key collaborators, a more effective 'architecture' around the legislative design process and current institutions such as the Legislation Advisory Committee and Legislation Committee of Cabinet to deliver higher quality draft legislation and more effective regulatory design
- be consistently delivering support and assistance to agencies and departments early in their policy and legislative design phases so that the full package of legislation is considered as a single whole (primary legislation, secondary legislative instruments and any tertiary rules, directions or notices)
- have developed a comprehensive training programme for departments and agencies which delivers training both to agency trainers and direct to instructors and policy officials. This will include an examination of the benefits of developing the model of 'accreditation' suggested by the Lead Reviewers
- build on the current initiatives for assisting new Ministers and Members, including Select Committee chairs, in understanding their roles, responsibilities and contribution to producing high-quality legislative drafting
- be conducting regular post-legislative reviews with instructing agencies at the conclusion of major primary and secondary legislative drafting projects
- arrange a Follow-up Review at an appropriate time to provide an independent assessment of how we have done.

David Noble
Chief Parliamentary Counsel

⁴ Leadership Development Centre; Australia and New Zealand School of Government; Victoria University, Wellington.

FOUR-YEAR EXCELLENCE HORIZON

This PIF Review considered: *“What is the contribution that New Zealand needs from the PCO and, therefore, what is the performance challenge? If the agency is to be successful at meeting the future performance challenge, what would success look like in four years? Does it have the change capability to get there?”*

Environment

The PCO performs a unique constitutional role in New Zealand’s system of Government. Its status as a statutory office outside of the core public service but under the control of the Attorney-General is more fully described in the Agency Context section of this Report. It also sets out the PCO’s functions, as prescribed by the Legislation Act 2012. These functions go well beyond drafting Bills and legislative instruments. The PCO also has an important advisory role, advising government agencies, the Government, the Judiciary and, through Select Committees, Parliament itself.

The PCO is regarded by its stakeholders as a professional and effective agency. Its staff are seen as highly skilled, with a deep knowledge of their craft. It was somewhat surprising to us that despite this high praise, many of the people we interviewed raised concerns about the state of New Zealand’s legislation and legislative process. We heard that much of our legislation is considered outdated, unnecessary and unduly complex. The need for a coherent, simplified and modernised framework for our legislation, based on a hierarchy developed from the top down, was repeated in various ways by different stakeholders.

This is reinforced by the Productivity Commission’s recent inquiry into regulatory regimes and practices. In its report it noted that legislation can easily become obsolete and fail to keep up with technology or public expectations. Almost two-thirds of the chief executives surveyed by the Productivity Commission reported that their agencies work with legislation that is outdated or not fit-for-purpose.

The MMP system of Government has radically changed the way in which Bills progress through the House as the Government may not always have the numbers required to progress them. Select Committees can recommend amendments to Bills and these may differ from the Government’s policy. This leads to reworking of policy through the Select Committee stages and even later.

There is frequent demand from Ministers and agencies for Bills to be drafted urgently and, increasingly, contemporaneously with the development of the policy supporting them. This has on occasion resulted in the need for significant amendments by way of Supplementary Order Paper (SOP) as Bills progress through Parliament. It also leads to an increase in the size and complexity of SOPs and can take up significantly more House sitting time than anticipated. This places an additional and growing burden on the PCO.

This Government has given a high priority to the settlement of historic Treaty of Waitangi claims with all willing and able Iwi by 2017. This has resulted in a significant increase in drafting and introduction of Treaty Settlement Bills, many of which are complex and lengthy and require a different approach to drafting, as they are frequently drafted contemporaneously with the negotiation of the Deed of Settlement. This increased workload is likely to be compounded by the settlement process for the Marine and Coastal Area (Takutai Moana) Act 2011.

There is a fundamental principle that for the law to be effective, it must be accessible and public. Accordingly a part of the PCO's mission is to enable "easy and free access to the laws of New Zealand". In this internet age, easy access means instantly accessible online from anywhere. This is reinforced by the Government's information and communications telecommunications (ICT) strategy, which requires that Government information and services must be joined up and easy to access through common customer-centric digital channels. In January 2014 the New Zealand legislation website which is developed and maintained by the PCO became an official source of New Zealand legislation. This fits well with the Government's Better Public Services (BPS) strategy as it enables users to interact easily and digitally and provides immediate access to legislation.

Performance Challenge – Outcomes

Clear and comprehensible legislation – a process of ongoing improvement

The PCO's mission is to provide high-quality impartial legislative drafting services and advice and to enable free and easy access to the laws of New Zealand. The challenges that must be addressed to achieve these dual outcomes are to:

- draft legislation that is clear, unambiguous and comprehensible
- ensure that the laws are available to those who are governed by it, those who apply it and those who must comply with it
- provide these services and advice in a timely and cost-effective way to meet the reasonable expectations of their customers.

The need for clear and comprehensible legislation is not a new challenge but requires a process of ongoing improvement. The Law Commission's advice to the Government over 20 years ago noted:⁵

"We cannot have a moral obligation to obey a law which is actually withheld or kept secret from us. But availability is not sufficient: those who are expected to know, obey, apply and advise on the law must be helped so far as is practicable to understand it."

In its report the Law Commission recommended the use of shorter sentences in everyday language and commended the use of aids to understanding, such as examples, formulas, maps and diagrams. The recommendations were adopted commencing in 1995 when drafting responsibility for primary tax legislation was transferred from the PCO to the Inland Revenue Department (IRD) to facilitate the reorganisation and rewrite of the Income Tax Act using plain language.

The PCO also adopted a commitment to plain language drafting and this is now set out prominently in its Strategic Objectives in its *Statement of Intent*. It is also enshrined in the Legislation Act 2012, whose purpose includes:

"... to make New Zealand statute law more accessible, readable, and easier to understand..."

We recognise the PCO's commitment to this objective but note that plain language drafting that is, "clear, consistent and easy to understand" is in the eye of the beholder. In a world where the meaning and use of language is constantly evolving this is a skill that requires a focus on continuing ongoing improvement. We also note that achieving plain language drafting also requires the commitment of instructing agencies and Parliament.

⁵ The Format of Legislation NZLC R27, 1993.

Consistency across all legislation

Consistency also requires a common style across all legislation – including IRD legislation, delegated legislation, local, private and members Bills. This point was made in the Law Commission’s 2009 Review of the Statutes Drafting and Compilation Act 1920. The Law Commission’s conclusion was that the arguments for having all drafting done in a single office are strong. The Commission makes the point that legislation is the language of communication between Parliament and the Courts and thus the Judiciary has a substantial interest in the clarity of legislative drafting. It would be easier to apply the law if there were a consistency of style and terminology and this consistency would be easier to achieve if the PCO had overall responsibility for drafting them all.

Efficient use of resources

The objectives of BPS require a consideration of whether it makes sense from a value-for-money perspective to have drafting resources split across two separate agencies: the PCO and IRD. We recommend consideration of a closer relationship because New Zealand has a small pool of qualified legislative drafters. We note, for example, the Canadian model where the drafters in the tax counsel division reside in the Department of Finance but remain employees of their equivalent of the PCO. Closer integration would not only avoid duplication of training and professional development but also provide cover (both ways) for work peaks. In addition, it could broaden the opportunities for skills development for counsel.

Greater and more forms of access

Ease of access is also a challenge that is constantly evolving. Online official access requires a different drafting approach to facilitate online use. There is also a growing need to make the legislation easier for others to use. For example, to enable those who use or apply the law, such as police officers, to access it remotely and instantly and to be able to click through to further explanation or information relevant to their functions. This might include:

- enabling links with other official sites, such as geospatial information provided by Land Information New Zealand (LINZ) or information on the Statistics New Zealand or Ministry for Primary Industries websites
- allowing users to cut and paste and annotate the legislation for their own purposes
- facilitating access through handheld and other mobile devices through the use of ‘apps’
- providing click-through links to other sources of relevant information and aids to interpretation, such as judgements and academic articles.

Better education of agencies and Parliament

There often seems to be a disconnect between the PCO’s needs and expectations and those of instructing agencies, Ministers and Select Committees. During our interviews we heard that the PCO too often receives inadequate instructions from agencies (often as a result of agencies working under tough time constraints, which means they cannot complete the policy work before sending instructions). Agencies and Ministers (and Select Committees) can also have unrealistic expectations of timeframes needed to draft legislation of an appropriate standard. Finally, we heard of poorly developed policy, which adversely impacts drafting, can lead to excessive use of SOPs (which are both time consuming and expensive) or the need to amend Bills to correct errors or change policy within a timeframe.

The PCO runs annual seminars on the legislative process. These seminars are open to all public servants and are always oversubscribed. As a minimum, they should be offered more frequently as staff turnover means that many agencies do not have sufficient institutional memory or understanding of what is required. The PCO also undertakes tailored seminars for agencies on request.

We suggest in addition to training those who directly provide drafting instructions, it is also the PCO's responsibility to educate senior managers in agencies that provide drafting instructions so they understand what is required and why. In addition more regular briefings would be valued by Ministers and Select Committee chairs who have to grapple with the legislative process and who depend upon the PCO for the successful development of legislation. The PCO should step up to the challenge and assume responsibility for educating agencies and MPs more proactively.

Revision of the overall hierarchy of legislation

One of the purposes of the Legislation Act 2012 is to make New Zealand statute law more accessible, readable and easier to understand by facilitating the progressive and systematic revision of the New Zealand Statute Book so that:

- statute law is rationalised and arranged more logically
- inconsistencies and overlaps are removed
- obsolete and redundant provisions are repealed
- expression, style and format are modernised and made consistent.

The Act introduced a requirement for a triennial programme of statute law revision. The Attorney-General is required to bring before each new Parliament a draft revision programme setting out revisions:

- proposed to be started during the three-year period
- expected to be enacted during that period
- on which work is expected to continue during that period.

The purpose of this revision programme is to “re-enact, in an up-to-date and accessible form, the law previously contained in all or part of 1 or more Acts,”⁶ and to eliminate obsolete, redundant and inconsistent laws. It is not to change the effect of the law.

The PCO has proposed the first of these revision programmes to the Attorney-General⁷, but in practice the amount of revision undertaken will depend on the collaboration and engagement of the agencies responsible for administering the laws and also the availability of Parliamentary sitting time.

We suggest that to provide enduring benefits, this programme requires a strategic assessment or a ‘meta-analysis’ of current legislation. This should be undertaken from a top-down rather than bottom-up perspective. There is a widely held view that New Zealand has far too much legislation, which has been introduced in an often random and non-strategic way over many years and by many different parliaments.

