



**NEW ZEALAND  
FOREIGN AFFAIRS & TRADE  
Aid Programme**

# Parliamentary Counsel Office Legislative Drafting Assistance to Pacific Nations Evaluation Report

Lucina Schmich, Patricia Vermillion Peirce, Matthew Allen

*Allen + Clarke*

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### **Further details about author**

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# 1

## Abstract

Since 2011 Ministry of Foreign Affairs (MFAT) has funded the New Zealand Parliamentary Counsel Office (PCO) to provide assistance to Pacific Islands' officials responsible for drafting legislation. The PCO Pacific Desk prioritised assistance to the Crown Law Offices (CLOs) of the Cook Islands, Niue and Tokelau. Assistance has since been provided to other Pacific Island Countries (PICs) on an ad hoc basis.

This formative evaluation presents findings from a desk-based document review and key informant interviews with CLO and MFAT staff, local lawyers and representatives from regional agencies and networks. The evaluation assessed the effectiveness, efficiency and sustainability of the assistance provided by PCO.

Overall, the assistance has proven an effective and efficient approach to supporting the development of legislation, for the Cook Islands and Niue in particular. The assistance is highly valued by the CLOs and has contributed to an improvement in the overall quality of local legislation providing clarity, consistency and certainty. It is expected to have a sustainable impact on good governance and business practice in the long-term.

The current model for assistance should be maintained, focusing on drafting to demand for the CLOs. Engagement with MFAT, specifically the bi-lateral programmes, should be strengthened. In addition, the training and mentoring component of the Activity could be enhanced by: increasing the number of visits per year, and providing an opportunity for Pacific Islands' locals to undertake a placement with PCO. Options for capability building targeting increased sustainability of the Activity should be explored with the CLOs and PICs.



# 2

## Executive Summary

### Introduction

The Ministry of Foreign Affairs and Trade (MFAT) considers well-written legislation an important precursor to good governance and the achievement of economic and social goals. Many Pacific Island Countries (PICs) have limited capacity and capability to develop policy, regulatory and legislative frameworks and require assistance to develop local law.

Under the New Zealand Aid Programme State Sector Development Partnerships Fund (Partnerships Fund), MFAT funded the New Zealand Parliamentary Counsel Office (PCO) to provide Legislative Drafting Assistance to Pacific Nations (the Activity). The focus of this evaluation is assistance provided between June 2011 and June 2015.

One advanced Parliamentary Counsel (the Counsel), is seconded full time to the PCO Pacific Desk on a 12 month rotation.<sup>1</sup> The Counsel focuses on providing assistance to the Cook Islands, Niue and, to a lesser extent Tokelau. The key counterparts are respectively the Solicitor General and Attorney General and staff of the Crown Law Offices (CLO) of the Cook Islands and Niue. Ad hoc assistance is provided to other PICs.

### Key Findings

Over the life of the Activity an estimated 80-90 percent of the assistance has been legislative drafting. PCO drafts legislation in response to direct requests, and on receipt of drafting instructions, from the CLOs. PCO has drafted more than 30 pieces of primary legislation since 2011, with 25 of these subsequently passed into law in the Cook Islands (n=16), and Niue (n=9), by June 2015. In addition, 27 separate sets of regulations have been drafted for the Cook Islands (n=5), Niue (n=20), and Tokelau (n=2). Instruments drafted include civil, criminal and public law. In all of these instances PCO was either the principal drafter, or reviewed and substantively redrafted the legislation. During the implementing period, PCO also provided drafting and legal advice to other drafters. The number of times assistance of this type was provided was not reported to MFAT.

The balance of the assistance has been providing informal (on-the-job) training and mentoring for CLO staff and local lawyers, and developing drafting guidelines and templates which were completed in year one of the Activity.

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<sup>1</sup> Parliamentary Counsel Office. Job Description. Pacific Desk Parliamentary Counsel (undated)



Staff of the Cook Islands and Niue CLOs are greatly appreciative of the **drafting assistance** provided by PCO. The CLOs' staff who had directly engaged with PCO emphasised the quality of assistance provided by the Counsel. Key strengths included the flexibility, responsiveness, meticulousness and professionalism. It was noted that without PCO assistance, much of the work would never get done, or the CLOs would have to seek assistance from alternative providers. Notably, staff of the CLOs indicated a preference for receiving assistance from PCO because of the confidence and trust they have in the quality of the final product.

Very little formal **training and mentoring** has been provided as part of the Activity. However, local lawyers and CLOs' staff interviewed as part of the evaluation reported an overall improvement in their own skill levels where they had collaboratively drafted with the Counsel. The "Basic Drafting Skills" training PCO facilitated in the Cook Islands in April 2015 was reportedly well received by the approximately 30 participants who attended. Key informants for this evaluation, who also attended the training, indicated there is scope for, and interest in more training. However, the course itself was not formally evaluated.

The **legislative drafting guidelines and templates** were well received. CLOs have taken ownership of the documents and made changes as required. The Acting Cook Islands Solicitor General and Niue Attorney General both reported that the tools have been useful, empowering them to require a minimum standard for instructions and drafting. In the annual Solicitor Generals' Survey implemented by PCO they reported use of the new drafting tools progressively increased with the uptake estimated to be 60-70 percent for the Cook Islands, and 80-90 percent for Niue. They noted an overall improvement in the quality of drafting.

The evaluation participants overwhelmingly support continuation of the Activity. The Activity was delivered as planned, well received, and evaluation participants offered very few suggestions for improving the effectiveness or efficiency. Suggested improvements included: increasing the number of visits, or extending the amount of time Counsel spends on-island, and exploring alternative approaches for capability and capacity building to increase the sustainability of outcomes. The quality of drafting instructions and policy work was a common challenge, and it was suggested there might be scope to address this issue by providing training in basic drafting skills to a wider audience, for example, public sector staff.

Representatives from regional agencies and organisations indicated there is significant need in terms of legislative drafting across the Pacific region. There is a strong interest in the PCO model of assistance and a number of evaluation participants are interested in exploring how they might engage with PCO. Suggestions included: PCO providing technical assistance to support Pacific CLOs to establish local drafting units; drafters being seconded to Pacific CLOs; and PCO offering placements for Pacific drafters in their Wellington office.

## Conclusions

- There is an ongoing need for assistance, the PCO model responds to the needs of the CLOs, and is aligned with the legislative priorities of the assisted countries.
- The Activity is effective, efficient and sustainable and MFAT could continue to fund it without making any substantive changes and see continued benefits for the Cook Islands and Niue in the longer-term.



- There is a strong view that robust legislation that is clear, concise, constitutional and enforceable contributes to good governance and the rule of law in the Pacific. Legislation drafted by PCO meets these standards.
- Sustainability in terms of local capability building is an ongoing challenge because legislative drafting is highly technical, and there is scope to reorient the focus of the Activity to include a greater capability building component.

## **Recommendations**

A summary of recommendations on the scope, focus and management approach is presented below. A detailed rationale is provided in the recommendations section of this report.

### **Recommendation 1. Geographic focus of the Activity**

- Continue to Focus on the Cook Islands and Niue
- Re-engage with Tokelau to assess the level of need
- Continue to offer ad hoc drafting assistance to other PICs on request

### **Recommendation 2. Scope and model for assistance**

- Continue to provide drafting assistance
- Increase engagement between the bi-lateral and partnerships programmes
- Increase the annual on-island time of Counsel
- Broaden the scope and provide a more structured approach to the training and mentoring component of the Activity
- Offer assistance to other PICs interested in developing local drafting guidelines and templates

### **Recommendation 3. Governance**

- Strengthen governance arrangements using MoUs

### **Recommendation 4. Management and Reporting**

- MFAT should take on a more proactive coordination role between Partnerships Fund activities and the bi-lateral programme
- Strengthen the Activity monitoring and reporting including: progress against an annual workplan, and analysis of the Annual Solicitor-General Survey

### **Recommendation 5. Funding**

- Continue to fund the Activity on a 3 + 2 year implementation cycle



# 3

## Background

Since 2011 MFAT has funded the New Zealand PCO to provide legislative drafting assistance, and training and mentoring to Pacific Islands' officials responsible for drafting legislation. The Activity focused on the Cook Islands, Niue and Tokelau. On request, and where PCO had capacity, it provided assistance to other PICs.

This formative evaluation reviewed and assessed the effectiveness<sup>2</sup>, efficiency<sup>3</sup> and sustainability<sup>4</sup> of benefits from the Activity. This evaluation was guided by the principles of a Utilization-Focused Evaluation (UFE)<sup>5</sup> approach, an interactive process, informed by the context and guided by end users' needs. The evaluation highlights issues, gaps and actions to be taken into account when considering funding, and the findings will inform decisions on the design of a second phase of this Activity.

The evaluation focuses on Activity implementation from June 2011 to June 2015. The Cook Islands, Niue, and Tokelau were prioritised for assistance and as such are the focus of this evaluation. Thirty representatives from MFAT, other PICs and the regional organisations were included in the evaluation to assess the need, and potential, for assistance to be provided to other PICs. This information was used to inform the evaluative judgements and recommendations.

