



# Cabinet Office

CO (13) 3

## Circular

4 July 2013

**Intended for**

- All Ministers
- All Chief Executives
- Chief Parliamentary Counsel
- Clerk of the House of Representatives
- All Senior Private Secretaries
- All Private Secretaries
- All officials involved in the preparation of legislation

## Disclosure Requirements for Government Legislation

### Introduction

- 1 Cabinet has agreed to legislate (with additional administrative enhancements) to require the government to disclose key features of all legislation (with limited exemptions), substantive Supplementary Order Papers (SOP) (where a change affects the original disclosure), and disallowable instruments that are produced by the government.
- 2 The information to be disclosed relates to existing government expectations for the development of legislation and to significant or unusual features of legislation that are expected to be used with care. Disclosure is intended to reinforce these expectations and facilitate better scrutiny of legislation, in order to support the production of legislation that is robust and consistent with good legislative practice.
- 3 Disclosure is ultimately intended to be a legislative requirement. However, while legislation is being developed for this purpose, Cabinet has directed the Treasury to administratively implement the requirement for disclosure as soon as possible.
- 4 This circular outlines what disclosure will be required during the initial administrative period. Ministers and Chief Executives should ensure that all staff involved in the preparation of legislation are familiar with the advice in this circular.

### The key elements of the disclosure requirements

- 5 **From the week beginning 29 July 2013**, all Cabinet or Cabinet committee papers seeking approval to introduce a qualifying government Bill or government SOP must have a disclosure statement attached that reflects the final content of the associated Bill or SOP.
- 6 Subsequently, when the Bill is introduced or SOP is tabled in the House, the finalised disclosure statement is to be published on a central website managed by the Parliamentary Counsel Office (PCO). A hyperlink to the disclosure statement is to be included in the explanatory note of the published Bill or SOP, and hard copies of the statement are to be made available to MPs through the Bills Office.

- 7 The disclosure statement is a departmental document, not a Ministerial document. It should reflect the knowledge and understanding of the department(s) responsible for the preparation of the Bill or SOP. It must, however, address all the matters specified in the appropriate template.
- 8 The matters for disclosure can be grouped into four parts:
- 8.1 *Part One: General Policy Statement:* a statement about the objectives that the legislation seeks to achieve, and how it goes about trying to meet those objectives.
  - 8.2 *Part Two: Background Material and Policy Information:* important background material and policy analysis that can throw further light on the underlying policy issues addressed by the legislation.
  - 8.3 *Part Three: Testing of Legislative Content:* information about the quality assurance work undertaken to test the content of the legislation.
  - 8.4 *Part Four: Significant Legislative Features:* information about significant or unusual provisions that the legislation may contain.
- 9 Disclosure statements are intended for publication. If there is a very good reason why certain information requested in the template should not to be publicly released, then it should not be included in the statement.

## Disclosure for government Bills

- 10 A disclosure statement is required for all government Bills **except**:
- 10.1 Imprest Supply and Appropriation Bills;
  - 10.2 Statutes Amendment Bills;
  - 10.3 Regulatory Reform (Repeal) Bills;
  - 10.4 Subordinate Legislation (Confirmation and Validation) Bills; and
  - 10.5 Revision Bills.
- 11 The disclosure statement template for Bills requires disclosure in each of the four areas outlined in paragraph 8. The disclosure takes the form of a series of ‘primary questions’ which must all be answered. Most questions also require further information to be disclosed, and on occasion require subsidiary questions to be answered, if the response to a primary question is affirmative.
- 12 Disclosure must be completed using the disclosure statement template provided. The template is intended to ensure a consistent product and is formatted to meet the Parliamentary Counsel Office’s needs for publishing disclosure statements online. *Disclosure Statements for Government Legislation: Technical Guide for Departments* has also been prepared by the Treasury; it seeks to assist departments in properly interpreting each of the questions and to explain the nature of the further information sought. The template and detailed guide can be downloaded from the Treasury’s website ([www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements](http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements)).