6 See S3(e) and S.29(2) Legislation Act 2012.

7 <http://www.pco.parliament.govt.nz/revision-consultation/>

The Productivity Commission notes in its review, referred to earlier, that there is no clear strategy for regulation and not enough attention is paid to the framing and performance of the regulatory regime as a whole. The same claim can be made of all our legislation. The PCO, as a steward of New Zealand's statute law, could lead this strategic review, as a first step, to inform the triennial revision process. A system-wide review could establish a hierarchy and logic to simplify the legislative framework and enhance the accessibility of the statute laws. We suggest that the Legislation Design Committee could be revived as an advisory board to provide 'whole-of-government' input and support.

Performance Challenge – Agency

i Purpose, Targets and Business Strategy

The PCO is generally seen as an effective agency with a strong professional culture and a clear sense of purpose. It is highly regarded by its key stakeholders. It was described to us as 'a centre of excellence' and Parliamentary Counsel as 'stellar public servants' with high levels of competence. Further, the online access to legislation through the PCO website was universally praised. This is a well organised and focused agency that does its core business of drafting and providing access to legislation well. However, the PCO's Four-year Excellence Horizon requires it to extend its influence and exercise a more proactive role to lift the skills and disciplines of its customers and all who are integral to the development and operation of our legislative system.

The PCO is an important gateway in the law making process and, as such, is a key monitor of legal risk. In performing its functions well the PCO lessens or eliminates risks to the Government as a whole. In this regard it must work closely with the Solicitor-General and the Crown Law Office in particular, as well as other agencies, to ensure that the risks caused by poorly thought through policy or legislation are anticipated and avoided wherever possible.

The current vision of the PCO is, "to be a leading legislative drafting and publishing office within the Commonwealth". Its mission is "to provide high quality legislative drafting services and advice and to enable easy and free access to the laws of New Zealand". These statements are inward looking as they refer to the function of the PCO and do not suggest a vision or mission related to the important role that the PCO should play as a guardian of our legislation. This was recognised by the Law Commission in its 2009 Review,⁸

"PCO must see the wider picture, and ensure consistency with our statute law overall. It can be said properly that PCO is the "guardian" or "keeper" of the Statute Book. It protects the integrity of our statutes as a whole".

There needs to be a sense of integrated legislative design in the aspirational purpose of the PCO. It needs to be more than a service provider drafting legislation and then providing access to laws and legislative instruments once enacted. Its strategic vision should encompass the role of guardian or steward of New Zealand's system of legislation referred to above and as the holder of deep institutional understanding of the statutes contained in it.

This can be illustrated by consideration of the customers of the PCO. They include:

- the Executive
- Select Committees
- Parliament as a whole

⁸ Review of the Statutes Drafting and Compilation Act 1920, p8.

- the Judiciary (for whom the legislation is the language of communication with the Parliament)
- agencies responsible for administering the laws
- statutory bodies and officers who apply them
- users of legislation who must comply with them.

The PCO needs to see the wider picture and exercise its influence, and in particular the influence of its Chief Executive as Chief Parliamentary Counsel, to promote overall consistency and the integrity of the body of legislation, taken as a whole. That requires a proactive influencing leadership role, not merely reactive or demand-driven response⁹.

In practical terms this may require counsel to have a closer role in development of the policy (or more particularly the design of the legislative framework or architecture for the delivery of that policy) and the instructions that provide the foundation of the drafting they are required to undertake. Some of the frustration that arises because of poorly considered and framed instructions may be overcome if counsel are prepared to collaborate more closely with instructing agencies at an earlier stage. Formal drafting instructions can be unduly time-consuming to prepare, particularly for agencies without frequent need for legislation. There is no reason why Parliamentary Counsel should not get involved at an earlier stage to assist.

We acknowledge that the independence of Parliamentary Counsel as advisers on constitutional and legal issues who must act ‘without fear or favour’ is highly valued. However, we see no reason why this independence would be compromised by earlier engagement in the development of instructions. This is what occurs in IRD, where tax policy and legislation has been successfully developed over the past two decades by a process involving wide consultation with practitioners.

ii Operating Model

For many years all Parliamentary Counsel were appointed by the Governor-General upon the advice of the Prime Minister as ‘principal officers’ of the PCO. This system of appointment was changed following the enactment of the Legislation Act 2012. The law now provides that the Chief Parliamentary Counsel (CPC) is the Chief Executive of the PCO and that he or she appoints and employs all other staff, including the Parliamentary Counsel. This means it is clear that the CPC is solely responsible for the effective operation of the PCO, in the same way that the Solicitor-General is responsible for the Crown Law Office (CLO).

Whereas previously the office was run broadly according to the model used by Barristers Chambers, the current operating model has three business units that each align with a core function: legislative drafting, access to legislation and corporate services.

The legislative drafting business unit is divided into four teams, each responsible for different subject matter areas. Our observation in conducting this Review is that this operating model is still relatively immature in its operation as the teams seem to operate more for work allocation than to drive co-ordinated outcomes by working as teams. We heard frequent comments that while the overall calibre of the PCO is undoubtedly high, agencies feel they can be held hostage to the style and approach of individual counsel.

⁹ This role would ideally be reinforced by explicit statutory reference to it in the Legislation Act.

The challenge for the PCO is to operate as a single voice, so that there is a unified PCO view of drafting style and approach. There should be no room for autonomous decision-making or for individual counsel to decide what type of work they undertake. There is a need to implement an operating model designed to underpin and support this way of working. Buy-in to the model will be assisted if this operating model is co-created by the staff and leadership of the PCO but it will require a significant change in the culture and a reconsideration of the organisation's design.

The PCO needs to adopt a professional services model. It needs to ensure that drafting responsibilities are appropriately allocated by managers across staff according to skills and capacity and that all counsel continually develop their communication skills to improve their ability to interact effectively with each other and their clients. They must speak with one voice and, wherever possible, use standard clauses (as has been effectively introduced for Treaty legislation) to ensure consistency of style. Agencies should not be concerned that the outcome for their legislation may be affected by the individual allocated to their Bill.

We think the portfolio approach, where each manager has a range of agency clients for whom they are directly responsible, needs further development. Managers should continue to engage directly and frequently with those clients in particular to ensure that the managers in the agencies are well informed about what the legislative drafting process entails. As noted earlier, the PCO must become more proactive about this education process by insisting upon engagement at a sufficiently high level.

Team building and effective collaboration – not only within the drafting teams but across all business units, would be greatly assisted by changes to the physical layout of the PCO's office accommodation. At present there is little opportunity for effective interaction and team building because of the lack of common areas, apart from meeting rooms. We note later in the Report that a reorganisation of office space is planned and we encourage the SMT to use this opportunity to engage with all PCO staff in planning it to enhance the opportunities for greater collaboration.

Another area for consideration arises from the risks inherent in the PCO's effective monopoly on statutory drafting. Although some agencies are able to draft some secondary and tertiary legislative instruments, all primary legislation (apart from tax Bills) is PCO's responsibility. As noted above, we understand and agree with this. Nonetheless, it does expose the PCO and thus the Government, to a significant risk of inadequate internal capacity as counsel retire or leave. Fully trained counsel are highly sought after and there is a very limited pool of talent. We heard that legislative drafting skills can take three to seven years to acquire.

The CPC and drafting team managers expressed a reluctance to allow drafting work to be briefed outside the office, though we note this has been done successfully in the past, both by PCO and IRD. It is seen as essential for the PCO to retain the specialist skills needed to draft legislation within the office and too risky, in terms of ensuring consistency with current drafting practice, to rely on outsourced service providers.

We are not convinced. There is a risk of 'learned helplessness' that can develop if counsel are continually drafting under unrealistic time pressure, great urgency or with inadequate drafting instructions.

There are several ways in which this risk area and the potential log-jam that can arise might be ameliorated. We think they are worthy of further consideration.

Accredited drafters/instructors

We suggest consideration of establishing a network of ‘accredited drafters’, who may be subject matter experts, within other agencies or even the private sector. These accredited drafters would need appropriate training but would work under the supervision of the PCO to provide comprehensive instructions and/or departmental drafts of Bills, together with an accompanying narrative explaining what is to be achieved. Another area where they might assist is in providing peer review of drafts. The PCO would retain the responsibility for final sign-off.

Secondments

The PCO uses secondments from time to time to provide professional development for individual staff members. For counsel this has included overseas postings with commonwealth agencies in Australia, Canada and the UK, as well as secondments to agencies either as policy analysts or legal analysts. Counsel who have undertaken secondments have found them valuable for extending their knowledge and understanding of the policy development process and the challenges the instructing agencies deal with. This also adds to the capacity of those agencies to develop effective instructions for legislative drafting.

There is also scope for suitably qualified lawyers or other staff from agencies to be seconded to PCO drafting teams. This can assist the PCO with specialist knowledge – the attachment of an Office of Treaty Settlements (OTS) staff member assisting with Treaty settlement legislation is a current example – and it also provides valuable experience for the analyst to draw on when they return to their own agency. We recommend consideration of a more systematic approach to secondment.

Branch offices or embedded counsel

Consideration could also be given to expanding the practice of placing trained legislative counsel within agencies that require extensive legislative drafting programmes each year, particularly where the drafting is of a specialist nature. Ministry of Business Innovation and Employment and Ministry of Justice are possible examples. These ‘embedded counsel’ would remain employees of the PCO but would work as part of the agency team in developing the policy in much the same way as the IRD drafting team currently operates. Indeed we suggest there may be scope for IRD counsel to become a part of the PCO drafting team, while staying embedded in IRD as a type of ‘branch office’. This would have the merit of ensuring that the CPC had overall responsibility for legislative drafting, but enabling those skills to be effectively distributed to ensure a closer and more immediate understanding of highly technical policy issues.

Another challenge is to effectively measure legislative drafting services. We acknowledge this is difficult, but we see it as a fundamental tool to enable the PCO to understand and plan for the resources it needs. At present, the PCO’s outputs are virtually entirely demand-driven. There is no meaningful comparison made between years and no evidence-based measure of the amount of time and resource required for different drafting projects. The introduction of time recording was considered in 2012 by an internal working group. The recommendation was not to proceed on an office-wide basis but to trial time recording for specific projects. There have been a couple of trials undertaken and time recording has been used successfully in connection with the redrafting of High Court Rules but there has not been any decision taken to use time recording more broadly.