The evaluative judgements are based on MFATs Quality Standards: very good, good (minimum acceptable standard), adequate, not adequate; or poor.

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<sup>2</sup> Effective – the extent to which the Activity delivered on agreed MOU outputs and outcomes

<sup>3</sup> Efficient – the Activity was implemented in a timely manner and the overall contract costs are reasonable given the outputs delivered

<sup>4</sup> Sustainable - the Activity contributed to positive changes for local agencies and individuals responsible for legislative drafting and likelihood of long-term benefits after major assistance is completed

<sup>5</sup> Patton, Michael Quinn (2008) Utilization-Focused Evaluation: 4th edition. Thousand Oaks, Ca: Sage Publications



# 4

## Evaluation Findings

### Overview of Current Activity

Well written legislation is a precursor to good governance and the achievement of economic and social goals. Many PICs have limited capacity and capability to develop their own policy, regulatory and legislative frameworks, and so require assistance to develop local law.

Under the New Zealand Aid Programme Partnerships Fund, MFAT funded PCO to provide Legislative Drafting Assistance to Pacific Nations (the Activity). A Memorandum of Understanding (MOU) between MFAT and PCO includes the project design outlining Activity objectives, key deliverables, and intended outcomes. The Activity has been implemented continuously since June 2011, and was recently extended to June 2016. The focus of this evaluation is assistance provided to 30 June 2015, at which point actual expenditure was just over NZ\$885,000.<sup>6</sup>

PCO seconds one advanced Parliamentary Counsel (the Counsel) full time to the PCO Pacific Desk on a 12 month rotation.<sup>7</sup> The position is filled through an internal expression of interest and assessment process managed by the Deputy Chief Parliamentary Counsel. The selection process includes consideration of experience and “fit” in terms of capacity to engage with Pacific-based counterparts.

The focus of the Activity is providing assistance to the Cook Islands, Niue and Tokelau, with assistance provided to other Pacific Island Countries (PICs) on an ad hoc basis. The core components of the Activity are: legislative drafting assistance, training and mentoring for legislative drafters, and development of drafting guidelines and templates. The key counterparts are the Cook Islands Solicitor General and Niue Attorney General and staff of the Crown Law Offices (CLOs).

Over the life of the Activity an estimated 80-90 percent of the assistance provided under the Activity has been legislative drafting. The balance of the assistance has been providing peer review for legislation drafted by CLO staff, local lawyers and international consultants, largely informal (on-the-job) training and mentoring, and development of the drafting guidelines and templates, completed in year one of the Activity.

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<sup>6</sup> Activity Progress Reports 2011-2015

<sup>7</sup> Parliamentary Counsel Office. Job Description. Pacific Desk Parliamentary Counsel (undated)



## Assessment of Activity Implementation

This section is focused on how the Activity has been implemented, identifying PCO's strengths, challenges for implementation and areas for improvement. It responds to the following question:

***KEQ 1: How well have the PCO activities delivered on the intended outputs and contributed to outcomes as articulated in the MOU in terms of efficiency, effectiveness and sustainability?***

The findings in this section are framed around the three components of the Activity:

- legislative drafting assistance,
- training and mentoring, and
- development of drafting guidelines and templates.

Overall assessments against the Activity indicators and intended achievements are provided.

### DRAFTING ASSISTANCE

***Assessment: The drafting assistance PCO provides is aligned with local legislative programmes and priorities***

During the initial stages of the project the PCO Counsel visited the Cook Islands and Niue, met with Crown Law Office staff and discussed needs. For Tokelau these discussions were held with MFAT staff. For the remainder of the Activity implementation period PCO Counsel have visited the Cook Islands and Niue for approximately two weeks each, two times per year.

The PCO employs the drafting practices similar to those used in New Zealand to assist the Cook Islands and Niue. The Counsel drafts in response to demand from the CLOs. They meet with agency officials as required and attend Select Committee. Where drafting instructions are inadequate, or unclear, they will request further work from responsible agencies. Bills are peer reviewed by Counsel for simplicity, legislative effectiveness, compliance, and constitutionality. A further and final review process includes detailed proofing, cross-referencing and annotations for consequential amendments. They only draft where they have the required instructions.

Over the life of the Activity an estimated 80-90 percent of the assistance has been legislative drafting. PCO drafts legislation in response to direct requests, and on receipt of drafting instructions, from the CLOs. Instructions are developed in compliance with the approved guidelines and templates. To ensure the assistance remains relevant and is responsive to government needs, and drafted bills are likely to pass into law the PCO does not assist with drafting Members Bills.

Where available, the CLOs provided PCO with copies of their legislative programme priorities. These are attached to the Annual Activity reports along with a list of legislation drafted by



PCO during each year of Activity implementation. Examples of priority bills drafted and enacted include:

- Cook Islands Digital Registers and Copyright Bills; and
- Niue Bank Amendment, Nuclear Test Ban and Environment Bills.

Appendix 4 provides a full list of bills and regulations drafted by PCO that were subsequently passed into law.

Evaluation participants raised concerns regarding the **Cook Islands** legislative programme. The CLO seeks to maintain a clear focus and coordinate the programme to ensure it meets local priorities. A 2013 schedule of Bills for introduction was provided to PCO, but challenges for the introduction and passing of legislation have arisen, including the Cook Islands Parliament not sitting for twelve months. Evaluation participants also indicated that currently, sitting sessions tend to be too short to support robust debate of introduced bills. In addition, there has been a relatively high turnover of staff during implementation of the Activity, and the PCO's key contact has changed multiple times in 4 years.

The legislative programme of **Niue** is well-developed. The programme is linked to the 3-4 year cycle of the Assembly. Parliament is required to sit every 4-6 weeks and current practice is to sit monthly. During the evaluation it was suggested the new Assembly of Niue enthusiastically supports the current legislative programme and is keen to progress it. Regular meetings of the Bills Committee assist to maintain momentum for drafting and review processes. The challenges for Niue are limited local resources to coordinate the programme, and lack of local drafting capability. PCO has benefitted from having the same key contact in charge of the programme for the life of the Activity.

PCO relies on the MFAT desk officer to support engagement with **Tokelau**. Over the life of the Activity there has been very little engagement. However, in year one Exclusive Economic Zone Fishing Regulations were drafted. Since that time no further assistance has been provided. During the evaluation a variety of perspectives on the level of need for legislative drafting assistance in Tokelau were provided. There was a suggestion there is a need, and that PCO has not been approached because the Government of Tokelau's Legal Advisor was unaware of the opportunity. However, it was also suggested that what is required is general mentoring and support as Tokelau has a single legal advisor and would benefit from the opportunity to consult other lawyers. This issue requires further exploration, with the Government of Tokelau's Legal Advisor.

***Assessment: Stakeholders believe PCO is responsive to their needs, the time allocated to work is adequate, and the need for assistance is ongoing.***

PCO agrees timelines for delivery of draft bills and regulations with the CLOs of the Cook Islands and Niue. Time required to draft bills relies on the quality of drafting instructions which in turn are influenced by the quality of the policy work that informs them. Good quality instructions include a detailed policy narrative and text vetted by local government lawyers to ensure constitutionality and identify required consequential amendments. The complexity of the subject matter also impacts upon drafting time. The workload can fluctuate, and CLO



responses to comments and feedback provided through peer review can slow the process, but this is no different to the situation in New Zealand.

CLO staff indicated they are happy with the existing arrangements and comfortable negotiating timelines. Both PCO and CLO staff reported having regular contact by phone and email to keep one another abreast of progress. The relationships are such that where PCO does not have capacity to assist, the CLOs seek assistance from subject matter experts or local lawyers, for example, SPC-RRT team, Australia Attorney Generals Department (AGDs) or local lawyers.

**Niue** has an active legislative programme and the Assembly meets regularly. This means that there is always drafting in progress and no single busy period. For the **Cook Islands** the drafting “cycle” includes preparation of policy and bills in the first half of the year for introduction during sitting sessions scheduled for the final quarter, although this timeline is not always borne out. The flexibility and responsiveness of the PCO Counsel in meeting these timelines were identified as a key strength of the Activity.

***Assessment: Legislation PCO drafted or peer reviewed has been enacted, measuring rates of enforcement was outside the scope of the evaluation.***

PCO has drafted more than 30 pieces of primary legislation since 2011, with 25 of these subsequently passed into law in the Cook Islands (n=16) and Niue (n=9) by June 2015. In addition, 27 separate sets of regulations have been drafted for the Cook Islands (n=5), Niue (n=20), and Tokelau (n=2).<sup>8</sup> All of these legislative instruments are among the listed priorities on the legislative programmes provided by Niue and the Cook Islands.

