

2019 Legislation Programme: FAQs on requirements for submitting legislative bids

The process of seeking legislative bids for 2019 is starting early this year, with bids to be due with Cabinet Office by the end of November.

These FAQs set out some key information to help you prepare your bid and estimate its complexity and timing. But please contact your PCO team manager with any questions and ensure the bids reflect any PCO concerns on timing.

Please remember to use the most recent bid template attached to the [Cabinet Office Circular](#), as the information required does change.

How does the legislation programme work?

Government Bills are managed through an annual Legislation Programme. To include a Bill in the 2019 Legislation Programme, a “bid” is required. [Cabinet Office Circular CO 18 \(5\)](#) sets out the process and the template for submitting them.

Bids must be received by the Legislation Coordinator in the Cabinet Office by **10 am on 30 November 2018**.

Bids must be received for all Bills, whether new, being drafted, or already before the House or select committee.

New Bills can be added to the Legislation Programme during 2019, but it is preferable to include them at the beginning of the year.

What do I do if I don't know the Bill's timing?

Please do not put “unknown” but do the best you can to provide a realistic estimate. A realistic timetable must have been agreed with the PCO.

If the PCO advises that the proposed timetable is not realistic, then this advice must be clearly included in the bid.

You should consult your PCO Drafting Team Manager on the timetabling appropriate given the size, complexity, and timing of your Bill. But here are some rules of thumb:

- The time needed is affected by both the size of the Bill (a larger Bill requires more drafting and crucially more checking, even if not very complex) and the complexity of the Bill (see below).
- A 50-clause Bill of medium complexity should be estimated to take 3 months from instructions to introduction. This takes account of drafting time, review by you, consultation with other government departments and LDAC, quality assurance requirements for PCO, and the NZ Bill of Rights Act vet.
- But we have peak busy times in the year. So we caution that:
 - for a new Bill to be passed in 2019 instructions will need to be provided to the PCO as soon as possible in the first quarter of 2019 and that the bill needs to be ready for introduction by the end of the second quarter
 - for a Bill to be introduced in 2019, you will generally need to have instructions to us by the end of the second quarter of 2019

- If you have an exposure draft process, you need to add in the time the exposure draft will be out for **plus** a further 4–6 weeks minimum to allow for further instructions and changes to be made.
- Take into account your own capacity to turn around drafts and respond to queries.
- Delays in the policy process cannot be made up by shortening drafting time. Also, if timing imperatives result in shortcuts in the policy process, the unresolved issues generally will increase the drafting time needed.

How do we estimate size?

We consider bills to be:

- *Small* if they have up to about 20 clauses. Some examples are the Earthquake Commission Amendment Bill or the Health (Drinking Water) Amendment Bill. These will usually be small, targeted measures.
- *Medium* if they have between 20 and about 80 clauses. Some recent examples are the Criminal Cases Review Commission Bill or the Commerce Amendment Bill.
- *Large* if they have more than 80 clauses. Some recent examples are the Privacy Bill, most Treaty settlement Bills, and the Tribunals Powers and Procedures Legislation Bill. These will often be replacements of whole current Acts, or multi-pronged amendments to a number of Acts.

When you estimate the size of an amendment Bill, you need to take into account the number of amendments proposed (not just the number of clauses in the principal Act you need to amend).

How do we estimate complexity?

In assessing whether a Bill is low, medium, or high complexity, you need to look at policy, legal, and drafting dimensions. The length of time the department has spent developing the proposals to this point is often a guide to how long you need to allow for the rest of the process and how complex the Bill is likely to be. For example, if the policy work has taken many months, this may indicate that the Bill is of medium to high complexity. A Bill rarely ceases to be complex once policy is settled.

Complexity is affected by:

- the novelty and/or difficulty of the legal concepts you are creating
- the number of existing Acts that are affected, and the degree of complexity of the existing legislation you are amending—changes to a scheme that already has a number of overlapping Acts tend to be highly complex
- the extent of change required
- how strongly related the changes are (so better targeted) vs having many initiatives that are weakly related (creating more “moving parts”)
- the degree to which you can expect the policy to be “settled” vs in flux during the process (this may be affected by the amount of time you have to settle the policy well before starting drafting, and other factors like stakeholder involvement, etc)
- the use of novel (rather than established) concepts, novel (rather than standard) provisions, your own “version” of established concepts rather than simply relying on the generic approach (for example, for Crown entities)
- the extent of consequential amendments (very extensive amendments, even if relatively simple, will increase checking time)
- the degree of “staging” of commencement and the need for complicated transitional provisions

- whether the legislation being amended is already heavily amended and multi-pronged in terms of policy and/or complex
- a lot of detail in the Bill.

How does the estimate for regulations work?

The Cabinet Office circular also asks you to provide timing estimates for regulations associated with your Bill. This applies if the regulations are needed within 12 months of enactment for your Bill to commence and operate effectively (so core to the regulatory package contemplated by the Bill).

This is to ensure that the regulatory package as a whole is well thought through and coordinated. In particular, it cuts down on the risk that:

- a Bill will be passed with a fixed date commencement, but without enough time to develop the regulations needed for it to commence effectively
- a Bill will be passed with an Order in Council commencement and “sit on the books” for a long time awaiting the necessary regulations. Latent legislation causes uncertainty for users, complexity for other legislation (when you have to deal with the risk of further amendments coming into force), and increased risk of wasted Government and parliamentary time.

The Cabinet Office circular requires:

- policy decisions for associated regulations to be made before the first reading of the Bill
- drafting instructions on them to be sent to PCO before the Committee of the whole House stage of the Bill—this also helps identify any issues with empowering provisions in time for them to be addressed by amendments at the Committee stage.

When should LDAC be consulted?

You need to state in your bid whether a Bill will be referred to LDAC for advice, or explain why LDAC advice will not be sought. You need to factor consultation with LDAC into your timetable for a Bill. The LDAC website states that a legislative proposal should definitely be referred to LDAC for consultation if the proposal:

- is a significant new principal Act
- is likely to impact on the coherence of the statute book (for example, by its connection with other Acts across the statute book)
- is or is likely to be inconsistent with principles in the Legislation Guidelines (2018 edition) (particularly fundamental constitutional and legal principles).

You may also wish to refer a legislative proposal to LDAC if:

- the proposal raises basic framework/design issues or questions of instrument choice
- you consider the proposal would benefit from advice about how to apply or best ensure consistency with the Legislation Guidelines (2018 edition) that officials consider would benefit from LDAC input.

Other guidance about when and how to engage with LDAC is available on the [LDAC website](#) or by contacting the [LDAC Secretary](#).