The information that the PCO could collect from a time recording system, which should not be difficult to establish, would assist greatly in providing data to support planning and where appropriate, budget bids, and to inform agencies and Ministers about the actual cost of poor process to the overall legislative system. Agencies should be aware of the costs that inadequate instructions impose

on the public sector and on Parliament itself. The PCO will command more attention if it can provide evidence of the impacts on its own resources as well as the costs of additional House time.

iii Implementation (including Change Capability)

Implementation of the changes we recommend will not require major change for the PCO but it does require immediate focus and action. The corporate structure is already in place and reorganisation is currently under way to recognise the change in functions of the publications and to a lesser extent the change to the editorial team. These changes will assist the PCO in meeting its compilation and publication roles and reflect the PCO's continual need to operate in the modern online age. More action is needed to address the changes in culture and operating model required in the legislative drafting area.

The PCO has the capability to make these changes. What is required is a greater sense of urgency where all managers are driving the implementation of the changes needed. It requires a focus on developing the management disciplines needed to operate as a truly integrated organisation, speaking with a unified voice. The PCO values its independence but this should not require it to be isolated from the rest of the public and parliamentary service. The achievement of BPS requires that the PCO play its part in facilitating the smoother passage of Government policy into legislation. This will require the PCO to 'roll up its sleeves' and lead agencies by engaging more actively in educating and informing them.

What will success look like?

The PCO will have succeeded in meeting these challenges if, by 2018, in addition to being recognised as, "a leading legislative drafting and publishing office within the Commonwealth" it:

- has led the development of a clear strategy for modernising and simplifying New Zealand's legislative framework
- has made significant progress in revising legislation to eliminate obsolete, redundant and inconsistent laws
- is providing effective oversight over the drafting of all legislation in New Zealand
- is providing comprehensive training and guidance in respect of the legislative process for all of its customers
- has an interactive website that enables users not only to access official legislation but to link seamlessly with other relevant information and to incorporate the legislation in their own applications.

To achieve these high-level goals the PCO will have made further improvements to the way it operates. In particular:

- it will speak with a single unified voice when engaging with its customers
- there will be greater consistency and clarity of style and expression in its drafting
- the risks of insufficient capacity or experienced drafters to meet demand will have been addressed.

To effect these improvements we recommend that the PCO considers:

- developing its operating model to reflect a professional services model and defining the required behaviours and competencies needed to ensure a clear culture of 'one office – one voice'

- improving its focus on process efficiency through the use of effective time recording and management tools and greater use of standard drafting templates
- an active programme of secondments to and from instructing agencies and other Commonwealth drafting offices to provide development and training for its staff, as well as building better understanding and knowledge within other agencies
- more proactive management of the risks created by unforeseen peaks in demand through the use of a wider range of drafting options. Possibilities to consider are the accreditation of legal counsel within major instructing agencies; preparation of first or departmental drafts (well constructed drafting instructions would still be required); and encouraging the greater use of consultation or 'exposure' drafts
- succession planning for all key positions, particularly to cover expected retirements and promotions.

In summary, we see the PCO as on the path to becoming a highly effective organisation: going from 'good to great'. But this next step requires the organisation to become more outward-facing and to engage in the wider issues of what will provide Better Public Services. The PCO needs to become the champion for the development of a stronger, clearer and more accessible legislation system. It is not enough to be expert at what it does. It needs to accept the challenge to improve the system in which it operates.

Dame Patsy Reddy
Lead Reviewer

David Butler
Lead Reviewer

CENTRAL AGENCIES' OVERVIEW

The Lead Reviewers have confirmed that the PCO is a well run, high-performing agency valued by its Minister and stakeholders in government, Parliament and externally. Over the past few years it has significantly lifted its game as both a drafter and a publisher of legislation.

It faces three key challenges. Firstly, it is more difficult than it should be for PCO to do its core drafting job well. That difficulty arises from poor drafting instructions, haste and the demand that it produces draft legislation on the back of incomplete policy development. There is more the PCO can do to address these deficiencies but we also acknowledge instructing agencies need to lift their game and as the leaders of the state services we have a part to play in assisting the PCO. The ongoing fitness for purpose (including accessibility) of the legislation they administer is part of all Chief Executives stewardship role and we will reinforce that.

Secondly, the enactment of the Legislation Act 2012 underlines the stewardship role the PCO has in terms of the overall structure, quality and accessibility of our legislation. The revision programme will assist the PCO address this challenge but again it cannot do so without the active cooperation of its instructing agencies. But there is also a bigger job to be done, in collaboration with other players, to lift the overall quality and comprehensibility/accessibility of the Statute Book and we will be pleased to support the PCO to undertake its role as steward. All Chief Executives, in undertaking their individual stewardship responsibilities, should be supporting the PCO's stewardship of the overall system.

Finally, the digitisation of the Statute Book has been achieved very successfully. However, the demand for online access and the ability to manipulate and use legislation accessed digitally will face the PCO with ongoing challenges and it will need to be fleet of foot to find new and innovative ways of meeting those demands within its resources or in collaboration with other stakeholders.

The PCO is a non-public service department. While it is part of the State sector it is not a State Service and thus our role as central agencies is different. However, the PCO faces similar management challenges to other agencies and would benefit from greater inclusion in State Services fora and events and support in its change and people development programmes. As noted earlier it serves core public service agencies and its ability to be truly effective is impacted by how those agencies operate. We will support the PCO in its engagement with those agencies as it addresses the challenges referred to above.


Iain Rennie
State Services Commissioner






Gabriel Makhoul
Secretary to the Treasury

Andrew Kibblewhite
Chief Executive, Department of
the Prime Minister and Cabinet

SUMMARY OF RATINGS

Results






GOVERNMENT PRIORITIES	RATING
Not applicable	





CORE BUSINESS	RATING (EFFECTIVENESS)	RATING (EFFICIENCY)
Core Drafting Services		
Treaty Settlement Legislation		
Access to Legislation		




Rating System






 Strong	 Well placed	 Needing development	 Weak	 Unable to rate/not rated
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Organisational Management

LEADERSHIP, DIRECTION AND DELIVERY	RATING
Purpose, Vision and Strategy	
Leadership and Governance	
Values, Behaviour and Culture	
Structure, Roles and Responsibilities	
Review	

EXTERNAL RELATIONSHIPS	RATING
Engagement with the Ministers	
Sector Contribution	
Collaboration and Partnerships with Stakeholders	
Experiences of the Public	

PEOPLE DEVELOPMENT	RATING
Leadership and Workforce Development	
Management of People Performance	
Engagement with Staff	

FINANCIAL AND RESOURCE MANAGEMENT	RATING
Asset Management	
Information Management	
Improving Efficiency and Effectiveness	
Financial Management	
Risk Management	

Rating System

 Strong	 Well placed	 Needing development	 Weak	 Unable to rate/not rated
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Note: There have been three significant upgrades to the PIF Agency Model since it was implemented in 2009. The first was the inclusion of the Four-year Excellence Horizon in October 2011. The second was the Strategic Financial Management upgrade in December 2012. The most recent is the Better Public Services upgrade in January 2014. These upgrades affect comparability with previous PIF reports. For more information on the upgrades see: <http://www.ssc.govt.nz/pif-core-guide-1>.

AGENCY CONTEXT

The PCO is a separate statutory office established by the Legislation Act 2012 under the control of the Attorney-General. It is not part of the core Public Service under the State Sector Act 1988, and thus is not under the direct control of the State Services Commissioner. This status recognises that, while the PCO is part of the Executive, Counsel also takes instructions from the Judiciary (Court Rules) and Parliament (amendments to Bills).

Under the Legislation Act 2012, the functions of the PCO are to:

- draft Government Bills and Legislative Instruments
- publish Bills, Acts, Legislative Instruments and reprints of legislation (including reprints of Imperial legislation in force in New Zealand) in electronic and printed forms
- prepare reprints of Acts and Legislative Instruments
- prepare Bills to revise Acts in accordance with the current revision programme
- advise departments and agencies on the drafting of disallowable instruments that are not drafted by the PCO
- examine local and private Bills and Members' Bills that the Attorney-General directs to be examined
- advise on and assist with the drafting of all local and private Bills, and draft Members' Bills on the Attorney-General's direction.

The PCO may also draft certain other instruments at the direction of the Attorney-General or the Chief Parliamentary Counsel (eg Court Rules). The PCO is also responsible for supplying printed copies of Bills and SOPs to the House.

The PCO's goal is to contribute to parliamentary democracy under the rule of law by supporting Parliament and the Executive in their law-making roles and contributing to the Government's objectives by ensuring that:

- legislation that is necessary to change the law to implement Government policies is effective, clear, and consistent with other legislation, the general law and international law
- legislation, including Bills and SOPs, is accessible to the public in both printed and electronic forms and printed copies of Bills and SOPs are provided to the House
- Acts and Legislative Instruments are published with official, authoritative status.


The Parliamentary Counsel Office Budget for 2014/15 is \$23.435 million (2013/14 actual was \$22.235 million). This funds the PCO's two core functions: *Access to Legislation*: \$9.931 million; and *Law Drafting Services*: \$10.674 million. The Budget also includes provision for capital expenditure of \$2.830 million.

The PCO employs 83 staff. 39 Counsel, 27 providing access functions and 17 Corporate Support staff. It also receives support for its back office needs from the Parliamentary Service.

RESULTS SECTION

Part One: Delivery of Government Priorities

This section reviews the agency’s ability to deliver on its strategic priorities agreed with the Government. While the questions guide Lead Reviewers to retrospective and current performance, the final judgements and ratings are necessarily informed by scope and scale of the performance challenge.



Government priority
Performance Rating: Not applicable 

We considered whether there were specific priorities the Government wanted to achieve through the PCO. We considered whether the drafting of Treaty Settlement legislation and/or the Revision Programme provided for in the new Legislation Act should be treated as Government Priorities but concluded that the Government’s priority for the PCO was that it excelled at its core businesses of drafting and providing access to New Zealand’s legislation.

RESULTS SECTION

Part Two: Delivery of Core Business

This section reviews the agency’s effectiveness and efficiency in delivering its core business. While the questions are ex-post and guide Lead Reviewers to retrospective and current performance the final judgements and ratings are necessarily informed by the scope and scale of the performance challenge.

Core business 1: Core Drafting Services	
Performance Rating (Effectiveness): Well placed	
Performance Rating (Efficiency): Needing development	

The PCO functions include the drafting of Government Bills and amendments to them, drafting of instruments specified in the Legislation Act 2012 and revision of Acts in accordance with the current revision programme. The PCO is also required to examine all local and private Bills and as directed by the Attorney-General, to examine Members’ Bills. The PCO aims to draft legislation that is effective, clear and consistent with other legislation and adheres to legal principles.

