



Intended for

- All Ministers
- All Chief Executives
- Chief Parliamentary Counsel
- Clerk of the House of Representatives
- All Senior Private Secretaries
- All Office Solicitors

Statutes Amendment Bill (No 3) for 2011

- 1 The Statutes Amendment Bill (No 2) was developed in 2010 and introduced into the House of Representatives in February 2011.
- 2 Cabinet has agreed to the inclusion of a further Statutes Amendment Bill in the 2011 Legislation Programme (known as the Statutes Amendment Bill (No 3)) with the intention that it be introduced in July this year. This circular sets out the process for developing the Statutes Amendment Bill (No 3) and replaces Cabinet Office Circular CO (10) 1.

Important dates:

- Departments are to submit potential items for inclusion in the Bill (as approved by the portfolio Minister) to the Ministry of Justice by **Friday, 15 April 2011** (see paragraphs 9 to 14 for the steps to be followed).
- Departments are to send drafting instructions to the Parliamentary Counsel Office by **Friday, 13 May 2011** (see paragraph 17).

The nature and content of the Bill

- 3 Statutes Amendment Bills are designed as vehicles for technical, short, and non-controversial amendments to a range of Acts [refer paragraph 7.64 of the Cabinet Manual]. Amendments proposed for inclusion in a Statutes Amendment Bill should meet all three of these criteria.

In determining whether an amendment/s meets the above criteria, consider the following:

- “technical” should be given its natural meaning. An amendment that reflects a substantial change in policy or substantially amends the principal Act is not “technical”;
- “short” is an objective test. A proposed amendment that spans several pages is not “short” for the purposes of a Statutes Amendment Bill;

- “non-controversial”, although a subjective test, should be interpreted with awareness of relevant history or implications. An amendment that has previously failed in Parliament, or is anticipated to generate debate or controversy with stakeholders or the wider community, is unlikely to be “non-controversial”.
- 4 It is important that all elements of the Bill are appropriate for inclusion in this type of Bill and that they have been the subject of prior consultation with all parties in the House. If any Member of Parliament objects to a clause of a Statutes Amendment Bill during its consideration by the committee of the whole House, it will be struck out of the Bill [Standing Order 295(2)]. The aim is to avoid this by engaging in full, cross-party consultation before including clauses in the Bill.
 - 5 The Statutes Amendment Bill (No 3) will comprise items approved by any Minister (or identified by Cabinet) which involve technical, short and non-controversial amendments to Acts relevant to the Minister’s portfolio area. For proposals to come within the scope of a Statutes Amendment Bill they must consist entirely of amendments to an Act or the repeal (without replacement) of an existing Act. Consequential amendments, consequential repeals, application provisions, and savings and transitional provisions are permissible. Stand-alone provisions, including the creation of a new principal Act, are normally ruled out. Amendments that the portfolio Minister considers require policy consideration by a Cabinet committee or by Cabinet will almost certainly be unsuitable, as will those requiring in-depth discussion by party caucuses.
 - 6 A finite allocation of drafting time has been made for the preparation of the Bill and for its support through the House. The deadlines outlined in paragraph 2 must be met in order to ensure proposed amendments can be included in the Bill.

The process for developing the Bill

Roles of Ministers and departments

- 7 Individual departments are responsible for identifying and developing amendments to Acts they administer. Portfolio Ministers will approve potential amendments within their portfolio areas and undertake any necessary consultation with their own party caucus.
- 8 The Associate Minister of Justice (Hon Nathan Guy) is the Minister in charge of the Bill and will co-ordinate the inclusion of items in the Bill and the cross-party consultation process. The Ministry of Justice will co-ordinate the administrative aspects of the development of the Bill. Departments should liaise with the Ministry of Justice co-ordinator in the first instance (Amanda Hyde, Solicitor, Ministry of Justice, ph 494-9958; fax 494-9839; email amanda.hyde@justice.govt.nz).