Instruments drafted include civil, criminal and public law. For all of this legislation PCO was either the principal drafter, or reviewed, and substantively redrafted the legislation. During the implementing period, PCO also provided drafting and legal advice to other drafters. The number of times assistance of this type was provided was not reported to MFAT. Examples of assistance to other PICs include a review of a Fisheries Bill for the Solomon Islands, and drafting Standing Orders, a Parliamentary Powers and Privileges Act 2014, and Remuneration of Members of Parliament and Certain Officers of State Decree 2014 to support Fiji’s transition back to democracy.

All evaluation participants familiar with the Activity indicated that, without PCO assistance two situations are likely to arise. The first of these is that there would be limited to no progress in the development of local legislation required for day to day operations and ultimately “chaos”. The second situation is that government departments would continue to contract independent consultants to draft

*"The Legislative Programme is on track thanks to the assistance from PCO." (Niue 2011/12)*

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<sup>8</sup> Parliamentary Counsel Office Activity Report 1 July 2014 – 30 June 2015 Activity Report: New Zealand State Sector Development Partnerships Fund – Legislative Drafting Assistance to Pacific Islands Nations



laws perpetuating issues around quality, consistency, constitutionality and enforceability of legislation.

PCO provides a disinterested high quality drafting service that meets locally determined priorities. The model of assistance, and New Zealand's close engagement with PICs ensures that the final product is contextually appropriate.

#### OVERALL ASSESSMENT

The drafting assistance provide by PCO is:

**Effective**, in terms of what is delivered and how, quality of the final product from PCO, level of professionalism and integrity of the drafters;

**Efficient**, but might be improved by more on-Island time, and increased opportunities for local lawyers to work directly with Counsel; and

**Sustainable**, in terms of delivering clear, consistent and constitutionally valid legislation can be implemented and enforced.

#### TRAINING AND MENTORING

***Assessment: training and mentoring was beneficial for the local lawyers who received it, all reported an increase in their knowledge and skills.***

PCO recruits only experienced lawyers and currently has an estimated 32 drafters, many of whom have more than 10-15 years' experience. PCO Counsel noted that it takes 5-7 years working with Advanced Counsel and drafting daily to achieve full competency as a drafter. Training is primarily on-the-job and new drafters are given relatively simple drafting tasks from very early on in their time with the agency. Skills are improved through experience.

Very little formal training and mentoring has been provided as part of the Activity. Evaluation participants from PCO and the CLO's identified lack of interest in legislative drafting as a career pathway, and competing priorities such as obligations around conducting prosecutions and litigation as barriers to identifying and selecting training participants. However, local lawyers and CLOs' staff interviewed as part of the evaluation reported an overall improvement in their own skills where they had collaborated on drafting work with the Counsel.

The Annual Activity reports indicate the focus has been supporting CLO and departmental staff, and in the case of the Cook Islands a small number of local lawyers. Training and mentoring undertaken as part of the Activity include providing clause -by-clause feedback specific to the draft bills. The process is intensive and requires effective communication and engagement. Communicating and providing feedback via email was identified as a challenge, and evaluation participants noted the most productive periods are when the Counsel is on-island. CLO staff indicated they would benefit from more face-to-face engagement with PCO lawyers, as would other government officials responsible for developing policy and providing drafting instructions. An increased number of, or longer, visits the Cook Islands and Niue would require additional funding.



In the early stages of the Activity, **Cook Islands** CLO staff responsible for drafting were provided with unstructured, but intensive mentoring and training. However, there has been relatively high turnover of staff in the Cook Islands CLO, and lawyers tend to be young (graduates), and in some instances expatriates. However, at least a few evaluation participants have worked with PCO since the Activity commenced and report they have benefitted from the experience.

In April 2015, PCO provided the first “Basic Drafting Skills” training workshop in partnership with the Cook Islands Law Society. The one-day workshop included CLO staff, local lawyers and some government officials (est. 30). The training was reportedly well received by those who attended and included a range of formal presentations and drafting exercises. Key informants for this evaluation, who also attended the training, indicated that the training was beneficial and that there is scope for, and interest in, more training in the future. A number of evaluation participants suggested periodically repeating the Workshop and potentially extending it to a wider audience. Anticipated benefits were increased awareness of the drafting process, and improved understanding of the requirement for detailed policy narrative and clear drafting instructions among government officials. The “Basic Drafting Skills” training workshop was not formally evaluated. If the workshop is repeated in future it would be beneficial to undertake a simple evaluation, for example questions regarding most/least useful sessions, key things they will take away, and suggested improvements/inclusions.

*“Inclusion of 1-day workshop greatly assisted local lawyers who have done drafting or regularly do drafting”  
Cook Islands 2014/15*

There has been no formal training in **Niue**, but CLO staff have worked closely with PCO throughout the life of the Activity. The small size of the team and lack of local lawyers to train means there is little scope for training. However, the CLO staff has recently increased to 5 with new graduates joining the team, and there may be scope to offer training in the second phase of the Activity. The Attorney General of Niue is happy to discuss options with PCO. In addition, a small number of evaluation participants indicated it would be beneficial to run the basic drafting skills workshop delivered in the Cook Islands for staff from government departments in Niue. Further, it was suggested that Village Council and non-government organisation representatives would benefit from training in basic drafting skills.

**Assessment: The quality of local lawyers’ drafting has improved, but there is an ongoing need for training and mentoring**

Evaluation participants indicated there is an ongoing need for training, and people appreciate the opportunity where it is provided. The majority of participants noted the highly technical nature of legislative drafting and the need to develop skills over time.

Many of the evaluation participants noted they completed the University of the South Pacific (USP), **Professional Diploma in Legislative Drafting** (the PDL). The PDL is a 30 week programme targeting drafters of all skills levels. The programme includes all aspects of drafting using a variety of training modalities including video, DVD, conferencing and online elements, culminating in an intensive residential drafting workshop. The feedback on the value of the qualification varied. A key challenge for participants was the fact that developing competency as a legislative drafter requires daily drafting opportunities.



PCO also provides training at a number of **regional network meetings and workshops**. Examples include the Legislative Drafters Forum in partnership with the Pacific Islands Forum Secretariat (PIFS), and working with the Commonwealth Secretariat (CommSec). These activities are funded by PCO and provided by a different Senior Counsel. The training forms part of a broader strategic engagement in Pacific Region which includes networking and information sharing and participation in the Pacific Islands Law Officers Network (PILON) and ensures PCO remains abreast of issues and needs in the region.

Evaluation participants indicated that where legislative drafting training has been provided, either by PCO or other agencies, it is valued and appreciated. The intensive workshop for advanced drafters in Auckland in 2014 was highlighted by a number of participants as being of particular value. However, some suggested one-month intensive programmes would be more appropriate, and others indicated that 12-month mentoring schemes from a senior advisor would work well. The Samoa CLO drafting team currently has a mentor funded by the **Pacific Technical Assistance Mechanism (PACTAM) Advisor** and this is reportedly working well.

Evaluation participants indicated a key challenge for small CLO teams is taking time off work to attend formal training and the impact this has on the team. The nature of legislative drafting is that it requires training over a long period and hands-on experience. It was suggested that some of these issue could be addressed by longer workshops, and sending drafting exercises ahead of the trainer to allow for direct feedback and detailed discussion during training sessions, extended placements with PCO, and posting a PCO drafter to the Pacific CLOs full-time.

#### **Overall Assessment**

The training and mentoring provided by PCO is:

**Effective**, where CLO staff and local lawyers works with PCO they reported an increase in their drafting knowledge and skills;

**Efficient**, but the requirement for on-the-job training and length of experience required to become a competent legislative drafter, combined with high staff turnover and competing priorities, present challenges; and

**Sustainable**, for Niue, and to a lesser extent the Cook Islands, it may be unrealistic (in the short-to medium term) to try to build a cadre of local drafters, although clear benefits have been realised in terms of increasing overall awareness of high quality drafting and baseline skill levels.

#### **DRAFTING GUIDELINES AND TEMPLATES**

***Assessment: The guidelines and templates set the benchmark for local drafting standards and support the development of consistent plain English legislation of an international standard***

Drafting manuals and guidelines for Samoa, Australia, New Zealand and the Republic of the Marshall Islands include a broad range of information including the process for enactment of



bills and criteria for assessment in the chamber. They provide templates, forms and checklists for drafting and review, and outline standards in terms who can and should draft, and required processes from initiation to completion.

In the first year of the Activity PCO worked with the Cook Islands and Niue CLOs to develop local legislative drafting guidelines and templates. The materials drew on the Samoa Legislative Drafting Handbook (2008) and are designed to establish local standards and support consistency in drafting. In June 2012 the CLOs received PCO approved versions of:

- Guide to preparing instructions for Drafting of Legislation
- Solicitor General’s Legislative Drafting Directives
  - Drafting Template for Bills
  - Drafting Template for Regulations.

The materials are clear and concise and locally appropriate. They identify the intended audiences and outline required processes for contracting and initiating drafting, and establish local standards. For accessibility, they are Word documents with forms and templates attached as schedules or appendices.

Responses to the Annual Solicitor-General’s Survey (email survey implemented by PCO) indicate that the materials are well received, and in all years of Activity implementation uptake has increased. CLOs reported overall improvement in the quality of legislative drafting, and evaluation participants reported an appreciation for the transition to plain English drafting.

