



Intended for All Ministers
All Chief Executives
Chief Parliamentary Counsel
Speaker of the House of Representatives

2021 Legislation Programme: Requirements for Submitting Bids

Introduction

- 1 This circular sets out the requirements for the preparation of requests ('bids') from Ministers for bills to be awarded places on the 2021 Legislation Programme.
- 2 Ministers and departments are asked to consider legislative priorities not only for the 2021 parliamentary year, but also to signal their highest priority legislative intentions for the entirety of the 53rd Parliament, where possible. This will assist the government in prioritising, and so enabling delivery of those priorities, over the full term.
- 3 Information on the [Legislation Programme](#), including the priority categories assigned to bills, can be found on the [CabGuide](#) website.

Invitation to submit proposals, deadline and format

- 4 Ministers are asked to arrange for bids for the 2021 Legislation Programme to be delivered to the Legislation Coordinator in the Cabinet Office by **10.00am on Friday, 29 January 2021**.
- 5 The standard format for bids can be found on the [CabGuide](#) website and is set out in the annex to this circular.
- 6 Each bid must be authorised by the Minister, or in the case of multiple bids, attached under a covering letter authorised by the Minister. Where a Minister is submitting more than one bid in a portfolio, the covering letter must rank all bids for legislation in the 53rd Parliament in that portfolio.
- 7 Please provide a hard copy of each bid. In addition, an electronic version of each bid must be emailed to the Legislation Coordinator using the address at the bottom of this circular.

Process for developing the Legislation Programme

- 8 Bids will be summarised and submitted in summary to the Cabinet Legislation Committee (LEG) for consideration and for the initial determination of priorities. The draft Legislation Programme as agreed by LEG is confirmed by Cabinet.

- 9 From time to time, the Leader of the House will report to Cabinet on the progress of the Legislation Programme, and Cabinet may adjust priorities as necessary. Bills that fall behind the agreed timetable may be assigned a lower priority or be set aside when Cabinet reviews the Programme's progress.

Items for which a bid is required

- 10 A place on the annual Legislation Programme must be sought for the following:
- 10.1 every bill that is currently before the House or a select committee;
 - 10.2 bills that are currently undergoing policy development work, or are being drafted, and have a place on the previous (2020) Legislation Programme;
 - 10.3 policy proposals that may result in a bill in the 53rd Parliament (including bills likely to be proposed in Law Commission reports).
- 11 New bills for the period 2021-2023 can be added to the Legislation Programme during 2021. However, it is preferable that bills be included in the Legislation Programme at the beginning of the year to assist with the planning of House time and the allocation of drafting resources.
- 12 There is no need for departments to make bids for contingency bills.

Statutes Amendment Bills

- 13 In recent years, Statutes Amendment Bills have been introduced almost annually to promote minor, technical, non-urgent, and uncontroversial amendments to a collection of Acts. It is likely that a new Statutes Amendment Bill will be included in the 2021 Legislation Programme.
- 14 Departments preparing bids for minor amending bills should include at least a preliminary assessment of whether these bills might qualify for inclusion in a future Statutes Amendment Bill. Where it is important or essential to pass a minor amending bill by a particular date, state this clearly, so that a decision can be made as to whether the item is appropriate, on timing grounds, to proceed in a Statutes Amendment Bill.

Associated regulations

- 15 This paragraph applies to bills proposed for inclusion in the 2021 Legislation Programme that also require the drafting of associated regulations. The expectation is that these should be designed, developed and progressed as a single legislative package. The bid must describe the extent and nature of the regulations required and the proposed timeline for making the regulations.

Priorities and cooperation arrangements

- 16 Ministers are asked to approach their proposals for bills in light of the government's overall priorities. Departments should explain how the bid will assist the government's priorities.
- 17 Ministers should ensure that proposed timeframes for legislation allow them adequate time for ongoing [consultation with the government caucus](#) from an early stage in the policy development process.

