

LAC Guidelines 2014 edition: Checklist for officials

Guideline	Principle	Principle applicable (Yes/No)	Complied with (Yes/No)	Notes / Justification for any departure
Chapter 1: Defining the policy objective				
1.1	<i>The policy objective must be clearly defined and discernible.</i>			
1.2	<i>All alternative means to legislation should be considered.</i>			
1.3	<i>All relevant government departments should be consulted at an early stage.</i>			
1.4	<i>Public consultation should take place.</i>			
1.5	<i>The provisions of the proposed legislation should be consistent with its purpose and the policy that underlies it.</i>			
Chapter 2: How new legislation relates to the existing law				
2.1	<i>Any existing legislation that relates to the same matters or implements similar policies to those of the proposed legislation should be identified.</i>			
2.2	<i>Any conflict or interactions between new and existing legislation should be explicitly addressed in the new legislation.</i>			
2.3	<i>New legislation should not re-state matters that are already addressed in existing legislation.</i>			
2.4	<i>Relevant common law rules and principles should be identified.</i>			

2.5	<i>Any conflict or interaction between new legislation and the common law should be explicitly addressed in the new legislation.</i>			
2.6	<i>New legislation should not address matters that are already satisfactorily dealt with by the common law.</i>			
2.7	<i>Precedents from existing legislation should only be used if they are consistent with the scheme and purpose of the new legislation.</i>			
Chapter 3: Basic constitutional principles and values of New Zealand law				
3.1	<i>New legislation should respect the basic constitutional principles of New Zealand law.</i>			
	<i>New legislation must respect the principles of the Treaty of Waitangi.</i>			
	<i>New legislation must respect the dignity of the individual and the presumption in favour of liberty.</i>			
	<i>New legislation should respect property rights.</i>			
	<i>The exercise of powers under legislation must be subject to the principles of natural justice where appropriate.</i>			
	<i>New legislation should not generally restrict the right of access to the courts.</i>			
	<i>Legislation should not affect existing rights and should not criminalise or punish conduct that was not punishable at the time it was committed.</i>			
	<i>Money must not be raised, spent or borrowed without Parliamentary authority.</i>			

	<i>Clear and unambiguous wording must be used if Parliament wishes to override fundamental rights and values.</i>			
	<i>New legislation must comply with New Zealand's international obligations.</i>			
Chapter 4: The Treaty of Waitangi and Treaty Settlements				
4.1	<i>Māori interests that will be affected by the proposed legislation should be identified.</i>			
4.2	<i>New legislation must not be inconsistent with an existing Treaty settlement.</i>			
4.3	<i>Any land, bodies of water or other resources potentially subject to customary title (or rights), and that might be affected by proposed legislation, should be identified.</i>			
4.4	<i>The Government must make informed decisions where legislation will affect, or have the potential to affect, the rights and interests of Māori.</i>			
4.5	<i>Consultation must target Māori whose interests are particularly affected.</i>			
4.6	<i>When legislation has the potential to conflict with the rights or interests of Māori under the Treaty, additional measures should be considered to ensure recognition of the principles of the Treaty or the particular rights concerned.</i>			
4.7	<i>Clear language is required where legislation is intended to be inconsistent with the principles of the Treaty.</i>			

Chapter 5: New Zealand Bill of Rights Act 1990				
5.1	<i>NZBORA rights should not be limited, or should be subject only to such reasonable limits as can be justified in a free and democratic society.</i>			
5.2	<i>Any unjustified limitation should be restricted to that which is necessary to achieve the policy objective.</i>			
Chapter 6: Discrimination and distinguishing between different groups				
6.1	<i>Legislation should not discriminate on one of the prohibited grounds.</i>			
6.2	<i>Any discrimination should be no greater than is necessary to achieve the policy objective.</i>			
6.3	<i>Consult the Human Rights Commission early in the policy development process.</i>			
6.4	<i>Consider the full range of consequences of passing legislation or taking action that does not comply with the Human Rights Act 1993 and section 19 NZBORA.</i>			
Chapter 7: Privacy and dealing with information about people				
7.1	<i>Legislation should be consistent with the requirements of the Privacy Act 1993, in particular the Information Privacy Principles.</i>			
7.2	<i>The design of new legislation must take account of any applicable Code of Practice.</i>			