Many described the guidelines and templates as the new benchmark for drafting, and noted that they empower the CLOs to require a certain quality product and level of review in terms of content and approach.

It should be noted that a small number of evaluation participants suggested the expectations outlined in the Directives developed by PCO may unrealistic. In particular, it was suggested the requirement in Directive A relating to “Professional Capabilities of Persons Drafting Legislation”, requiring drafters to have a minimum of 5 years’ experience working as a legislative drafter is unrealistic. Further, it was suggested that lawyers with an understanding of the Pacific Region should be able to draft locally appropriate legislation of the type and complexity needed in the Cook Islands and Niue. However, the Directives were drafted with the intention of setting a high standard, and to increase expectations of drafters.

***Assessment: Legislative drafting tools are available for use, easily accessible, contextually appropriate and used by local lawyers.***

The CLOs make the drafting guidelines and templates available for drafters and government departments. Evaluation participants who had seen the templates and had cause to use them indicated they are beneficial, in terms of providing guidance and a format. A number of local lawyers in the Cook Islands indicated they have successfully used the templates, and that their drafting skills have developed as a result.



The **Cook Islands** tools have been published on the Pacific Legislative Drafters Technical Forum.<sup>9</sup> However, CLO staff indicated that they prefer for agencies requiring drafting assistance to engage with their offices early, even when they intend to contract consultant drafters. To that end, the drafting tools are not widely distributed.

*"The quality of the guide and templates is excellent and easy to follow and use. Their use in practice has been widely accepted and adhered to." Cook Islands 2012/13*

The Cook Islands CLO reported an increased uptake in the use of the drafting guidelines and templates every year since their introduction. They reported close to 100 percent of drafting is on the templates in the 2014/15 Annual Solicitor-General's Survey, but noted varying degrees of "effective use" in terms of following the style guide and directives. At least one evaluation participant indicated this success was due to the determination of the Solicitor-General in insisting government departments follow the directives and drafters use the tools. In addition, a few instances where international consultant drafters refused to use local drafting tools were highlighted, but these are reportedly decreasing. Where local lawyers are drafting they are using the tools.

There are only two local lawyers working in private practice in **Niue**, it is understood that they do not currently provide drafting assistance. The Niue CLO now has a team of 5 including a number of government lawyers and PCO works with them to provide the majority of drafting assistance. As such, 100 percent of bills are drafted using the tools. A single exception to this is where the CLO requested assistance from the SPC-RRT team. They have consulted on and drafted a generic bill for the prevention of domestic violence for Niue. The bill needs further consultation and during the evaluation it was indicated they will confirm if the CLO would like them to reformat the draft for the final version.

A single evaluation participant indicated it may be beneficial for Niuean Village Councils and Government Departments to have access to the drafting tools as many people would benefit from basic drafting instructions. For example, there is a high level of need for by-laws and rules, and limited capability among those responsible for drafting them.

During the evaluation it was suggested many countries do not like to share their drafting resources with external agencies and consultants. It was also suggested that the translation of text to a local format allows government lawyers to maintain a degree of control over the final product and provides for considered review of the final text.

### Overall Assessment

The Drafting Guidelines and templates are:

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<sup>9</sup> Available at: [http://www.pilonsec.org/index.php?option=com\\_content&view=article&id=117&Itemid=106](http://www.pilonsec.org/index.php?option=com_content&view=article&id=117&Itemid=106) (accessed October 2015)



**Effective**, the tools were developed and delivered in year one of the Activity as planned, using a consultative process and are now widely used in the Cook Islands and Niue;

**Efficient**, providing a simple and enduring tool that can be used to support the modernisation of local statute books and build clarity and consistency; and

**Sustainable**, the CLOs have taken ownership of the templates and made minor adjustments as required. They have set the standard for plain English drafting and empowered CLOs to demand more from instructors and drafters; awareness of the tools will need to be maintained to ensure continued use.

## Summary of Key Achievements and Challenges

Overall the Activity has been well implemented and received and has clearly contributed to the development of:

- draft legislation that meets local needs in terms of quality and practicality; and
- government lawyers in the Cook Islands and Niue, and local lawyers in the Cook Islands, with increased knowledge, skills, and confidence with drafting smaller pieces of legislation.<sup>10</sup>

*"The quality and efficiency of the drafter on the Pacific Islands desk at PCO has been a tremendous benefit..." (Cook Islands 2013/14)*

The Activity has achieved the best possible outcomes during the MoU period, relative to the total cost of managing and resourcing it. Achievements highlighted through the document review and key informant interview processes include:

- a contribution to the increased **profile** of, and interest in legislative drafting in the Pacific Region;
- **professionalism** of Counsel including, promotion of and commitment to plain English drafting using basic legal principles and effective engagement with stakeholders;
- building a strong **reputation**, for PCO, and by association NZ due to the integrity of drafters and meticulous process contributing to trust and respect and expectation of a quality product; and
- **responsiveness** of PCO coupled with the flexibility, willingness and capability to meet the priorities and timelines of the

*The assistance that has been provided to Niue has been objective and accurate and more than sufficient for our needs. (Niue 2011/12)*

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<sup>10</sup> Formal Monitoring Visit Report: PCO/CI Crown Law Office. September 2014



CLOs.

Key challenges for Activity implementation have been:

- complex political environments resulting in **changing** legislative programme priorities;
- a lack of quality **policy work**, leading to inadequate **drafting instructions** thereby reducing the efficiency of the drafting process; and
- limited, or no, people to train (Niue); and high staff turnover (Cook Islands) resulting in limited opportunities to build capability in a sustainable manner.

## Overall Assessment and Future Focus

This section is future focused, and therefore more exploratory. It seeks to inform future Activity design with reference to PCO capacity and capability. It considers legislative drafting assistance provided by other agencies in the Pacific Region and identifies strengths, weaknesses, and potential changes that might be implemented to make the Activity more effective, efficient or sustainable. It answers the following question:

***KEQ 2: What opportunities, risks and changes should be considered to maximise the value of this intervention in the Pacific?***

### OVERVIEW OF LEGISLATIVE DRAFTING ASSISTANCE IN THE PACIFIC REGION

***Assessment: the Activity is one of a number of models of assistance provided throughout the region, but it is the only model not currently limited by subject matter or sectoral focus***

Well drafted legislation with enforcement mechanisms specific to the local circumstances are critical to the effective operation of the rule of law. Previous experience with legislation drafted by off-island contractors showed a lack of awareness of the local enforcement environment. Concerns around the quality and usefulness of legislative drafting assistance being provided by a range of agencies and individuals in the Pacific Region have given rise to a number of initiatives in response. The Activity is one such initiative, as is the Pacific Legislative Drafters' Technical Forum (the Drafters' Forum). The Drafters' Forum is a regional network for legislative drafters and legislative drafting assistance providers in the Pacific. It was established in response to a 2006 Pacific Working Group on Legislative Drafting recommendation.

The **Drafters' Forum** has a page on the PILON website to facilitate resources and information sharing. The Forum has met on five occasions since the first meeting in 2007, including most recently in October 2015. The meetings provide opportunities for networking,



information planning and drafting workshops.<sup>11</sup> A key output of the Forum is a Regional Action Plan (the Action Plan). The Action Plan outlines a range of strategies including: skills building, network development and strengthening, information sharing, capability building policy development and drafting skills, recruitment processes and access to law and other resources.

The Action Plan maps assistance provided by a range of agencies including: PCO, PIFS, PILON, the AGDs, CommSec, and SPC-RRT.<sup>12</sup> PCO has been instrumental in the establishment of the webpage and associated information gathering processes, the goal of which is to avoid duplication of process and support improved coordination. A number of these agencies were interviewed as part of this evaluation, to better understanding ongoing needs and compare and contrast the assistance provided. A snapshot of the assistance they provide is outlined in the section that follows.

The **SPC – RRT** focuses on supporting the development of legislation for the prevention of domestic and interpersonal violence. They undertake advocacy and provide support for policy development. They contract a legislative drafter and subject matter expert to provide drafting assistance. After consultations with local officials they seek instructions and develop “model” bills using a team drafting approach for further consultation. The SPC-RRT has drafted 4 domestic violence bills and peer reviewed 7 further bills. Their current focus is on domestic violence, and in the future may extend to family law.

The **AGDs Pacific Section** provides a train-the-trainer programme for law and justice sector personnel and supports development of policy and legislation, and subsequent implementation. AGDs staff facilitate the consultation and engagement process and provide training. Australian-based legislative drafters are contracted as needed. Their focus is law and justice sector support.

**PIFS** has a single legislative drafter who provides drafting assistance on request. They have a focus on capacity building and have coordinated the Drafters’ Forum meetings since their inception. They provide coordination and work to avoid duplication of functions. They rely on PCO to assist the Cook Islands and Niue.

