



**DEPARTMENT OF THE  
PRIME MINISTER AND CABINET**

TE TARI O TE PIRIMIA ME TE KOMITI MATUA

# Briefing for the Incoming Leader of the House

2 February 2023

# Briefing for the Incoming Leader of the House

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## Briefing for the Incoming Leader of the House

### Overview

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1. This briefing is from the Parliamentary Counsel Office (the PCO) and the Cabinet Office. It is divided into 2 Parts.
2. Part 1 sets out matters that are likely of immediate note for the Leader of the House (LoH), including—
  - approval of the 2023 Legislation Programme:
  - issues with legislation that doesn't follow normal processes:
  - issues with the amount of legislation being drafted, and the changing legislative environment.
3. Part 2 sets out matters concerning the role of the LoH, including—
  - the role of the LoH, Cabinet Office, and PCO:
  - the functions of the LoH, and how PCO and the Cabinet Office provide support:
  - the key contacts at PCO and the Cabinet Office.

### Part 1 – Matters of immediate note for the Leader of the House

#### Approval of the 2023 Legislation Programme

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4. The Government's annual legislation programme is a key tool for identifying and aligning priorities for Ministers and departments (more information about the legislation programme is set out in Part 2 of this briefing). The LEG bid process for the 2023 Legislation Programme closed on 21 November 2022. The next step in the process is for you to submit a LEG Paper seeking Cabinet's approval of the 2023 Legislation Programme.
5. PCO will provide you with a briefing on the draft 2023 Legislation Programme to support your consideration of this LEG paper. We will identify any key risks that we think may impact on the delivery or quality of the legislation in the Programme, as well as any systemic risks.
6. Ensuring the programme is realistic, predictable, and adhered to is even more critical than usual this year given that—
  - it is an election year; a consequence of which is that, after factoring in the time that must be allocated to matters such as the opening of Parliament, the Budget Debate, and members days, there is very limited House time available (around 148 hours) before the House rises on 31 August 2023 (although this time can, of course, be increased through the use of extended sittings and urgency); and
  - the Government is resetting its priorities; a consequence of which is the importance of ensuring that the 2023 Legislation Programme aligns with the Government's reset priorities, as the Legislation Programme determines the allocation of resources across government at many different levels. (This is particularly so for PCO. We can provide further advice on how PCO's resources can best be utilised to assist in delivering the Government's legislation programme once we have more information on the reset priorities).
7. The 2023 LEG bids were prepared in advance of the Government resetting its priorities. The Cabinet Office and PCO therefore recommend that—

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- the LEG Paper seeking Cabinet’s approval of the 2023 Legislation Programme be prepared after the Government has reset its priorities; and
  - departments provide a revised LEG bid if significant changes are made to the timeline for a Bill as a result of that process.
8. PCO’s experience is that active management of the legislation programme against the Government’s priorities is critical. PCO works with PMO, DPMC, and the LoH’s office throughout the year to regularly check and confirm the Government’s legislative priorities to ensure our resources are appropriately deployed. We regularly provide information to assist with this and will advise you if we have concerns.
9. PCO recommends that the LEG Paper seeking Cabinet’s approval of the 2023 Legislation Programme empower the Prime Minister and the LoH to determine legislative priorities if departmental capacity or the PCO’s drafting resources are likely to impact on the delivery of legislation, or if legislative instructions do not align with the 2023 Legislation Programme.

### Key trends in legislation noted by PCO

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10. There are some significant challenges that may undermine the Government’s ability to deliver its legislative priorities before the 2023 general election. These challenges arise from the time and resource intensive work required to deliver high-quality, effective legislation, as well as broader trends that have emerged in legislative practice in recent times.