Tax Bills are an exception to these drafting responsibilities. These Bills have been drafted by a separate drafting function within IRD since 1995. This is a unique arrangement – no other OECD country has drafting of taxation Bills completed by the administrator of the tax laws.

The Legislation Act 2012 (section 60) provided for the continuation of this historic anomaly notwithstanding recommendations made by the Law Commission following its review of the Statutes Drafting and Compilation Act 1920.¹⁰ IRD’s drafters utilise the LENZ system for drafting and publication purposes, the PCO drafts tax regulations and there appears to be a close relationship between the PCO and IRD drafting team. We note elsewhere in this Report there are likely to be opportunities for strengthening this relationship to provide opportunities for the development of drafting staff and to improve the robustness and efficiency of the services provided by both the PCO and IRD’s drafting team.

The PCO has a well deserved reputation for developing high-quality legislation, often under considerable time pressure and where policy design may change while a Bill is being drafted. The PCO is responsible for producing well written law but is not accountable for policy development and resulting drafting instructions. It does play a key role, however, in that the PCO can influence thinking as policy is being developed. Overall, the agencies that work with the PCO most frequently recognise the difficulty of the task and have high respect for the drafters they work with.

The PCO has well developed peer review and proof-reading processes to help ensure a high-quality product. However, in the year ended 30 June 2013, 77% of Bills drafted by the PCO and introduced were peer reviewed compared with the performance standard of 80%. Further, 75% of Bills introduced were proof-read compared with the performance standard of 97%. We understand that the failure to meet these standards is a result of pressure on the PCO to get Bills introduced. The performance measurement for peer review has been amended to require a Bill to be peer reviewed once before introduction and again before consideration by the Committee of the whole House. We

¹⁰ “Review of the Statutes Drafting and Compilation Act 1920” May 2009.

note that peer review also provides an opportunity (which is not being leveraged) to develop knowledge that can be used to continuously improve the PCO's performance.

Furthermore, it is uncommon for the PCO to review each Bill following enactment to consider whether there are lessons to be learnt, such as what could be done differently, were the right choices about resourcing made and what the people who worked on the Bill may have learnt which could assist in future drafting projects. The ongoing pressure of the PCO workload has meant that appropriate post-implementation review is not often carried out and therefore improvements have not been captured. Post-implementation reviews ought to be expanded and they should include the instructing agency. This should become normal practice for significant legislation projects.

While the Legislation Committee of Cabinet considers all Bills before they are introduced, in practice this does not allow sufficient detailed consideration. Further, the Legislation Advisory Committee does not have access to and ability to comment on Bills until they have been introduced. This can be too late to influence design. It may be more effective to revive the Legislation Design Committee to provide advice before Bills are introduced into the House.

The PCO now registers legal risks arising from draft legislation with CLO as part of the Government Legal Network (GLN) processes.

The PCO faces three key challenges in providing excellent drafting services:

- the quality of drafting instructions
- haste resulting from unrealistic timeframes and changing priorities
- the need to draft legislation on the basis of incomplete policy decisions.

Some agencies struggle to provide drafting instructions that sufficiently describe their policy objectives. Some agencies also have a poor understanding of how long it will take for a Bill to be drafted and become law. To further complicate things, we were frequently told that what seems to be a simple policy decision may be very difficult to turn into a Bill and instructing agencies are not always alive to this challenge.

Quality of Drafting Instructions

This is a systemic problem for the PCO and has been the case for a number of years. It was noted by many people and, despite efforts by the PCO to improve the quality of drafting instructions, continues to be an issue. We heard that the quality of instructions provided by an agency can be dependent on the skills and experience of a few staff. Quality can fall quickly when those staff leave. The Legislation Advisory Committee has promulgated (and is reviewing) guidelines on the process for, and content of, legislation.

There is a drafting instruction checklist on the PCO website and it runs an annual seminar for instructing agencies where the aspects of good drafting instructions are covered. This is usually oversubscribed and it is puzzling this seminar is not held more often given the unmet demand. The PCO also provides customised training. Renewed effort is needed to inform and educate agencies about how to prepare quality drafting instructions and the PCO needs to take a stronger role, as the approaches used to date have been unsuccessful. It may be necessary for PCO to take a firmer stand and return poor instructions to agencies more often.

The PCO does not believe drafters should be involved in developing policy and indeed it needs to retain an independent perspective. However, good practice necessitates the PCO discussing with the policy and legal analysts in the instructing agency the intent of a proposal to ensure it has an indepth

understanding of the policy proposal and the reasons for it. Policy decisions can be at a macro level and in these cases, the PCO could add value about how workable a proposal may be from a legislative perspective. The PCO could also provide unique insights into policy objectives, including suggesting how a proposal would work in practice. In essence, the PCO needs to test the legal effectiveness of drafting instructions as a Bill is developed.

We heard that the PCO could be more open to discuss policy decisions and to a degree, the extent of involvement in discussions can depend on the drafter. We note that the PCO's ability to engage in policy discussions can also depend on the attitude of an instructing agency. Sometimes drafters are perceived to have taken the independence of their role too far and stand back when they could add real value yet retain an independent perspective. If this is correct it needs to be addressed urgently by senior managers in the PCO. We heard from other jurisdictions that parliamentary drafters are commonly involved in discussions to tease out policy decisions and they actively seek an understanding from agencies about what it is trying to achieve. In those jurisdictions it was said there is a lot of discussion around a table. Another good practice is the use of an exposure draft of legislation to invite comments and feedback before the final Bill is introduced. Further, the Generic Tax Policy Process used by IRD is a good example of consultation and involvement of external experts in the development of legislation, which includes consideration of policy.

Drafting in haste

Despite having an agreed legislation programme with the Leader of the House, issues will arise that require urgent Bills or changes to priorities. In these circumstances the PCO endeavours to ensure the best possible quality Bill is prepared and staff work extremely hard to deliver. We were told that when a Bill is drafted very quickly quality can be compromised but the PCO will strive to resist quick consideration of important matters of principle. There appears to be more frequent use of SOPs to correct a Bill where issues arise during Select Committee scrutiny. It was suggested this is a result of the PCO rushing drafting as a result of demanding timeframes.

Some agencies perceive that the PCO occupies a position of power because the resources it applies to a Bill will determine how quickly the Bill is advanced to the House. However, we note that the PCO drafts in accordance with the Government's Legislation Programme or instructions from the Leader of the House or Select Committees. This misconception needs to be carefully managed and the PCO needs to be responsive and open to discuss the merits of a particular Bill compared to other work it needs to undertake.

It takes a long time for an experienced lawyer to become a skilled drafter and we heard varying estimates of at least three years and up to seven years. Matching planned workload with the right people requires careful consideration and new team-based arrangements aim to overcome the risk of overloading individual drafters. We see this as an essential work management tool as it also facilitates a more consistent PCO approach to drafting. Overall, the PCO needs to be able to respond to urgent work demands and it does this well but often as a result of a tremendous commitment from drafters.

Incomplete Policy Decisions

In addition, there is a growing practice of introducing Bills before policy has been completely developed – resulting increasingly in parallel policy and drafting development processes and the subsequent need for lengthy SOPs to change Bills as they progress through the House. This also slows the progress on Bills and there are several natural bottlenecks in completing the legislative process. The Legislative Programme always contains many more Bills than can be passed in any year and the House sitting programme is limited to fewer than 90 days a year. The longer a Bill requires in the House, the fewer Bills can actually progress.

The Legislation Framework

Given the PCO's unique drafting role it should also have a focus on the overall structure of the New Zealand Statute Book and be a champion for ongoing improvement to New Zealand's legislation. One of the purposes of the Legislation Act 2012 (section 3(e)) is to make New Zealand statute law more accessible, readable and easier to understand by facilitating the progressive and systematic revision of the Statute Book so that it is rationalised and arranged more logically. The Act requires the Attorney-General to prepare a draft three-yearly legislation revision programme for each Parliament. This is directed at removing redundant provisions, renumbering and rearranging provisions, making changes in language, format and the like. In addition to the revision programme, the PCO should also be prepared to express a view about the overall design and structure of New Zealand legislation and advocate change as needed. This is referred to in the Four-year Excellence Horizon.

Efficiency

Measuring the efficiency of legislative drafting services is a difficult issue faced by all legislative drafting offices. The PCO's outputs are almost entirely demand-driven and each year approximately 50 – 70 Bills are drafted along with 300 – 400 Legislative Instruments. We were advised that it is difficult to get a meaningful comparison between years because Bills and Legislative Instruments differ in complexity, making it unwise to simply compare, for instance, the number of pages of legislation produced each year, either in total or per counsel. We agree with this view however we suggest elsewhere in this Report that a better understanding of the efficiency of legislative drafting is needed and time recording should be considered.

Core business 2: Treaty Settlement Legislation	
Performance Rating (Effectiveness): Needing development	
Performance Rating (Efficiency): Needing development	

Passing legislation to give effect to Treaty settlements is a Government priority. The Government has a goal to complete the negotiation of all redress for historical breaches of the Treaty of Waitangi with all willing and able Iwi by 2017. In most cases legislation is needed to implement a settlement, for example, to ensure the finality of the settlement by removing the ability of the Courts and Waitangi Tribunal to re-open claims and to vest certain types of land in the Iwi governance entities.

Recognising the enormous commitment this imposes on Parliament's time and also the bi-partisan approach taken to Treaty legislation, the House has agreed to accept omnibus Bills, which combine several Deeds at Select Committee and first and second reading stage and has also agreed to use extended sitting hours to enable these Bills to proceed through to enactment.

This Treaty legislation places a substantial burden on the PCO. There are, at present count, at least another 12 Deeds signed and awaiting settlement legislation. Some of these are already in Bill form and are at various stages of progress in the House; others are waiting to be drafted. The OTS has other Deeds in final stages of negotiation that will require urgent drafting by the PCO if they are to have any prospect of introduction in this calendar year.

The position is even more complicated because of the practice whereby the Bill is drafted in parallel with the negotiation of the Deed of Settlement. Because the Iwi partner must sign off on the Bill that gives effect to the Deed, this practice can save time and resource. But it also imposes substantial and different burdens on the PCO, since it requires drafters to listen to the views of the Iwi as well as OTS,

at a time when issues are not always fully resolved. This process can be difficult to manage as the timing is dictated principally by the negotiation process, which are frequently complex and time-consuming.



The special processes the House has adopted to give priority to Treaty legislation also imposes additional pressure because it means that Treaty Bills are not always subject to the same rigorous scrutiny in the Select Committee stage. This creates greater pressure on the drafters to ensure the Bill is correct and to reduce the need for last minute SOPs to correct errors.

