

A User's Guide to Legislation in the Northwest Territories

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Legislation and House Planning
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This document has been developed as a reference tool to explain how laws are created in the Northwest Territories.

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The Legislative Process

The “Legislative Process” is a series of stages involving a number of different people that describe how laws are created in the Northwest Territories. The process of transforming a government policy decision from an idea into law can be broken down into three main stages:

1. Phase 1: Policy Development
2. Phase 2: Drafting the legislation
3. Phase 3: Enacting a law

These stages, and the numerous steps under each one, are described in detail.

Phase 1: Policy Development

1.1 Identification of a need to create or amend an Act.

In this stage, a policy objective, a problem or an idea is identified – usually at the department level. Solutions and options are analyzed and it may be determined that legislation is the recommended course of action for the department.

However, legislation is not required to achieve all policy objectives/solve all problems. It is one of many tools to effectively achieve policy objectives and should only be used when it is the most appropriate option. In conducting an analysis of an identified policy objective or issue, officials should focus on achieving the desired outcome rather than assuming that a particular instrument is necessary from the outset.

A range of possible solutions may be considered, such as policies, procedural directives, formal guidelines or standards, information sharing, training and programs, MOU's or framework agreements etc. Even a combination of several instruments may be necessary.

If it is determined that the most effective way to meet a policy objective is through enacting or amending legislation, this document will guide you through that process and highlight the roles and responsibilities of the many parties involved.

1.2 Research/Preliminary Consultation

A substantial amount of information and research is normally gathered before an initiative can proceed to the legislative proposal. This will often include consultation/communication with central agencies, affected departments, special interest groups, aboriginal organizations or the public in general.

1.3 Legislative and/or Legal Counsel

Counsel in the Department of Justice is separated into two separate divisions with different mandates: Legal Division and the Legislation Division.

The Department of Justice's Legal Division is a full-service law firm, providing legal advice and services to all government departments and specified public agencies of the GNWT. In cases where the proposed legislation arises from legal issues or deals with complex legal matters, formal legal advice may be required on questions of law. In such cases Legal Counsel may be assigned to assist by the Department of Justice, Legal Division to provide formal legal opinions to the Department.

Legislation Division is responsible for all matters related to territorial legislation such as:

- Drafting all Bills for the Government and the Legislative Assembly
- Preparing all French versions of Bills and regulations
- Preparing all regulations made under Acts and a great majority of Government statutory appointments
- Preparing consolidations of statutes and regulations
- Preparing annual volumes of statutes enacted by the Legislative Assembly for publication
- Preparing the Northwest Territories Gazette, a publication including a full text of regulations and orders, notices of statutory appointments and revocations, and various government and non-governmental notices in both English and French

In some cases it may be useful at an early stage in an initiative to contact Legislation Division, Department of Justice, to discuss the initiative. The Director of Legislation Division may assign Legislative Counsel to assist in determining the appropriate course of action. Legislative counsel is a separate role from the "drafter" who will eventually draft the proposed Bill, although in practice it may be the same Counsel assigned to both tasks.

Legislative Counsel can assist with advice on the proposed legislative approach – i.e. perhaps there is uncertainty as to whether there is authority in existing legislation to achieve your objectives and therefore amendments may not be required, or perhaps the objective can be reached through regulations instead of a Bill.

Legislative counsel can also provide advice on whether an existing Act can be amended to achieve your objectives as opposed to repealing and completely replacing an existing law. A discussion with Legislative Counsel at this stage is separate from the drafting process; the drafter who will draft the proposed Bill is assigned at a later point, typically following approval of the Legislative Proposal.

1.4 Drafting and approving a Legislative Proposal

For every new legislative initiative, a Legislative Proposal is prepared. It is the tool used for a Minister to bring a legislative initiative to Cabinet seeking direction to create new, repeal or amend existing legislation.

Note that as per Cabinet direction, Legislative Proposals are not required for standard financial Bills, miscellaneous statute law amendment Bills, write-offs and forgiveness of debt Bills, and Board of Management Bills.

A Legislative Proposal must always state in clear terms what the amendment or new Act would do and why it is being proposed. As well, a Legislative Proposal should always provide Cabinet with a clear understanding of all significant issues associated with the implementation of this new or amended law.

In order to provide Cabinet with the information it needs to make a decision on the proposed legislative initiative, the legislative objective/problem/need must first be identified and policy options must be examined and decided upon. Submission of a legislative proposal in advance of this work being completed would be premature.

Legislative Proposals are prepared in a prescribed format. Guidelines for drafting a Legislative Proposal as well as a sample template are included as Appendix A. The Legislation Division, Department of Justice should be consulted on the amount of time required to draft a proposed Bill, and as well the results of any consultation on the proposed legislative initiative should be fully stated.

1.5 Legislative Coordinator/Legislative Initiatives Committee

Drafts of Legislative Proposals are commonly shared with the Legislative Coordinator in Legislation and House Planning, Department of Executive for comments before the legislative proposal is finalized and submitted by the Minister.

The Legislative Coordinator is the Chair of a Legislative Initiatives Committee comprised of Legislation Division, Department of Justice and senior policy staff from Executive, Cabinet Secretariat, Aboriginal Affairs and Intergovernmental Relations and Finance.

