



**LEGISLATION DESIGN AND
ADVISORY COMMITTEE**

Briefing for the Incoming Attorney-General

11 December 2023

Attorney-General

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OVERVIEW

Purpose

1. This briefing provides you with information about your role in supporting the quality, constitutionality, and effectiveness of legislation made by Government. The Legislation Design and Advisory Committee is a key support to you in carrying out this role. This briefing provides information on the Committee's role, functions, and membership, and outlines some key trends in the development of legislation as observed by LDAC.

Key messages

2. As Attorney-General, you have a central role in ensuring that Government legislation is effective in achieving the Government's policy objectives, while being consistent with the rule of law, constitutional norms, and key Crown obligations (including Te Tiriti o Waitangi | the Treaty of Waitangi). You also have a statutory role under the New Zealand Bill of Rights Act 1990 to ensure that inconsistencies with protected rights and freedoms are identified when legislation is considered.
3. There are a number of organisations which contribute to the basic quality of legislation, including: the Parliamentary Counsel Office (PCO), the Crown Law Office (CLO), the Ministry of Justice (MoJ), the Treaty Provisions Oversight Group (TPOG) and the Legislation Design and Advisory Committee (LDAC).
4. LDAC is an important part of the institutional framework to ensure New Zealand legislation is of high quality. It helps best achieve the policy objectives of Parliament with clarity and in conformance with constitutional conventions and the Legislation Guidelines. LDAC supports you in your responsibility for maintaining the rule of law.
5. You appoint the members of LDAC in accordance with LDAC's Terms of Reference. All members contribute their time without remuneration, with secretariat and advisory support provided from PCO's baseline. This represents a significant investment by the public and private sector in quality laws and law-making.

Legislation Design and Advisory Committee

6. The Legislation Design and Advisory Committee (LDAC) was established in 2015 to improve the quality and effectiveness of legislation. It replaced the Legislation Advisory Committee (established in 1986). In 2018 LDAC subsumed the Legislation Design Committee which had been established in 2006 (see LEG Min (15) 2/2 "*Remodelling the Legislation Advisory Committee*" and LEG-18-MIN-0127 "*Adjustment of Legislation Design and Advisory Committee*"). The changes moved LDAC's focus so that it operates both at the pre-introduction stage and at select committee stage, meaning it can provide input early at the critical policy design stages and therefore influence more effectively.

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7. LDAC provides advice on design, framework, constitutional, and public law issues arising out of legislative proposals. It is responsible for maintaining the Legislation Guidelines (the Guidelines), which have been endorsed by Cabinet. LDAC is not concerned with the policy objectives of legislation; its focus is on good legislative practice and public law issues.
8. LDAC's mandate is to improve the quality and effectiveness of legislation by:
 - Advising departments in the initial stages of developing legislation, typically when legislative proposals and drafting instructions are being prepared.
 - Maintaining and updating the Guidelines, together with supplementary material, for officials who design, develop, and draft legislation.
 - Scrutinising and making representations to select committees on Bills that raise issues about compliance with the Guidelines.
 - Providing training and education to develop quality legislation consistent with the Guidelines.
9. LDAC's Terms of Reference set by Cabinet are attached at **Appendix 1**.
10. During the sitting of the 52nd Parliament (November 2017-September 2020) LDAC consulted on approximately 58 Bills and made 13 submissions to select committees. During the 53rd Parliament LDAC consulted on approximately 59 Bills and made 9 submissions. More details about LDAC's operations over this period can be found in the Annual Reports that LDAC produces.

HOW YOU AND LDAC INFLUENCE LEGISLATIVE QUALITY

You appoint members to LDAC

11. LDAC comprises senior public service officials and non-public service advisers from outside of the core public service. Collectively, membership has expert policy, regulatory and legislative skills, drawing on backgrounds in the public and private sectors, and academia. You appoint members to LDAC in accordance with LDAC's Terms of Reference.
12. You may approve specific external members to be involved in LDAC's pre-introduction Bill subcommittees on the advice of LDAC's Chair, after consultation with the chief legal adviser of the department for the relevant Bill. In 2020, the Attorney-General delegated this approval power to the LDAC Chair until such time as it is revoked in writing. This way of operating has been effective as non-approvals were rare and our external members participate in most Bill subcommittees. The Solicitor General provides oversight of the use of the delegation.