Recently, this process was significantly improved and the workload reduced by the mandatory use of templates of standard clauses for Settlement Bills. These were initiated and devised by counsel in the PCO. This is an excellent innovation, but it took over a year for the PCO to agree internally to adopt them because of reluctance on the part of some counsel to agree to use them. We also heard that some counsel are reluctant to work on Treaty legislation. With the sheer volume of work Treaty legislation is creating, coupled with the urgency the Government accords to completing the settlement process, we think this is disappointing. We discuss elsewhere in this Report the management challenge of ensuring all counsel work as a team rather than autonomously or as if they were barristers in chambers. This is not a business model that can work efficiently or effectively given the pressures of delivery in the modern parliamentary environment.

Effort has been put into improving the process by both the PCO and OTS (for example, the PCO now sits on the OTS Governance Board). Nonetheless, recognising the high priority the Government has given to passing Treaty legislation, the PCO must adapt its model to become more outcome focused. We suggest it work proactively with OTS to develop more solutions for dealing with the volume of legislation that will need to be passed in the next few years

There are other measures that can be taken to assist with this pressure and volume of work. OTS has currently seconded an employee to the PCO to assist counsel with the drafting, but we suggest the PCO should consider authorising some form of accreditation for legally qualified employees in other agencies – in this case OTS, Ministry of Justice and possibly LINZ – to draft provisions which would then be peer reviewed by the PCO. This would involve providing some specialised drafting training but we think that it would be a worthwhile investment for both agencies and would enable the PCO to develop more resilience to manage peaks of legislation demand.

Our comments about the efficiency of delivery of Core Business 1 apply to this Core Business.

Core business 3: Access to Legislation	
Performance Rating (Effectiveness): Strong	
Performance Rating (Efficiency): Well placed	

PCO is required to ensure that New Zealand legislation is readily accessible to the public in both printed and electronic form, and that printed copies of Bills and SOPs are provided to the House.

In particular, since 6 January 2014, the Chief Parliamentary Counsel has issued official electronic legislation under section 17 the Legislation Act 2012 through the New Zealand Legislation Website. The following documents are now official:

- every Act and Legislative Instrument enacted or made since 2008
- every reprint (subsequent version) of those Acts and Legislative Instruments

- the latest versions of all principal but not amendment Acts and Legislative Instruments enacted or made between 1931 and 2007, if still in force
- the latest version of some pre-1931 Acts, for example, the Sale of Goods Act 1908
- some earlier reprints of those 1931 to 2007 Acts and Legislative Instruments, and some earlier reprints of those pre-1931 Acts.

This is a unique responsibility for the PCO and one which users are very positive about. The website is easy to use and comprehensive. Search facilities are well developed and users cannot recall the website not being available.

The website is designed to comply with the New Zealand Government Web Standards, allowing the content to be usable by all, irrespective of physical or technological impediments.

Website statistics indicate the site is widely used with an average of 124,000 unique visitors per month. The PCO measures and reports on the timeliness and accuracy of its access functions and consistently meets the performance and quality standards that it sets. The performance standard of 99% availability of the website was met in the year ended 30 June 2013 and the availability of the law drafting system, used by drafters in the PCO and Office of the Clerk, was 99% which exceeded the performance standard of 92%.

To further enhance this service there needs to be a forward-looking approach taken to legislation publishing. For example, considering how remote access can be improved, how new electronic devices can more easily be used to access the website and whether commentary on legislation should be linked to the website. It would also be worthwhile to explore with other agencies, eg, the Police, how the website could be made more useful for police officers with information presented in a way which assists them. The ability to easily annotate legislation presented in electronic form would also be welcomed by MPs. We note that the PCO is currently engaged with the Office of the Clerk and Parliamentary Service in developing improvements to e-Committee and on a proposed 'Virtual House' initiative to deliver improved services to members.

The PCO has taken some positive steps by developing its *'Access to Legislation Strategy 2014 – 2019'*. This is a comprehensive and clear analysis of the current position and opportunities for the PCO to improve and extend access. As proposed in the strategy the PCO recently established an External User Group to provide advice and feedback on the current site and on improvements and innovations.

The PCO has started to consider how to measure the cost effectiveness of publishing legislation. This will include the actual publication process, including Bills and SOPs and the basis on which reprints are compiled and published as well as practices adopted in compiling and publishing.

Timeliness of publishing legislation on the New Zealand Legislation website is measured. Performance measure for new Bills and SOPs were met in the year ended 30 June 2013. This includes new Bills being online within one working day of introduction, SOPs online within one working day of circulation to members and Acts within five working days of assent.

ORGANISATIONAL MANAGEMENT SECTION

This section reviews the agency's organisational management. The questions focus on ex-ante and often guide Lead Reviewers to future and current performance. Final judgements and ratings are informed by the scope and scale of the performance challenge.

Part One: Leadership, Direction and Delivery

Purpose, Vision and Strategy

How well has the agency defined and articulated its purpose, vision and strategy to its staff and stakeholders?

How well does the agency consider and plan for possible changes in its purpose or role in the foreseeable future?

Performance Rating: **Needing development**



Leadership and Governance

How well does the senior team provide collective leadership and direction to the agency?

Performance Rating: **Needing development**



Values, Behaviour and Culture

How well does the agency develop and promote the organisational values, behaviours and culture it needs to support its strategic direction?

Performance Rating: **Needing development**



Structure, Roles and Responsibilities

How well does the agency ensure that its organisational planning, systems, structures and practices support delivery of government priorities and core business?

How well does the agency ensure that it has clear roles, responsibilities and accountabilities throughout the agency and sector?

Performance Rating: **Well placed**



Review

How well does the agency encourage and use evaluative activity?

Performance Rating: **Weak**



The PCO's vision is to be a leading legislative drafting and publishing office within the Commonwealth. Its mission is to provide high-quality legislative drafting services and advice and to enable easy and free access to the laws of New Zealand. The PCO considers that its role of drafting and publishing legislation will be an enduring responsibility and no significant change in its purpose or role is expected. Given this, the PCO's strategic planning focuses on strengthening and delivering better outcomes within its existing Core Businesses. However we suggest, in the Four-year Excellence Horizon, the current vision and mission, directed at the process of drafting and providing access to legislation, needs to change with the key deliverable for the PCO to become the steward of New Zealand's legislative framework. This will be a new strategy for the PCO with significant flow-on change to the roles of many people. The focus on high quality drafting and continuing to improve access to legislation needs to be retained.

The PCO does not have metrics (other than its annual user survey results) that enable it to compare drafting performance with other similar agencies in the Commonwealth. We were given examples where comparisons can be usefully made such as the overall structure of New Zealand legislation and the advanced use of plain language. These comparisons provide some insights into whether the PCO has been successful in legislative drafting compared to other jurisdictions but more is needed. It is relevant to note that we heard New Zealand is more likely to legislate compared to other countries and this would cloud comparisons. New Zealand is leading other countries with the comprehensiveness and ease of use of online legislation; this can be demonstrated more easily.

To become the steward of New Zealand's legislation the PCO needs a clear view about the legislative framework in New Zealand and to provide support to the Attorney-General to advance ideas for improvement. This could complement the Revision Programme that is under way. The PCO should have a view about what overall improvements need to be made and a plan to develop progressive and sustainable improvements.

To be 'well placed' the PCO would need to complete the changes it has started to implement and embed ownership of its purpose, vision and strategy within the organisation but more importantly grasp the challenge of becoming the steward of legislation for New Zealand and work closely with the Attorney-General to support him in modernising and simplifying New Zealand's legislation.

The PCO has come a long way over the last few years and a lot of attention has been given to ensuring there are more up-to-date leadership and management practices. The SMT of four people includes the Chief Executive and the leaders of each business unit. They meet fortnightly to consider and discuss issues affecting the organisation. When first established, a substantial amount of senior leadership attention was focused on the difficulties faced in delivering the integrated digital drafting and publishing system for New Zealand legislation. Although this took longer than expected to implement, both the drafting elements and the publication/website parts are now working well and the SMT is able to consider wider strategic issues for the PCO.

There appears to be good information sharing in the PCO. Regular management meetings are held within each business unit where issues of operational importance to the PCO are openly discussed.

The SMT has been effective in achieving change and encouraging the drafters to adopt a more consistent plain English style. It has also successfully introduced effective and reliable online drafting and access to legislation. However, although the people who engage with the PCO spoke highly of the overall quality of the work, they also said it is still very apparent there are different approaches used by different Counsel. It will always be the case that style differences will appear in Bills and this is understandable, but some Counsel appear to be less willing to engage with instructing agencies and, as suggested already, take their views about the independence of the PCO too far. There is a

commitment from SMT to address this but clearly there is further to go to ensure stronger alignment across the PCO. This needs to be addressed as a priority, given the challenge we have put forward for the PCO to take on a broader stewardship role.

An opportunity will arise soon to take another step forward in gaining greater integration within the PCO. The current office accommodation is due to be refurbished, which should provide an opportunity to enable staff to engage with each other more effectively. A number of PCO staff said the current accommodation creates a poor environment for collegial engagement, particularly for the drafting teams. While some drafters prefer to have separate areas for drafting, most are keen to have the opportunity for more social interaction within the office and the provision of modern, common work and discussion areas would assist. This should also lead to more collaboration by encouraging staff to get together more often to share experiences and discuss their work more broadly.

The PCO has identified and articulated the following values in its strategic plan: cooperation; developing staff; professionalism; respect; service; and transparency. It was common for us to hear, both internally and from external stakeholders, that PCO staff are very committed to the organisation and the importance of the work they do. There is a strong culture of professionalism throughout the organisation – whether in connection with drafting legislation or ensuring the online services are working well.

There are good induction and other training programmes and newer staff said they felt very welcomed. The values of the PCO are covered in the induction and skills development programmes and are specifically included in the PCO's performance management system.

The PCO's structure is aligned to its two Core Business areas and its corporate functions each having a senior leader who is a member of SMT. There are four drafting teams and the leaders of these teams report to the Deputy Chief Parliamentary Counsel who is a member of SMT. The drafting teams have specific areas of specialisation but as needed, work is allocated across the teams to ease the impact of spikes in workload and allow drafters to gain different experience.

While the PCO has put in place the LENZ system, which is an effective tool that supports its business from end-to-end, there is a need to create an explicit organisational operating model designed to underpin and support this way of working. We have described the key elements of this model in some detail in the Four-year Excellence Horizon and we note that buy-in to the model will be assured if this operating model is co-created by the staff and leaders.

Given the nature of the PCO's work, the planning, systems and structures are appropriate and seem to work well. This is particularly challenging, given the very different nature of the work the PCO undertakes in drafting compared to publishing and providing access. As already noted, lessons learnt from drafting legislation should be captured systematically and consistently so they are used to improve future performance.

