

# Regulatory Impact Statement: Supporting a single point of online access to New Zealand legislation

## Coversheet

Purpose of Document	
Decision sought:	Analysis produced for the purpose of informing final Cabinet decisions concerning the secondary legislation publication model
Advising agencies:	Parliamentary Counsel Office
Proposing Ministers:	Hon Judith Collins KC, Attorney-General
Date finalised:	11 October 2024
Problem Definition	
<p>Secondary legislation that is drafted by an agency other than the Parliamentary Counsel Office (the PCO) is not published on the New Zealand Legislation website. Instead, it is notified or published in a number of different places, or not at all. This makes it very difficult (if not impossible) to find and comply with all New Zealand's legislation, increases compliance costs, and hinders parliamentary scrutiny of delegated law-making powers.</p>	
Executive Summary	
<p><i>Centralised publication is anticipated to commence from March 2026</i></p> <ul style="list-style-type: none"><li>• Over the years, advice to government and several inquiries recognised the difficulty members of the public and businesses have in finding all the secondary legislation that applies to them. In response, previous governments made legislative amendments aimed at addressing the issue.</li><li>• Latent amendments (enacted in 2019 and 2021, to come into force in March 2026) will establish legislative requirements on the PCO to publish all legislation (both primary and secondary), except local authority bylaws. This type of publication model is called centralised publication. The 2016 Government agreed to implement centralised publication of secondary legislation in response to two 2014 Inquiries concerning the accessibility of secondary legislation. Both inquiries recommended that the government expand the New Zealand Legislation (NZL) website to provide a central and comprehensive source of other instruments.</li><li>• Centralised publication will require the PCO to build and maintain a secure electronic lodgement portal and publication system. The lodgement and publication system would fully integrate agency drafted and published secondary legislation, making it available to read in full on the NZL website.</li><li>• To enable centralised publication, the PCO would need to identify and onboard agencies and their representatives to have access to this system, so that those representatives can lodge and publish all their existing, and future legislation on the NZL website. Secondary legislation would be published under the 'secondary legislation' tab of the relevant empowering Act, and agencies would need to actively manage that legislation on the NZL website once published. Secondary legislation would not become law unless and until published on the NZL website.</li></ul>	

*Further analysis of centralised publication uncovered several issues, which prompted exploration of an alternative option*

- Since the latent amendments were agreed, the PCO has undertaken further analysis of centralised publication. This analysis outlined several challenges with the model, including its cost to the PCO and agencies (currently unfunded), technical and security risks, and that it would exclude local authority legislation.
- Given these challenges, the PCO identified an alternative model, which would deliver similar benefits at less cost and risk – decentralised publication.

*The PCO has assessed decentralised, and centralised publication against the status quo*

- The PCO's preferred option is to progress with decentralised publication (Option Three). When compared to the status quo, Option Three achieves the desired objectives and outcomes (refer table on page 14). Accessibility, clarity, stewardship, scrutiny and compliance costs are all improved under Option Three.
- Option Three also scored best against the criteria used in this assessment, compared to other options. This is because the costs are more affordable for the PCO and agencies, while still delivering similar benefits, to a similar level as Option Two (centralised publication). Option Three also has the added benefit of being scalable, as it will be less complex and less costly to include bylaws on the NZL website at a later date, subject to further Cabinet decisions (including funding).

*Decentralised publication will require legislative changes, and transitional arrangements*

- The PCO will be responsible for implementing the proposed changes and the ongoing operation of the publication model. A Bill to amend the Legislation Act 2019 will be required to implement the changes. The amendment Bill will need to be introduced in early 2025 and passed by March 2026, in order to prevent centralised publication requirements from coming into force.
- In the meantime, the PCO will continue its work with agencies through the Community of Practice. This will be the main (but not only) way in which impacted stakeholders will be advised of the changes and receive support to comply with the new requirements.
- To provide for a smooth transition, the PCO proposes a transitional period of up to one year following the Bill's passage, whereby agencies must publish all in-force legislation on their websites to specification. However, there will be flexibility to allow up to five years for this transition, where this is needed.

*Monitoring and reporting*

- The PCO's Strategic intentions for 2023-2027 include indicators to assess the impacts of the PCO's activities to improve the accessibility and quality of secondary legislation. Measures include an increase in the proportion of secondary legislation that is legally required to be published online, and that is drafted and published in accordance with the PCO's technical standards. These indicators will be used to measure progress over the coming years.
- The PCO recently issued a survey to the approximately 120 drafting and publishing agencies, aimed at understanding the stock and flow of their secondary legislation. There is scope to carry out a similar survey next year, with new or updated questions focused on decentralised publication. The PCO's Annual Report on Legislative Practices can include analysis of survey results, as a means for the Attorney-General and interested parties to be aware of its impacts.

### Limitations and Constraints on Analysis

- The PCO has been engaging with agencies that draft and publish secondary legislation through a Community of Practice to obtain insight into the challenges and opportunities faced by those agencies. While we know more about the stock of secondary legislation than we have before, there is a critical lack of information about agency and, to a lesser extent, PCO costs, with respect to publication, and volumes of stock and flow of legislation.
- At this stage, we are not proposing local authority bylaws be included in the secondary legislation published on the NZL website from day one, due to a 2016 Cabinet decision to exclude this legislation to contain the scope of the project. Bylaws are a significant stock of secondary legislation, however, and a subsequent 2017 Cabinet decision directed exploration of options for its publication. As such, the criteria of scalability is included, to accommodate a future decision to include this type of legislation. There would be further costs associated with a decision to include local authority legislation.