For all Legislative Proposals (and also for Bills) the Legislative Coordinator, working with the Legislative Initiatives Committee, prepares an Assessment Report to assist Cabinet in its consideration of the proposed Bill to the sponsoring Minister. This Assessment is commonly referred to as a “pink” in reference to the colour of paper it is printed on in the package that will be submitted to Cabinet.

Providing the Legislative Coordinator and/or the Legislative Initiatives Committee an opportunity to comment on draft legislative proposals improves the likelihood of a supportive “Pink”. A face to face meeting to describe the legislative initiative early in the process is also recommended.

It is also highly recommended that department staff meet with the Legislative Coordinator and/or the Legislative Initiatives Committee at the draft stage to walk through the issue(s) and intended outcome(s) that have resulted in the need for a legislative proposal. A more detailed description of the assessment process is included in Appendix B.

1.6 Submitting a Legislative Proposal for Cabinet Approval

Once the legislative proposal has been finalized and signed by the sponsoring Minister, it is submitted to Cabinet Secretariat. Cabinet Secretariat then provides the Legislative Proposal to the Legislative Coordinator who works with the Government House Leader to refer the Legislative Proposal to Standing Committee.

1.7 Government House Leader

Appointed by the Premier, the Government House Leader has a lead role in the development of the government’s legislative agenda and generally manages the legislative process with respect to the involvement of Cabinet. The Government House Leader acts as a liaison between Cabinet and Standing Committees, and provides briefings to Caucus on the Government’s Legislative Agenda.

1.8 Standing Committee Review

Before the legislative proposal is considered by Cabinet, the government is obliged to seek comments on the proposal from the applicable Standing Committee. To obtain comments, the Government House Leader refers the legislative proposal to the appropriate Standing Committee after it has been submitted to the Cabinet Secretariat.

Comments are provided back to the Government House Leader in a letter from the Chair of the Standing Committee. This process is governed by the Process Convention for Standing Committee Review of Legislative Proposals, which is included as Appendix C.

It is important to note that the Government House Leader is given discretion to take the legislative proposal through Cabinet before it is referred to Standing Committee. This is usually only done in the case of very large or controversial initiatives or otherwise where concerns with a legislative proposal have been identified. In any event, Cabinet does not make a decision to approve the legislative proposal until Standing Committee comments have been received. Correspondence at this stage with the Standing Committee is done through the Government House Leader.

Once the Standing Committee's final comments have been received and an Assessment Report has been completed, a package is submitted to Cabinet Secretariat for placement on the next Cabinet Meeting agenda. The final package that goes before Cabinet includes the Legislative Proposal (the "White"), an Assessment Report prepared by LIC/the Legislative Coordinator (the "Pink") and copies of any correspondence with Standing Committee (the "Blue").

Note that there is no time limit for Standing Committee to consider a legislative proposal, and occasionally there is more than one round of correspondence back and forth providing Committee with additional information. A thorough legislative proposal will reduce the likelihood of this happening. Correspondence with the Standing Committee at this stage is done through the Government House Leader.

1.9 Cabinet Consideration of the Legislative Proposal

Cabinet considers the legislative proposal and will either approve it, amend it, defer it to another meeting or reject it (with or without direction for revision and re-submission) by way of a Record of Decision (or ROD).

An approved legislative proposal provides the responsible Minister with authority to commence drafting a corresponding Bill and bring it back to Cabinet for consideration.

Phase 2: Drafting the Legislation

2.1 Drafting Instructions

The department prepares drafting instructions and issues them to the Legislation Division, Department of Justice. Legislation Division then assigns a drafter to begin drafting a Bill.

2.2 Legislative Initiatives Committee

When required or appropriate, early drafts of the Bill are circulated to affected departments, agencies, special interest groups, stakeholders etc. for comment.

It is also strongly recommended that the department meet with Legislation and House Planning and/or the Legislative Initiatives Committee to review the Bill, explain any deviations from the legislative proposal, etc as this will assist in the preparation of an eventual Assessment Report by the Legislative Initiatives Committee/Legislative Coordinator and will improve the likelihood of the Assessment Report being supportive.

2.3 Submission to Cabinet

When the drafting of the Bill is complete, Legislation Division, Department of Justice provides the draft Bill to the instructing official in the relevant department who obtains the sponsoring department's Deputy Minister's initials on the Bill. Legislation Division, Department of Justice then provides the initialled Bill along with a clean copy to the Minister, advising that the Bill is ready for Cabinet consideration. Legislation Division, Department of Justice provides a copy of the Bill to the Legislative Coordinator at the same time. The Minister submits the Bill to Cabinet at least 10 working days in advance of the Cabinet meeting when it is to be considered as per the usual process for Executive Council Submissions. In cases where the Bill has deviations from the approved Legislative Proposal, the Bill should be accompanied by a Decision Paper outlining the reasons for the deviations.

2.4 Legislative Initiatives Committee Assessment Report

The Legislative Coordinator forwards the draft Bill to Legislative Initiatives Committee members and an Assessment Report is prepared. The Legislative Coordinator provides an Assessment Report (the Pink) and the Bill (the White) to the Cabinet Secretariat approximately 1 week prior to the Cabinet meeting date.

After circulation of the Cabinet package to Ministers, the Deputy Minister of the responsible department is provided a copy of the Assessment Report. The department ensures that the Minister is briefed and is prepared to introduce and speak to the draft Bill in Cabinet.

2.5 Cabinet Consideration of the Bill

Cabinet considers the draft Bill and will either approve it, approve it subject to amendments, defer it to another meeting, or reject it (with or without direction for revision and re-submission) by way of a Record of Decision.