The recurring problem of poor quality drafting instructions provided by other agencies is an area where the PCO could do more to educate agencies. We suggest the PCO should be more active in communicating what is required to speed up and improve the quality of the resulting legislation. We also suggest some form of time recording be introduced to track the time spent working on particular Bills and other legislative instruments. As well as assisting with understanding the requirements and resourcing needed in the PCO, a measure of time spent would be useful to demonstrate the additional time and effort required when drafting instructions are poorly prepared.

There is an expectation that each business group will prepare an annual plan that links to the PCO's strategic direction as articulated in its Statement of Intent. Business units report to SMT quarterly which provides an opportunity to gauge performance and identify pressure points.





As noted already, the PCO does not have a common or consistent practice of evaluating work completed to provide the opportunity to leverage learning from experience. We found no clear evidence that the staff recognise the value such evaluation would provide. There is a well developed peer review process to check draft legislation before introduction, but no 'post-facto' review process. As well, we heard from some counsel are not sure who is the 'best' drafter for particular issues and, therefore, who they can learn from.

The PCO understands the drivers that threaten the quality of the legislation its counsel draft and which result in inefficiencies for the legislation process (most often felt by the PCO and those responsible for managing scarce parliamentary time) and risk. It has put in place some mechanisms to attempt to mitigate these, but they remain systemic issues. We suggest there are other things that the PCO should do. An overarching approach to continuous improvement of the process is required and this will be a necessary part of a bigger picture approach to the quality of policy advice and of regulation.

Internal and external user groups and user surveys provide feedback and suggestions for improvements to the LENZ website. These have influenced the access strategy and will continue to do so. It is a technique which could also be considered for improvement of the legislation drafting functions of the PCO.

ORGANISATIONAL MANAGEMENT

Part Two: External Relationships

<p>Engagement with the Ministers</p> <p>How well does the agency provide advice and services to Ministers?</p>
<p>Performance Rating: Strong</p> 
<p>Sector Contribution</p> <p>How effectively does the agency work across the sector?</p>
<p>Performance Rating: Needing development</p> 
<p>Collaboration and Partnerships with Stakeholders</p> <p>How well does the agency generate common ownership and genuine collaboration on strategy and service delivery with stakeholders and the public?</p>
<p>Performance Rating: Needing development</p> 
<p>Experiences of the Public</p> <p>How well does the agency understand customers' and citizens' satisfaction?</p>
<p>Performance Rating: Well placed</p> 

The PCO reports to the Attorney-General, who has expressed his complete satisfaction with its service. The Attorney-General is aware of the pressure often placed on the PCO for urgent and complex legislative drafting and the often unrealistic expectations imposed on them by the political process and inadequate instructions. He noted that notwithstanding these pressures the PCO generally rises to the occasion and delivers drafting to a high professional standard.

The PCO is involved, with the CLO, in developing and maintaining a legal risk register that is used to alert the Attorney-General to legal risks for the Crown, including, in the PCO's case, with draft legislation and other legislative instruments that have not been adequately tested or developed.

The relationship between the PCO and the Leader of the House is also an important one and this is similarly strong. There is a close valued and positive relationship between the Office of the Leader of the House and the Chief Parliamentary Counsel (CPC) and Deputy CPC.

The PCO can do more to manage the risks to the quality of legislation and to exercise its stewardship role. In addition to working through the Attorney-General and the Leader of the House, the CPC should use his influence, relationships and standing to engage with other Ministers to highlight risks and implications arising from the poor quality of instructions or time pressures and to promote overall consistency and integrity of the body of legislation taken as a whole. In addition, the

relationship between the PCO and the Select Committees is important where again it is highly respected. More can be done by the PCO outside the context of hearings on specific Bills to assist chairs to understand their role and as needed, provide ideas about how to gain most benefit from hearings.

The PCO's reach is extremely wide, as virtually every agency, at some time, requires its advice and services in drafting legislation or other legislative instruments. It is also a part of the Government Legal Network, linking over 800 central agency lawyers across the Public Service.

The PCO has an important part to play in driving improvements in the legislative process, particularly to ensure that agencies understand their roles and how to develop good quality drafting instructions. The PCO provides annual seminars for new instructors which are regularly oversubscribed. It also offers tailored seminars to individual agencies. These services are well received, but the general concern with the inadequacy of drafting instructions and the lack of awareness of the time requirements for good quality drafting indicated to us there was more that could and should be done in this area. One suggestion is that the education and training for other agencies needs to be targeted at not just the agency lawyers, but also at the decision-makers who develop the policy and are in a position to influence how and when the PCO is engaged in the process.

The PCO works closely with the Office of the Clerk, whose drafting staff also use its drafting tool (LENZ) to prepare Bills and SOPs for members and are trained by the PCO. Similarly the PCO provides the LENZ system to IRD drafters. The PCO has a Memorandum of Understanding with IRD for the processing, printing, supply, and publication of their legislation. Elsewhere in this Report we raise the question whether this relationship would be even more productive and more efficient if IRD drafters were in fact Parliamentary Counsel who are seconded to IRD. This could allow for greater consistency of style and clarity of legislation and would also provide more scope for the management of risks associated with peaks and troughs of their respective workloads.

The PCO has extensive connections with its stakeholders across the wider Public Service. As well as taking instructions from central government agencies on drafting new and amended legislation it also provides links and electronic 'feeds' from its legislation website, which is highly regarded and valued by all.

We suggest that the PCO could also undertake a more pro-active role with agencies to establish frameworks for legislation and advising the Government on how they might be applied. It could also take a stronger leadership role in providing guidance to instructing agencies on the development of policy, by becoming involved earlier in the process. There is some resistance to this approach by some counsel who are concerned that it might jeopardise their independence. Our view is that it should be possible for counsel to provide guidance in a collaborative way, particularly having regard to the wide institutional knowledge they possess, but retain their professional judgement and ability to advise Ministers and Select Committees. Early engagement in the policy development process will give Parliamentary Counsel more confidence that the drafting instructions are comprehensive.

Parliamentary Counsel attend Select Committee meetings when departmental reports on draft Bills are presented and when amendments are decided. They provide advice to the committees and while this can create tension, their contribution is generally well received. However, it was noted in several interviews that the effectiveness of this relationship can depend upon the individual counsel and that there are differences of style and approach. This is a recurring theme in areas of interaction between Parliamentary Counsel and their stakeholders and we recommend that the PCO needs to move more firmly to ensure there is a single agency voice and style, in the same way that the CLO has done. This provides much greater consistency and clarity for stakeholders.

External Relationships

The PCO could also do more to assist in the education of members, Select Committee chairs and Ministers. Regular seminars and refresher courses should be provided to improve understanding of the process and the role of the PCO in ensuring high-quality legislation.

The relationship between the PCO and the Judiciary is principally through regular contact with the Rules Committee, which depends upon the services of Parliamentary Counsel for drafting advice and services. This service is highly valued and the relationship is a good one.

The PCO also engage regularly with the Law Commission, particularly through joint involvement on the Legislation Advisory Committee (LAC). At present, a PCO lawyer is seconded to the Law Commission to support the LAC in redrafting its guidelines. This relationship is a strong and supportive one but there are some frustrations felt by all parties that the input of the LAC is too late in the legislation process to be fully effective. This has led the PCO and the Chairman of the Law Commission to propose that the Committee should be restructured as a Legislation Design Committee, with a more focused membership and a role to advise on design, structure and content before legislation is introduced to the House.

The PCO's principal interaction with the wider public is through its website. This tool is widely used and admired, by Judges through to government agencies, academics, lawyers and business people. We had no report of any outages and consistent feedback about how valuable and easy it was to access. As noted elsewhere, the online access to official legislation is widely admired by comparable jurisdictions and public use of the website continues to increase.




The PCO has established a Website Communications Group that communicates with external website users when a defect or an incident affects its operation or performance. It has also recently surveyed a Website External Users Group for feedback on its operation and ideas about improvements and developments that might be made.

Whenever the PCO responds to public enquiries by email, a link is included to a survey seeking feedback about the promptness, clarity and usefulness of the response. Although relatively few people complete the survey, the results indicate a high level of satisfaction with the PCO's responses. The feedback provided through user groups and survey feedback is used to inform further development of the system.

The question of accessibility and comprehensibility of legislation drafted by the PCO is also relevant here. It has adopted a plain language approach to drafting and is well regarded (nationally and internationally) for its efforts but there is more to be done to ensure readability and comprehensibility of legislation. As noted more can be done to use the Peer Review process, the identification and dissemination of best practice to ensure a more consistent style and approach from counsel across the office and to identify clear, comprehensible language and structure and to highlight poor styles that should not be used. The implementation of post-enactment review to identify and ensure benefit for the whole office from lessons learned would also assist.

ORGANISATIONAL MANAGEMENT

Part Three: People Development

<p>Leadership and Workforce Development</p> <p>How well does the agency develop its workforce (including its leadership)?</p> <p>How well does the agency anticipate and respond to future capability requirements?</p>	
Performance rating: Needing development	
<p>Management of People Performance</p> <p>How well does the agency encourage high performance and continuous improvement among its workforce?</p> <p>How well does the agency deal with poor or inadequate performance?</p>	
Performance rating: Needing development	
<p>Engagement with Staff</p> <p>How well does the agency manage its employee relations?</p> <p>How well does the agency develop and maintain a diverse, highly committed and engaged workforce?</p>	
Performance rating: Well placed	

The PCO has a reputation for having a highly skilled workforce. Turnover is very low and Parliamentary Counsel seem to greatly enjoy their drafting work. We were told that they like the challenge of drafting legislation and that each day the work can be different. The other staff we met also enjoy their roles and there is a strong commitment to excellence in delivery and to provide support for the rest of the organisation.

The PCO has a strong focus on training. Staff agree they are well trained for their roles and that the organisation encourages them to develop their knowledge, skills and expertise. Development objectives are agreed with each staff member and formally recorded as part of the performance planning, appraisal and development system. Progress toward development goals is monitored regularly during the year. Third tier managers administer training budgets and staff members are encouraged to submit requests to attend training and development courses. All training is recorded on a training database.

Training of managers and mentoring of third tier managers is available that includes opportunities to gain senior management experience by attending SMT meetings on a rotating basis. Third tier managers can also attend various leadership development courses. Training in leadership and management skills needs to be strengthened to support the 'one office – one voice' operating model discussed earlier in this Report but, more importantly, becoming the steward of New Zealand's legislation will require new leadership thinking and development of people to take this step up .