### Responsible Manager(s) (completed by relevant manager)

Megan Moffet

Manager

Legislative Stewardship

Parliamentary Counsel Office

Signature:



Date signed out: 11 October 2024

### Quality Assurance (completed by QA panel)

Reviewing Agency:	Parliamentary Counsel Office (the PCO)
Panel Assessment & Comment:	<p>This Regulatory Impact Statement (RIS) has been reviewed by a panel of representatives from the PCO. It has been given a 'meets' rating against the quality assurance criteria for the purpose of informing Cabinet decisions.</p> <p>The Panel considers that this statement provides a sufficient basis for informed decisions on the current proposal, however the PCO should be looking to strengthen the evidence base about the stock and flow of secondary legislation and the associated cost of publication. This evidence should inform future decisions.</p>

## Section 1: Diagnosing the policy problem

### What is the context behind the policy problem and how is the status quo expected to develop?

1. Most of the legislation made each year is not enacted by Parliament directly. Instead, it is made by other people or bodies under powers delegated to them by Parliament. This type of legislation is 'secondary legislation'. Legislation of this kind may take various forms, such as regulations, rules, notices, standards, codes of practice, Orders in Council, and other instruments with various names made by Ministers, department chief executives, Crown entities, local authorities, occupational regulation bodies and a range of other entities.
2. The Parliamentary Counsel Office (the PCO) only drafts a limited amount of, generally more significant, secondary legislation – Regulations, some Orders in Council, and other instruments as agreed with the administering agency and Ministers (such as the Road User Rule). The PCO publishes any legislation that it drafts on the New Zealand Legislation (NZL) website.
3. The rest of the secondary legislation that is made, including things like rules, notices, and codes of practice, is drafted and published by around 120 different agencies (excluding local authorities). These agencies have varying proximity to government – most are recognisable government entities such as the New Zealand Transport Agency. A small number are less-well-known, and less closely linked to government, such as the New Zealand Flour Millers Association.
4. Secondary legislation drafted by agencies is difficult to find. Some is published in the Gazette, some is published in newspapers or on agency websites, while some is not published at all. These arrangements:
  - a. constrain the ability of people to find all their rights and obligations under the law. This raises compliance costs on businesses, and is inconsistent with the basic principle of the rule of law that the law must be publicly accessible. Even where legislation has been located, it is not always clear if it is current or an older version
  - b. weaken efforts to analyse, harmonise, simplify, and automate compliance with legislation, increasing costs and undermining efforts to identify and reduce unnecessary burden
  - c. reduce parliamentary oversight of secondary legislation. Difficulty identifying and accessing secondary legislation impedes parliamentary scrutiny and weakens the checks and balances on delegated law-making powers
  - d. can make it harder to meet international obligations for access to legislation. Some trade agreements, such as the Comprehensive and Progressive Trans-Pacific Partnership Agreement (CPTPPA), contain transparency obligations requiring legislation that impacts on it to be freely available online via a single, official website.
5. Over the years, several inquiries have recognized the difficulty members of the public and businesses have in finding all the secondary legislation that applies to them:
  - a. A 2014 report of the Regulations Review Committee highlighted that difficulty in identifying secondary legislation means that a large amount of secondary legislation that should have been presented to Parliament has not been presented. This impairs parliamentary oversight of the exercise of delegated law-making powers.
  - b. A report of the Productivity Commission published in the same year noted the absence of a central electronic repository of 'other instruments' (secondary legislation) constrains the ability of firms and individuals to access and understand their regulatory rights and responsibilities. It recommended that the PCO expand the NZL website to provide a central and comprehensive source of other instruments.



- c. A 2013 inquiry into whey protein (in response to a potential contamination incident) identified challenges with the volume, complexity and accessibility of secondary legislation. Knowing when a search for relevant legislation is 'complete' (i.e. all applicable legislation on a matter has been found) was a particular challenge.
6. As part of its response to the Regulations Review Committee Inquiry, the Government directed the PCO to explore options to remedy these concerns. Improvements are expected to deliver efficiency gains, including better oversight and enforcement of regulatory regimes, enhanced regulatory design, and ability of individuals and businesses to comply with the law and understand their rights and obligations.

### **The PCO has a long-term work programme focused on secondary legislation**

7. To respond to these issues, the PCO established a multi-year programme of work focused on making all secondary legislation readily accessible. Work to date in the Access to Secondary Legislation Project has included creating a single category of secondary legislation (where previously there were several overlapping and confusing categories), clearly defining in Acts what is secondary legislation, and the related inclusion of Publication Presentation and Disallowance (PPD) tables in empowering provisions. The PCO also created a new 'secondary legislation' tab for each principal Act on the NZL website, where we have linked secondary legislation drafted and published by the PCO to the Act that it is made under.
8. Underpinning many of these improvements are the Legislation Act 2019 (the LA19, or the Act) and its companion Act, the Legislation (Repeals and Amendments) Act 2019 (the LRAA19), the Secondary Legislation Act 2021 (the SLA21) and the Legislation (Publication) Regulations 2021 (the LPR21, or the Regulations). Together, they set out the legal framework for legislation in New Zealand and provide the basis for how primary and secondary legislation is interpreted, applied, drafted, published, notified, and overseen by Parliament.