Recall that any deviations from the approved legislative proposal in the Bill require the submission of a Cabinet decision paper.

If approved, scheduling of the draft Bill for introduction in the Assembly is confirmed. A Cabinet Record of Decision is prepared and circulated to Ministers, and appropriate Deputy Ministers and officials.

Phase 3: Enacting A Law

3.1 Types of Bills

There are two types of Bills identified in the Rules. Public Bills (also known as government Bills) are Bills introduced by a Minister relating to matters of administration or public policy of general application within the Northwest Territories. There are also Private Members Bills which may be introduced by a Member who is not a Minister, and may not involve the appropriation of public funds or the imposition of a tax.

For the purposes of this document, the process described below for the introduction and passage of a Bill through the Legislative Assembly refers to a Public Bill.

3.2 What is a Bill?

A Bill is an instrument intended to implement policy that has been approved by Cabinet, written in legal language, translated in both French and English and presented by a sponsor to the Legislative Assembly for consideration. It can either be a proposal to make a new law or to change an existing one.

A Bill must pass through several stages prescribed by the Rules of the Legislative Assembly of the Northwest Territories.

A Bill which has been approved in the Legislative Assembly and has received Assent from the Commissioner, becomes a statute or law.

3.3 Introduction of Bills in the Legislative Assembly

The movement of Bills through the Legislative Assembly involves the following steps:

- Notice of Motion for First Reading
- First Reading
- Second Reading
- Standing Committee Review
- Report of Standing Committee on the Review of the Bill
- Committee of the Whole review
- Third Reading
- Assent
- Coming into Force

First, Second and Third Readings of Bills must occur on separate sitting days of the Legislative Assembly (Rule 70(1)). However the Bill may be advanced more than one reading or more than one stage in a single day with consent of the Members. Consent means opposition from no more than two Members present in the House (Rule 70(2)).

The Legislation and House Planning Division, Department of Executive will prepare the standard text for Notice of Motion for 1st Reading, 1st Reading, 2nd Reading and 3rd Reading of the Bill in the House and ensures that the script is placed in the sponsoring Minister's daily House folder on the appropriate days.

The Department ensures that the Minister is briefed on the Bill and prepared to speak to the principal of the Bill should debate occur at 2nd Reading and during Committee of the Whole debate and clause-by-clause review.

3.4 Notice of Motion for First Reading:

The Minister sponsoring the Bill gives Notice of Motion for 1st Reading. The Rules require two sitting days notice before the Bill can be given first reading (Rule 49). A Minister can seek to waive this rule by seeking unanimous consent from all Members present in the House (i.e. no "nays"). This is typically only done in cases where expedited passage of a Bill is required.

3.5 First Reading

After two sitting days the Bill can be given 1st Reading. 1st Reading is done by way by way of a motion and requires a vote of the Assembly. Despite the name "Reading", there is no actual reading of the Bill. The term "Reading" has been carried over through British parliamentary traditions from a time when printing was uncommon therefore an entire Bill would be read aloud in the House. Today, the Minister simply introduces the Bill and makes the motion "That this Bill be now read for the first time". The motion for first reading is not debatable (Rule 71).

Once a Bill has had 1st Reading, it becomes public and Members have a chance to study the Bill and decide whether to support all or part of it. However, two readings of the Bill are required before amendments can be made (Rule 73).

3.6 Second Reading:

On the next sitting day following 1st Reading the Bill can be given 2nd Reading. As with 1st Reading, 2nd Reading is done by way of motion and requires a vote of the Assembly. In making the motion, the Minister reads the Summary usually on the cover of the Bill. At 2nd Reading, Members have an opportunity to debate the principal of the Bill which means that Members may speak for or against the general intent of the legislation. They may not debate the specifics of individual sections.

The Rules of the Legislative Assembly provide clarity on the debate of the principal of the Bill by limiting debate to the object, expediency, principles and merits of the Bill (Rule 74(1)).

If a Bill receives 2nd Reading, the Speaker will order it referred to a Standing or Special Committee for further review (Rule 74(2)).

At this stage, the Bill cannot advance further through the Legislative Assembly until the Committee reports back to the House or 120 days has passed since 2nd Reading occurred (Rule 75(1)).

3.7 Standing or Special Committee Review of Bills:

At this stage the Standing or Special Committee has an opportunity to examine the Bill in detail, recommend amendments, hold public meetings. Depending on the initiative this may include travel to smaller communities.

The Standing Committee sets the review date(s) and time(s), advises the Minister and places a notice in the newspapers to advise the public.

The Department ensures that the Minister has opening remarks on the Bill for the Standing Committee meeting.

When the Standing Committee holds its meeting(s), they usually meet with the Minister before opening the meeting to the public. Representation can be made by the public (though the Standing Committee will decide in advance if this would be in written or verbal form). The Standing Committee can amend the Bill by motion at this stage but only with the Minister's concurrence. If this is a substantive amendment the Minister must return to Cabinet seeking approval before concurring. If amended, the Bill is reprinted when the Standing Committee reports it back to the Assembly.