People Development

Staff development appears to be determined largely on an individual basis. As part of the PCO's policy on staff development and succession planning, secondments to other agencies are undertaken from time to time to enable legislative counsel to develop greater knowledge and understanding of policy development and the implications for legislative drafting.

Some staff have been seconded to agencies to gain technical or managerial experience and others have been seconded to gain a deeper appreciation of the challenges for staff involved in policy development. In some cases staff have been able to take secondments to Parliamentary Counsel offices in other Commonwealth jurisdictions, such as Australia and the UK. Secondments can enable staff to develop a wider range of skills and expertise and we encourage a greater use of this as a development opportunity.

Team managers have been able to participate in training and development for their roles and the PCO has actively used development opportunities offered by the Leadership Development Centre.

For newly-appointed counsel, a formal training framework ensures that training sessions and on-the-job experience cover the range of topics necessary to become a competent Parliamentary Counsel.

There is a clear, four level, career progression framework for counsel, which facilitates progression from associate counsel through to advanced counsel level. Advanced counsel may elect to pursue a career as a drafting team manager or as a principal counsel. For other PCO staff, career options are less clear and this has meant that Engagement Survey results for the access and corporate groups are lower in some areas.

The very stable workforce (approximately half of the staff have worked in the PCO for over 10 years) means there is a relatively high median age, with approximately half of the staff aged over 50. This can lead to a higher risk for succession planning and maintaining institutional expertise if not carefully addressed and managed. A more proactive approach to succession planning should be considered.

A number of people we interviewed who work regularly with the PCO expressed concern about succession planning. In particular they were worried about the loss of institutional knowledge and expertise as several long-serving Parliamentary Counsel retired from the agency.

As noted earlier, it takes several years to train a fully qualified Parliamentary Counsel and this is a particular risk area, given it is a profession that does not suit everyone. We heard it can be difficult to recruit skilled counsel though recently there has been a successful recruitment round for several new counsel but only a few of these have previous drafting experience. This will provide a buffer when staff retire and is part of an overall workforce strategy the PCO has in place. The PCO has also taken secondments and fixed-term appointments of Australian and UK legislative drafters, as well as recently retired counsel, to bridge gaps and provide additional capacity.

There is also specific leadership training and mentoring undertaken for third tier managers, which will assist with their development and provide some different career choices to them. Although there is some way to go this should provide opportunities for the PCO to strengthen its more senior leadership capability and enhance its ability to deliver on its Four-year Excellence Horizon.

As a small agency it is difficult to develop a number of people who could step up to Tier 2 and perhaps the Chief Executive level. Nevertheless, more effort needs to be made to develop Tier 3 managers to ensure they are given good opportunities to further grow and develop. The PCO does not need to do this alone and could for example work more closely with CLO and agencies such as IRD the Ministry of Justice to tap into different development opportunities for its people.

Recently, responsibility for the management of the development and operation of the LENZ system was brought in-house after several years of out-sourcing to a single supplier. The in-house team now manages a panel of external developers and the support services provided by one of the all-of-government IT facilities providers. It will be important to ensure there are plans to recruit and retain the people needed for these specialist roles. To date this has worked well with savings expected but as it is often difficult to find skilled ICT staff this needs to continue to be well managed.

The PCO's Self-review noted different options for meeting demands for legislative drafting services were being considered, including whether counsel could be assisted by making greater use of legal executives or interns, outsourcing appropriate projects and contracting fixed-term counsel from overseas drafting offices. We observe that some added flexibility and cover for peak workloads or the unexpected loss of key personnel should be considered. Examples we have referred to already include having a more formal relationship with the legislative drafters in IRD, instituting a programme of developing 'accredited' drafters/instructors in the legal departments of some other agencies that are frequent users of the PCO and maintaining the cadre of alumni who are able to provide cover on a contract basis.

The PCO has been successful in achieving high performance and the very positive feedback we heard about the quality of its people is evidence of this. We have noted earlier that more could be done to encourage ongoing learning from completed legislation projects and a strong focus on improvement is needed.

This could be applied to improve the process used to take a policy idea through to legislation to demonstrate the impact of poor drafting instructions on the costs and resources incurred in drafting a Bill and seeing it through the legislative process to enactment. Similarly, a continuing focus on improvement would likely show the benefits of bringing the user experience into the development of a policy proposal through to the drafting of a Bill. Some agencies, such as IRD and the New Zealand Customs Service, use this approach.

From discussions with staff, it is clear that rewards and recognition practices could be strengthened. Further, in its Self-review the PCO said, "*... staff generally consider that they are recognised for doing a good job, and that their contribution is valued, but are less inclined to agree that outstanding performance is rewarded*".

While there have been some good steps taken to recognise achievements, this appears to be less structured and planned than we consider to be good practice. This requires knowing the culture well, thinking through how to encourage and recognise success and adapting the rewards and recognition system to continually align it to the culture.

In recent years the PCO has strengthened its performance management system. More attention is now given to planning and recording annual performance objectives and development goals for each staff member. Managers meet individually with their staff three times a year to track their progress against those objectives and goals.

It is not evident that superior performance has been clearly defined. A transition is under way to move the organisation from a situation where everyone received a superior rating to a more usual bell curve.

There is a view among staff that poor performance is not adequately addressed. In the most recent Kenexa workplace survey only 35.6% of those staff who participated agreed with the statement that 'poor performance is dealt with effectively'. Further analysis suggests that there are specific reasons for this result which are not related to how poor performance is dealt with. However, although on a par with the State sector benchmark results, this was a poor result and is significantly below the 'all organisations' upper quartile of 64.5%. This is an area that needs further focus and improvement.

People Development

The PCO is a relatively small agency and all staff are on individual employment agreements. Until very recently there were very few staff who were union members. However, following a restructure of part of the PCO operation, union membership has increased.

The practice used to manage employee relations has been for senior managers to communicate directly with staff when changes are being considered. This has enabled changes to be implemented with little impact on delivery of outcomes.

An example of a recent change managed directly with employees was when Parliamentary Counsel were moved from being officers appointed by the Governor-General under the Statutes Drafting and Compilation Act 1920, to being employees of the PCO appointed by the CPC. This arose because of changes in the Legislation Act 2012.

This change required all Parliamentary Counsel to negotiate and sign new employment agreements and the process involved identifying and confirming the existing conditions of all counsel and preparing contracts on terms no less favourable. Counsel were given time to consider the contracts and the transfer to new terms has been completed and the employment side appears to have been well managed. However, as already noted, further work is needed to ensure that counsel do not take their independence too far when dealing with drafting instructions.

The completion of the officialisation process has enabled the PCO to review its production and publication process and the capability it requires. This has in turn resulted in a relatively minor change in roles and structure. Technically, this appears to have been an appropriate process. That said, the 'vibe' within the office suggests that the ride was bumpier than necessary and management may have benefitted from access to experienced change management expertise.






The PCO achieved very good results in its most recent Engagement Survey, with an overall engaged percentage of 79%. This compared favourably with the State sector average benchmark and was on a par with the 'all organisations' upper quartile for the same period. The PCO is one of the leading organisations in the State sector in terms of employee engagement, with scores on 57 of the 60 questions significantly above the State sector benchmark.

This survey demonstrated that staff believe the PCO is a good place to work, they enjoy a good level of autonomy within their roles, and feel they have the ability, tools, and resources to perform well. We heard similar comments in the more recent discussions we had with staff during this Review.

Given the nature of the drafting work the PCO undertakes, and the fact that not all lawyers would be attracted to this work, the PCO needs to continue to challenge itself to ensure that diversity in cultures, thinking and ideas is actively encouraged and welcomed. To be strong in this area the PCO needs to address its role as system leader and demonstrate that it has effectively incorporated diversity of thinking and ideas into its day-to-day activities.

ORGANISATIONAL MANAGEMENT

Part Four: Financial and Resource Management

<p>Asset Management</p> <p>How does the agency manage agency and Crown assets, and the agency balance sheet, to support delivery and drive performance improvement over time?</p>
<p>Performance Rating: Well placed </p>
<p>Information Management</p> <p>How well does the agency manage and use information as a strategic asset?</p>
<p>Performance Rating: Needing development </p>
<p>Improving Efficiency and Effectiveness</p> <p>How robust are the processes in place to identify and make efficiency improvements? How well does the agency evaluate service delivery options?</p>
<p>Performance Rating: Needing development </p>
<p>Financial Management</p> <p>How well does the agency plan, direct and control financial resources to drive efficient and effective output delivery?</p>
<p>Performance Rating: Needing development </p>
<p>Risk Management</p> <p>How well does the agency manage its risks and risks to the Crown?</p>
<p>Performance Rating: Well placed </p>

The PIF performance ratings are set against the systems expectations of public sector agencies in general. Small agencies inevitably find it difficult to develop critical mass of core competencies in some or all of these areas. The PCO’s capability is generally fit for purpose. The PCO receives a number of services from Parliamentary Services, including accounting and financial reporting services, payroll and the parliamentary core computing network. It has service-level agreements to manage the provision of these services and is satisfied with those services.

The PCO’s only significant capital asset is the LENZ system. It is a complete drafting, publishing and reprinting system. The officialisation process, the re-capture of LENZ-related intellectual property and the move away from a single supplier to a model where several suppliers maintain and develop the

system, have been successfully completed. The PCO's focus now is bedding in this new way of operating which is delivering lower costs. Planned enhancements will continue to ensure that the major software components of the LENZ system are kept up to date and developed to ensure the continuing value of this investment. Work has commenced on an Access to Legislation Strategy 2014 – 2019. The LENZ User Group looks at ways of improving the day-to-day operation of the LENZ system.

While the changes referred to above have provided a much less risky environment for the operation and development of the LENZ system, it is still a complex, highly customised system, heavily reliant for its maintenance and development on the institutional memory inherent in the small PCO IT team. The team has done what it can to manage this risk. It recognises that longer-term resolution depends on the ongoing simplification of the system and this is recognised in both the Access Strategy and the reviewed Information Systems Strategic Plan (ISSP).

The original system has been fully depreciated and the enhanced system has a current book value of \$7.7 million. As at June 2013 the accumulation depreciation and impairment fund was approximately \$15.5 million which is sufficient to fund the developments referred to above.

The LENZ system supports BPS Result Areas 9 and 10 and the Open and Transparent Government Programme (the CPC is on the Chief Executives Governance Group for the Programme). Successive releases of the LENZ system have introduced new functionality to improve the usability of the system for drafters. The LENZ website was redesigned in 2012 and redeveloped in 2013 with the aim of making legislation easier to find and navigate. The changes improved searching, search and browse results and how legislation was displayed. The redeveloped website has been well received by the public and agencies. This has been achieved while ensuring that material derived from the system is secure, robust and dependable.