### **Latent provisions will establish centralised publication of legislation (except bylaws)**

9. Schedule 2 of the LRAA19 contains latent amendments which are scheduled to come into force in March 2026. These amendments provide for a major change to publication requirements for agency-drafted secondary legislation.
10. Where currently both agencies and the PCO publish secondary legislation, the amendments will establish a system where secondary legislation is lodged through a portal managed by the PCO, providing the ability for agencies to publish that secondary legislation on the NZL website (centralised publication). This means users of the NZL website would be able to access and read all legislation (except that made by local authorities) through one website.

### ***Components and features of a centralised publication system***

11. The PCO would build and maintain an online portal and publication system, and identify and onboard agencies and their representatives to have access to it through a license. Agencies would be responsible for lodging and publishing their secondary legislation through the portal and publication system, and the maintenance of that legislation. Legislation would not become law unless and until published on the NZL website.
12. This model would involve identifying, reviewing and republishing up to 20,000 existing instruments through the NZL website, and would need to cater for the publication of up to 2,000 new instruments per year. Agency staff who access the portal and publication system would need to have legal knowledge to provide accurate information that is required for publication, as well as be comfortable working with technology and an online system. In

some cases, this may require dedicated FTE in agencies to manage their legislation through the portal, and some agencies would need to invest in capability and/or capacity to develop this resource.

13. Centralised publication could also be expanded to remove the requirement to notify the making of legislation in the Gazette. Instead, the PCO could take over this function, as notification could occur through the system following the publication of the legislation. In effect, this would see the NZL website become the single source of truth regarding all New Zealand legislation (except for local authority and other exempted legislation).

*Local authority legislation is excluded, and would pose significant costs and risks to include*

14. During the development of the Legislation Act 2019, the 2016 Government chose to exclude local government legislation from the regime in order to contain the scope of the project. There are 67 territorial authorities empowered to make bylaws under primary legislation such as the Local Government Act 2002 and the Land Transport Act 1998.
15. Including this type of secondary legislation in a centralised publication model would mean a more than 50% increase in the number of agencies accessing the system, which would require additional capability and capacity needs for the PCO and the local council, with funding to match.
16. However, acknowledging it is a significant source of secondary legislation and there are benefits to having it accessible from one place, the 2017 Government subsequently directed the Department of Internal Affairs (DIA) to explore options for the future publication of local government legislation.

#### **Current publication requirements for secondary legislation not published by the PCO**

17. The transition to centralised publication was anticipated to take many years to complete and require significant investment from the PCO and agencies in people and technology.
18. To smooth the transition, the rewrite of the 2012 Legislation Act included publication provisions that envisioned centralised publication, while providing for the status quo to continue. As such, the Act currently provides that agencies that draft secondary legislation must follow the 'applicable publication requirements' for that secondary legislation, being:
  - a. what any regulations concerning publication made under the LA19 say, or
  - b. what the PPD table says, or
  - c. what the publication requirements were prior to the LA19 coming into force.
19. This is essentially a hierarchy provision, that was inserted to, over time, improve publication practices of agencies that 'make' legislation. The intention was that until the latent amendments come into force, the PCO would continue to work with agencies to improve their drafting and publication practices. Those agencies which are at, or very close to 'best practice' would have the empowering provisions they make secondary legislation under added to Schedule 2 of the Regulations.
20. Once added to that Schedule, the agency would be required to comply with the Regulations with respect to publication and notification. The Regulations require that secondary legislation is "*published on the maker's website*" (i.e. the website of the person empowered to make the instrument – typically the agency website), and "*notified in the Gazette*".
21. This would provide a stepping stone to centralised publication, as it would encourage agencies to identify and review their secondary legislation made under an empowering provision in Schedule 2 (ahead of the transition deadline), and get into the routine of publishing it online. The information that is required for notification is also the same information that would be required to lodge the legislation for publication in a centralised model.

**Since the latent provisions in the LRAA19 and SLA21 were developed, an alternative model of publication has been identified – decentralised publication**

22. To support implementation of a centralised publication approach, the PCO undertook further work to understand what would be required to give effect to the new regime. This analysis identified an alternative approach, which could deliver a similar level of benefit as centralised publication, at significantly less cost and risk. We have termed this approach ‘decentralised publication’.

*Components and features of a decentralised publication system*

23. Agencies would continue to draft and publish secondary legislation. There would be minimum base requirements set out in legislation that apply to all secondary legislation that agencies draft (unless it is exempt). Some of these minimum base requirements, such as the Secondary Legislation Access Standards, have already been circulated to publishing agencies through the PCO’s Community of Practice (a group comprised of the approximate 120 agencies that make secondary legislation), and endorsed by the Regulations Review Committee, Public Service Commission, and Attorney-General.
24. Other requirements are web specifications that would include publishing the legislation in a searchable PDF format (with at a minimum, strong encouragement for HTML format as well), clearly demarcating the legislation from non-legislative material on the website (such as guidance), and publishing metadata, termed ‘minimum legislative information’ (MLI) with, or within, the secondary legislation. MLI includes information like when the legislation was made, published and notified, who administers it, what empowering provision it is made under (and which Act), and when the legislation commences.
25. The PCO would work with agencies to establish links between the agency website and the NZL website. Metadata aggregation software would then be used to identify and aggregate that published secondary legislation, using the MLI published with or within it. This software is currently being piloted, following a successful proof of concept in 2023, where it collected 784 instruments from 21 agencies (exceeding the original goal of collection from 10 – 15 agencies). It was confirmed that the software could monitor agency websites and detect when new instruments are added. For the pilot phase of the project, the PCO are aggregating metadata on secondary legislation from roughly 70 agency websites and making it searchable via a demo version of the NZL website.
26. In full operation, this will mean users will be able to search for and locate a piece of secondary legislation using one website (the NZL website), making it easier to begin a search for legislation, with the ability to view all secondary legislation made under an Act. Should they wish to read the secondary legislation in full, they will need to click the link listed on the NZL website which will take them to where it is published on the agency website, along with the MLI associated with that secondary legislation.
27. More advanced users will also be able to access the full data set for the purpose of developing new tools to interrogate and reuse the data, for example, to make compliance tools for particular sectors, contributing to digitising government services.