3.8 Reports of Committees on the Review of Bills:

When the Standing Committee has completed its review it reports back to the Assembly under "Reports of Committees on the Review of Bills" on the Orders of the Day (More often than not, the Committee's report consists of a statement that its review is concluded and that the Bill is ready for consideration in Committee of the Whole). If a more detailed report has been produced, the Committee will give this report under "Reports of Standing and Special Committees" and would likely move this formal report to Committee of the Whole for consideration alongside the Bill. The Bill is placed on the Orders of the Day for Committee of the Whole two sitting days after being reported back to the House, and can be considered any time after that. However, with unanimous consent of all Members the Bill may be dealt with earlier.

3.9 Committee of the Whole:

The Committee of the Whole is a less formal portion of the Orders of the Day when the full Legislative Assembly is sitting without the Speaker in the Chair to review matters referred to it by the House including the detail of Bills (See also Procedures and Formats for the 18th Legislative Assembly).

At this stage, all Members have the opportunity to examine and debate the Bill in detail.

The Department ensures that the Minister has opening remarks to introduce the Bill in Committee of the Whole.

When a Bill is considered in Committee of the Whole, the Minister delivers opening remarks; the Standing Committee makes opening remarks (if any) followed by general comments by Members, discussion, questions, and finally a clause-by-clause review. The Minister is often accompanied by witnesses for the clause-by-clause review of the Bill who can speak to questions that are technical in nature or require particular expertise on the subject matter of the Bill. These witness are usually the drafter of the Bill and senior departmental officials. The Chair of Committee of the Whole will ask the Minister if he or she would like to bring witnesses into the House after his or her opening remarks and if so witnesses are escorted to and from the Chamber by the Sergeant at Arms.

Review of the title and preamble of the Bill are postponed. The Committee considers every other clause and schedule in order. The preamble and title are considered last (Rule 76(1)).

This is usually the most in-depth stage in the debate of Bills through the House. Each section of the Bill is subject to a separate debate and vote, however sections can be considered together if the Committee agrees.

The Bill can be amended in Committee of the Whole if the motion is supported by a majority of Members in the House. Any Member can move an amendment and debate will be allowed provided that it is ruled in order. Notice and seconders are not required for motions in Committee of the Whole.

3.10 Third Reading

Once the Committee of the Whole review is completed the Bill is reported to the Speaker (with any amendments) as ready for 3rd Reading. The Bill can be given 3rd Reading on the next sitting day.

3rd reading is the final stage of a Bill's consideration in the House when Members decide whether the Bill will pass. The Bill is given 3rd Reading, by motion, and if the motion is carried, the Bill is ready for Assent.

3.11 Assent

Assent to Bills is the final stage of the Legislative Assembly's role in the process of enacting legislation.

Assent to all Bills that have received 3rd Reading is granted by the Commissioner of the Northwest Territories. Appointed by the Prime Minister, the Commissioner is the territorial representative of the Monarch and the Head of State. Assent is usually on the last day of a sitting.

Note that under the *Constitution Act 1867* each province has a Lieutenant Governor appointed by the Governor General of Canada, the representative of the Monarch in Canada, and therefore Assent to provincial (and federal) Bills is referred to as Royal Assent. In the Northwest Territories, the Commissioner who serves this role is appointed by the Prime Minister under the authority of the *Northwest Territories Act*. Therefore the term Assent is generally favoured.

3.12 Coming into Force

An Act becomes a law when it "comes into force". Some Bills contain a clause stating a date upon which the Act will take effect. If the Bill has no coming into force provision, it is law immediately upon Assent. However in some circumstances the Bill will specify that the Act will come into force on a date specified in the Act, or a date set by the Commissioner other than the date of Assent, for example to allow time for a regulatory scheme to be created.

Legislative Proposals:

The development and passage of government legislation involves a number of steps and can take a significant amount of time to achieve.

A Legislative Proposal is prepared whenever a Minister is seeking Cabinet direction to develop new, repeal or amend existing, legislation. A Legislative Proposal must always state in clear terms what the amendment or new Act would do and why it is being proposed. As well, a Legislative Proposal should always provide Cabinet with a clear understanding of all significant issues associated with the implementation of this new or amended law.

To provide Cabinet with the information they need to make a decision on the proposed legislative initiative, the legislative problem/need must first be identified and policy options to solve that problem/need must be examined and decided upon.

Submission of a Legislative Proposal in advance of this work being completed would be premature.

Before Cabinet approves a Legislative Proposal, the Government is obliged to seek comments on the legislative proposal from Standing Committee. To obtain comments, the Government House Leader refers the Legislative Proposal to the appropriate Standing Committee after it has been submitted to Cabinet by the sponsoring Minister.

Comments are provided back to the Government House Leader in a letter from the Standing Committee. This process is governed by the Process Convention for Standing Committee Review of Legislative Proposals, which is also included as Appendix C.

It is important to note that the Government House Leader is given the discretion to take the Legislative Proposal through Cabinet before it is referred to Standing Committee. This is usually only done in the case of very large or controversial initiatives. In any event, Cabinet does not make a decision to approve the Legislative Proposal until Standing Committee comments have been received. The final package that goes before Cabinet includes the Legislative Proposal, a LIC Assessment Report and the letter(s) from Standing Committee.

An approved Legislative Proposal provides the responsible Minister with the authority to draft a Bill and submit it to Cabinet for consideration.

Outline and Contents

Title

Give the title of the proposed new Act or the Act to be amended.

Tips:

In the case of numerous or comprehensive amendments to an existing Act, Legislation Division (Justice) should be consulted as to whether or not a complete re-write of the Act is advisable.