The **USP Law School** plays a role in the development of legislative drafting capability and capacity across the Pacific region. The law school offers a Bachelor of Law (LLB) programme offered in 3 modes (face-to-face, online, and combination of both). The majority of the students are from Fiji, followed by the Solomon Islands. USP also offers 2 post-graduate qualifications, a Master of Laws (LLM), Master Environmental Law and PhD programme, and 2 professional diplomas including the post-graduate diploma in legal practice (PDLP) and the PDLD. Language competency is a challenge for students and graduates of all of these

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<sup>11</sup> The final meeting report for 2015 has been requested but is not available at time of submission of this draft report.

<sup>12</sup> Further information available at: [http://www.pilonsec.org/index.php?option=com\\_content&view=article&id=117&Itemid=106](http://www.pilonsec.org/index.php?option=com_content&view=article&id=117&Itemid=106) (accessed October 2015)



programmes, it was noted during the evaluation that for many English is their third or fourth language. In addition, there are a large number of law graduates in the region and few positions. The first year intake for the LLB programme is approximately 400 with about 250 making it to graduation. Approximately 24 students complete the PDL each year.

The **Pacific Islands Legal Information Institute (PacLII)** is funded by the Australian Department of Foreign Affairs until mid-2016. The PacLII database captures legislation and case law provided by 22 PICs. The database is considered by the overwhelming majority of evaluation participants as a critical resource, supporting access to law essential for drafting. It is managed as a project of the USP Law School and the operational model is under internal review. Issues under consideration include opportunities to expand the funding base; how the project is managed, the place of PacLII within the USP structure, for example should it be a stand-alone institute. It is understood that the New Zealand Aid Programme jointly funded PacLII in the past but the history and status of this arrangement were not explored as part of this evaluation.

While they were not interviewed as part of the is evaluation, it is understood that agencies like the Asian Development Bank, World Bank and the United Nations Office on Drugs and Crime anti-money laundering network all provide issues specific assistance such as developing regulations to meet international treaty obligations, or loan agreements.

All of the other assistance providers interviewed as part of this evaluation indicated they have not provided assistance to the Cook Islands and Niue because of the role New Zealand plays. However, they all expressed willingness to assist where it is logical and within their specific focus areas.

## **ASSESSMENT OF LEGISLATIVE DRAFTING NEEDS IN THE REGION**

***Assessment: there is an ongoing need for legislative assistance in the Pacific region, and scope for PCO to extend assistance to other countries.***

A 2013 PIFS report provides an overview of legislative drafting assistance needs, and approaches to addressing needs across these in the Pacific Region. Legislative drafting needs are met using the following approaches:

- Stand-alone independent drafting offices e.g. Papua New Guinea;
- drafting units within the CLOs / State Law Offices e.g. Samoa and Vanuatu;
- drafters in secretariat of the legislatures e.g. Republic of the Marshall Islands; and
- drafting work is allocated to lawyers in the offices of the attorney general e.g. Cook Islands, Niue, and Tuvalu.

Key challenges for developing legislative drafting skills included issues such as:

- legal literacy and policy skills of drafters;
- salary rates, employment conditions and staff retention; and



- access to local law.

Evaluation participants indicated that, despite increased awareness of legislative drafting as a technical speciality, and examples of increasing capability and capacity, the challenges remain the same in 2015.

The example of the legislative drafting unit in the Samoa CLO was cited by a number of participants as a positive development. The commitment of the Samoan Attorney General to developing a skilled drafting team combined with the mentoring programme supported by PACTAM has reportedly seen an improvement. Samoa has also offered to host legislative drafters from around the region on secondments. The PACTAM advisor is funded through to 2016.

In addition, at least a few evaluation participants indicated there is a small but slowly increasing number of Pacific Islanders working as drafters in the region who have around five years of drafting experience. Despite these positive developments it was also noted that many of the leadership positions in CLOs are held by expatriates, especially those related to drafting, thereby raising questions around sustainability.

All evaluation participants familiar with the Cook Islands and Niue, indicated there is an ongoing need for assistance. Further, there is an expectation the need for technical assistance will last well into the future. This is despite the number and range of agencies supporting legislative drafting in the region. For Tokelau, further investigation into the type of assistance required is needed.

Regional agency representatives indicated there is a similar need for much of the Pacific Region. In particular, evaluation participants indicated small island states such as Kiribati, Tuvalu and the Republic of the Marshall Islands, are in need of, and have requested drafting assistance. Tonga indicated interest in developing their capability and capacity and are interested in working with PCO to consider options for developing their own parliamentary counsel office.

There is a broad interest in intensive training programmes and opportunities to engage with highly skilled legislative drafters. Representatives from regional agencies also highlighted the increasing interest in “south-south” mentoring and partnerships where experienced drafters from the region support capability building for other PICs, similar to the PACTAM advisor position in Samoa.

## **GOVERNANCE AND REPORTING ARRANGEMENTS**

A range of MFAT staff at the desk and post participated in the evaluation with a view to capturing information regarding past management processes and informing the design of a further stage of the Activity. Annual Activity and Activity Monitoring Assessment Reports were also reviewed as part of this evaluation. This section outlines the findings from these engagement and review processes.

***Assessment: the Annual Activity Reports would benefit from further analysis, and reporting progress against a simple annual workplan and targets would make the reports more informative***



The Activity has been implemented under a MoU which outlines the key objectives, deliverables and intended outcomes. The Activity is relatively small in scale and low risk, and as such reporting expectations to date have been limited. Engagement with MFAT tends to be during in-country visits, annual reporting process and on an as required basis where issues or concerns arise. No annual workplans are developed.

The intended Activity outcomes relate to the development of priority legislation that improves the business environment, compliance with drafting standards, improvement in drafting skills of local lawyers and the development of the guidelines and templates. The targets start with a zero baseline, PCO reported against these in subsequent years.

PCO submits **Annual Activity Reports** to MFAT, in the agreed format, documenting key conclusions, progress on bills drafted, introduced, passed and archived for each of the countries assisted. In the second year of the Activity a revised results framework, including targets was developed. The Annual Activity Reports include unedited responses to the Annual Solicitor-General's Survey (an email survey conducted by PCO) about the quality of assistance, progress of local lawyers and uptake of drafting tools. The Survey questions changed across the life of the Activity and not all questions were answered for each year of implementation. The opportunity to gather impact data through this process was lost. The Legislative Programmes for Niue and the Cook Islands are also attached to these report.

While the Annual Activity Reports reflect the scale of the Activity, they are output focused and include limited analysis in terms of contributions to intended outcomes. In the current format the presentation of information regarding the status of bills drafted, passed, archived is hard to track year-on-year, and information on barriers, challenges, delays for drafting would be useful. The reports also tend to be repetitive, for example the risk management and suitability responses are identical for each year of implementation.

The narrative could be strengthened by reporting against an annual workplan and targets. Alternatively, **issues or exceptions reporting** could be adopted to keep reporting requirements in check, and still track issues of potential concern. At a minimum, the format for the Annual Solicitor-General's Survey should be redesigned to gather data on intended Activity development outcomes. A more considered Survey design would assist with tracking progress and increase potential to track broader development outcomes and impact. To capture Activity achievements it could be implemented more broadly, for example including local lawyers and government officials.

#### **PCO ENGAGEMENT WITH MFAT**

***Assessment: there is scope to strengthen engagement with MFAT and increase the profile of the Activity to ensure coordination with bi-lateral programme activities.***

A number of evaluation participants were of the impression that PCO assistance was ad hoc, and therefore not aligned with any particular priorities. This view reflected the varying levels of knowledge of the model of assistance and extent of **engagement with PCO**. The level of awareness and understanding of the Activity appears also to have impacted on coordination with activities undertaken as part of the bi-lateral programmes.



However, both PCO and MFAT staff agreed that it is logical and feasible for the PCO Pacific Desk to support bi-lateral programme activities that require legislative drafting. There are a number of potential risks and challenges with this approach. Key among these is the need to manage competing priorities. The current model of assistance is essentially a **client/counsel relationship** between PCO and the CLOs of the assisted countries. PCO takes instructions and drafts accordingly thereby ensuring the Activity meets local legislative programme priorities and gives effect to the governments' policy position. Currently, there are no written agreements in place between PCO and the CLOs. Drafting is commenced upon receipt of instructions from the CLO and timelines for delivery negotiated directly with the responsible Counsel.

PCO support for bi-lateral programme activities would require MFAT coordination and negotiation with the relevant government departments and CLOs to ensure legislation is on the Legislative Programme and prioritised accordingly. It would require a more detailed statement of roles, responsibilities and expectations, or it risks MFAT and CLO priorities coming into conflict making it difficult for PCO to respond.

Responding to the challenge of developing the quality of policy and drafting instructions was widely canvassed as part of this evaluation. Gaps in capability, capacity and resourcing for policy development were consistent themes with a number of evaluation participants raising the possibility of providing policy support through this Activity. Counsel appointed to the PCO Pacific Desk bring extensive and diverse experience to the role, and they report providing a measure of policy support to the CLOs. However, a number of people expressed concerns that the support they provide to get adequate drafting instructions might be perceived as influencing policy and undermine the integrity of drafting process. There was a clear view that the role of the drafters is to develop law that gives effect to an already well-articulated policy position. The question of whether the bi-lateral programmes are better positioned to respond to the policy development needs was also raised during the evaluation.