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LDAC sets its work programme based on the annual legislation programme

13. A key lever is the annual legislation programme which is settled near the start of each calendar year. In previous years, Cabinet has required departments to indicate whether they intend to engage LDAC on legislative proposals submitted for inclusion in the Legislation Programme.
14. Cabinet Office Circular (21) 2 "*Legislation Guidelines: Cabinet Requirements and Expectations*" states that officials should use the criteria listed in **Appendix 2** when deciding whether to consult with LDAC. These include whether the project is complex or novel, has significant implications for the statute book, or pose obvious risks under the Guidelines.
15. As LDAC advice is usually oversubscribed, LDAC also reviews bids for the Legislation Programme. This allows us to prioritise which Bills we engage on and organise our broader work programme. We prioritise proposals using the criteria listed in **Appendix 2**.
16. There may be cases in which a department has stated that it intends to consult with LDAC, but the Bill does not meet LDAC's criteria. Conversely, LDAC may advise the department if it considers there are proposals that would benefit from LDAC's input, where the Minister has not indicated in the bid that LDAC will be consulted. In those cases, LDAC contacts the department concerned to discuss whether the Bill would benefit from pre-introduction LDAC engagement.
17. Occasionally, your support may be needed to help other Ministers see the advantages of bringing their bills to LDAC for design advice. We will brief you if we consider this is necessary. You may also wish to consider making recommendations to Ministers when the legislation programme is being settled about referring a Bill to LDAC.

LDAC works with departments before introduction

18. LDAC advises departments early in the process of developing policy and legislation. This allows design, framework, public law, and constitutional issues to be addressed early, when there is the most flexibility in design approaches. This is much more than a compliance exercise for departments; it provides an opportunity for them to test policy and legislative frameworks with a body of experienced legislation and regulatory experts.
19. LDAC's role is advisory, and its advice is non-binding. Its working style is collegial and responsive. Departments and Ministers determine whether, or how, to implement LDAC's advice. However, LDAC does ensure that issues interacting with the Guidelines are identified and worked through so that decisions are made transparently and in full understanding of their implications.
20. LDAC's pre-introduction work is done through Bill-specific subcommittees drawn from LDAC's full membership. The subcommittees enable more focused and in-depth conversations, followed up with letters of advice.

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21. The style of working with subcommittees is largely determined by agencies' needs in each case. Subcommittees can work flexibly to consider timeframes and other factors in the development of legislation. Generally, a subcommittee will meet with an agency two to three times over the course of developing legislation.
22. LDAC's operating model is set out in the flow chart at **Appendix 3**.

Ministers indicate compliance with the Guidelines when seeking approval for introduction

23. The Cabinet Manual requires Ministers to identify, in Cabinet papers seeking approval of Bills for introduction, whether any aspects of the legislation depart from the principles in the Guidelines. Cabinet papers are expected to explain and justify any departures. This ensures that there is transparent and informed decision-making by Cabinet.
24. Compliance with the requirement is mixed. Revisions to the procedures of the Cabinet Legislation Committee (LEG) have added more robust scrutiny of legislation against the Guidelines. LDAC is also making efforts to promote the Guidelines through its webinar and seminar programme. This will require ongoing effort and attention.

LDAC comments and reports to the Attorney-General

25. LDAC generally succeeds in achieving design and guidelines compliance improvements through our work with departments. Occasionally we consider an unresolved issue is sufficiently important to warrant a comment in a Cabinet paper. Such an issue would involve a departure from the Guidelines that was serious or contentious or, a difference of opinion between LDAC and a department or Minister over the existence or extent of a departure. In such a case, we may include a comment, or ask for our views to be reflected, in the relevant Cabinet paper. If this arises, we will report in advance to you to ensure you are aware of our concerns. This will also enable you to raise concerns with your Ministerial colleagues if you wish.
26. We report to you sparingly. We are generally able to work through our concerns with the applicable department but recognise that escalation is an important option in certain cases, especially where it would be useful for Ministerial colleagues at the Cabinet Legislation Committee to have a substantive discussion on the issue.

Select committees

27. LDAC reviews and, if necessary, makes submissions to select committees. This usually only occurs on Bills that have not been reviewed by LDAC before introduction. LDAC will always provide a copy of a submission to a select committee to your office, and where practicable, will do so in advance of sending it to the select committee. On occasion, LDAC also works with departmental advisers on issues raised at select committee.
28. LDAC's place in the legislative process is illustrated at **Appendix 4**.

LEGISLATION GUIDELINES

29. LDAC sets standards for good legislation by maintaining the Legislation Guidelines (2021 edition). The Guidelines provide advice and direction about the process of developing legislation and the need for new laws to maintain consistency with basic legal principles. They also provide specific guidance about elements of the content of legislation such as the creation of criminal offences, other remedies, and the delegation of legislative power.
30. The first edition of these Guidelines was published in 2001 and have developed in four editions since then. The Guidelines are regularly reviewed and updated as part of continual improvements. The most recent development is the update from the 2018 edition to the current 2021 edition of the Guidelines. Those updates largely concern the delegation of law-making powers and reflect changes made by the Legislation Act 2019 and the Secondary Legislation Act 2021.
31. We will brief you on any proposed changes to the Guidelines as a consequence of our regular review programme and insights gained from our advice work.