Consequential amendments to other statutes need not be described here but could be noted in the “Implementation” section.

Background (Optional)

An optional heading that could be used to describe in general terms the nature of the legislative problem (e.g., certain provisions in the Act are outdated or have been overtaken by decisions of the court, etc.). This heading could also be used to provide general context/history for the particular initiative or to note significant origins for the initiative such as MLA or special interest group requests for the legislation.

Tips:

If there was any previous relevant Cabinet or FMB direction, this should be mentioned. Use dates to identify previous direction; do not include ROD numbers.

Keep it brief, keep it general – view this section as a way of introducing the topic and leading up to more specific information in the various headings below.

Purpose of Legislation

Describe, in clear and concise terms, what changes are going to be made to the existing Act or, if a new law is being proposed, outline the main elements of the new Act.

Tips:

Statements such as “modernize the Act” or “update the discipline provisions” don’t provide Cabinet with any information to assess the merits of the initiative. Describe in plain language what amendments / new provisions are being proposed to achieve the policy objectives.

Each item listed in this section should have a corresponding entry in the “Policy Rationale” section below.

If a new Act is being proposed or if numerous amendments to an existing Act are being proposed, it is often advisable to combine “what” is being done with the “why” (i.e., Policy Rationale) in a separate document or table attached to the legislative proposal.

In this instance, the text or narrative of the proposal could be used to highlight significant or controversial changes to existing legislation.

“What” should not include proposed specific wording changes to the Act – it is understood that the actual wording would be determined during the drafting of the Bill.

Policy Rationale

Describe, in clear and concise terms, why the initiative is being proposed. In other words, state how the proposed new or amended legislation will address the problem at hand and why, from a policy perspective, this is the best way to deal with that problem.

Tips:

As noted above, if a new Act is being proposed or if numerous amendments to an existing Act are being proposed, it is often advisable to combine “what” is being done (i.e., Purpose of Legislation) with the “why” in a separate document or table attached to the legislative proposal.

Consultation

Legislation can have far-reaching effects on individuals and groups. Consultation on legislative initiatives is important and, generally speaking, should be completed before a legislative proposal is submitted.

As a matter of course, all affected GNWT departments and agencies should be consulted on proposed legislative initiatives. Additionally, and dependent on the nature of the legislative initiative, Aboriginal organizations, special interest groups, non-government organizations, professional associations, unions, etc. are all potential groups that could be targeted for informal consultation to assist in the development of a legislative proposal. For the more significant pieces of legislation (e.g., *Wildlife Act*, *Human Rights Act*, *Liquor Act*, etc.) broader public consultation is required and usually done through a formal consultation document.

Tips:

It is not enough to say that consultation has been, or will be undertaken – the results of the consultation must also be provided.

If the consultation is legally required, this should also be noted.

In some cases, additional consultation with selected stakeholders on a draft Bill is also appropriate and should be mentioned here if it is planned.

If you have not consulted, explain why consultation was not necessary.

Legislation and House Planning may contact parties you have already consulted with (or additional parties) to get a better understanding of their views on an issue.

Implementation

Describe any problems that may be encountered or need to be addressed or solved to enact the proposed legislation. (e.g., political issues, adverse public reaction, legal issues, etc.)

Describe any and all administrative implications resulting from the enactment of the legislation. (e.g., human or financial resource requirements, establishment of new boards, etc.)

Describe any timelines that must be met regarding introduction and passage (usually related to legal liabilities). If the Act is not to be brought into force upon assent (e.g., to allow time for the development of appropriate regulations), this should also be noted.

Tips:

It is very useful to use sub-headings (e.g., Political, Financial, Human Resource, Legal, Interdepartmental, Social Impacts, Public Relations, etc.) as required to describe and address all relevant implementation issues.

Any known consequential amendments to other Acts that may be needed could be noted here.

Drafting

Indicate the time required to prepare the draft Bill as advised by the Director of Legislation Division, Department of Justice.

Tips:

Contact Legislation Division, Department of Justice early in the process to discuss the amount of drafting time that will be required and to allow for planning as drafters are often busy with other projects.

Scheduling

Indicate the proposed target date for introduction of a Bill in the Legislative Assembly.

Note this target date should be established in consultation with both Director of Legislation Division in the Department of Justice and Legislative Coordinator in the Department of the Executive.

Tips:

Frequent communication with others involved in the Legislative Process is the best way to avoid road blocks and unnecessary delays down the road.

LEGISLATIVE PROPOSAL

TITLE

BACKGROUND (Optional)

PURPOSE OF LEGISLATION

POLICY RATIONALE

CONSULTATION

IMPLEMENTATION (Sub-headings as required)

- Political Issues
- Financial/Human Resource Issues
- Legal Issues
- Interdepartmental Issues
- Social Impact Issues
- Communications Issues
- Other Issues

DRAFTING

SCHEDULING

Minister

Date

Legislative Initiative Assessment Reports:

Legislative proposals and draft Bills submitted for Cabinet approval are assessed by Legislation and House Planning with input from the Legislative Initiatives Committee (LIC). LIC is chaired by the Legislative Coordinator and includes members from Cabinet Secretariat, Finance, the Department of Aboriginal Affairs and Intergovernmental Relations and the Legislation Division, Department of Justice. The broad range of perspectives represented by LIC members helps to ensure that any significant issues are identified and resolved before Legislative Proposals or draft Bills receive Cabinet approval. LIC also draws upon other expertise as required in the preparation of Assessment Reports (e.g., obtaining legal opinions from the Legal Division, Department of Justice, obtaining advice on risk management from the Department of Finance, obtaining communications advice from Corporate Communications and Protocol, etc.).