Identify potential amendments

- 9 The **first step** is for a department to identify amendments that it considers appropriate for inclusion in the Bill and clear these as appropriate with other departments with a direct interest. Departments must be satisfied that proposed amendments are technical, short and non-controversial and otherwise consistent with the content requirements described in paragraphs 3 to 5. In identifying potential amendments, departments should consult their legal departments.
- 10 It is a mandatory requirement for all departments to, at an early point in the process, contact the appropriate team leader in the Parliamentary Counsel Office to clarify whether potential amendments for inclusion in the Bill are suitable.

Obtain approval of portfolio Minister

- 11 The **second step** is for the department to brief the Minister responsible for the principal Act and obtain that Minister's approval for the proposed amendment and for the proposal to proceed to cross-party consultation. The department's briefing to the portfolio Minister should include the following documents, templates of which are available from the Ministry of Justice co-ordinator:
- 11.1 a letter from the portfolio Minister to the Minister in charge of the Bill seeking to include the proposed amendment in the Bill. This letter should provide contact details for two officials in the department responsible for the proposed amendment who will be the contact persons for the Ministry of Justice co-ordinator. These contact persons should be able to respond to queries on the substance of the proposed item; and
- 11.2 an attachment on Ministerial portfolio letterhead clearly citing in full the sections of the principal Act proposed to be amended, and providing information on the proposed amendment and the reasons for it. This attachment should provide contact details for a private secretary in the portfolio Minister's office who will be the contact person for all parliamentary parties. This contact person must be able to respond to queries on the substance of the proposed item.
- 12 The attachment referred to in paragraph 11(ii) is designed to go under a covering letter from the Minister in charge of the Bill to the leader of each parliamentary party seeking support for all the proposed amendments.
- 13 The portfolio Minister will need to undertake consultation with his or her own party caucus, as necessary, in the normal way.

Provide information to Ministry of Justice

- 14 The **third step** is for departments to provide all relevant briefing material and correspondence, once approved and signed by the portfolio Minister, to the Ministry of Justice by **Friday, 15 April 2011**. The Ministry of Justice will brief the Minister in charge of the Bill on all proposals tendered by portfolio Ministers, on an aggregated basis.

Parliamentary parties consulted

- 15 The cross-party support process is co-ordinated through the Minister in charge of the Bill. The **fourth step** is for the Minister in charge of the Bill to send a letter to each parliamentary party seeking its support for the proposed amendments. Each letter will be accompanied by a set of attachments from the portfolio Ministers setting out the details of the proposed amendments. The recipients of the letters will be asked to direct queries on the substance of the proposed amendments to the office of the relevant portfolio Minister, and to finally respond to the Minister in charge of the Bill indicating their support or otherwise for the amendments.
- 16 The Ministry of Justice will notify departments and the Parliamentary Counsel Office of the outcome of the consultation process. It is anticipated that this process will be completed in June 2011.

Submit drafting instructions to Parliamentary Counsel Office

- 17 The **fifth step** is for the department to send drafting instructions to the Parliamentary Counsel Office team leader responsible for the department's drafting by **Friday, 13 May 2011** [refer paragraphs 7.46 and 7.49 of the Cabinet Manual which relate to the role of the drafter and drafting instructions]. The Parliamentary Counsel Office will not begin drafting any amendment until confirmation of support from all parties has been obtained.

- 18 Parts of the Bill, when drafted and settled with instructing departments, are sent by Parliamentary Counsel to the Ministry of Justice, which will organise for the proposals to be vetted for consistency with the provisions of the New Zealand Bill of Rights Act 1990.

Timing of introduction

- 19 The intention is to finalise the Statutes Amendment Bill (No 3) for introduction and first reading in July 2011.

Future Statutes Amendment Bills

- 20 It is proposed that a similar timetable be followed for a Statutes Amendment Bill in 2012 and future years.

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