Supplementary material to support the Guidelines

32. So as not to lose the benefit of detail whilst maintaining accessibility, LDAC publishes “supplementary material” to support the Guidelines.
33. The objective of the supplementary material is to provide more detailed information or guidance to assist advisers to address questions or issues raised in the Guidelines, legislative examples to assist advisers to make decisions at the margins of issues, and guidance on areas not covered by the Guidelines.
34. Supplementary material is based on the Guidelines and is not endorsed by Cabinet. The material is intended to be iterative and easily updated by LDAC to keep pace with developments and matters as they arise.

EDUCATION AND ENGAGEMENT

35. LDAC provides education and training about its role, and the Guidelines, as part of its mandate to improve the quality of legislation beyond the specific proposals it directly advises on.
36. Recent seminars have included presentations to policy and legal officials, on how LDAC works and how to engage with us, as well as on using the Guidelines to support good legislative design.
37. Seminars are either held directly by LDAC or are in conjunction with other organisations like the Office of the Clerk, the Government Legal Network, and the Policy Project.

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38. In 2022 LDAC started running live webinars which are recorded and uploaded onto our YouTube channel. The topics are based off issues that LDAC sees recurring. We currently have six videos uploaded and are in the process of uploading our latest webinar which took place in November of 2023.
39. LDAC maintains relationships with cross-government organisations, such as the Office of the Ombudsman, the Policy Project, and the Government Legal Network.

TRENDS AND ISSUES

40. The following are some of the key trends LDAC has seen over the last Parliamentary term. Further information on trends can be found in our annual reports.
41. The trends and issues observed assist LDAC in the development of educational material including seminars, webinars, and supplementary material. LDAC is focussed on providing the necessary guidance to ensure that legislative design is facilitating the policy objectives of Parliament, while maintaining a coherent statute book and complying with constitutional conventions and the Legislation Guidelines.
42. LDAC is not under the illusion that perfection in process and design is achievable but considers that improvements to current processes are both realistic and desirable.

Aligning Operative Provisions with the Policy Objective

43. LDAC routinely provides advice on the importance of a clearly defined policy objective. A clear understanding of the policy objective is the foundation of good legislative design.
44. The operative provisions of a Bill should align with the policy objective underlying the legislative reform. LDAC advises departments to regularly assess and reassess how proposed operating provisions relate, and give effect, to the overarching policy objective. This ensures coherency and consistency and mitigates the risk of unforeseen consequences.
45. When the operative provisions do not align with the policy objective, there are real risks to the clarity and efficacy of legislation. Inconsistency can make the law difficult to interpret and apply which makes the law less certain for users. This can lead to litigation, confusion, unintended consequences and the degradation of trust and confidence in the law.
46. Ways of achieving greater clarity and avoiding unintended consequences include explaining how the operative provisions give effect to the policy objective in the Bill's general policy statement, in a legislative statement, in speeches by the Minister or in advice to the select committee. Including well-designed purpose and/or principle clauses in the legislation may also help address uncertainties.

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Treaty Provisions in Legislation

47. The Cabinet Manual states that the Treaty of Waitangi | Te Tiriti o Waitangi is an integral part of New Zealand's constitutional framework. The Treaty's status will continue to evolve along with other constitutional principles and norms. Constitutional, legal, ethical, and procedural issues associated with the Treaty are likely to remain a focus of discussion and be debated in various settings.
48. Meeting the Crown's obligations under the Treaty | Te Tiriti can be complex. The Māori | Crown relationship is continually developing and as such a single uniform approach would be inappropriate. However, there is scope to improve the consistency of approach across the system.
49. The Treaty Provisions Oversight Group or "TPOG" currently supports the development of considered and coherent Treaty provisions in legislation. TPOG comprises senior representatives from Te Arawhiti, the Ministry of Justice, Te Puni Kōkiri, the Crown Law Office, the Parliamentary Counsel Office and the Department of the Prime Minister and Cabinet.
50. While distinct, the roles performed by LDAC and TPOG overlap in some key respects of how the design of a Bill can influence how Crown obligations are captured. From a design perspective, LDAC's advice has been that standalone treaty provisions which simply refer to the principles of the Treaty are unlikely to be sufficient to meet the Crown's obligations or provide enough certainty and clarity about what is required to give effect to those obligations. LDAC advises officials to first identify what is required in the statutory context to enable the legislation, and the framework it establishes, to be consistent with the Crown's obligations under the Treaty.
51. Once interests are identified, mechanisms for achieving that consistency, including specific references to the Treaty if necessary and appropriate, should be built into the operative provisions of the legislation. Legislation should provide clear decision-making pathways for its users.
52. LDAC recommends to officials consider ['Providing for the Treaty of Waitangi in Legislation and Supporting Policy Design'](#). This document is published by Te Arawhiti and endorsed by Parliamentary Counsel Office/ Te Tari Tohotohu Pāremata, Department of the Prime Minister and Cabinet/Te Tari o te Pirimia me te Komiti Matua, Ministry of Justice, Te Tāhū o te Ture, Te Tari Ture o te Karauna/Crown Law and Te Puni Kōkiri/Ministry of Māori Development.