Similar to Cabinet Secretariat assessments in format and purpose, assessments on legislative proposals and draft Bills provide Cabinet with a summary of the submission and identify any potential issues it may wish to consider in making their decision. LIC/the Legislative Coordinator considers many of the same factors as the Cabinet Secretariat in the preparation of the assessment report, and there is a special emphasis on legislative policy issues (e.g., cohesion with overall GNWT statutory framework, costs of enforcement, etc.). Each assessment also includes a recommended decision that may or may not reflect the Minister's recommendation, depending on the issues identified. The recommended decision would also deal with formally establishing a target date for the introduction of a Bill in the Legislative Assembly.

There are a few differences between legislative initiatives and other Cabinet submissions worth noting, as follows:

- The development of legislative initiatives is a two-stage process. Cabinet first considers the concept and policy rationale as outlined in the legislative proposal and then considers the specific instrument (i.e., a draft Bill) that would establish a new law or change the existing law.
- Cabinet approval of a legislative proposal and, eventually, a draft Bill is only a part of the process and are requisite steps leading up to the Government's introduction of a Bill in the Legislative Assembly. Through its own separate processes, the Legislative Assembly will ultimately decide if a new law is to be enacted or changes are to be made to an existing law.

- Unlike most other decision items where Cabinet approves a decision or decisions contained in a document, when Cabinet approves a legislative proposal or Bill, the entire document is approved.
- Legislative Proposals are the only Cabinet submissions provided to Standing Committees. Departments are encouraged to contact the Legislative Coordinator, Legislation and House Planning Division when developing legislative proposals and other submissions concerning legislation. In addition, Departments are strongly urged to request (through the Legislative Coordinator) informal LIC review of draft legislative proposals. LIC may be able to help identify any issues or concerns that can be addressed before the submission is finalized, signed by the Minister and submitted to Cabinet.

PROCESS CONVENTION
Standing Committee Review of Legislative Proposals

Application

The process convention is not intended to govern *Appropriation Acts, Supplementary Appropriation Acts, Write-off of Debts Acts, Forgiveness of Debts Acts, Loan Authorization Acts, Miscellaneous Statutes Amendment Acts*, or any other legislative initiative (e.g., taxation measures) for which legislative proposals are not normally required by Cabinet.

General Principles: 1,2,3,4,5, and 8

General Consideration

It is in the interests of consensus government that Standing Committees are provided with an opportunity to review legislative proposals and provide advice to the Government in advance of Cabinet decisions.

Legislative proposals are Cabinet documents that must be kept confidential. Cabinet also reserves the right to keep a legislative initiative confidential up to the time that a Bill is introduced in the Legislative Assembly.

While Cabinet decisions on legislative proposals are pending, individual Ministers are not in a position to make any commitments regarding the initiative. All advice and other communication from Standing Committees should therefore be addressed to the Government House Leader, who has overall responsibility for the Government's legislative agenda.

In consideration of the limitations noted above, Standing Committee review of legislative proposals may not be a conclusive exercise in terms of reaching full agreement prior to the introduction of a Bill in the Legislative Assembly. The Committee's advice will guide the government in determining the advisability of proceeding.

Nothing in this process convention precludes Cabinet's prerogative to introduce Bills in the Legislative Assembly or the right of Committees and Regular Members to debate these Bills.

Authority

This Process Convention is established under the Authority of the Executive Council and the undersigned Standing Committees and may be amended at any time by agreement of the Executive Council and Standing Committees.

Process

(1) A legislative proposal is prepared, signed by the Minister responsible and submitted to Cabinet via the Cabinet Secretariat.

(2) At the discretion of the Government House Leader or upon request from the sponsoring Minister, a legislative proposal may be reviewed by Cabinet before it is referred to Standing Committee. Regardless, Cabinet will not approve a legislative proposal before comments have been received from a Standing Committee.

(3) The legislative proposal is forwarded by the Government House Leader to the Chair of the appropriate Standing Committee. All Ministers are copied on this correspondence. The Standing Committee on Priorities and Planning will also be copied on this correspondence if the legislative proposal is being referred to a different Standing Committee.

(4) The Standing Committee reviews the legislative proposal. The Minister and officials may be invited to this meeting to provide additional information. However, it is understood that the legislative proposal is a Cabinet document and that the Minister cannot make changes to the proposal or make any commitments regarding the content of a Bill.

(5) Standing Committee advice on a legislative proposal is provided in a letter from the Committee Chair to the Government House Leader. The sponsoring Minister is copied on this correspondence.

(6) Upon receipt of Standing Committee advice and the completion of an assessment report by the Legislative Initiatives Committee, the Government House Leader will arrange for the legislative proposal to be put before Cabinet for final consideration. The proposal, assessment report and Standing Committee letter goes before Cabinet as a package.

(7) The Government House Leader will, prior to the beginning of each sitting of the Legislative Assembly, provide Caucus with a list of Bills anticipated for introduction in that sitting.

Definitions

Act (statute, law): a Bill that has passed three readings and committee review and received royal assent.

Amendment: a proposed change made to a motion or a Bill. It must be in the form of a proposal to add, delete or substitute words.