#### *Legislation that doesn’t follow normal processes*

11. Over the last decade, successive crises have necessitated significant amounts of urgent remedial or response legislation. The PCO and others in the legislative system have responded and adapted, but there is a risk that these emergency adaptations may become over-used in other contexts.
12. The speed with which legislation is developed has increased generally, both in the pre-introduction stages and within the House.
13. Successive governments have used the following approaches to try and expedite the drafting and enactment of legislation, but these should be avoided:
- Drafting being done in tandem with policy still being developed, and often with multiple tranches of instructions. This approach results in unstable policy, requiring constant redrafting, and significantly increases the work required to produce legislation, the rate of errors, and the likelihood that the implications of legislation have not been fully worked through:
  - Overuse of the Attorney-General’s authority under the Cabinet Manual to approve PCO to begin drafting in advance of Cabinet decisions. This may mean the policy is not sufficiently developed, or its consequences not fully understood. This apparent shortcut can result in the need for fundamental re-work or later remedial legislation, undermining the efficacy and timeliness of the legislation:
  - Bills being introduced before they are complete, leaving important and substantive parts of the Bill to be prepared after introduction. Introducing incomplete Bills inevitably means that resolution of detailed policy issues, consultation, or important final checks cannot be undertaken in full. Shifting this work to select committee has significant impacts on the quality of the Bill and limits the opportunity for public input. The ability of the legislative system to achieve significant overhaul of regulatory systems is best supported by an overall and

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predictable plan that supports the legislation from initial development right through to detailed implementation:

- Legislative reform of a regulatory system being done via multiple Bills in order to have it publicly progress as quickly as possible, rather than doing it via a single, comprehensive Bill. This has created complexity with the policy development and the legislative and House process, inhibited the public's understanding of the proposed changes, and had unforeseen consequences.

14. In each of these circumstances, legislation is produced in a manner that—
  - inhibits a high-quality result; and
  - actually undermines the ability of the government to enact legislation within the desired timeframes.
15. We will advise you if we are concerned that Bills are proposed to be introduced before they are complete and ready for the House's consideration. We seek your support to encourage the setting of realistic expectations and timeframes for the development of legislation which will in turn support durable change.

### *Number, size, and complexity of legislation being drafted, and changing legislative environment*

16. PCO has been tracking the legislation programme in terms of number, size, and complexity since 2011. Over that time, there have been significant increases in all three aspects; there is more legislation on the programme, the legislation is longer, and (in particular) it is more complex.
17. There has also been an increase in—
  - the rate and scale of change in legislation:
  - the amount of legislation that has been required to be produced in response to unforeseeable events, in addition to the Government's annual legislation programme:
  - the need for PCO drafters to do policy and legal thinking to fill gaps created by the rapidly changing workforce of instructing departments:
  - the need for PCO to actively manage legislative demands in order to focus resources on trying to meet the Government's highest legislative priorities.
18. PCO has undertaken work to better understand the increasing demand for legislation and how it is changing and affecting the delivery of effective and accessible legislation, and the resources required to do so. We can provide you with further advice on things that can be done to mitigate these risks if that would assist.

## Part 2 – Matters concerning the role of the Leader of the House

### Role of the Leader of the House, Cabinet Office, and PCO

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#### *Role of the Leader of the House*

19. The LOH is responsible for managing the Government’s business in the House. This involves advising Cabinet on setting the Government’s legislation programme at the beginning of each year, determining the order in which Government business will be taken in the House, and managing progress against the Government’s legislation programme.
20. The LOH is the chair of LEG. LEG checks that Bills to be introduced to the House, and secondary legislation to be submitted to the Executive Council, give effect to Cabinet’s policy decisions and are fit for purpose. LEG also approves the presentation to the House of Government responses to select committee reports. The Chief Parliamentary Counsel or Deputy Chief Parliamentary Counsel (Drafting) are present at LEG meetings.
21. The LOH also attends House Business Committee meetings to inform the Committee about the Government’s business in the House and suggests the sitting programme for the House.