Having a coherent compliance regime

53. Coherent compliance regimes are essential to the success of their objective. Creating a fully developed compliance model that is effective in dealing with the many forms of non-compliance often requires a combination of tools. The combination of tools should form an effective system, and each tool should be proportionate to the form of non-compliance it is intended to address. Departments should also consider who will monitor compliance and enforce the legislation. In many

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circumstances, the role of achieving compliance and enforcement is given to an expert regulator. A regulator can take many forms.

54. Proposed legislation should clearly identify what level of regulatory intervention is necessary and who will be responsible for ensuring it is complied with. Where a regulator is required, their role should be clearly set out and clearly linked to the purpose of the legislation.
55. The more intrusive a regulator's power, or the more significant the consequences for the individual of the use of the power, the greater the need is for both a strong policy justification and safeguards on the exercise of the power. Justification for powers in an enforcement regime ensures coherency and alignment because regulatory options must be consistent with the purpose of the proposed legislation.
56. LDAC recommends avoiding the temptation to 'pick and mix' compliance tools from various regimes without proper thought to their interaction or analysis of how this will operate in practice. Individual enforcement tools must be justifiable and workable, in both their individual context and in the context of the enforcement regime as a whole. They must ensure that enforcement powers are not too heavy-handed, and penalties are commensurate with the gravity of the relevant offence.

The privilege against self-incrimination

57. LDAC has noticed an increase in the incidence of departments seeking its advice on design issues relating to the gathering and sharing of information. Departments appear to be unsure about how information gathering powers should interact with the privilege against self-incrimination, particularly in a regulatory context.
58. In general, LDAC's advice is that information gathering powers should be proportionate to the objective they are designed to achieve. Effective information gathering regimes successfully balance the need to provide regulators with sufficient tools to achieve compliance against the need to protect individual rights and protections. The more invasive a power is, the greater the justification required. Departments ought to be able to justify why a search power is necessary.
59. Regarding the privilege against self-incrimination, LDAC notes that the privilege predominantly arises in relation to testimonial evidence that is compelled (e.g., verbal evidence via interview, or the creation of a written account document). The application of the privilege to information gathered in a law-enforcement context is relatively straight-forward. Unless expressly overridden in legislation, the privilege will apply.
60. It is less clear how the privilege ought to apply in a broader regulatory context (e.g., inspections, monitoring, mandatory reporting or enforcing compliance). Uncertainty in legislation increases compliance costs and can lead to unnecessary litigation and unforeseen outcomes. If officials consider that the privilege ought to apply, this ought to be expressly stated in the legislation. For example, section 106(5) of the Commerce Act 1986.

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Delegation of Law-making powers

61. Departments frequently ask for advice on whether the delegation of certain matters to secondary legislation is appropriate. Flexibility is commonly stated as the main justification for the delegation.
62. Whether delegating legislation-making to secondary legislation is appropriate is heavily dependent on the context and scope of the specific legislative proposal in question, whereas setting the operational mechanics of implementation will usually be appropriate for delegation.
63. Delegations should not be used as a tool to deal with undecided or ambiguous aspects of the policy at a later stage. The framework and operating model should be developed to the extent that Parliament (including the relevant select committee) have a clear idea of what the secondary legislation will achieve in terms of its policy. This ensures it can be scrutinised properly during the parliamentary process.
64. LDAC often advises that matters delegated to secondary legislation should have appropriate safeguards to ensure the secondary legislation is consistent with the purposes and scope of the empowering Act. Safeguards that should be considered include establishing clear limits on the delegated power(s), including mandatory considerations, consultation and notification requirements, and review as required.
65. LDAC also advises that certain aspects of the proposed delegations are a matter of significant policy that should be included in the primary Act. Too much delegation, or the delegation of key policy matters, has the potential to undermine the transparency and legitimacy of a legislative regime. Likewise, frequent changes to secondary legislation can undermine the certainty of law, especially when these regulations address matters of policy.
66. Improving access to secondary legislation has been another focus. The Legislation Guidelines provide extensive, practical guidance concerning the delegation of powers via legislation. Scrutiny of, and access to, secondary legislation will improve over time but there is still a lot of work to be done. LDAC wishes to acknowledge the work of the Regulations Review Committee on the scrutiny of secondary legislation, and recommends officials review their [report on best practice for publication of secondary legislation](#). LDAC is also aware of the ongoing work of the Parliamentary Counsel Office to improve quality of, and access to, secondary legislation, and recommends officials review [PCO's annual report on legislative practices](#).

Conflicts with existing legislation

67. New legislation must fit into the existing body of law in a coherent way. Any conflicts or interactions between the new and existing laws must be explicitly addressed in the new legislation so that it is clear which law prevails. LDAC often asks agencies how the proposed legislation is intended to interact with specific regulatory regimes or legislation.