Planning and capacity

- 18 In making recommendations to their Ministers, departments should ensure that:
- 18.1 realistic project planning is in place to take into account the time that is required for policy development, discussion with the Legislation Design and Advisory Committee (the LDAC), iterative drafting (including time for the department to respond to drafting queries and for PCO's quality control standards of peer review and proof reading to be carried out), consultation with departments and the public (if an exposure draft is to be released), Bill of Rights Act 1990 vetting, ministerial and cross-party consultation, and Cabinet's approval;
- 18.2 in the case of bids for bills not yet introduced, that an achievable timetable has been discussed with the PCO. If the PCO advises that the proposed timetable is not realistic then this advice must be clearly included in the bid.
- 19 If a bill had a place on an earlier Legislation Programme but did not proceed (e.g. because policy development or drafting instructions were delayed), the bid must explain why and provide assurance that proposed new timelines can be met.
- 20 When seeking a priority for a bill that is already introduced, but for which substantial changes are likely to be required to reflect new government policy, departments should consult PCO about the time required for developing policy on, and drafting, those amendments (and adjust the priority accordingly).
- 21 In accordance with the government's [cooperation agreement with the Green Party](#), Ministers should ensure adequate consultation has taken place, if required.
- 22 Policy approvals must be sought before drafting instructions are issued. Reliance on the ability to seek the Attorney-General's approval to draft in advance of Cabinet policy approvals under paragraph 7.52 of the Cabinet Manual should be rare and only used for emergencies or unavoidable situations – not as a result of insufficient planning or delays. Any delays encountered at the policy development stage cannot be made up by shortening the time allowed to PCO to draft a bill. Instead of these approaches, departments should revise their implementation plans and seek a new priority if appropriate.
- 23 A minimum of eight months should be allowed for the passage of a bill from introduction to enactment. Departments should be aware that 4 months is the standard time to allow for select committee consideration of a bill, and that the Standing Orders provide that any bill sent to a select committee for a period less than 4 months requires a time-unlimited debate in the House.
- 24 Paragraphs 17 to 19 and 21 and 22 also apply to the regulations that are associated with the bill. The default position is that the bid should propose a timeline that includes:
- 24.1 any necessary Cabinet policy decisions to be taken before the Bill is read a first time;
- 24.2 drafting instructions for the associated regulations to be sent to PCO before the Bill proceeds to committee of the whole (unless the regulations are not necessary for the commencement of the Bill or can be made more than 12 months after commencement);

- 24.3 equivalent time being allowed for drafting of regulations as set out in paragraphs 21 and 22.

Discharging existing bills

- 25 The compilation of the Legislation Programme is also a timely opportunity for Ministers to consider whether they wish to have an existing bill before the House or a select committee discharged from the Order Paper. To do so, a Minister should propose a priority category 7 in the relevant bid (meaning that the bill is ‘not to proceed’). Discharging a bill must be undertaken in consultation with the Office of the Leader of the House.

Role of the Parliamentary Counsel Office

- 26 It is the statutory role of the PCO to draft the bills approved for introduction in the government’s Legislation Programme. The Inland Revenue Department is specifically authorised to draft certain revenue legislation. With that exception, departments should prepare material for possible inclusion in their Ministers’ bids on the basis that drafting will be undertaken by the PCO.
- 27 The PCO is available for general consultation to assist departments to prepare bids. In particular, the PCO can provide advice to departments to assist in identifying the size and complexity of a particular bill, the proposed timeframe for its introduction and passage, and whether a bill should be referred to the LDAC for advice. Departments should contact the PCO team manager responsible for their legislation:
- 27.1 Amy Orr (Amy.Orr@pco.govt.nz, (04) 333 1050);
- 27.2 Mark Gobbi (Mark.Gobbi@pco.govt.nz , (04) 333 1057);
- 27.3 Alana Belin (Rob.Brier@pco.govt.nz, (04) 333 1030); or
- 27.4 Richard Wallace (Richard.Wallace@pco.govt.nz, (021 906 263).
- 28 Ministers may ask the PCO to provide an assessment of the size of the drafting task associated with each proposed bill or substantive Supplementary Order Paper (SOP), to help to size the programme realistically in relation to drafting resources and House time. Unclear definition of the scope and content of a bill or SOP can contribute to the overestimation of the drafting task. This could reduce the chances of the bill gaining a place on the programme.

Role of the Legislation Design and Advisory Committee

- 29 The LDAC is a committee established to provide advice to Ministers and departments in the initial stages of developing legislation. The LDAC advises on framework and design issues, and consistency with fundamental legal and constitutional principles, as set out in the [Legislation Guidelines \(2018 edition\)](#).
- 30 Departments are required to indicate in a bid if a bill will be referred to the LDAC for advice and, if not, provide an explanation why. Information about what kinds of bills should be referred to the LDAC is available on its website ([here](#)), including the factors to consider in deciding whether to consult with LDAC in relation to a legislative proposal ([here](#)). Departments can also discuss the LDAC’s involvement with the [LDAC Secretary](#) or with the PCO. Consultation with the LDAC will be determined by Ministers or by Cabinet.

