



LEGISLATION DESIGN AND ADVISORY COMMITTEE

ANNUAL REPORT

for the year ended 30 June 2017

Report of the Legislation Design and Advisory Committee to the Attorney-General
Paul Rishworth QC, Chairperson

Annual Report of the
Legislation Design and Advisory Committee
for the year ended 30 June 2017

September 2017
Wellington, New Zealand

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CHAIRPERSON'S FOREWORD

This is the Legislation Design and Advisory Committee's second Annual Report since its establishment in June 2015. It covers the Committee's operation from 1 July 2016 to 30 June 2017.

The Committee's second year of operation has been busy – reviewing 32 legislative proposals before introduction, 10 Bills after introduction, and one exposure draft; conducting seminars for departments as part of its educational role; updating the LAC Guidelines; and continuing to refine its system of operating. It is pleasing that much of the Committee's advice has been accepted and implemented by departments, Ministers, and select committees and that there is continuing positive feedback on the Committee's contribution to improving the quality of legislation.

The Parliamentary Counsel Office conducted a review of the Committee and identified areas for enhancing the Committee's activities. These included (1) suggested ways of balancing, on one hand, the importance of early design advice on legislative proposals and, on the other, the desirability of subsequently scrutinizing the detail of significant bills prior to their introduction; (2) more fully harnessing the experience of the Committee's external members; and (3) seeking to have greater impact on legislative quality beyond that which flows from direct engagement on specific legislative proposals. The Committee looks forward to implementing these ideas over the next 12 months.

This report identifies a number of generic issues the Committee has focussed on in its dealings with departments and their legislative proposals.

In addition to updating the LAC Guidelines the Committee is preparing supplementary material to aid those who use them. The updated version of the Guidelines, and supplementary material, will be complete early in the new Parliamentary term.

Paul Rishworth QC

Chairperson

Legislation Design and Advisory Committee

INTRODUCTION

The Legislation Design and Advisory Committee (**LDAC**) was established by the Attorney-General in June 2015 to improve the quality and effectiveness of legislation. It provides advice on design, framework, constitutional and public law issues arising out of legislative proposals. It is responsible for the LAC Guidelines on Process and Content of Legislation (2014 edition) (the **Guidelines**), which have been adopted by Cabinet. LDAC improves 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.
- through its External Subcommittee, scrutinising and making representations to select committees on Bills that raise issues as to their compliance with the Guidelines
- providing training and education as to developing quality legislation consistent with the Guidelines.

See **Appendix 1** for LDAC's Terms of Reference.

LDAC's principal focus is on reviewing legislative proposals and advising departments before introduction. Under LDAC's mandate, an External Subcommittee is empowered to review and, if necessary, make submissions on those Bills that were not reviewed by LDAC before introduction.

MEMBERSHIP AND SUPPORT

LDAC comprises senior officials drawn from across the public service with policy and legislative skills and backgrounds in economics, law, and policy. Members are either ex officio or appointed by the Attorney-General from within the public service. Paul Rishworth QC, Senior Crown Counsel at Crown Law, currently chairs LDAC.

LDAC's External Subcommittee is empowered to make submissions to select committees on Bills that were not reviewed by LDAC before introduction. The External Subcommittee comprises independent advisers from outside the public service, appointed by the Attorney-General. The external members are experienced private sector lawyers and academics. Professor Geoff McLay of Victoria University of Wellington currently chairs the External Subcommittee.

See **Appendix 2** for LDAC's membership.

The Parliamentary Counsel Office provides secretariat, legal, and policy support to LDAC. The Parliamentary Counsel Office supports LDAC out of its baseline with one full-time legal and policy adviser and, since April 2017, one 0.5 administrative assistant. It also currently provides one fixed-term legal and policy analyst (12 months, January 2017 – January 2018) to develop supplementary material.

HOW LDAC OPERATES

This reporting period is the second year of LDAC's operation. LDAC has continued to develop and refine its processes and operation so as to offer timely advice. Feedback – from departments that have consulted with LDAC on legislative proposals and who have worked on Bills that the External Subcommittee has submitted on – identifying areas for improvement has been fundamental to LDAC's continued development.

LDAC met every three weeks over the past year, alternating between meetings attended by departmental officials and parliamentary counsel to consider legislative proposals and strategic meetings at which members discuss cross-cutting developments and design issues of general application across the statute book.

If it considers appropriate, LDAC delegates subcommittees of its members to work closely with officials and parliamentary counsel on legislative proposals. Subcommittees work flexibly within departments' timeframes. Subcommittees generally meet two to three times with officials and parliamentary counsel at key stages during legislative development.

Legislative proposals are identified for consultation with LDAC through the annual legislation programme. Departments are expected to consult LDAC on legislative proposals judged likely to benefit from advice (e.g. those that are complex or novel, or have significant implications for the statute book).

LDAC's role is advisory, its advice is non-binding, and its working style aims to be collegial and helpful. Departments and Ministers determine whether or how to implement LDAC's advice. Ministers must identify in Cabinet papers seeking approval of Bills for introduction (or authorisation for submitting regulations to the Executive Council) whether any aspects of the legislation depart from the principles in the Guidelines. Cabinet papers are expected to explain and justify any departures.