7.3	<i>Consult the Privacy Commissioner, the Ministry of Justice and the GCPO when developing new policies and legislation that may affect the privacy of individuals.</i>			
7.4	<i>New legislation should use the existing complaints process under the Privacy Act 1993 unless there is a good reason not to do so.</i>			
7.5	<i>The full range of consequences of creating legislation that does not comply with the Privacy Act 1993 should be considered.</i>			
Chapter 8: Treaties and international obligations				
8.1	<i>New legislation must not be inconsistent with existing international obligations.</i>			
8.2	<i>The appropriate method of incorporating treaty obligations into New Zealand law should be used to ensure that all relevant international obligations are given full effect.</i>			
8.3	<i>Legislation which implements a treaty should provide easy access to the treaty that it implements.</i>			
Chapter 9: Dealing with conduct, people and things outside New Zealand				
9.1	<i>Cross-border interactions and/or links relevant to the proposed legislation and policy should be identified.</i>			
9.2	<i>Legislation should set out the factors that determine whether or not New Zealand law applies.</i>			
9.3	<i>Legislation should address whether or not foreign decisions are</i>			

	<i>recognised or enforceable in New Zealand.</i>			
9.4	<i>Legislation that creates new civil proceedings should state the procedures for commencing proceedings and enforcing judgments against overseas defendants, if relevant.</i>			
9.5	<i>New criminal offences should be subject to the rules on territorial application in sections 6 and 7 of the Crimes Act 1961.</i>			
9.6	<i>Legislation should include sufficient powers to enable enforcement agencies to request and use information from overseas agencies.</i>			
Chapter 10: Applying the statute to the Crown				
10.1	<i>Legislation must state whether or not it binds the Crown.</i>			
10.2	<i>Legislation should apply to the Crown unless there are good reasons for it not to do so.</i>			
10.3	<i>Any immunity from civil liability should be separately justified and should not be overly broad.</i>			
10.4	<i>Government departments may be liable to criminal prosecution only if compelling reasons exist for doing so.</i>			
Chapter 11: Affecting existing rights, duties, situations and addressing past conduct				
11.1	<i>Legislation should not have retrospective effect.</i>			
11.2	<i>Potential transitional or savings issues should be identified early in the policy development process.</i>			

11.3	<i>Legislation should not include specific transitional provisions if the generic provisions in the Interpretation Act 1999 satisfactorily address the issues.</i>			
11.4	<i>New legislation should not pre-empt matters that are currently before the courts or deprive successful litigants the benefit of any court decision in their favour.</i>			
11.5	<i>All transitional or savings issues that have been identified should be addressed.</i>			
11.6	<i>All transitional provisions should be contained in the new legislation.</i>			
Chapter 12: Statutory interpretation and the Interpretation Act 1999				
12.1	<i>The primary rules of statutory interpretation should be considered when designing legislation.</i>			
12.2	<i>Legislation should be consistent with the Interpretation Act 1999. Matters that are already provided for in the Interpretation Act should not be re-stated in new legislation.</i>			
12.3	<i>Legislation should apply the definitions in Part 5 of the Interpretation Act. New legislation should not re-state those definitions.</i>			
Chapter 13: Delegating law-making powers to the executive				
13.1	<i>Legislation should not authorise delegated legislation to be made in respect of matters which are appropriate for primary legislation.</i>			