- 31 For bills that are referred to the LDAC, the expectation is that Ministers and departments will seek assistance when legislative proposals and drafting instructions are being prepared. Departments should allow sufficient time for consultation with the LDAC when setting legislative time frames.

Preparing drafting instructions

- 32 The best bills result from proper collaboration between the instructing department and the drafter. In particular, good drafting instructions are essential to ensure the timely and efficient drafting of legislation. The PCO can advise on the preparation of drafting instructions (contacts are set out in paragraph 27 above). Departments are encouraged to take advantage of this opportunity, and to use the resources available at <http://www.pco.govt.nz/working-with-the-pco/> (particularly the information on legislation bids at [FAQs 1.8 and 1.9](#)).
- 33 Departments are also referred to the material contained in the [Legislation Guidelines \(2018 edition\)](#).

Michael Webster
Secretary of the Cabinet

Enquiries:

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Annex

In Confidence

Office of the Minister of [xx]

Cabinet Legislation Committee

Government Examples Bill: Request for Priority in the 2021 Legislation Programme**Summary information**

- 1 Give the following details about the bid for legislation:
 - 1.1 the portfolio of sponsoring Minister;
 - 1.2 the department responsible (include a departmental contact name and phone number);
 - 1.3 the title of the proposed Bill (or the Bill in which these legislative changes are to be included);
 - 1.4 the proposed ranking of Bill within the bids from this portfolio; and
 - 1.5 whether the Bill is estimated to be small/medium/large and whether of low/medium/high complexity; and
 - 1.6 the proposed priority.
- 2 The summary information is required for bids prepared in response to the [annual request](#) for bids. For papers to LEG seeking a priority outside this process, the "summary information" section should be replaced with a "proposal" section that succinctly states what Ministers are being asked to decide.

Policy

- 3 Briefly summarise the policy to be implemented by the Bill. (Give [references](#) and dates of relevant Cabinet and Cabinet committee decisions.)
- 4 Indicate any aspects of the Bill that are likely to be contentious.
- 5 Note any policy issues that have not yet been agreed and state the dates by which these are expected to be resolved by Cabinet.

Need for legislation

- 6 Why is legislative action needed to implement the policy? (Please attach or refer to legal advice.)
- 7 Indicate the suggested [priority](#). Is it essential that legislation be enacted in the period under consideration, or simply desirable? If it is essential, explain why.

- 8 If the proposal is for amending legislation, has the principal Act been amended in the last year or will it be amended in the near future? If so, explain why this amendment is needed now.

Compliance

- 9 Indicate whether the Bill complies with each of the following, with reasons if the Bill does not comply (list each sub-heading):
- 9.1 the principles of the Treaty of Waitangi;
 - 9.2 the rights and freedoms contained in the [New Zealand Bill of Rights Act 1990](#) and the Human Rights Act 1993;
 - 9.3 the principles and guidelines set out in the Privacy Act 2020 (if the legislation raises privacy issues, indicate whether or not the [Privacy Commissioner](#) agrees that it complies with all relevant principles);
 - 9.4 the relevant international standards and obligations; and
 - 9.5 the [Legislation Guidelines \(2018 edition\)](#), which are maintained by the Legislation Design and Advisory Committee.

Binding on the Crown

- 10 At the policy development stage a decision will be required by a Cabinet committee on whether the Bill should include a provision that the Act should be binding on the Crown. Provide advice, if possible, on what is likely to be recommended. (See the Cabinet Office circular CO (02) 4 [Acts Binding the Crown: Procedures for Cabinet Decision](#)).

Consultation

- 11 Summarise the [consultation on policy issues](#) that has already taken place or will be needed with each of the following groups, as well as the results of any consultation that has already taken place:
- 11.1 [relevant government departments or other public bodies](#); and
 - 11.2 [relevant private sector organisations](#) and public consultation processes.
- 12 If consultation on policy issues has not yet been completed, indicate the date by which it is expected to be completed.
- 13 Indicate whether the proposed Bill will be referred to the Legislation Design and Advisory Committee for advice and, if not, explain why. If consultation is indicated, this should be factored into the legislative timeframe.
- 14 Indicate whether an exposure draft of the Bill will be released for consultation before the Bill is introduced and, if so, provide details.
- 15 Summarise the consultation that has already taken place or will be needed with the [government caucus, the Green Party to give effect to the cooperation agreement](#), and [other parties represented in Parliament](#).