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68. Having a complete and comprehensive picture of where the proposed legislation fits in the statutory and common law framework, including an understanding of its similarities to, and relationships with, other regimes, is essential in creating sound law and avoiding issues down the road. This is especially pertinent if there is an intention to reverse a particular judicial decision or trend that has arisen from a series of judicial decisions.
69. In LDAC's experience, issues of conflicts with existing legislation often occur where there is an expedited or pressured policy development process. Undertaking careful analysis of the existing body of law will be critical to ensure any conflicts or interactions between the policy and existing regimes are appropriately addressed in the new legislation. LDAC encourages further analysis, including consultation with the bodies concerned, before any final decisions are made.
70. The consequences of conflicts arising can lead to confusion and unnecessary, costly (in money, time, and resource), litigation.

Necessity of Legislation

71. We continue to see a tendency for new legislation to restate matters that are already addressed in existing legislation. Restating matters increases the risk of unintended consequences arising if the new legislation does not align clearly with the existing legislation. It also creates an incentive for other legislation to restate matters.
72. At times, it may be more appropriate to give effect to the policy objective through non legislative means like improving the understanding of the existing law through education, rather than through legislation.
73. LDAC often provides advice on whether a new piece of legislation is the best vehicle to achieve the policy objective. We have, at times, recommended considering whether specific pieces of existing legislation may provide a better vehicle for an amendment that could achieve the same outcome as the proposed legislation.
74. There have also been instances where the policy objectives being put forward do not appear to *require* legislation. LDAC acknowledges that Governments have, and do, consider that legislation can play an important role in setting expectations in a more general sense and that this is a legitimate reason for legislating. Legislation can be used to promote social change by articulating aspirations and values, even when they are not wholly enforceable. However, LDAC's view is that such legislation should be used sparingly, as overuse can undermine respect for the rule of law.
75. At a practical level, this type of legislation creates potential for unintended risks. Where there is minor to no legal effect intended, it can be easy to miss potential real-world consequences that can occur when legislation is applied in unforeseen scenarios.

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An underlying problem - speed

76. The speed at which legislation is developed underpins many of the issues identified above. Good law requires thorough policy analysis and appropriate scrutiny, both of which require time.
77. The pressure to work efficiently, or to tight timeframes, can come at the expense of scrutiny and adequate processes. These risks are exacerbated by the growing number, size and complexity of the legislation programme.
78. Not all legislative processes pose the same level of risk. The key is to be clear on what is required for each legislative proposal. A well-designed and realistic legislative programme can still achieve significant legislative changes in a relatively short period of time. Significant changes to functioning regimes or the setting up of new regimes will require time.
79. Where possible, “normal” select committee periods (of more than 4 months under Standing Orders) should be adhered to, and all deadlines through the process should account for the complexity and length of the Bill. Although these are not complete solutions, good law provides immeasurable benefits across all facets of society and ensures there is less risk for the Crown.

LDAC MEMBERSHIP AND ADVISORY SUPPORT

80. LDAC members are appointed on staggered terms of two years. There are currently 20 LDAC members including two alternate members and one co-opt member. The LDAC Chair may co-opt up to three additional members to work on specific issues or for limited periods. Acting arrangements are made for public service members if they are away or unable to support LDAC’s work for an extended period. There are alternate arrangements for CLO and PCO members.
81. LDAC meets regularly as a full committee and conducts its business with departments in subcommittees which meet frequently and as required. We will work with your office to find a time when you are able to meet with LDAC alongside one of the full committee meetings.
82. LDAC currently has a vacancy for one public service member and two co-opt members. We will provide you a briefing with information about options for appointments.
83. From the first eight years of operation, it is apparent that a mixture of skills and perspectives is important. Senior public service officials provide expert knowledge on designing regimes and it is valuable to have a spread from different disciplines and different agencies across the public sector. The non-public service members provide expertise in particular subject areas and have an external perspective on legislative design that adds rigour to LDAC’s analysis. This broad membership also increases LDAC’s reach.
84. PCO provides secretariat and advisory support to LDAC out of its baseline. A list of LDAC members is located at **Appendix 5**.

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KEY CONTACTS

85. The following table provides you details of your key LDAC contacts:

Contact	Role and contact details
Mark Steel	Chair of LDAC Director, Regulatory Systems Leadership, Ministry of Business, Innovation and Employment E: Mark.Steel@mbie.govt.nz M: [Redacted]
Sarah Kerkin	Co -Deputy Chair of LDAC Chief Advisor, Office of to the Deputy Secretary, Policy (Ministry of Justice) E: sarah.kerkin@justice.govt.nz M: [Redacted]
Guy Beatson	Co-Deputy Chair of LDAC General Manager, Governance Leadership Centre (Institute of Directors) E: Guy.Beatson@iod.org.nz M: [Redacted]
LDAC SECRETARIAT	E: Contact.LDAC@pco.govt.nz

86. The Chief Parliamentary Counsel and the Deputy Chief Parliamentary Counsel, System and Stewardship sit on LDAC as ex officio members.