*Local authority legislation could be included with less complexity*

28. Like centralised publication, decentralised publication could be expanded to include notification of secondary legislation, subject to further decisions. However, unlike centralised publication, a decentralised model is more easily scalable and could include local authority bylaws. Bylaws are a significant source of secondary legislation, and their inclusion would support the NZL website to be a single point of access to all legislation.

## Continuing with the status quo is undesirable and requires legislative intervention

29. Without intervention, the latent framework for centralised publication will come into force in March 2026. Therefore, continuing with the status quo will require legislative amendments to remove the latent framework and prevent it from commencing.
30. A decision to continue with the status quo is undesirable. While the PCO is working with agencies to lift capability and achieve best practice in drafting and publication, it would be difficult for agencies to progress this work without a legislative requirement, given competing priorities. This means secondary legislation would continue to be published in a variety of ways (including not at all), and the identified issues with respect to access to and scrutiny of that legislation would persist.
31. Continuing with the status quo would also undermine work undertaken over the past 10 years, including the work of the Inquiries, to better understand the issues, stocks and flows of secondary legislation, and develop solutions to identified issues. It would also jeopardise potential future work, such as efforts to tidy up and maintain the legislative framework for local authority legislation.
32. The impacts of continuing with the status quo are discussed further under Option One / status quo in Section 2.

## What is the policy problem or opportunity?

33. The inaccessibility of New Zealand's secondary legislation is a significant weakness in our current system. No-one knows how much secondary legislation is published by agencies. Estimates range from around 7,500 to 20,000 current instruments, published by around 120 government and some non-government agencies.
34. Secondary legislation that is drafted by an agency other than the Parliamentary Counsel Office (the PCO) is not published on the New Zealand Legislation website. Instead, it is notified or published in a number of different places, or not at all. This makes it very difficult (if not impossible) to find and comply with all New Zealand's legislation, increases compliance costs, and hinders parliamentary scrutiny of delegated law-making powers.

## What objectives are sought in relation to the policy problem?

35. Changes to how secondary legislation is published and notified are expected to deliver the following objectives:
  - a. **Accessibility:** the NZL website is a free, single point of access for legislation in New Zealand, including secondary legislation (with some exceptions, such as legislation exempt from publication and, at least initially, local government bylaws).
  - b. **Clarity:** the relationship between secondary legislation and the primary Act it is made under is clear, including the provision that empowers the secondary legislation's making, and secondary legislation is demarcated from non-legislative instruments (such as guidance). Information such as what type of legislation it is, key dates, and the agency responsible for it, are clearly set out.
  - c. **Stewardship:** agencies have a whole-of-system view and understanding of the regulatory frameworks they are responsible for, including information about the secondary legislation that comprises the regulatory system. The system supports the creation of a high-quality dataset to enable more advanced users to develop tools to interrogate and reuse the information published.
36. There are no significant trade-offs between these objectives. However, they do directly support one another. Improved clarity, with clear information about what the legislation is,



who administers it and how it relates to primary legislation improves accessibility and stewardship, as it supports understanding of the legislation and wider regulatory system, how different components fit together, and the obligations under those components. This information also enables third parties to analyse and produce new tools to interrogate and reuse the data (e.g. creating compliance tools), further contributing to accessibility.

## Section 2: Deciding upon an option to address the policy problem

### What criteria will be used to compare options to the status quo?

37. This RIA compares two different publication models against the status quo, including the regulatory requirements, systems and technology needed to enable the model to function. The criteria for this assessment are:
- a. **Effectiveness.** Does the option help address the identified issues with access to secondary legislation? Does the option achieve a model for publication that realises the stated objectives, accessibility, clarity and stewardship?
  - b. **Workable costs.** Is the option able to be implemented and operationalised at a reasonable cost that is affordable, long-term, for both the PCO and impacted agencies?
  - c. **Scalability.** Over the long term, can additional legislation be added easily, to expand the utility of the NZL website and enable the inclusion of local authority bylaws?
38. There are trade-offs between these criteria. For the solution to be effective, we need the approximately 120 agencies to be, as much as possible, publishing under best practice. Effectiveness could be in conflict with workable costs, if the best practice requirements are too rigid or set a too high standard. Smaller, less well-resourced organisations may struggle to find funding for activities needed to be compliant. Similarly, workable costs may be in conflict with scalability, if it is expensive or otherwise burdensome to expand the range of legislation available through the NZL website.