Associated regulations

- 16 Are regulations likely to be needed within 12 months of the Bill being enacted to give effect to the provisions in the Bill? If so, summarise briefly the regulations that will be needed, their likely timing (taking into account the [28-day rule](#)), and the likely size of the drafting task involved to develop them.

Timeline

- 17 If it is critical that the Bill come into force by a particular date, give the date and explain why. If it is proposed that the Bill be expedited faster than standard timeframes (see below) explain why.
- 18 Summarise the proposed timing for the legislation in chronological order, as follows. Provide Cabinet or Cabinet committee references where any deadlines have been established by Cabinet or Cabinet committee decision:

<i>Step</i>	<i>Proposed date</i> <i>(for dates in 2022 and 2023, it is sufficient to indicate quarters)</i>	<i>Consistency assurance</i>
Date on which final policy approvals were, or will be, obtained from Cabinet.		Describe process before or since this date (e.g. consultation, discussion documents). If a Bill had a place on an earlier Legislation Programme but did not proceed, provide assurance that proposed timelines can be met this year.
Date on which final drafting instructions were or will be sent to the Parliamentary Counsel Office or other drafter.		Note the period between submission of instructions and approval for introduction provides for drafting and consultation on the draft Bill – relate your estimate for this phase to the expected length and complexity of the Bill. PCO gives advice on how to estimate these matters. This date should be at least 3 months (depending on expected length and complexity of the Bill) before the date on which the Bill will be provided to Justice (see below). If there will be an exposure draft, at least 2 additional months is needed between these dates. If not, give reasons. Note any concerns expressed by PCO.

Date by which the Bill will be released for exposure draft (if an exposure draft is planned).		Allow adequate time for amending the Bill in response to comments from the exposure draft before the Bill is assessed for consistency with the New Zealand Bill of Rights Act 1990.
Date by which the Bill will be provided to the Ministry of Justice (or the Crown Law Office if applicable) for an assessment of consistency with the New Zealand Bill of Rights Act 1990.		This date must be at least two weeks prior to the paper being considered by LEG.
Dates on which the Bill will be before LEG and Cabinet for approval for introduction.		
Date by which any policy decisions for associated regulations will be before Cabinet.		This date should be before the first reading of the Bill. Give reasons if not.
Date requested for introduction of the Bill.		
Date of report back from select committee.		<p>Allow 6 months for the select committee process (or, at a minimum, 4 months). Give reasons if a period of less than 6 months is proposed.</p> <p>If new policy is proposed to be added to a Bill at select committee, this date should be no less than 6 months from 1R and a select committee extension should be sought if it has an earlier report back date set at present.</p>
Date on which final policy approvals will be obtained from Cabinet for any substantive SOP to Bill (if already introduced)		Describe process before or since this date (e.g. consultation, discussion documents).

Date on which final drafting instructions were or will be sent to the Parliamentary Counsel Office or other drafter for any substantive SOP to Bill (if already introduced).		This date should be at least 2 months (depending on expected length and complexity of the Bill) before the date on which the substantive SOP will be provided to Justice. Note any concerns expressed by PCO.
Date by which final drafting instructions for any associated regulations will be sent to the Parliamentary Counsel Office.		This date should be before the committee of the whole House stage of the Bill. Give reasons if not.
Date of enactment.		
Date of commencement.		

Recommendations

- 19 The Minister of x recommends that the Committee:
- 19.1 note that the [title] Bill will [briefly summarise the policy to be implemented by the Bill];
 - 19.2 approve the inclusion of the [title] Bill in the 2021 Legislation Programme, with a priority [xx] ([give priority number and brief description of priority](#));
 - 19.3 note that drafting instructions will be provided to the Parliamentary Counsel Office by [date];
 - 19.4 note that the Bill should be introduced no later than [date];
 - 19.5 note that the Bill should be passed no later than [date].

Authorised for lodgement

[Name of Minister]
[Title of Minister]