Appropriation Bill: a Bill introduced by the Minister of Finance requesting the Legislative Assembly to approve the government's spending of public funds.

Assent to Bills: This is the final stage of the Assembly's role in the enactment of legislation process. The Commissioner gives "Assent" to all Bills that have received 3rd Reading. If a Bill does not have a coming into force provision, it is law upon Assent.

Bill: a proposed law introduced in the Assembly; either creating a new law or amending an existing one. To become law, a Bill must pass three readings and committee review and be given Assent.

Blue: The portion of an Assessment Report of a Legislative Proposal prepared for Cabinet that contains all correspondence with Standing Committee.

Blues (unedited Hansard): the unofficial transcript of proceedings of the House or any of its committees.

Cabinet (Executive Council, the government): the executive branch of government, led by the Premier, and selected from among all 19 elected members of the Assembly. Cabinet sponsors new laws and programs and is accountable to the Assembly for government actions.

Cabinet Minister: a member of Cabinet, usually the head of a government department.

Caucus: all the 19 elected members of the Legislative Assembly; a private (or in camera) meeting of this group.

Chairperson of Committee of the Whole (Deputy Speaker): the member elected by the House at the beginning of each Legislature to serve as Deputy Speaker and preside over Committee of the Whole.

Clause: a part of a Bill consisting of an individual sentence or statement. Once a Bill becomes law, its clauses are referred to as sections.

Clause-by-Clause Consideration: the detailed review of the clauses of a Bill at the Standing Committee or Committee of the Whole stage.

Clerk of the Legislative Assembly: the Clerk is the chief permanent officer of the Legislative Assembly, with the rank and status of a deputy minister.

Coming Into Force Provision: the clause of a Bill stating the date upon which an Act will take effect. The clause may indicate that the Act or some part of it will come into force on a specific date or on a date fixed by order of the Commissioner. If no such clause exists, the Act comes into force upon assent.

Commissioner: the territorial representative of the Monarch and the head of state, a largely ceremonial position. The Commissioner is appointed by the Prime Minister and delivers the Opening Address or Speech from the Throne, grants royal assent and approves orders in council.

Committee Stage: the step in the legislative process where Bills are referred to a Committee for review and clause-by-clause consideration or where other issues are referred to a Committee for review. The Committee Chairperson reports the proceedings to the House under the order of business Reports of Committees on the Review of Bills.

Committee of the Whole: a committee of all Members of the Legislative Assembly that meet to discuss Bills and other issues in detail. It is the order of business that is considered informal Session, where the rules are more relaxed, witnesses may be present and is presided over by the Chairperson of Committee of the Whole or designate, who reports back to the Speaker.

Consent: Similar to unanimous consent, but two Members would have to be opposed say “nay” for consent to be denied. Consent is used to allow a Bill to pass through more than one stage in a single day.

Department (Ministry): a Cabinet Minister’s area of responsibility, or portfolio, and the people who work for the department. The Minister, who is the head of the department, is a member of the Executive Council.

Deputy Minister: the public servant, reporting directly to the Minister, who is the permanent administrative head of a government department and is responsible for its day-to-day management.

Deputy Speaker (Chairperson of Committee of the Whole): the member elected, by motion in the House at the beginning of each Legislature to replace the Speaker when necessary and serve as Chairperson of Committee of the Whole.

Executive Council (Cabinet, the government): the executive branch of government, led by the Premier, and selected from among all elected members of the Assembly. Cabinet sponsors new laws and programs and is accountable to the Assembly for government actions.

Extended Adjournment: An extended adjournment is an adjournment of the House to a date in the future (i.e. beyond the next normal sitting day). This is authorized through the adoption of a formal motion.

First Reading (Introduction of Bills): the first stage in the passage of a Bill. Bills pass first reading without debate as debate is not allowed.

Government: in the parliamentary sense the Cabinet or Executive Council, headed by the Premier. To remain in office, the government must have the support of a majority of members in the Legislative Assembly.

Government Bills: Bills approved by Cabinet and introduced by a Cabinet Minister.

Government House Leader: the Cabinet Minister responsible for managing the government's business in the House, including the negotiation of scheduling with the Standing Committee Chairs, especially the Standing Committee on Priorities and Planning.

Hansard: the official, verbatim record of parliamentary debates and proceedings.

House: the Legislative Assembly while in Session, also used to refer to the Chamber.

Introduction of Bills (First Reading): the order of business when MLAs introduce Bills. Bills pass first reading without debate as debate is not allowed.

Law (Act, statute): a Bill that has passed three readings and committee review and received royal assent.

Law Clerk: the Legislative Assembly Office's legal advisors. They often sit at the table in the Assembly to advise on matters related to Bills. They also assist in drafting private member's Bills as well as providing legal and procedural advice to MLAs, committees and other branches of the Legislative Assembly Office.

Legislation: laws enacted by the authority of a legislative body.

Legislative Assembly: a lawmaking body of elected representatives; also called the House.

Legislature: the lawmaking body in Canadian provinces and territories consisting of the Lieutenant Governor, or Commissioner, and the Legislative Assembly. Each general election results in a new legislature.

Member of the Legislative Assembly (MLA): a person elected to the Legislative Assembly to represent one of the 19 electoral districts.

Minister (Cabinet Minister): a member of Cabinet, usually the head of a government department.