### What scope will options be considered within?

39. All options require legislation. While previous governments agreed to legislative changes establishing centralised publication, [REDACTED]. Even if there was a decision to progress with centralised publication (Option Two), [REDACTED], legislation would be needed to amend the timeframe for its implementation. March 2026 is no longer a viable date for its operationalisation.
40. Given this, the status quo option in this analysis is the current publication arrangements, rather than the latent (and unfunded) centralised publication model. Legislation would also be required to continue with the status quo, to remove the latent amendments set out in the Legislation (Repeals and Amendments) Act 2019. Legislative amendments would also be needed to progress with Option Three (decentralised publication), to establish a framework for its operation including requirements on agencies and the PCO.
41. Aside from the centralised publication option, the PCO has not considered any other significant system changes, such as removing the ability for agencies to draft secondary legislation in its entirety (and instead requiring the PCO to do this for the agency). Compared to centralised publication, this would require significant uplifts in the PCO's capacity and capability (and funding), potential re-organisation of agency departments (as drafting functions would no longer be needed) and take many years to transition.
42. The options, as described, do not contemplate the inclusion of local authority bylaws from day one of the regime. This is because there has been no agreement to include such legislation within the scope of the project. However, the PCO is mindful that the 2017 Government directed the DIA to explore options for the publication of this legislation, in

future, and that bylaws represent a significant stock of secondary legislation. As such, the criteria 'scalability' is included, to accommodate a future decision to include bylaws.

43. Neither fully centralised nor decentralised publication models are in operation in any jurisdiction we have been able to identify. Since the early 2000s, the United Kingdom has been working towards rationalising access to information including centralised publication of laws. However, it is only very recently that they have started to bring this system online, and local government legislation is excluded. The United States of America have multiple websites where legislation can be accessed, depending on whether it is made by Congress, the Senate, and what information is wanted (e.g. full text, summary, or information about the legislation). In Australia, the Federal Register of Legislation contains a list of instruments made by federal agencies. However, delegated instruments are not clearly defined in their legislation. As such, the Register contains instruments that are potentially not secondary legislation, reducing its clarity and reliability.

### What options are being considered?

44. This RIA identifies three options – status quo (Option One), centralised publication (Option Two), and decentralised publication (Option Three). The benefits and disadvantages are outlined below, and summarised in the table on page 15.

#### Option One – Status quo / current state

45. Under this option, legislative intervention would occur to prevent latent amendments to the LA19 from coming into force in March 2026. Instead, current requirements and processes would apply, so that agencies that draft secondary legislation adhere to the 'applicable publication requirements' (either publish in accordance with the Regulations; the PPD table, or; whatever the empowering Act said prior to the LA19 coming into force). Legislation with CPTPPA impacts would continue to be published on the agency website, with a requirement that links to where it is published are forwarded to the PCO for publication on the NZL website.
46. The PCO would continue with its Community of Practice, working with the approximately 120 agencies that draft secondary legislation to get to best practice drafting and publication. This would see the PCO build on its current work with agencies, through developing further tools, services and guidance.

#### *Benefits*

47. It would not incur any implementation or operational costs for the PCO or agencies, as it would not require either to do anything differently. No additional FTE or capital costs are needed to continue with the status quo.

#### *Disadvantages*

48. There is unlikely to be significant improvement to the publication practices in agencies, at least in the short-term. Current issues as identified over the years would persist. This means legislation would continue to be published in a variety of ways (including, not at all), and not be clearly demarcated from guidance and other non-legislative material. Individuals and businesses would continue to face challenges in attempting to understand their rights and obligations, and Parliament would continue to face challenges in overseeing delegated law-making powers.
49. It would not support realisation of stated objectives. Accessibility of secondary legislation would continue to be variable, there would remain a lack of clarity as to what empowering provision some secondary legislation is made under (and who is responsible for it).

Stewardship initiatives within agencies to maintain and tidy-up legislation would continue, but are not well-supported under the status quo compared to other options. Despite the PCO's influence, there would likely be little impetus for agencies to achieve and maintain best practice, when considered among other competing government priorities.

50. It would be inconsistent with the PCO's Strategic Intentions for 2023 – 2027. One intention is to reimagine the access and use of legislation, as access to it is vital for the legitimacy and effectiveness of our legislative system. Ensuring our services are trustworthy builds confidence in our democracy. There is a specific reference to secondary legislation being easy to access and use. It would likely undermine work done to date, including by the Inquiries referred to in paragraph 5, and jeopardise further work the PCO has identified with respect to secondary legislation. This includes proposals to tidy-up and maintain the bylaw legislative framework.
51. It would not support the Government's priority to digitise government services and provide trustworthy, user-centred services (through clearer and more integrated publication of secondary legislation), respond to emerging digital trends (such as how people access and make use of government information), and address risks (including regulatory risks, which may arise through not having secondary legislation readily accessible).

## **Option Two – Centralised publication**

52. Under this option, the not yet in force framework for centralised publication would come into force (at an extended date than currently provided by the legislation). This would require all secondary legislation (except that made by local authorities) to be published on the NZL website.

### *Benefits*

53. It would establish a free, single, online source of New Zealand legislation. Centralised publication would most improve accessibility, as all secondary legislation (excepting bylaws and other exempted legislation) would be reliably and fully accessible from the NZL website. There would not be a need to visit agency websites in search of legislation.
54. Clarity would be improved, as centralised publication would provide a clearer picture of all the secondary legislation that exists under an Act, and be clearly demarcated from non-legislative material such as guidance (which would not be published on the NZL website). However, it may not be clear who is ultimately responsible for that secondary legislation; at present, users are already contacting the PCO to discuss issues with legislation managed by another agency. By having all secondary legislation published on the NZL website, people may assume the PCO is directly responsible for that legislation, only to be referred to another agency when they do get in contact.
55. Stewardship would also likely be improved, due to the work required to transition to centralised publication. The process of identifying, reviewing and republishing the agency's instruments would likely result in a stronger understanding of all the secondary legislation that is their responsibility, and what its purpose is.
56. Parliamentary scrutiny is improved, as there would be more standardised requirements for publication and easier access to secondary legislation. Compliance costs for businesses would also be improved, as it would be easier to view all legislation relevant to a particular matter, reducing search times and providing increased certainty that all relevant laws have been found.
57. Easier management of compliance with international transparency obligations set out in trade agreements, such as the CPTPPA. In centralised publication, all legislation would be published on the NZL website, mitigating the risk of human error (i.e. legislation with CPTPPA impacts is accidentally 'missed' and links are not provided to the PCO).