13.2	<i>The empowering Act should define clearly the purposes for creating delegated legislation.</i>			
13.3	<i>The person authorised to make delegated legislation must have an appropriate level of expertise, and hold an appropriate office having regard to the importance of the issues and the nature of any safeguards that are in place.</i>			
13.4	<i>All delegated legislation should be subject to an appropriate level of scrutiny, publication and review.</i>			
13.5	<i>Legislation should address any special features of the power to make delegated legislation.</i>			
13.6	<i>Incorporation by reference should only be used where it is impractical to do otherwise.</i>			
Chapter 14: Granting powers of exemption				
14.1	<i>There must be compelling reasons to grant a power of exemption.</i>			
14.2	<i>Legislation must specify appropriate safeguards to apply to powers of exemption.</i>			
14.3	<i>Legislation should clearly identify whether or not the power of exemption will be subject to the disallowance and/or publication procedures in the Legislation Act 2012.</i>			
14.4	<i>Legislation must contain express authority to impose conditions on an exemption.</i>			

Chapter 15: Authorising the charging of fees and levies

15.1	<i>Fees should only be charged where the nature of the service or function is appropriate and the fee can be quantified and efficiently recovered.</i>			
15.2	<i>Levies should only be imposed where it is appropriate for a certain group to contribute money for a particular purpose.</i>			
15.3	<i>Legislation must include an empowering provision that specifically authorises the executive to prescribe a fee or a levy.</i>			
15.4	<i>Legislation must set out the manner by which to determine the fee.</i>			
15.5	<i>Legislation must set out the manner by which to determine the levy.</i>			
15.6	<i>Legislation must clearly identify who may be charged the fee or levy and in what circumstances it may be waived or refunded.</i>			
15.7	<i>Legislation should identify any procedural requirements that must be carried out in connection with the fee or levy.</i>			

Chapter 16: Creating a new statutory power

16.1	<i>A new statutory power should only be created if no suitable existing power or alternative exists that can achieve the policy objective.</i>			
16.2	<i>Legislation should identify who holds the new power. The power should be held by the person or body that holds the appropriate level of authority, expertise and accountability.</i>			
16.3	<i>Legislation should state the extent to which a new power can be delegated.</i>			

16.4	<i>Legislation should not create a power that is wider than is necessary to achieve the policy objective.</i>			
16.5	<i>Legislation should identify what the power is, for what purposes, and in which circumstances it may be exercised.</i>			
16.6	<i>Legislation should include safeguards that will provide adequate protection for the rights of individuals affected by the decision.</i>			
16.7	<i>New powers that are given to a specialist tribunal must be consistent with the particular field of expertise of that tribunal, must be appropriate in light of the procedure adopted by the tribunal, and must not impair the tribunal's independence and impartiality.</i>			
Chapter 17: Creating a new public body				
17.1	<i>A new public body should only be created if no existing body possesses the appropriate governance arrangements or is capable of properly performing the necessary functions.</i>			
17.2	<i>Legislation should only be used to create a new public body when it is required by law or is necessary to ensure that the body possesses the necessary powers, authority, and appropriate governance arrangements.</i>			
17.3	<i>A new body should be in the form that provides appropriate accountability arrangements and is best suited to performing the relevant functions.</i>			
17.4	<i>Legislation should only create a new tribunal where it is inappropriate to give new powers to an existing tribunal and no other court, tribunal, or other specialist body is better placed to exercise the power.</i>			

17.5	<i>All public bodies should be subject to the Ombudsmen Act 1975, the Public Audit Act 2001, the Public Records Act 2005, the Official Information Act 1982 (or the Local Government Official Information and Meetings Act 1987).</i>			
Chapter 18: Creating powers of search, surveillance and seizure				
18.1	<i>New search powers should only be granted when the policy objective cannot be achieved by other means.</i>			
18.2	<i>All searches should be carried out pursuant to a warrant unless there are good reasons not to.</i>			
18.3	<i>New search powers should only be exercisable when there are “reasonable grounds to suspect” the relevant factual situation has occurred, and “reasonable grounds to believe” that evidence will be found, or a particular thing may be achieved during the course of that search.</i>			
18.4	<i>New search powers should apply the rules and procedures set out in Part 4 of the Search and Surveillance Act 2012.</i>			
Chapter 19: Ways to achieve compliance and enforce legislation				
19.1	<i>The Government should not generally become involved in enforcing rules or otherwise regulating in an area where the rules can be reliably enforced by those who are subject to them.</i>			
19.2	<i>Regulatory options should be effective and efficient, workable in the circumstances that they are required to operate in, and be appropriate in</i>			