#### *Role of the Cabinet Office*

22. The Cabinet Office supports Cabinet in good decision-making and in developing, monitoring, and modifying, the annual legislation programme. The Legislation Co-ordinator in the Cabinet Office—
  - assists the LOH to prepare an annual programme of legislation for consideration by Cabinet and, once the programme is agreed, works together with the PCO to monitor and manage the programme:
  - assists with reports to Cabinet on weekly House business, and periodically reports to Cabinet as required:
  - together with the PCO, provides support for the LOH’s annual Secondary Legislation Confirmation Bill:
  - advises ministerial and departmental staff on House and Cabinet processes that ensure proper consideration of their legislative proposals:
  - liaises with your House adviser and office staff, the Deputy LOH, and Government whips as necessary:
  - supervises the Cabinet Office’s secretariat support to the Cabinet Legislation Committee (LEG), and ensures that Bills and secondary legislation are at a stage to be considered by Cabinet:
  - liaises with the Prime Minister’s Office, the DPMC Policy Advisory Group, the PCO, and the Office of the Clerk as necessary:
  - provides advice on the status of legislation and legislative proposals as required.

#### *Role of the Parliamentary Counsel Office*

23. The Parliamentary Counsel Office (PCO) is an instrument of the Crown and is constituted under the Legislation Act 2019 as a separate statutory office under the Attorney-General’s control. The objective of PCO is to promote high-quality legislation that is easy to find, use, and understand and, to that end, to exercise stewardship of New Zealand’s legislation as a whole.

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24. PCO gives effect to this statutory objective through its core functions of drafting and publishing legislation and through its functions of providing advice and guidance. This statutory objective also establishes PCO's system leadership role for all of New Zealand's legislation, whether or not drafted or published by PCO.
25. The PCO implements the Government's legislative programme by drafting—
  - Government Bills, including amendments made to them at select committee and Committee of the whole House (other than the Inland Revenue Bills drafted by the Inland Revenue Department):
  - much of the secondary legislation made by Cabinet and Ministers (the rest is drafted by departments, agencies, professional bodies, and local authorities).
26. The PCO publishes all Acts, Bills, and secondary legislation drafted by the PCO (but not other secondary legislation) on the New Zealand Legislation website—[www.legislation.govt.nz](http://www.legislation.govt.nz).

### **Functions of the Leader of the House, and how PCO and the Cabinet Office provide support**

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#### *Annual legislation programme*

27. Legislation is drafted and proceeds through the House to meet priorities set by Cabinet through the annual legislation programme. A key role of the LOH is to set the Government's legislative priorities by submitting an annual legislation programme to Cabinet for agreement at the beginning of each year, and managing that programme throughout the year. The legislation programme reflects and balances Ministers' legislative priorities in their individual portfolios with Cabinet's whole-of-government legislative aspirations.
28. Access to the legislation programme is restricted to Ministers and chief executives, the Clerk of the House, named staff of the Office of the Clerk, and staff of the PCO and Cabinet Office.
29. A realistic and predictable legislation programme has multiple benefits. The use of resource is better directed throughout the Government. Both House sitting time and drafting resources can be efficiently allocated. This ensures that effort goes to producing and improving the legislation that can realistically proceed, which ultimately results in less Crown risk and higher quality regulatory outcomes for New Zealand. It also promotes the role of the House as more rigorous scheduling of legislation enables the public to participate fully in the legislative process and the Opposition to perform its role in debating legislation in the House.
30. The closing date for legislation bids for the 2023 legislation programme was 21 November 2022. Ministers were asked to consider overall Government priorities and coalition support party arrangements when they prepared the leg bids.
31. The process for setting the legislation programme is set out in **Appendix 1**.

#### *Management of the House programme*

32. The LOH determines the order of Government business in the House. The LOH informs the Clerk of the House in the morning of each sitting day about the order of business (usually Bills but also any notices of motion) to be debated that day. This forms the basis for the Order Paper.