**Disclosure for shared or omnibus bills**

- 13 Only one disclosure statement may be provided for a Bill. For Bills in which two or more departments have policy responsibilities, the complete disclosure statement should generally be provided either by the lead department or as a collective effort under joint names, even where multiple Acts may be amended.
- 14 There may, however, be limited instances where an omnibus Bill includes changes to different Acts that have been worked on completely independently by different departments (e.g. a Regulatory Reform Bill which collates different initiatives with the broad purpose of reducing business compliance costs). Where this occurs, and a collective disclosure statement is not practical, separate disclosures may be prepared for the separate parts of the Bill and then collated by the lead department into a single multi-part document for the complete Bill. The lead department should, however, consult with the PCO Prepublication Unit and the Treasury's Regulatory Quality Team before pursuing this option.

**Disclosure for government supplementary order papers**

- 15 Disclosure is also required for "substantive" government amendments to Bills (other than exempt Bills) that are introduced as a supplementary order paper. "Substantive" amendments will fall into two categories:
- 15.1 those involving material changes to the policy being given effect by the Bill; and
  - 15.2 those that may not involve material policy changes, but nonetheless would require an affirmative answer to at least one of the questions about matters relating to offences, penalties and court jurisdictions (in Part Three), to privacy issues (also in Part Three) or to any significant legislative feature covered in Part Four of the disclosure statement template for Bills.
- 16 If the SOP meets neither of these criteria, it is not a substantive amendment and no disclosure statement is required.

**Amendments involving material policy changes**

- 17 What constitutes a material change to a Bill's policy will be a matter of judgement. Indicators that a policy change is material may include:
- 17.1 material changes to the nature or size of the potential costs or benefits of the policy;
  - 17.2 the need for further policy approvals from Cabinet;
  - 17.3 the need for an updated or supplementary regulatory impact statement; or
  - 17.4 external consultation on the proposed amendments ahead of tabling the SOP, or a recommendation to refer the resulting SOP back to select committee.
- 18 Where material policy changes are proposed, the department should provide a disclosure statement for the amended Bill (that is, the Bill as it would be with the SOP changes incorporated). This is intended to help the reader consider the changes in the context of the Bill and its development process as a whole.

- 19 Departments can either provide an updated version of the original disclosure statement (likely to be most suited to extensive and multi-faceted policy changes), or a supplement to the original disclosure statement (likely to be most suited to policy additions or relatively contained policy changes), depending on which is likely to be most helpful for the reader. The disclosure must, however, be completed using the approved disclosure statement template for amendments.
- 20 A consequence of producing disclosures for the Bill as amended is that it will also pick up any relevant changes made at the select committee stage. These select committee changes should be noted; further departmental explanation or justification is not required.

#### **Amendments affecting disclosure for Parts Three or Four**

- 21 Where the policy changes are not material, but the amendments have features that would require an affirmative answer to at least one of the questions about matters relating to offences, penalties and court jurisdictions (in Part Three), to privacy issues (also in Part Three) or to any significant legislative feature covered in Part Four, the department can provide a short-form disclosure statement for the SOP alone. The short-form disclosure statement would be limited to answering that set of questions. Again, departments must use the approved short-form disclosure template for amendments.

#### **Amendments to a Bill with no original disclosure statement**

- 22 If there was no original disclosure statement (because the Bill was introduced before the disclosure requirements came into force), but a disclosure is required for a SOP (as outlined above), there are two options to complete disclosure:
- 22.1 if the SOP is to be referred back to a select committee, the department should provide a complete disclosure statement for the amended Bill;
- 22.2 otherwise, the department should provide a short-form disclosure statement as outlined in paragraph 21 of this circular.
- 23 *Disclosure Statements for Government Legislation: Technical Guide for Departments* prepared by the Treasury will contain more information about completing disclosure statements for government amendments to Bills. The Guide and the two disclosure statement templates for amendments will also be available on the Treasury's website ([www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements](http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements)).

#### **Timing of disclosure preparation and Cabinet consideration**

- 24 From the week beginning 29 July 2013, Cabinet and Cabinet committee papers that seek approval to introduce a Bill or SOP must attach a disclosure statement if the disclosure requirements apply. The disclosure statement provided must reflect the final content of the legislation that is to be submitted to Cabinet for approval.
- 25 The compliance section of the Cabinet paper should indicate that a disclosure statement has been prepared and is attached to the paper. Departments should also use this section to highlight any issues in the disclosure statement that may be of interest to Ministers.