Ministry (department): a Cabinet Minister's area of responsibility, or portfolio, and the people who work for the department. The Minister, who is the head of the department, is a member of the Executive Council.

MLA (Member of the Legislative Assembly): a person elected to the Legislative Assembly to represent one of the 19 electoral districts.

Motion: a proposal made to the House by a member that the House do something, order something, or express an opinion regarding some matter. Motions moved in formal Session of the House require a mover and a seconder.

Notice of Motion: the order of business announcing the intention to introduce a motion. Two sitting days notice is required prior to the item appearing on the Orders of the Day.

Order Paper or Orders of the Day: a daily schedule of items for consideration in the House. It is like an agenda for a meeting, although all items on the order paper are not necessarily spoken to or covered on any given day.

Point of Order: when a member calls the Speaker's attention to an alleged breach of the Rules or to any perceived departure from the customary mode of proceeding in debate or in the conduct of the business of the Assembly.

Portfolio: the office or responsibilities of a Cabinet Minister. The Premier assigns portfolios.

Principle of the Bill: the purpose of a Bill, which is debated at second reading.

Private Members' Bills: Bills sponsored by any regular member. They give members a chance to propose policies and raise concerns in the public forum of the Assembly. These Bills do not have Cabinet's formal approval and cannot require the government to spend public funds.

Regular Member: any MLA who is not a Member of Cabinet or the Speaker.

Reports of Standing and Special Committees: the order of business when chairs of the various committees appointed by the Assembly may present their committees report.

Reports of Committees on the Review of Bills: the order of business when the chairs report a Bill back to the House as ready or not ready for consideration in Committee of the Whole; usually no recommendations are made in the reports.

Report of Committee of the Whole: the order of business when the Chair of Committee of the Whole gives a report to the Speaker when the House goes back to the formal sitting.

Royal Assent: In the House of Commons and provincial legislatures, the procedure by which the Governor General or Lieutenant Governor gives final approval to a Bill. When a Bill receives Royal Assent, it becomes law.

Rules of the Legislative Assembly: a document which sets out the manner in which the NWT Legislative Assembly will conduct its business and Members during proceedings of the House and Committee meetings.

Ruling: a decision of the Speaker or Chairperson of Committee of the Whole on the procedural acceptability of a matter before the House or before Committee of the Whole. Rulings range from reminders to members not to speak out of turn to complex questions of parliamentary privilege and may serve as precedents for future proceedings.

Second Reading: the stage when members debate the principle of a Bill and either accept or reject it. Detailed consideration is not given to the clauses of the Bill at this stage.

Special Committee: a committee appointed by the Assembly to consider matters referred to them by motion; for example, a committee to review the services provided to non-tax-based communities. The motion that establishes a special committee and appoints its members also sets its terms of reference and operating authority. When their assignment is completed or a specific term set by the House has expired, they cease to exist.

Session: a session consists of a number of sittings beginning with the opening of the House and ending at prorogation. The Commissioner formally opens and prorogues each session. There is no predetermined length for a Session. It can include spring and fall sittings. For example, the fifth Session of the 17th Legislature began in October 2013 and ended in October 2015.

Sittings: the daily meetings of the Assembly. Sittings can also refer to the spring or fall periods when the Legislature is meeting.

Speaker: the MLA elected by all MLAs by secret ballot to maintain orderly debate in the Chamber and to ensure that members conduct their business according to parliamentary rules. The Speaker must serve all MLAs equally whether they are a regular member or Cabinet Minister, and all MLAs must accept his or her authority. The Speaker is also the head of the Legislative Assembly Office. Although Speakers are not members of Cabinet

and the Legislative Assembly Office is not a government department, the Speaker's administrative duties are similar to those of a Cabinet Minister. The Speaker also chairs the Board of Management meetings.

Speaker's Ruling: a decision of the Speaker on the procedural acceptability of a matter before the House. Rulings range from reminders to members not to speak out of turn to complex questions of parliamentary privilege and may serve as precedents for future proceedings.

Standing Committee: are appointed under the Rules of the House for the life of the Legislature to consider matters referred to them. There are five standing committees: Priorities and Planning, Economic Development and Infrastructure, Government Operations, Social Programs and Rules and Procedures.

Statute (law, Act): a Bill that has passed three readings and committee review and received Assent.

Sub Judice Convention: a matter before the courts is sub-judice. In recognition of the separation of powers between the legislative and judicial branches of government, the Legislative Assembly, by convention, does not debate or comment on matters before the courts.

Supplementary Appropriation: an expenditure proposal introduced to provide funds to the government to meet new or increased costs.

Table Officers: employees of the Legislative Assembly Office, who provide procedural advice during sittings of the House, keep records of the proceedings and record the votes. They include the Clerk, Deputy Clerk, Principal Clerks, Law Clerk, Sergeant at Arms and Deputy Sergeant at Arms.

Third Reading: the final stage of consideration of a Bill, at the conclusion of which the Bill as a whole is either finally passed or rejected. Members again have a chance to comment on, criticize, or ask questions about the Bill before voting on it for the last time. Third reading debate is usually limited to brief comments supporting or opposing the Bill.

Unanimous Consent: When all Members present give their agreement to set aside the Rules or usual practice of the House without notice. Actions taken by unanimous consent do not constitute a precedent.

Unedited Hansard (blues): the unofficial transcript of proceedings of the House or any of its committees. Commonly referred to as the "Blues".