## *Disadvantages*

58. There are substantial costs and risks. For the PCO, centralised publication will require significant IT and business systems build, new staff to support this system, and funding for the operational and capital spend. To date, efforts to seek funding have been unsuccessful, meaning the system is unfunded for centralised publication. There are also security risks that come with enabling representatives from around 120 agencies to have access to the PCO's systems, which could also contribute to increased costs.
59. Agencies would face substantial costs. This includes licensing costs (to use the system and software), the potential need for dedicated FTE to manage the publication of the agency's secondary legislation (particularly where an agency produces or amends a lot of secondary legislation), and technical training for staff in that role on how to use the portal, software and publication systems (including training in XML). Staff managing their agency's legislation publication would also need to have legal knowledge, in order to complete the forms and questions required to publish that legislation. There are risks to the NZL website if the information provided on it is unreliable.
60. In 2019, the New Zealand Institute of Economic Research (NZIER) undertook analysis of different models of both centralised and decentralised publication. This analysis indicated that while centralised publication would deliver the largest reductions in transaction costs and uncertainty, it is costlier, with a discounted total cost of \$30.7 million over 10 years. Given inflationary changes over the past five years, it is likely this figure has increased.
61. Analysis commissioned of Martin Jenkins acknowledged the challenges in quantifying benefits and costs of either model, however it also concluded that centralised publication would likely cost the PCO up to 251% more, and agencies that draft secondary legislation up to 65% more, to operationalise, than an alternative model (decentralised publication).
62. Centralised publication model is likely to curtail what types of material we may want to make available through the NZL website. For example, local authority bylaws would not be able to be included without further significant investment in systems and people within local authorities, and the PCO.
63. Along with high costs, a centralised publication model would take around 3 – 6 years to develop, implement and operate. This will require significant, sustained effort and investment from the PCO, to manage the flow of secondary legislation and onboard agencies into the new system, and from agencies, to identify, review and republish secondary legislation, which will divert resources from other work.

## **Option Three - Decentralised publication**

64. Under this option, a framework for decentralised publication is established. Similar to the status quo, agencies that draft legislation would be required to publish that legislation on their website, in accordance with requirements set by the PCO. Technology would then be used to identify, aggregate, index and link agency-published secondary legislation, making it discoverable on and searchable from the NZL website.

## *Benefits*

65. Compared to the status quo, the benefits of this option are similar to that of Option Two: it would establish a free, single point of online access to New Zealand legislation (except that which is exempted). Accessibility is improved, as agencies would have consistent requirements for publication, and most secondary legislation will be accessible via one website. Similar to Option Two, users will only need to visit one website to begin their search for legislation, making it easier to access and clearer how the secondary legislation relates to an Act.



66. This option also improves clarity. Along with the NZL providing a more complete picture of all the instruments that come under an Act, the fact that users will be taken to the agency's website to view the secondary legislation will make it clearer who is actually responsible for it. Users of legislation are not always specialists and lawyers. Guidance, and other contextual information (e.g. fact sheets) are often read in conjunction with the legislation, to support users to understand their rights and responsibilities. Agencies, who are responsible for the policy work and the legislation, are best placed to compile this information. Stewardship would similarly be supported in this way, as well as through agencies identifying and prioritising secondary legislation for transition to the new regime.
67. International transparency obligations are also supported under this option. As with Option Two, there would no longer be a need for agencies to forward links to the PCO, as these would be automatically aggregated and indexed on the NZL website.
68. The requirements likely to underpin a decentralised publication model have already been circulated to agencies that make secondary legislation. The Secondary Legislation Access Standards received endorsement from the Regulations Review Committee, Public Service Commissioner and Attorney-General. These requirements are largely reflective of what is already happening in agencies, due to existing legal requirements (e.g. to comply with publication, notification and presentation obligations, and accessibility standards), and Cabinet expectations (e.g. for minimum legislative information).
69. Similarly to Option Two, Parliamentary scrutiny is improved, due to standardised requirements regarding publication. Compliance costs for businesses would also be improved, as it would be easier to view all legislation relevant to a particular matter, reducing search times and providing increased certainty that all relevant laws have been found. More consistent publication of MLI will also enable more advanced users to analyse and develop resources such as compliance tools, further supporting users.
70. NZIER analysis identified this option would deliver smaller reductions in transaction costs and uncertainty (compared to Option Two), however would be more affordable, with a discounted cost after 10 years of \$25.1 million. The Martin Jenkins report estimated that decentralised publication, at a steady state, will likely have an annual cost of \$16.86 million across the PCO and agencies that draft legislation, with the lion share (\$14.9 million) falling on agencies. This is less costly than centralised publication.
71. Along with being less costly to implement and operate, the approach outlined under this option is scalable. Decentralised publication could be expanded to include legislation made by local authorities (subject to further Cabinet decisions). This is a significant future benefit, and would mean this option would provide a more comprehensive register of New Zealand legislation than centralised publication.