- 26 As a matter of good practice, disclosure statements should be provided to the PCO's Prepublication Unit, and copied to the drafter, at the same time that it is provided to the Minister with the Cabinet paper. This will allow PCO to check that the disclosure statement is in the correct format for publication, and possibly also identify other obvious errors or missing information. If any formatting issues are identified, there will still be sufficient time for the disclosure statement to be returned to the department to address these before publication. All responsibility for ensuring the disclosure statement is accurate, complete and in the right format, however, rests with the department.

### **Disclosure statement and explanatory notes**

- 27 The explanatory note of all Bills and SOPs will include a standard section on legislative disclosure (provided by PCO). If a disclosure statement is not required, standard wording will be provided to that effect. If a disclosure statement is required, the section will include:
- 27.1 a hyperlink to a specific page on the website managed by PCO, and
  - 27.2 standard wording explaining that a disclosure statement can be expected to be found on the landing page of the hyperlink.
- 28 If a disclosure statement is required but has not been provided, a statement to this effect will be included on the landing page of the hyperlink, together with a note to contact the responsible agency regarding any queries.
- 29 PCO will also provide the Bill reference number for the introductory material of the disclosure statement and complete this section when preparing the disclosure statement for publication.

### **Publication**

- 30 The disclosure statement must be confirmed to PCO as final (or an updated version provided) no later than two working days prior to the intended introduction date of the legislation. If the statement is in the correct template format PCO will then publish the content provided by the department online at the same time that it publishes the Bill or SOP. This will include both HTML and PDF versions of the disclosure statement.
- 31 PCO will publish disclosure statements and maintain a central online repository of all disclosure statements produced. Publication will be arranged electronically by PCO when it publishes the related legislation on the New Zealand Legislation website. Apart from the hard copies for MPs provided by the department to the Bills Office, disclosure statements will only be published electronically.
- 32 Disclosure statements should be sent to PCO by email to the address [ppu@parliament.govt.nz](mailto:ppu@parliament.govt.nz) and copied to the PCO drafter.

### **Circulation of the disclosure statement**

- 33 Hard copies of the disclosure statement must be provided with all legislation provided to the Bills Office. Departments are responsible for ensuring that 40 hard copies of the disclosure statement are delivered within half a working day after the date on which the PCO orders the printing of introduction copies of the Bill. The Bills Office will then associate the hard copies with the introduction copies of the Bill. This aligns with the current requirement for the supply of regulatory impact statements to the Bills Office, which will also continue.

## Future coverage of the disclosure requirement

- 34 During the initial administrative period disclosure is only required for government Bills and supplementary order papers as outlined in this circular. Following the passage of legislation the requirement for disclosure will also be extended to those disallowable instruments drafted by the Parliamentary Counsel Office (within the meaning of section 38 of the Legislation Act 2012). Disclosure will only be required for a subset of the matters required to be disclosed for Bills.
- 35 Further guidance on this area will be provided closer to the time.

## Monitoring

- 36 The Treasury will monitor the production of disclosure statements during the initial administrative period. The purpose of this is to inform the passage of the legislation making disclosure a legislative requirement, and to allow refinements to be made to the administrative disclosure requirements if necessary. This may include asking departments to provide feedback on their experience in completing a disclosure statement.

## Further information

- 37 Templates for completing a disclosure statement and *Disclosure Statements for Government Legislation: Technical Guide for Departments* can be found on the Treasury's website ([www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements](http://www.treasury.govt.nz/publications/guidance/regulatory/disclosurestatements)).
- 38 If you require further advice or information on the process for completing regulatory disclosure you can contact the Regulatory Quality Team in the Treasury by emailing [regulation@treasury.govt.nz](mailto:regulation@treasury.govt.nz).
- 39 If you require further advice or information about the process for publishing disclosure statements you can contact the Prepublication Unit in the Parliamentary Counsel Office by emailing [ppu@parliament.govt.nz](mailto:ppu@parliament.govt.nz).
- 40 The contents of this circular will also be included in the CabGuide (available on the Cabinet Office website at <http://cabguide.cabinetoffice.govt.nz>) in due course. If you require further advice or information about Cabinet procedures, please contact the relevant Cabinet committee secretary.

Secretary of the Cabinet

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### Enquiries:

Regulatory Quality Team, The Treasury ([regulation@treasury.govt.nz](mailto:regulation@treasury.govt.nz))