Each of these issues highlights the need for strengthened engagement to better understand how the Activity aligns with MFAT priorities. Further, it signals the need for an increased role for MFAT in ensuring coordination with bi-lateral programme activities to ensure the best management and funding arrangements.

## **FUNDING MODEL**

The Activity was initially funded through the contestable funding stream of the Partnerships Fund. The initial funding was for three years and has been extended to five years through multiple contract variations. During the evaluation there was some concern expressed about uncertainty of ongoing funding and the requirement to repeatedly negotiate variations. Feeding into this were concerns around perceptions of how the Activity aligns with New Zealand Aid Programme priorities (see the recommendations section for further discussion of this issue). A number of evaluation participants also raised concerns about the perception that the Activity by providing a drafting service, rather than capability building, lacks sustainability and funding would be discontinued.

Equally, evaluation participants indicated there is broad based support for, and interest in, the Activity, including from the New Zealand Attorney General, within MFAT and from



Parliament's Finance and Expenditure Select Committee. These issues will need to be raised during the stage 2 Activity design.

## FOCUS ON FUTURE ACTIVITY DESIGN

***Assessment: MFAT could continue to fund the Activity unchanged and see benefits for the Cook Islands and Niue into the future; but there is scope to add value and improve the sustainability of outcomes in the Pacific Region.***

This section focuses on the strengths and weaknesses of the Activity and changes that might be considered when designing a further phase. Any recommended changes are presented in light of the assessment of the Activity as an effective and efficient service that contributes to the development of robust and effective legislation. They are focused on opportunities to improve sustainability without compromising the efficiency and effectiveness.

Overall the Activity is working well. Coordination with other agencies and networks in the region appears to be effective and there appears to be little to no duplication of effort. The assistance PCO provides can be differentiated from assistance provided by other agencies in that it is neither sector, nor subject matter specific, and the focus is primarily on legislative drafting. The key **strengths** of the Activity include:

- the simplicity of the current "service delivery" model, providing assistance on request from CLOs means PCO is responding to nationally-determined priorities with the majority of legislation and regulations drafted ultimately passed into law;
- the secondment of advanced full-time Counsel to the Pacific Desk, and ongoing relationship between the senior PCO staff and the CLOs, means PCO is a trusted service provider, responsive to CLO needs, and delivering a high quality product that is well received in country;
- CLO staff and local lawyers benefit from the opportunity to work closely with PCO staff, especially during on-island visits;
- the assistance from PCO has increased the profile and practice of plain English drafting, and new legislation has been well received by local judicial officers due to the clarity, consistency and certainty provides.

There are a number of structural and contextual issues that impact on the success of Activity implementation that might be addressed through any increased engagement. These **weaknesses** are:

- changing political priorities and processes including infrequent sitting sessions impact on workflow and productivity of the drafters;
- the efficiency of the Activity is, at times, undermined by the lack of clarity in and quality of policy work that informs the drafting instructions, and there is limited scope to respond to this need under the current service delivery approach;
- there is limited scope for capability building under the current model of assistance, especially due to the small staff numbers, relatively high turnover in the CLOs, and



the need for intensive on-the-job training to become competent in legislative drafting; and

- the level of engagement with MFAT staff and the broader New Zealand Aid Programme is variable, and there is scope for better coordination, especially where bi-lateral activities generate the need for new legislation or regulations.

Many of the Activity weaknesses such as the limiting effect staff turnover has on capability building, and shifting political priorities are difficult if not impossible to address in an activity of this type. However, the benefits and impacts of the Activity might be increased and sustained by making a number of changes. These **changes** include:

- review and agree on a new approach to engagement with MFAT to improve coordination with the bi-lateral programme, and support more effective mobilisation of technical experts such as PCO Counsel;
- consider including a stronger capability-building component in the next stage of the Activity; this could potentially focus on the larger PICs with more CLO staff; and
- strengthen governance arrangements between PCO and the CLOs to document and clarify roles and responsibilities, and prioritise assistance, especially if the intention is to extend assistance to other PICs, and support to bi-lateral programmes is increased.

## Assessment against DAC Criteria

The Activity was assessed in terms of its effectiveness, efficiency and sustainability. The Evaluation Rubric is provided as Appendix 2 of this report and provides standard indicators of success for each of these criteria. These are further assessed against the MFAT five-point rating scale. The findings are as follows:

**Effectiveness:** The outputs of the Activity are highly regarded in terms of quality. Key informants familiar with the specific outputs of the Activity considered them as the benchmark for legislative drafting in the Pacific Region. The Activity is rated **Very Good** in terms of effectiveness.

**Efficiency:** The assistance was delivered in a timely manner, using a consultative process and in accordance with agreed timelines. Work was often completed at short notice, to tight timeframes and with very little direction or instruction. The Activity is rated **Very Good** in terms of efficiency.

**Sustainability:** The legislation and regulations are considered the highest quality and are expected to have a lasting impact on good governance and the business environment in the Cook Islands and Niue. There is a high uptake and good local ownership of the drafting guidelines and templates developed as part of this Activity, and these are expected to have a lasting impact on the evolving statutes of the Pacific. Training and mentoring have proven a challenge for Activity implementation and developing a capability and increasing capacity for legislative drafting remains out of reach of the current model of assistance. The Activity is rated **Good** in terms of sustainability.



## **Limitations of this Evaluation**

This desk-based evaluation was implemented over a period of 8 weeks. A total of 30 people from the Cook Islands, New Zealand, Niue, Tonga, Samoa, Fiji, the Solomon Islands, and Australia were interviewed by telephone or Skype. A number of people involved in the early stages of Activity implementation were not available for interview during the evaluation period.

In addition, a number of evaluation participants were not familiar with the details of the assistance provided by PCO and they could not speak directly to the benefits of the Activity. However, it should be noted that many of the evaluation participants were included as key informants to contribute to the future focus component, provide alternative perspectives on the legislative drafting needs across the region, and inform the design of the next phase of the Activity.



# 5

## Evaluation Conclusions

Overall the Activity is **effective** and **efficient**. The Activity has largely been delivered as intended including assistance from PCO in three core areas: legislative drafting assistance, on-the-job training and mentoring, and the development of drafting guidelines and templates. The Activity is **sustainable** in terms of contributing to the development of easily understood and interpretable legislation, but building capability of local legislative drafters is an ongoing challenge.

The main focus of the Activity has been **drafting assistance** which is considered the benchmark for legislative drafting in the Cook Islands and Niue. Assistance is provided, on request, to the CLOs and as such meets local legislative programme priorities. While it is difficult to measure the immediate impact of new legislation; the instruments drafted by PCO are expected to contribute to clarity, consistency and certainty of local legislation, resulting in improved statute books and thereby a **sustainable** impact.

The **training and mentoring** has been a small component of the Activity. In the early stages of implementation, the PCO Pacific Desk Officer worked closely with CLO staff to develop drafting guidelines and templates. In addition, during in-country visits PCO staff work closely with CLO and departmental staff. However, high staff turnover in the Cook Islands, low staff numbers in Niue, and competing priorities for CLO staff in both countries, mean identifying appropriate candidates to train in the highly technical skill of legislative drafting is an ongoing challenge. The lack of appropriate candidates with an interest in training as legislative drafters means that this will continue to be a challenge for the Activity in terms of **sustainability**.

The **drafting tools and guidelines** were developed in consultation with the CLOs in year one of the Activity. The CLOs have taken ownership of these tools and made some minor adjustments as required. Staff of the CLOs are responsible for ensuring all legislation is drafted in compliance with the guidelines and on the template provided. There has been a relatively high level of uptake in terms of using the tools but varying degrees of consistency in terms of application of the style guide. The tools have empowered the CLOs to demand more of departmental staff and any consultant drafters they recruit, in terms of the quality of drafting instructions and compliance of the final product with the new standards. Assuming CLOs continue to enforce their use, the drafting tools are expected to contribute to the development of clearer, more consistent statute books into the future.

The PCO Pacific Desk **model of assistance** is unique in the region. The assistance is provided by highly qualified senior drafters on request from the CLOs and therefore is certain to meet current priorities and demands of the Governments of the Cook Islands and Niue. In contrast to other agencies and organisations providing drafting assistance in the region, the service PCO provides includes drafting for a range of public, civil and criminal law. A key



strength of the Activity is that support is not driven by interest in a particular issue, or meeting the requirement of specific agreements (e.g. loan or treaty obligations). The Pacific desk officer is flexible and responsive, negotiating drafting priorities and timelines with the CLOs.

The need and demand for the assistance is ongoing and MFAT could continue to fund the Activity unchanged, prioritising assistance to the Cook Islands, Niue and Tokelau over the longer-term. However, there is also scope to build on the success of the Activity, and increase the impact by making changes in a number of areas.