The PCO has developed a new and comprehensive ISSP and tactical plan that follows on from the ISSP executed between 2009 and early 2013. The ISSP responds to the developments contemplated by the PCO's *Statement of Intent*, Government Chief Information Officer initiatives, the relationships that PCO has with IRD, the Office of the Clerk and others who operate within the Parliamentary Precinct and the Users of the system. The ISSP initiatives are fundable within the PCO's baseline and available capital.

Provision is made in the ISSP to develop and enhance the LENZ system, the IT platform and other significant business systems and processes. The PCO will participate in several all-of-government pilots.

To be 'well placed' for information management, as noted elsewhere in this Report, the PCO would need to do more to collect, analyse and use information to improve both the efficiency and effectiveness of its drafting services.

The PCO has through the LENZ system significantly enhanced the efficiency and effectiveness of its processes for the development, processing and publication of legislation.

As noted in the results section work is still required to consider and identify opportunities to improve the efficiency of the drafting process. There are opportunities to gather information about the implications of known inefficiencies, identify (with stakeholders) the opportunities to address those inefficiencies and mitigate them. Many of these opportunities will require changes in the way the PCO and its customers and stakeholders work to co-create the legislation products.

The PCO operates off the financial processing and management system provided by Parliamentary Services. Annual planning and the allocation of budgets are conducted at the SMT level. There is regular reporting to SMT, with SMT receiving financial position and transaction reports every month. The PCO has a Financial Management Strategy (dated June 2013). It is a comprehensive (in terms of coverage) but high-level and descriptive document. The Strategy highlights key risks/opportunities around the LENZ system, all-of-government contracts, cost and efficiency savings (in particular opportunities around the printing of legislation), property and staff remuneration.

The financial outturn of the PCO over the past three years has resulted in surpluses. These came from efficiencies enabled by the progressive implementation of the LENZ system and consequent changes to processes (eg, the printing of hard copy legislation). While early on there was uncertainty about the sustainability of these efficiencies, the PCO should now have sufficient confidence to make decisions about the allocation of these savings (in the order of \$1.2 million per annum) to short term performance improvement projects or building ongoing capability, as appropriate.

The PCO's management control environment and financial information systems and controls have been consistently rated as 'very good' and its service performance information and associated systems and controls as 'good'.

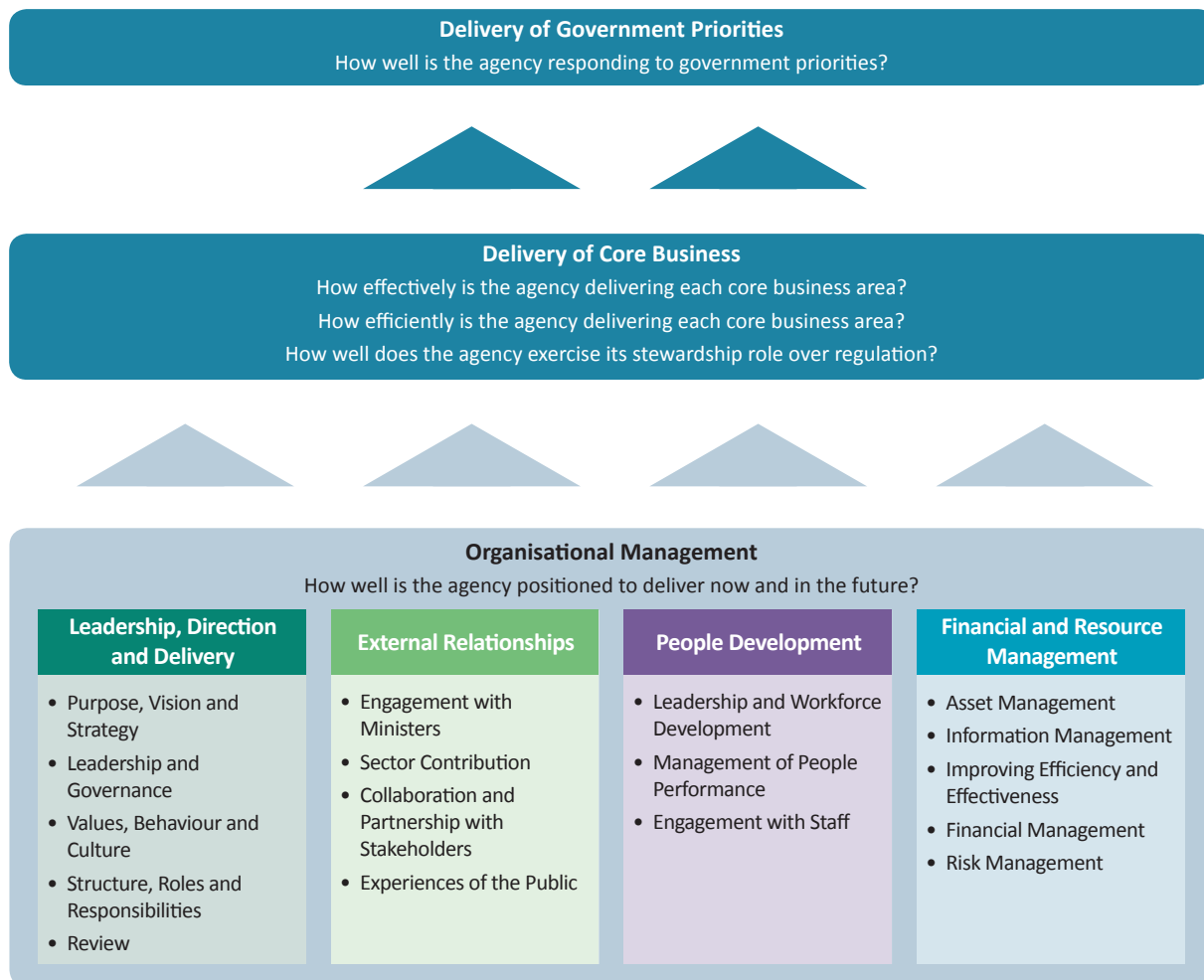
The PCO has a mature risk management approach; it assesses and manages risk effectively. A risk management framework and methodology operates in the PCO. Quarterly updates are considered by the SMT and the Audit and Risk Committee. The risks inherent in the LENZ system (referred to above) have been a significant focus of the Committee's work over the past few years. While that risk has been largely mitigated, it still remains and the impact of the risks coming to fruition would be large. We have noted that both the PCO and the Committee are very much alive to the need to keep working on these risks.

The PCO has established an independently chaired Audit and Risk Committee that meets regularly. The committee operates in accordance with good practice, has a Charter and a work programme covering all major aspects of its business that follows good practice guidelines. It provides independent advice to the CPC on governance systems and internal control, risk management and compliance, and external accountability responsibilities.

As well as managing organisational risk, the PCO also has a significant role to play in managing Crown Legal Risk. The likelihood and impact of risk, that legislation does not achieve its intended effect, has unintended effects or achieves the desired effect in a less than optimal way, is high. The PCO uses its relationships with agencies, its Minister, the Leader of the House and through the Government Legal Services Network Risk Register to highlight these risks. As noted earlier, it can do more, by itself and working with others, to manage and mitigate these risks.

APPENDIX A

Overview of the Model



Lead Questions

Results

Critical Area	Lead Questions
Government Priorities	1. How well is the agency responding to government priorities?
Core Business	2. How effectively is the agency delivering each core business area?
	3. How efficiently is the agency delivering each core business area?
	4. How well does the agency exercise its stewardship role over regulation?

Organisational Management

Critical Area	Element	Lead Questions
Leadership, Direction and Delivery	Purpose, Vision and Strategy	5. How well has the agency articulated its purpose, vision and strategy to its staff and stakeholders? 6. How well does the agency consider and plan for possible changes in its purpose or role in the foreseeable future?
	Leadership and Governance	7. How well does the senior team provide collective leadership and direction to the agency? 8. How well does the Board lead the Crown entity? (For Crown entities only)
	Values, Behaviour and Culture	9. How well does the agency develop and promote the organisational values, behaviours and culture it needs to support its strategic direction?
	Structure, Roles and Responsibilities	10. How well does the agency ensure that its organisational planning, systems, structures and practices support delivery of government priorities and core business? 11. How well does the agency ensure that it has clear roles, responsibilities and accountabilities throughout the agency and sector?
	Review	12. How well does the agency encourage and use evaluative activity?
External Relationships	Engagement with Ministers	13. How well does the agency provide advice and services to Ministers?
	Sector Contribution	14. How effectively does the agency work across the sector?
	Collaboration and Partnerships with Stakeholders	15. How well does the agency generate common ownership and genuine collaboration on strategy and service delivery with stakeholders and the public?
	Experiences of the Public	16. How well does the agency understand customers and citizens' satisfaction?
People Development	Leadership and Workforce Development	17. How well does the agency develop its workforce (including its leadership)? 18. How well does the agency anticipate and respond to future capability requirements?
	Management of People Performance	19. How well does the agency encourage high performance and continuous improvement among its workforce? 20. How well does the agency deal with poor or inadequate performance?
	Engagement with Staff	21. How well does the agency manage its employee relations? 22. How well does the agency develop and maintain a diverse, highly committed and engaged workforce?
Financial and Resource Management	Asset Management	23. How well does the agency manage agency and Crown assets, and the agency balance sheet, to support delivery and drive performance improvement over time?
	Information Management	24. How well does the agency manage and use information as a strategic asset?
	Improving Efficiency and Effectiveness	25. How robust are the processes in place to identify and make efficiency improvements? 26. How well does the agency evaluate service delivery options?
	Financial Management	27. How well does the agency plan, direct and control financial resources to drive efficient and effective output delivery?
	Risk Management	28. How well does the agency identify and manage agency and Crown risk?

APPENDIX B

List of Interviews

This review was informed by input provided by a number of PCO and Central Agency staff, relevant Ministers, and by representatives from the following businesses, organisations and agencies.

Agency/Organisation
Academia
Cabinet Office
Crown Law Office
Inland Revenue Department
Judiciary
Law Commission
Law Firms
Legislation Advisory Committee
Ministry of Business, Innovation and Employment
Ministry for the Environment
Ministry of Justice
Office of the Auditor-General
Office of the Clerk of the House of Representatives
Office of the Leader of the House
Office of the Parliamentary Counsel Australian Government
Office of the Queensland Parliamentary Counsel
Office of Treaty Settlements
Parliamentary Select Committee Chairs