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33. The LOH has an oral item at Cabinet meetings during House sitting weeks to advise Cabinet of the House programme for the week. The Legislation Co-ordinator prepares a copy of the week's programme and arranges for it to be distributed at the meeting.
34. The Deputy Chief Parliamentary Counsel (Drafting) and the LoH's House adviser work closely together to support the LOH's management of the House.
35. The Deputy Chief Parliamentary Counsel (Drafting) provides the LOH's office with a planner providing forward-looking information of upcoming legislation over multiple sitting blocks on the Friday before each sitting week. This planner has been developed over a number of years to provide the information required to best support active planning and predictability in the legislation programme, and the management of the House.
36. The planner includes advice on—
  - Bills awaiting introduction:
  - Bills going to LEG or Cabinet in the upcoming sitting blocks, being reported back from select committee, or being readied for Committee stage:
  - Bills that have any issues likely to affect their progress through the House.
37. The Chief Parliamentary Counsel, the Deputy Chief Parliamentary Counsel (Drafting), the Clerk of the House, and the Legislation Co-ordinator meet with the LOH, the Deputy LOH, and their House advisers at the start of each sitting week. This is a key opportunity to plan and discuss the House programme for the week and for future sitting blocks, and to actively manage relevant issues, including problems or risks with particular pieces of legislation and prioritisation of resources.
38. The Legislation Co-ordinator provides advice and support to the LOH on legislation and House procedure, and the legislation programme.
39. The Legislation Co-ordinator also provides advice of any oral items at Cabinet, or issues arising at upcoming Cabinet committee meetings that need the LOH's attention.

### *House Business Committee*

40. The LOH attends Business Committee meetings to inform the Committee about the Government's intentions regarding the business to be transacted and the order in which Government business will be taken in the House.
41. The Business Committee makes, or may input into, decisions about many aspects of proceedings of the House and its committees. Towards the end of each year, it recommends to the House a sitting programme for the following year based on the advice of the LOH.
42. In some circumstances, the Committee may determine the order of business to be transacted in the House, the time to be spent on any particular item of business in the House, how time spent on a particular item of business will be allocated among the parties represented in the House, and the speaking time of individual members on an item of business. It can determine extended sitting hours and whether legislation may proceed through the House as cognate Bills or as an omnibus bill (ie, a Bill that deals with different matters such as the annual Statutes Amendment Bill).



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43. The Committee also determines whether or not to extend the time for select committee consideration of Bills. Bills are often amended extensively at select committee and require further quality assurance processes to minimise the risk that errors have been made in the amendments. The PCO can provide advice on whether further time is needed to minimise these risks.

### *Secondary Legislation Confirmation Bills*

44. The Legislation Co-ordinator and the PCO assist the LOH in managing an annual Bill confirming and validating the secondary legislation that lapses at a stated time unless confirmed or validated by an Act of Parliament. Such Bills are generally uncontroversial, but do require sufficient House time to ensure that they are passed within the calendar year.
45. The annual LEG Bid for the Secondary Legislation Confirmation Bill is prepared by the Legislation Co-ordinator for the LOH, with assistance from the PCO.

### **Key contacts at PCO and Cabinet Office**

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46. The key initial contacts related to your responsibilities as Leader of the House are—

Contact	Role and contact details	Area
<b>Cassie Nicholson (PCO)</b>	Chief Parliamentary Counsel  s9(2)(a) [REDACTED] s9(2)(a) [REDACTED]	All.
<b>Richard Wallace (PCO)</b>	Deputy Chief Parliamentary Counsel (Drafting)  s9(2)(a) [REDACTED] s9(2)(a) [REDACTED]	Drafting of legislation (including Bills and secondary legislation).
<b>Sam Moffett (Cabinet Office)</b>	Legislation Co-ordinator  s9(2)(a) [REDACTED] s9(2)(a) [REDACTED]	Coordinates legislation on behalf of Cabinet Office, including secretarial support for LEG.

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## Appendix 1

### Setting the Legislation Programme

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