# 6

## Recommendations

### Alignment with New Zealand Aid Programme Priorities

The New Zealand Aid Programme Strategic Plan 2015-19 (the Plan) outlines a vision for promoting sustainable development with a clear focus on assistance to Pacific Region. The Plan maintains a strong emphasis on country partnerships underpinned by coherent strategies for engagement, and is focused on evidence for investment and opportunities for New Zealand to “add value”.<sup>13</sup> The programme will seek to draw on successes and lessons to support the agile deployment of resources to similar settings and support the scale-up of successful activities.

The New Zealand Partnerships for International Development Fund (Partnerships Fund) is available to fund activities which align with the strategic focus and sector priorities of the New Zealand Aid Programme. The Partnerships Fund was developed to harness the expertise and innovation of New Zealand organisations in the delivery of aid activities and is a key component of the development programme.<sup>14</sup> MFAT and PCO have discussed establishing a longer-term Partnership Arrangement consistent with the New Zealand Aid Programme current policy on core state sector assistance.<sup>15</sup>

The recommendations that follow take into account the strategic direction of the New Zealand Aid Programme. They are based on consideration of how providing legislative drafting support contributes to New Zealand’s law and justice programme in the Pacific and alignment with the sectoral focus, and development objectives outlined in the Plan. The recommendations are divided into those specific to the design of a second stage of the Activity design and management issues.

### Activity Design

#### Recommendation 1. Geographic focus of the Activity

- *Continue to Focus on the Cook Islands and Niue*

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<sup>13</sup> New Zealand Aid Programme: Strategic Plan 2015-19

<sup>14</sup> More information Available at: <http://www.aid.govt.nz/funding-and-contracts/nz-partnerships-international-development-fund> (accessed October 2015)

<sup>15</sup> Meeting with Parliamentary Counsel Office: Legislative Drafting Assistance to Pacific Island Nations. March 2015



The focus of the Activity should remain on providing drafting assistance to the Cook Islands and Niue. The need for assistance is ongoing, and the relationships with the CLOs are well-established and thereby likely to improve outcomes from the assistance.

- *Re-engage with Tokelau to assess the level of need*

The need for assistance in Tokelau should be explored further. The evaluation unearthed differing views regarding the type and level of assistance needed, and it is unclear if the required assistance is legislative drafting, or more general legal mentoring and support.

- *Continue to offer ad hoc drafting assistance to other PICs on request*

Given the scale of need throughout the region, particularly among the small island states, there may be benefit in establishing an ad hoc assistance mechanism for other PICs. Currently assistance provided by other agencies in the region tends to be limited to criminal codes, or be issue-specific and there may be an opportunity to New Zealand to support a “value add” by providing drafting assistance.

## **Recommendation 2. Scope and model for assistance**

- *Continue to provide drafting assistance*

The legislative drafting component of the Activity should be maintained as a demand-driven “service delivery” model characterised as a client/counsel relationship between CLOs and PCO. This will ensure it is aligned with priorities outlined in local legislative programmes, and minimise wasted effort by increasing the potential for legislation to be introduced and passed into law. This should be the case even where the requirement for drafting assistance is generated as a result of other MFAT-funded activities.

- *Increase engagement between the bi-lateral and partnerships programmes*

The focus of the Activity should continue to be on government initiated legislative priorities. However, MFAT should also play an increased coordinating role to ensure that where the bi-lateral programmes generate a need for legislation and regulations they are engaging with the CLOs and PCO. This will assist to ensure technical expertise is mobilised and assistance prioritised to the best effect across the programmes. This should also ensure that resources, such as the Drafting Guidelines are used consistently across programmes in the Cook Islands and Niue.

- *Increase the annual on-island time of Counsel*

The current approach to providing on-the-job training and mentoring is likely to contribute to increased local capability over the medium-term. However, the impact and sustainability might be improved by increasing the amount of on-island time for each year of Activity implementation. Evaluation participants indicated they benefitted from face to face engagement during the in-country visits by the PCO drafters.

- *Broaden the scope and provide a more structured approach to the training and mentoring component of the Activity*



There is a broad and increasing interest in legislative drafting around the region. While, there is limited scope to train a cadre of drafters in the Cook Islands and Niue, other countries have larger drafting teams with varying levels of knowledge and skills and would benefit from working with PCO. In addition, the basic drafting skills workshop provided in the Cook Islands was well received and has the potential to bridge the gap between the policy makers and drafters. Extending the activity to include a broader and more structured capability development component of the Activity will require funding for an additional dedicated position. The following training and mentoring models should be explored, and subsequently evaluated if adopted and evaluated:

- Wellington-based placement with PCO for 3-6 months;
  - recruitment and mobilisation of an Advanced Counsel as a mentor for the Cook Islands or Niue for 12 months;
  - offer basic drafting skills for government official in the region, specifically targeting countries where the New Zealand Aid Programme has extensive bi-lateral programme activities.
- *Offer assistance to other PICs interested in developing local drafting guidelines and templates*

Coordinate with Samoa Crown Law Office and PIFS to support development of drafting guidelines and templates (starting with small islands states). The guidelines and templates are an enduring resource that allow CLOs to set a standard for drafting and clearly communicate expectations to consultants, officials and regional agencies and networks.

## **Activity Management**

### **Recommendation 3. Governance**

- *Strengthen governance arrangements using MoUs*

Consider developing a MoU or letter of agreement between PCO and the CLOs outlining roles, responsibilities, and expectations especially if the focus of the Activity will be extended to provide support to other PICs and the bi-lateral programme.

### **Recommendation 4. Management and Reporting**

- *MFAT should take on a more proactive coordination role between Partnerships Fund activities and the bi-lateral programme*

There is scope to ensure that the bi-lateral programme benefits from access to PCO technical expertise if managers are better informed of and engaged in Activity workplan development.

- *Strengthen the Activity monitoring and reporting including: progress against an annual workplan, and analysis of the Annual Solicitor-General Survey*

The Annual Activity Reports should reflect the scale of the Activity, and still be informative for MFAT staff and PCO. The introduction of a simple annual workplan component with progress reporting outlining achievements against the workplan would make the reports



more informative and allow progress tracking. In addition, all training activities should include a simple evaluation with the results presented each year.

### **Recommendation 5. Funding**

- *Continue to fund the Activity on a 3 + 2 year implementation cycle*

There is widespread support for the Activity to continue, and due to the highly technical nature of legislative drafting, that need is likely to exist well into the foreseeable future. The Activity implementation cycle could be increased to a five years to increase certainty and minimise the need for contract variations. The Activity could be reviewed at the end of year three allowing for variation to targets, and outcomes without a renegotiation of the funding and contract.

### **Additional Considerations**

During a number of key informant interviews and the sense making session for the evaluation, challenges related to the **quality of the policy** work, the **level of demand for drafting assistance**, and the need to support **implementation of new legislation** and regulations were discussed at length. Discussions focused on potential strategies to work with officials in the Pacific to improve the quality of the policy papers and associated drafting instructions, and thereby allow PCO drafters to focus on drafting. In addition, the impact of new legislation can only be realised where it is enforced and a key part of the process is ensuring people are aware of the changes.

The additional recommendations that follows is focused on potential responses to these issues. While not critical to effectiveness and efficiency to the current PCO Activity, the recommended actions below may contribute to increased overall sustainability and worth consideration during the design stage for the next phase.

- *establish a technical assistance mechanism made up of a pool of pre-approved service providers to:*
  - *provide additional drafting support where PCO does not have capacity;*
  - *support policy development where the need is identified up front, or the quality of what has been developed is insufficient to complete the drafting but the legislation is a priority; and*
  - *support the implementation of new legislation drafted as part of the programme.*

A key consideration for this recommendation is whether PCO is the agency best placed to respond to these issues or if they should be addressed by some other mechanism.



# 7

## Lessons Learned

The lessons in this section are broadly applicable to MFAT's development programme. They are drawn from the evaluation, but are focused on design and management issues and intended to be broadly applicable to the New Zealand Aid Programme.

- A technical assistance or "service delivery" model of assistance can be effective and efficient.

MFAT should consider the circumstances in which is more appropriate to prioritise efficiency and effectiveness using a service delivery model, ahead of the sustainability-focused capacity building model, for activity design. This aligns with the new Strategic Plan which seeks to identify opportunities where New Zealand can quickly and effectively mobilise resources to "add value".

- Increased benefits and improved outcomes can be realised through closer cooperation between the bi-lateral and Partnerships Programmes.

The Activity has a low profile among MFAT staff and there is infrequent engagement with Development officers. However, evaluation participants identified a range of opportunities for the bi-lateral programme activities to benefit from PCO assistance. MFAT needs to play a stronger facilitation and coordination role to ensure the opportunities are acted upon. There is also scope to look at leveraging benefits across Partnerships funds activities for example drawing on the litigation skills training programme experiences to develop a similar programme for legislation drafting.

- Performance Management Frameworks need to accurately reflect the intended outputs, outcomes and impact of the Activity, and allow for review and update where these change in response to emerging needs or are achieved early in the implementing period.