	<i>light of the nature of the conduct and potential harm they are intended to address.</i>			
Chapter 20: Creating new, or relying on existing, civil remedies				
20.1	<i>Existing civil remedies should be relied on where they are adequate and appropriate for the purposes of enforcement.</i>			
20.2	<i>New civil remedies should only be created where there is a clear need, where it is necessary to achieve the purpose of the legislation, and no existing civil remedy is appropriate.</i>			
Chapter 21: Creating criminal offences				
21.1	<i>Legislation must precisely define the prohibited conduct.</i>			
21.2	<i>Legislation must state what mental element must be present for an offence to be committed.</i>			
21.3	<i>Legislation must identify any specific defences that are available.</i>			
21.4	<i>Legislation must identify who will be liable to criminal conviction and in what circumstances they will be liable.</i>			
21.5	<i>Compelling reasons must exist to justify applying the criminal law to any conduct. The criminal law should be reserved only for conduct that society considers is sufficiently blameworthy to attract the consequences of a criminal conviction.</i>			
21.6	<i>Legislation must state the maximum fine and/or term of imprisonment.</i>			

Chapter 22: Creating infringement offences				
22.1	<i>Infringement offences should be reserved for matters regarded as being of concern to the community and should be prohibited, but do not justify the imposition of a criminal conviction, significant fine, or imprisonment.</i>			
22.2	<i>Infringement offences must be authorised by primary legislation.</i>			
22.3	<i>Section 21 of the Summary Proceedings Act 1957 should apply to all new infringement offences.</i>			
Chapter 23: Creating new pecuniary penalties				
23.1	<i>Consult legal advisors and the Ministry of Justice pending the Government's response to the Law Commission's project.</i>			
Chapter 24: Imposing time limits for enforcement				
24.1	<i>The limitation periods in the Criminal Procedure Act 2011 should apply to all new criminal offences.</i>			
24.2	<i>The limitation periods in the Limitation Act 2010 should apply to all new civil proceedings.</i>			
24.3	<i>Consult legal advisors and the Ministry of Justice pending the Government's response to the Law Commission's project.</i>			
Chapter 25: Creating a system of appeal, review and complaint				
25.1	<i>Legislation should not restrict the right to apply for judicial review.</i>			
25.2	<i>A process of internal review should be provided as the first stage in the</i>			

	<i>complaints/appeal process.</i>			
25.3	<i>All bodies that exercise public functions should be subject to the Ombudsmen Act 1975 unless compelling reasons exist not to do so.</i>			
25.4	<i>Existing commissioners and other specialist statutory office holders should have jurisdiction in respect of decisions relevant to their specialist areas.</i>			
25.5	<i>Appeals against decisions in criminal proceedings should be governed or be consistent with the Criminal Procedure Act 2011.</i>			
25.6	<i>Legislation should identify which of the existing courts or specialist bodies will hear any appeal.</i>			
25.7	<i>Appeals in civil proceedings should be governed by the procedures in the District Court Rules or High Court Rules.</i>			
25.8	<i>Legislation should identify the type of appeal procedure to be adopted.</i>			
25.9	<i>The right to bring first and subsequent appeals should not be unreasonably limited.</i>			
25.10	<i>The subject matter of an appeal should not be unreasonably limited.</i>			
25.11	<i>The appeal procedure adopted should contain adequate safeguards to protect an individual's rights and interests and be consistent with the right to natural justice affirmed by section 27(1) NZBORA.</i>			
Chapter 26: including alternative dispute resolution clauses in legislation				
26.1	<i>ADR provisions should be included in legislation where the potential</i>			

	<i>nature of the dispute is suitable for determination by ADR.</i>			
26.2	<i>The form of ADR adopted should help to achieve the policy objective and be appropriate having regard to the nature of the dispute and the issues in question.</i>			
26.3	<i>Legislation should include those elements of the ADR scheme necessary to ensure the appropriate desired outcomes and procedures are adopted.</i>			