### *Disadvantages*

72. This option does not provide quite the same levels of accessibility compared to centralised publication (Option Two). This is because even though secondary legislation would be indexed and linked on the NZL website, it is still published on agency websites, requiring users to visit that website to access the full document. This means it would take slightly longer to access the full text as it requires users to click through to the agency website. However, this difference in accessibility (and associated compliance/time costs) is marginal – the difference of a few seconds saved.

## How do the options compare to the status quo/counterfactual?

	Option One – Status Quo	Option Two – Centralised Publication	Option Three – Decentralised Publication
<b>Effectiveness</b>	0	++ Most likely to meet stated objectives – accessibility and clarity most improved (through all legislation being in a standard format on the NZL website). Supports regulatory stewardship. Improves parliamentary security, and reduces compliance costs.	+ Would meet all stated objectives, to a similar level as Option Two. Does not meet objectives of accessibility quite as well, nor same level of reduction in compliance costs – but this difference is marginal. Supports regulatory stewardship. Improves clarity and parliamentary security to similar levels.
<b>Workable costs</b>	0	-- Most expensive of all options. 251% more expensive for the PCO, 65% more expensive for agencies.	- Some cost involved, but significantly less than that contemplated under Option Two. Depends on current capabilities and capacity of agencies. Reasonable chance costs may be met within agency baselines in many cases.
<b>Scalability</b>	0	-- Least scalable. Will require significant uplift in funding and FTE to include local authority legislation.	+ Scalable, with little further investment. Additional costs would fall on local authorities, and dependent on how they presently publish bylaws and work needed to meet publication requirements.
<b>Overall assessment</b>	0	-- This option is the most effective, but also most expensive and least scalable.	+ This option is an improvement on the status quo, and would deliver many of the stated objectives within reasonable costs.

### Key:

- ++ much better than doing nothing/the status quo/counterfactual
- + better than doing nothing/the status quo/counterfactual
- 0 about the same as doing nothing/the status quo/counterfactual
- worse than doing nothing/the status quo/counterfactual
- much worse than doing nothing/the status quo/counterfactual

## What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?

73. Compared to the status quo, the option that scored best against the criteria, that is best placed to achieve the overarching outcome sought, and meet objectives is Option Three – decentralised publication.

74. In terms of the objectives sought through change, Option Three:

- a. Improves accessibility. This is because most secondary legislation will be accessible, via links, through the NZL website. This means users can start their search for legislation in one place.
- b. Improves clarity. The relationship between the secondary legislation and its empowering Act will be clearly signalled, through listing it under the 'secondary legislation' tab of the relevant Act, and referencing the empowering provision of the Act it is made under, and other relevant information about the legislation, such as who is responsible for its administration. Requirements would also ensure non-legislative material is clearly demarcated from legislation, further supporting clarity.
- c. Supports stewardship. Agencies will have better sight of the regulatory frameworks that are their responsibility, supporting efforts to identify and prioritise legislation for maintenance activities. The system supports the creation of a high-quality dataset to enable more advanced users to develop tools to interrogate and reuse the information published.

75. In terms of the criteria used to assess the options, Option Three:

- a. is more effective than the status quo, and only marginally less effective than centralised publication. This is because Option Three will not actually publish secondary legislation on the NZL website, which marginally reduces its ability to improve the costs of compliance (by a difference of a few seconds).
- b. is likely to be more cost-effective than Option Two. This conclusion is supported by the NZIER report from 2019, as well as Martin Jenkins analysis from 2022, which similarly concluded that centralised publication would be significantly more expensive than a decentralised publication system to establish and operate.
- c. Is scalable, subject to future decisions and funding. This is because decentralised publication requires less resources and investment should there be desire to provide access to local authority legislation via the NZL website. The costs associated with this would depend on how the local authority presently publishes their legislation, and what further work they need to do to be compliant with the publication requirements.

76. Given this assessment, the PCO's preferred option is Option Three – decentralised publication.

## What are the marginal costs and benefits of the option?

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence <b>Certainty</b> <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups (the approximate 120 agencies that draft and publish secondary legislation)	Steady state, annual cost.  Low certainty in these figures, as the Martin Jenkins analysis outlined it is difficult to determine costs of either model (centralised or decentralised), due to the unavailability of required evidence to make this analysis	14.9	Low
Regulator (the PCO)	Steady state, annual cost.  Low certainty in these figures, as the Martin Jenkins analysis outlined it is difficult to determine costs of either model (centralised or decentralised), due to the unavailability of required evidence to make this analysis	1.96	Low
Others (eg, wider govt, consumers, etc.)	N/A	N/A	N/A
<b>Total monetised costs</b>	Steady state, annual cost.  Low certainty in these figures, as the Martin Jenkins analysis outlined it is difficult to determine costs of either model (centralised or decentralised), due to the unavailability of required evidence to make this analysis	\$16.86	Low
<b>Non-monetised costs</b>	N/A	N/A	N/A
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups	See below	N/A	N/A
Regulators	See below	N/A	N/A
Others (eg, wider govt, consumers, etc.)	N/A	N/A	N/A
<b>Total monetised benefits</b>	See below	Medium	Low
<b>Non-monetised benefits</b>	See below	High	Medium