The results framework for this Activity does not accurately reflect what PCO delivered, and could deliver as part of the Activity. It was reviewed in the second year of implementation and would have benefitted from further update as PCO met planned objectives. The Activity targets, were low, easily achieved, and could have been updated to reflect progress and be more ambitious during the implementing period.



# Appendices

## **APPENDIX 1: List of Documents Reviewed**

- 2012/13 Financial review of Parliamentary Counsel; Report of the Justice and Electoral Committee
- 2013/14 Annual review of the Parliamentary Counsel; Report of the Justice and Electoral Committee
- 2015/16 Estimates for Vote Attorney-General and Vote Parliamentary Counsel; Report of the Justice and Electoral Committee
- Meeting Minutes 11 June 2014 MFAT/PCO catch-up
- Meeting Minutes 6 March 2015 Meeting with Parliamentary Counsel Office: Legislative Drafting Assistance to Pacific Island Nations
- Ministry of Foreign Affairs: Contestable Funds Activity Monitoring Assessment. October 2013
- New Zealand Aid Programme (2015). New Zealand Aid Programme Strategic Plan 2015 – 2019. Ministry of Foreign Affairs and Trade. Wellington, New Zealand
- New Zealand Aid Programme (June 2011). Memorandum of Understanding; New Zealand State Sector Development Partnerships Fund. (CT File: MOU/65/1/SSDPF)
- New Zealand Aid Programme (August 2013). Variation No 1; Legislative Drafting Assistance to Pacific Island Nations. (CT File: MOU/65/1/SSDPF)
- New Zealand Aid Programme (August 2013). Variation No 2; Legislative Drafting Assistance to Pacific Island Nations. (CT File: MOU/65/1/SSDPF)
- New Zealand Aid Programme (August 2013). Variation No 3; Legislative Drafting Assistance to Pacific Island Nations. (CT File: MOU/65/1/SSDPF)
- Pacific Islands Forum Secretariat. DRAFT Shaping law in the Pacific – The role of legislative drafters. A study of legislative drafting services in Forum Island Countries. 2013
- Pacific Islands Law Officers Network. Draft Regional Action Plan for Sustainable Legislative Drafting Capacity Building in Forum Island Countries. 3<sup>rd</sup> Meeting of the Pacific Legislative Drafters' Technical Forum. 23-25 July 2012
- Pacific Islands Law Officers Network. Technical Legal Assistance Database. October 2013
- Pacific Islands Law Officers Network. Annual Meeting: Outcomes Report. 11-12 November 2014
- Pacific Islands Law Officers Network. Legislative Drafters Forum. Member Resource. September 2015



Pacific Islands Law Officers Network. 2015 Work Plan

Parliamentary Counsel Office Activity Report 1 July 2012 – 30 June 2013 Activity Report:  
New Zealand State Sector Development Partnerships Fund – Legislative Drafting Assistance  
to Pacific Islands Nations

Parliamentary Counsel Office June 2012. Guide to Preparing Instructions for the Drafting of  
Legislation

Parliamentary Counsel Office June 2012. Solicitor-General's Legislative Drafting Directives for  
the Cook Islands

Parliamentary Counsel Office Activity Report 1 July 2013 – 30 June 2014 Activity Report:  
New Zealand State Sector Development Partnerships Fund – Legislative Drafting Assistance  
to Pacific Islands Nations

Parliamentary Counsel Office Activity Report 1 July 2014 – 30 June 2015 Activity Report:  
New Zealand State Sector Development Partnerships Fund – Legislative Drafting Assistance  
to Pacific Islands Nations

Parliamentary Counsel Office. Formal Monitoring Visit Report: PCO/CI Crown Law Office.  
September 2014

Parliamentary Counsel Office. Basic Drafting Skills Presentation. April 2015

University of the South Pacific. The Professional Diploma I legislative Drafting. Programme  
Description October 2015



## APPENDIX 2: Evaluation Rubric

This evaluation rubric includes standard ratings grouped by DAC criteria relevant to the evaluation. The rubric is directly informed by the MFAT Activity Quality Policy including the five-point rating scheme to support consistency and clarity.

DAC Criteria	Evaluation Standards				
	Very Good	Good	Adequate	Not Adequate	Poor
Effectiveness	Outputs better than planned in terms of timing, quality, and quantity. Planned outcomes recorded and additional positive outcomes identified.	Outputs largely delivered. Some or all outcomes delivered or satisfactorily advanced.	Most outputs delivered with reasonable explanation of variance provided.	Only some outputs and outcomes have been delivered.	Few or no outputs have been achieved.
Efficiency	Value for money exceeds normal expectations. Timeliness of outputs exceeded expectations.	Value for money meets normal expectations.	Generally good practice with some scope for improvement.	Scope for improvement, more intensive management than expected required to keep the Activity on track.	Money wasted, big savings could have been made.
Sustainability	Positive benefits are expected to be sustained. Issues such as institutional environment and workforce planning are very well managed.	Positive benefits expected to be sustained. Issues such as institutional environment and workforce planning are well managed.	Most positive benefits are likely to be sustained with modest additional inputs. Most issues such as institutional environment and workforce planning are well managed.	Some positive benefits might be sustained. Issues such as institutional environment and workforce planning are not dealt with adequately.	Most positive benefits are unlikely to be sustained. Issues such as institutional environment and workforce planning are not dealt with.



### APPENDIX 3: Glossary of Acronyms

Acronym	Description
AGDs	Australian Attorney-General's Department
CLOs	Crown Law Offices
CommSec	Commonwealth Secretariat
DFAT	Australian Department of Foreign Affairs and Trade
KEQ	Key Evaluation Question
KII	Key Informant interview
MFAT	Ministry of Foreign Affairs and Trade
PacLII	Pacific Islands Legal Information Institute
PACTAM	Pacific Technical Assistance Mechanism
PCO	Parliamentary Counsel Office
PICs	Pacific Island Countries
PIFS	Pacific Islands Forum Secretariat
PILON	Pacific Islands Law Officers Network
Partnerships Fund	State Sector Development Partnerships Fund
PDL	Professional Diploma in Legislative Drafting
SPC (RRT)	Secretariat of the Pacific Community; Rights Response Team
UFE	Utilisation focused evaluation
UNODC	United Nations Office on Drugs and Crime
UNDP	United National Develop Programme
USP	University of the South Pacific
WHO	World Health Organization



## APPENDIX 4: Enacted Bills and Regulations Drafted by PCO

Country	Title
	<b>2014/15</b>
Cook Islands	Income Tax Amendment Bill 2015
Niue	Transport Amendment Bill 2015 Merchant Shipping (Registration of Foreign Vessels) Amendment Bill 2015 Environment Bill 2015 Domestic Fishing Amendment Regulations (Implementing an Uga Ban)
	<b>2013/14</b>
Cook Islands	Banking Amendment Bill Loan Repayment Bill Customs Tariff Amendment Bill Traditional Knowledge Bill Copyright Bill Financial Transactions Reporting
Fiji	Standing Orders for the Parliament (enacted) Parliamentary Powers and Privileges Bill (not enacted) Remuneration of Members of Parliament and Certain Officers of State Bill (not enacted)
Niue	Unclaimed Money Bill Nuclear Test Ban Bill Diplomatic Privileges and Immunities (World Bank) Regulations 2013  Diplomatic Privileges and Immunities (World Bank) Regulations 2013 Income Tax (Niue-Denmark Tax Information Exchange Agreement) Regulations 2013 Income Tax (Niue-Faroes Tax Information Exchange Agreement) Regulations 2013 Income Tax (Niue-Greenland Tax Information Exchange Agreement) Regulations 2013 Income Tax (Niue-Iceland Tax Information Exchange Agreement) Regulations 2013 Income Tax (Niue-Norway Tax Information Exchange Agreement) Regulations 2013 Income Tax (Niue-Republic of Finland Tax Information Exchange Agreement) Regulations 2013



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	Income Tax (Niue-Sweden Tax Information Exchange Agreement) Regulations 2013
	<b>2012/13</b>
Cook Islands	Education Bill
	Judicature Amendment Bill
	Employment Relations Bill
Niue	Bank Amendment Bill
	Niue Bank (Designated Bank and Authorised Agent) Regulations 2013
Cook Islands	Income Tax Amendment Bill (No 2) 2011
	Banking Bill
	Digital Registers Bill
	Financial Legislation Amendment Bill
	Insurance Amendment Bill
	Banking (Fees) Regulations 2011
	Heads of Department Selection Panel (Remuneration of Members) Order 2011
Niue	Vagahau Bill 2012
	Taoga Bill 2012
	Income Tax Amendment Bill 2012
	Income Tax (Niue-New Zealand Tax Information Exchange Agreement) Regulations 2012
Tokelau	Tokelau (Exclusive Economic Zone and Territorial Amendment Sea) Amendment Bill - (discontinued)
	Tokelau (Exclusive Economic Zone) Fishing Regulations 2012

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