87. Cassie Nicholson, the Chief Parliamentary Counsel, will be able to discuss relevant LDAC matters at your meetings with her.

CONCLUSION

88. The members of LDAC are proud of the work they do to support the delivery of high-quality legislation. While often low profile, it is important work. We look forward to supporting you to achieve your government's policy objectives with high-quality legislation.

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APPENDIX 1– LDAC TERMS OF REFERENCE

The Terms of Reference of LDAC are to:	
(a)	provide advice to departments in the initial stages of developing legislation when legislative proposals and drafting instructions are being prepared, including to: <ul style="list-style-type: none">• focus on significant or complicated legislative proposals, basic framework/design issues, instrument choice, consistency with fundamental legal and constitutional principles and impact on the coherence of the statute book;• assist departments with the allocation of provisions between primary and secondary legislation;• provide advice on delegated legislative powers; and• provide advice on the appropriateness of exposure draft Bills.
(b)	report to the Attorney-General on departures from the Legislation Guidelines in legislative proposals.
(c)	advise the Attorney-General on any other topics and matters in the field of public law that the Attorney-General from time to time refers to it.
(d)	help improve the quality of law-making by helping to ensure that legislation gives clear effect to government policy, ensuring that legislative proposals conform with the Legislation Guidelines and discouraging the promotion of unnecessary legislation.
(e)	scrutinise and make representations to the appropriate body or person on aspects of Bills which raise matters of particular public law concern.
(f)	undertake training and education work, relating to the LDAC’s role and the Legislation Guidelines.

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APPENDIX 2 – FACTORS TO CONSIDER IN DECIDING WHETHER TO CONSULT WITH LDAC

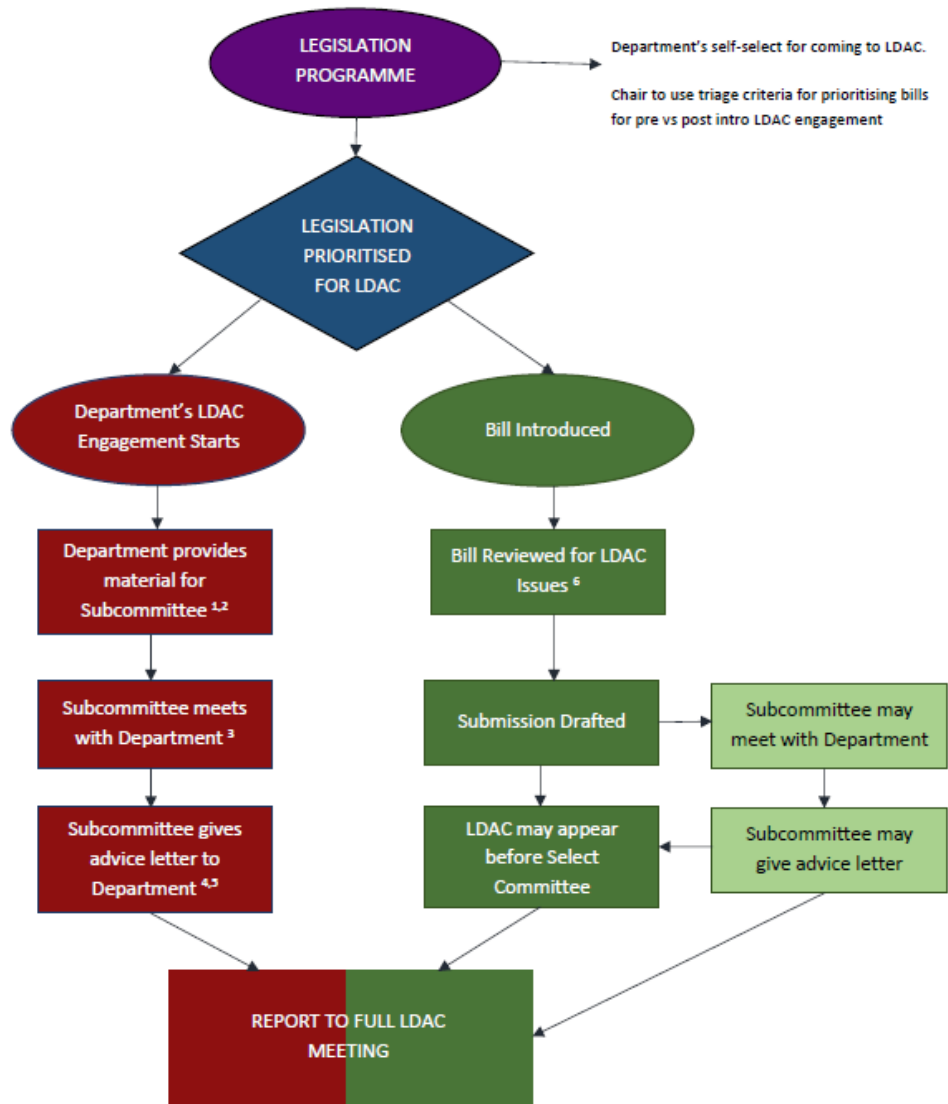
LDAC is likely to be interested in, and departments should consider engaging with LDAC in respect of:

Design Issues
<ul style="list-style-type: none">• A legislative proposal that will create a new principal Act.
<ul style="list-style-type: none">• A legislative proposal that introduces a new regulatory regime (e.g., prohibitions plus licensing, creating an agency, etc).
<ul style="list-style-type: none">• A legislative proposal that creates special operating regimes that supplant existing regulatory schemes.
Issues of Constitutional Importance
<ul style="list-style-type: none">• A legislative proposal that creates significant powers to enter or to seize property or compel provision of information or significantly affects property rights.
<ul style="list-style-type: none">• A legislative proposal that raises human rights issues.
<ul style="list-style-type: none">• A legislative proposal that has special features raising concern such as retrospectivity, or relate to extant legal proceedings, overturn a court judgment, or override contracts or other legal rights.
<ul style="list-style-type: none">• A legislative proposal that involves delegation of powers of exemption (or addition) or empowers delegated legislation to override primary legislation (Henry VIII powers).
<ul style="list-style-type: none">• A legislative proposal that deals with a topic of constitutional significance (e.g., on the structure and powers of courts and tribunals, or affecting Parliament, or the workings of the Executive, or the Crown-Māori relationship).
<ul style="list-style-type: none">• A legislative proposal that calls upon, and may create broad impacts for, tikanga Māori.
Issues involving complex choices
<ul style="list-style-type: none">• A legislative proposal that is likely to impact on the coherence of the statute book (e.g., because of a significant degree of overlap or interaction with other legislation, the common law, or regulators).
<ul style="list-style-type: none">• A legislative proposal that has an international dimension (e.g., attempting to regulate the conduct of overseas entities operating in New Zealand, or New Zealand citizens operating overseas).
<ul style="list-style-type: none">• A legislative proposal that involves complex transitional issues (e.g., moving an area of regulation and associated dispute resolution procedures into a new procedural paradigm).
<ul style="list-style-type: none">• A legislative proposal for a new or significant change to a dispute resolution process.
<ul style="list-style-type: none">• Legislative proposals for a new, or significant amendments to an existing, compliance and enforcement regime.
<ul style="list-style-type: none">• A legislative proposal that raises questions of instrument choice (e.g., involves competing considerations in determining the appropriate divide between primary and secondary legislation).
Other Significant Issues
<ul style="list-style-type: none">• Legislative proposals whose aims might be obtained by executive and administrative action and do not need empowerment by statute.