77. Additional benefits of the preferred option compared to the status quo are challenging to quantify. Analysis from Martin Jenkins outlined that quantifying the benefits of either model (centralised or decentralised publication) is difficult due to the benefits that improved access presents on its own, and the unavailability of information required to make such an assessment.
78. With respect to monetised benefits, a single point of access and improvements to clarity may decrease compliance costs. This is because all legislation will be available from one place, providing certainty that all relevant legislation relating to a matter has been found. This could reduce the time business owners, or their staff, spend searching for legislation, determining what it is made under and whether it applies to a particular issue.
79. There are a number of non-monetised benefits to be gained through the preferred option:
- a. Improved clarity over regulatory frameworks, through agencies having a clearer picture of those frameworks they are responsible for.
  - b. Improved parliamentary oversight of delegated law-making powers, with more consistent and clear requirements with respect to publication of secondary legislation.
  - c. Improved utility of the NZL website, through providing access to more legislation, as well as through enabling a data set that can make legislation easier to analyse, harmonise, simplify and automate. More advanced users will be able to access the full data set, for the purpose of developing new tools to interrogate and reuse the data, contributing to digitising government (e.g. compliance tools).
  - d. Supporting New Zealand to meet its international transparency obligations for access to legislation, as secondary legislation will be automatically indexed and searchable from the NZL website.
80. The preferred solution is also expandable (subject to future decisions, including funding). It has the potential to deliver further non-monetised benefits, such as streamlining the notification and presentation process, through the PCO providing these services (thereby reducing the workload on agencies and Ministers' offices).
81. There is only low-to-medium confidence in the above impacts being realised, as the overall impact will depend on the effectiveness of the technology in identifying, aggregating and indexing secondary legislation, how well agencies are meeting requirements, and, with respect to notification and presentation, further Cabinet decisions. However, the proof of concept undertaken last year successfully demonstrated the workability of the solution (refer paragraph 25). While the PCO is still piloting the technology with select agencies that draft and publish secondary legislation, the preliminary results are similarly promising.



## Section 3: Delivering an option

### How will the new arrangements be implemented?

82. The PCO will be responsible for implementing the proposed changes, the ongoing operation of the publication model, and any enforcement arrangements. The approximately 120 agencies which draft and publish legislation will be required to adhere to any requirements set through the Act, Regulations and other instruments.
83. An amendment Bill which amends the Legislation Act 2019 will be required to implement the changes. This will include amending, or as the case may be, revoking the LRAA21, which contains the centralised publication framework in its Schedule 2. The arrangements enabling decentralised publication will be scheduled to come into effect in March 2026 (the original date the centralised publication framework was to commence). To meet this deadline, the amendment Bill will need to be introduced in early 2025, and passed within a year.
84. In the meantime, the PCO will continue its work with agencies through the Community of Practice. This will be the main, but not only, way in which impacted stakeholders will be advised of the changes and receive support to comply with the new requirements. Traditional avenues such as email and meeting with agencies to communicate the requirements will also be used.
85. The Cabinet paper accompanying this proposal was consulted on with the following agencies: the Ministries for Primary Industries, and Environment, the Ministries of Health, Defence, Business, Innovation and Employment, Transport, Justice, and Foreign Affairs and Trade, as well as the Inland Revenue Department, Department of Conservation and the Department of Internal Affairs. Central agencies such as the Treasury, Department of the Prime Minister and Cabinet, Ministry for Regulation and the Public Service Commission were also consulted. The PCO also held a number of one-on-one meetings with specific agencies that requested it, including the Ministry for Primary Industries, Inland Revenue Department and Defence. Consultees on the Cabinet paper were also invited to a meeting where we discussed the background to the project, the proposals, and responded to agency questions.
86. A key risk raised by agencies with respect to identifying and publishing their secondary legislation online is time. Given this, the PCO proposes the legislation include a transitional time of up to one year following the Bill's passage, whereby agencies must publish all in-force legislation on their websites, to specification. However, this default transition will be able to be adjusted, with flexibility to allow up to five years following commencement to meet requirements.
87. Another risk is that some agencies are simply unable to comply with a requirement – such as publishing their legislation in a required format (e.g. HTML or searchable PDF). In these instances, the PCO will work directly with those agencies to troubleshoot issues and identify solutions.
88. It is likely that existing stocks of secondary legislation (i.e. that which is already made and in force) would be treated differently to newly-made secondary legislation. Further consideration and engagement with agencies during the development of the regulations and instruments that will sit under the requirements in the Act is needed, to determine whether or to what extent the requirements should apply to existing stock.

## How will the new arrangements be monitored, evaluated, and reviewed?

89. The core avenue through which engagement with impacted stakeholders will take place is the Community of Practice. The Microsoft Teams space includes an area where agencies can, either publicly (for other agencies in the group to see), or privately (to the PCO only) raise concerns or issues they are experiencing. The PCO monitors these spaces, and allocates questions and issues to its staff to progress.
90. The Community of Practice also provides a means for monitoring impacts and compliance. A survey to the approximately 120 agencies that draft and publish legislation was recently completed. The purpose of this survey was to understand what agencies know of their own secondary legislation stocks and flow. The PCO considers further annual surveys, following implementation of the proposed changes, may be useful in monitoring the impacts of decentralised publication. The survey will need to be updated to ask questions that are specific to the operation of decentralised publication.
91. There may also be scope to report on the survey's findings through the PCO's Annual Report on Legislative Practices. This would provide a means for the Attorney-General, and interested parties, to scrutinise this activity. This type of reporting may support the PCO or Attorney-General to identify issues and trends, and to consider whether the settings need review.
92. The PCO's Strategic intentions for 2023-2027 include indicators against which to assess the impacts of the proposals. These include measures such as increases to the proportion of secondary legislation that is legally required to be published online, and that is drafted and published in accordance with the PCO's technical standards. These indicators will be used to measure progress over the coming years as the system transitions to the new publication model.