



Cabinet Office Circular

CO (09) 3

7 May 2009

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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 Bills in 2009

- 1 Cabinet has agreed to the inclusion of two Statutes Amendment Bills in the 2009 Legislation Programme, namely the Statutes Amendment Bill and the Statutes Amendment Bill (No 2). This circular replaces CO (08) 2, which was issued last year in respect of the Statutes Amendment Bill (No 3) for 2008. The Statutes Amendment Bill (No 3) for 2008 will continue to be progressed but will be known as the Statutes Amendment Bill.

Continuation of Statutes Amendment Bill Developed During 2008

- 2 The Statutes Amendment Bill will consist solely of amendments that were proposed for inclusion in the Statutes Amendment Bill (No 3) for 2008. No new amendments will be progressed in this Bill. As introduction of the Statutes Amendment Bill (No 3) for 2008 did not occur before the 2008 general election, cross-party consultation for the amendments will need to be undertaken again with members of the new Parliament. It is anticipated that this process will be completed by mid 2009. The intention is to finalise the Bill for introduction and first reading in August 2009.
- 3 The Associate Minister of Justice (Hon Dr Richard Worth) is the Minister in charge of the Bill and will co-ordinate the cross-party consultation process.

Development of Statutes Amendment Bill (No 2) During 2009

- 4 Cabinet has agreed to the inclusion in the 2009 Legislation Programme of a Statutes Amendment Bill (No 2), for introduction by October 2009. This circular sets out the process for developing the Bill.

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, 5 June 2009** (see paragraphs 11 to 15 for the steps to be followed).
- Departments are to send drafting instructions to the Parliamentary Counsel Office by **Monday, 29 June 2009** (see paragraph 18).

The nature and content of the Bill

- 5 Statutes Amendment Bills are designed as vehicles for technical and short amendments to a range of Acts; extensive amendments to Acts are not appropriate for inclusion in a Statutes Amendment Bill.
- 6 Statutes Amendment Bills must be non-controversial. 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, the clause 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.
- 7 The Statutes Amendment Bill (No 2) will comprise items approved by any Minister (or identified by Cabinet) that 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.
- 8 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 4 must be met to ensure proposed amendments can be included in the Bill.

The process for developing the Bill

Roles of Ministers and departments

- 9 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.

- 10 The Associate Minister of Justice (Hon Dr Richard Worth) 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 (Helen Musson, Senior Solicitor, Ministry of Justice, ph 494-9882; fax 494-9839; email helen.musson@justice.govt.nz).

Identify potential amendments

- 11 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 paragraph 7. In identifying potential amendments, departments should consult their legal departments, which should, at an early point, contact the appropriate team leader in the Parliamentary Counsel Office to clarify whether potential amendments are suitable. Advice on whether a proposal complies with the Standing Orders of the House may be sought from the Office of the Clerk of the House of Representatives (Fay Paterson, ph: 817 9537, email fay.paterson@parliament.govt.nz).

Obtain approval of portfolio Minister

- 12 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:
- i. 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
 - ii. An attachment on Ministerial portfolio letterhead clearly citing in full the sections of the principal Act proposed to be amended, and providing detailed 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.
- 13 The attachment referred to in 12(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.
- 14 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

- 15 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 co-ordinator by **Friday, 5 June 2009** (Helen Musson, see contact details in paragraph 10). The Ministry of Justice will brief the Minister in charge of the Bill, Hon Dr Richard Worth, on all proposals tendered by portfolio Ministers, on an aggregated basis.

Parliamentary parties consulted

- 16 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.
- 17 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 August 2009.

Submit drafting instructions to Parliamentary Counsel Office

- 18 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 **Monday, 29 June 2009**. The Parliamentary Counsel Office will not normally begin drafting any amendment until confirmation of support from all parties has been obtained.
- 19 Parts of the Bill, when drafted and settled with instructing departments, are sent by the Parliamentary Counsel to the Ministry of Justice, which will liaise with the Ministry of Justice and the Crown Law Office for vetting the proposals for consistency with the provisions of the New Zealand Bill of Rights Act 1990.

Timing of introduction

- 20 The intention is to finalise the Statutes Amendment Bill (No 2) for introduction and first reading in October 2009.

Future Statutes Amendment Bills

- 21 It is proposed that a similar process will be followed for a Statutes Amendment Bill in 2010 and future years.

Rebecca Kitteridge
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