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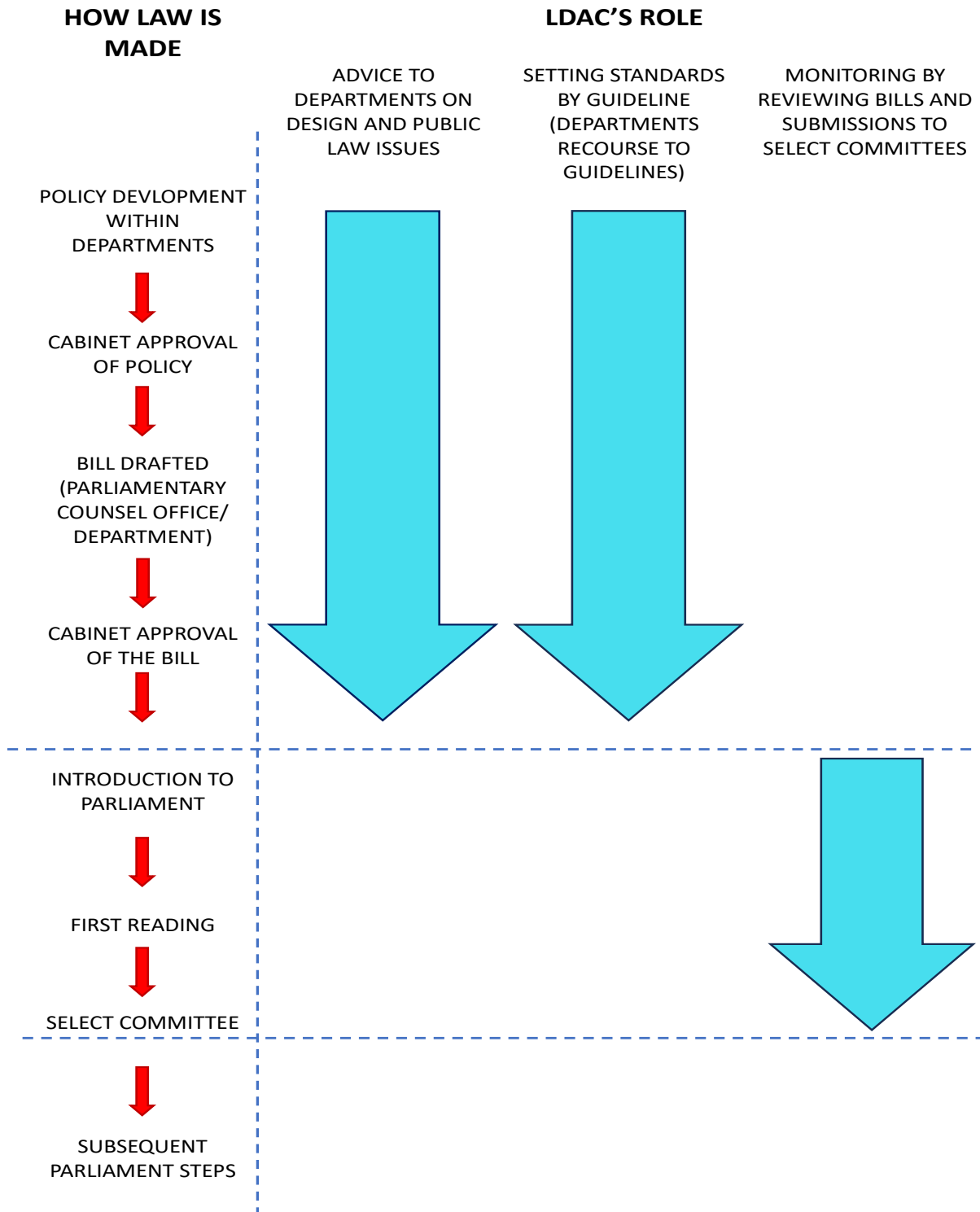
Appendix 3 – BILL SUBCOMMITTEE PROCESS

Bill Subcommittee Process



1. Regular time of Thursdays, 10.30 -11.30AM scheduled for Subcommittees
2. Non-public service members to be appointed by AG on advice of Chair (after conflict check and consultation with CLA of department)
3. Department should consult with PCO drafter on issues identified
4. Letter of advice clearly identifies Guideline issues and next steps
5. Report to the AG if concerns noted in the LEG paper (or LDAC considers they should be). Agreed wording to be used for LEG papers.
6. Regular email of recently introduced Bills sent to all members with note of adviser's analysis.

APPENDIX 4 – WHERE LDAC SITS IN THE LEGISLATIVE PROCESS



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APPENDIX 5 – LDAC MEMBERSHIP

Public service members of LDAC

Name	Role
Mark Steel (Chair of LDAC)	Director Regulatory Systems, Strategic Policy and Programmes Group, Ministry of Business, Innovation and Employment
Sarah Kerkin (Deputy Chair of LDAC)	Chief Advisor to the Deputy Secretary, Policy, Ministry of Justice
Allison Bennett	Director, Legal Services, Ministry of Business, Innovation and Employment
Cassie Nicholson (ex officio)	Chief Parliamentary Counsel, Parliamentary Counsel Office
Dagny Baltakmens (ex officio)	Principal Solicitor, Office of Legal Counsel, Ministry of Justice
Graeme Morrison	Policy Lead, Policy and Strategy, Inland Revenue Department
Jason Gough (ex officio)	Senior Crown Counsel, Crown Law
Jessica Gorman (ex officio)	Policy Advisor (Legal), Department of the Prime Minister and Cabinet
Karl Simpson (ex officio)	Deputy Chief Parliamentary Counsel - System and Stewardship, Parliamentary Counsel Office
Kathy Orpin-Dowell (Crown Law alternate member)	Crown Counsel, System Advice Team, Crown Law Office
Sam Miles	Principal Policy Analyst, Department of Internal Affairs
Scott Murray (Parliamentary Counsel Office alternate member)	Principal Counsel, Parliamentary Counsel Office

Non-public service members of LDAC

Name	Role
Guy Beatson (Deputy Chair of LDAC)	General Manager, Governance Leadership Centre, Institute of Directors New Zealand
Brigid McArthur	Partner, Greenwood Roche
Jonathan Orpin-Dowell	Barrister, Stout Street Chambers
Kelly Hanson-White	Chief Advisor Regulatory Excellence, Regulatory Effectiveness Group, WorkSafe New Zealand
Māmari Stephens (co-opt)	Reader, Te Kura Tātai Ture, Faculty of Law, Victoria University of Wellington
Matthew Smith	Barrister, Thorndon Chambers
Paul Rishworth KC	Barrister, Britomart Chambers
Stuart McGilvray	Chief Legal Adviser, Office of the Ombudsman