LDAC may report to the Attorney-General where it considers departures from the Guidelines are serious or contentious or LDAC has formed a view that is at odds with a department's/Minister's

view in relation to the existence or extent of a departure, and LDAC considers it is appropriate to flag this matter for the Attorney-General. In some cases, usually those where it has reported to the Attorney-General, LDAC may include a comment or request its views be recorded in Cabinet papers.

The External Subcommittee may make submissions to select committees, but generally will not do so on Bills reviewed by LDAC before introduction. The Secretary provided by the Parliamentary Counsel Office analyses those Bills and reports to the External Subcommittee about the Bills' compliance with the Guidelines. The External Subcommittee then determines whether a submission to select committee is required. Draft submissions to select committees are provided to the LDAC Chairperson for comment and a cover letter from the Chairperson is included with the final submission.

In rare cases, the LDAC Chairperson may determine it is appropriate for the External Subcommittee to make a submission on a Bill already considered by LDAC before introduction, for example where the Chairperson believes there is a significant public interest involved or there are significant matters in a Bill that were not considered by LDAC before its introduction.

ACTIVITIES DURING 2016/2017

Review of legislative proposals and Bills

In 2016/2017, LDAC advised departments in relation to 32 legislative proposals before introduction. Twenty-two of those proposals were new to LDAC in the reporting period and ten were carried over from 2015/2016. LDAC delegated subcommittees to provide detailed advice and assistance to officials and parliamentary counsel on 28 of the 32 legislative proposals. Of those subcommittees delegated, 12 will continue to work or be available to assist departments with legislative proposals in the next reporting year until they are introduced (the remaining subcommittees have concluded their work and the proposals were introduced as Bills).

The LDAC's External Subcommittee made submissions to select committees on 10 Bills, and one submission to a department on an exposure draft Bill, in 2016/2017. **Appendix 3** lists the Bills the External Subcommittee made submissions on.

LDAC reported to the Attorney-General in relation to four legislative proposals.

Legislative proposals and Bills the LDAC engaged with in 2016/2017	
Total legislative proposals reviewed by LDAC before introduction	32
New to LDAC in 2016/2017	22
Carried over from 2015/2016	10
Subcommittees worked closely on	28
Total Bills the External Subcommittee made submissions on	11
To select committees	10
Other submissions (exposure drafts)	1
Total legislative proposals/Bills	43

Common issues arising in the Committee's work during the period

Appendices 4 and 5 list the common issues LDAC has focussed on before introduction and in submissions to select committees after introduction. The issues identified indicate the common aspects of the Guidelines that have been a focus in the course of LDAC's work on particular Bills (though are not necessarily trends for the statute book as a whole).

The most common issues on which LDAC has advised on before introduction relate to:

- delegated law-making and empowering provisions
- relationships with existing law
- creating new statutory powers.

The most common issues on which the External Subcommittee has made submissions to select committees in relation to Bills after introduction relate to:

- creating new statutory powers
- the impact of proposed legislation on rights under the New Zealand Bill of Rights Act 1990
- accessibility and clarity.

Legislation that should be rewritten or revised

In the course of its work with departments on legislative proposals and in submissions to select committees LDAC has noted the following pieces of legislation that are heavily amended and inaccessible, and should be substantially rewritten or revised. It is not an exhaustive list and there are other statutes that will be suitable candidates for rewrites or for the revision programme (submitted by the Attorney-General under the Legislation Act 2012 to each new Parliament).

The accessibility and effectiveness of the statute book as a whole depends on individual pieces of legislation being clear, coherent, not unduly complex, and up to date. LDAC considers the following Acts should be substantively rewritten or revised at the earliest opportunity in advance of or as part of the next set of planned changes to the relevant Act:

- Children, Young Persons, and Their Families Act 1989 now the Oranga Tamariki Act 1989
- Education Act 1989
- Electoral Act 1993
- Telecommunications Act 2001

LDAC encourages departments to discuss options for substantive rewrites or revision with the Parliamentary Counsel Office.

Impact on the quality of legislation

Feedback from departments during LDAC's first year of operation (2015/16) was that proactive and early engagement before final policy approvals is likely to significantly increase the value of engaging with LDAC. In this reporting period, LDAC has mostly engaged with departments prior to final policy decisions or after policy decisions but before drafting is completed. The majority of departments surveyed consider the quality of their Bill was improved by working with LDAC and are very likely to proactively engage with LDAC in the future when developing policy/legislation.

Officials and parliamentary counsel provided feedback that the External Subcommittee's submissions are valued and provide useful independent scrutiny of legislation. The neutrality and independence of the External Subcommittee is particularly valued.

Most of the departments who have worked with LDAC before introduction have implemented its advice. Even where LDAC's advice is not implemented, officials consider working with LDAC helps to clarify and test policy thinking and helps them to prepare for issues likely to come up at select committee.

Many of the External Subcommittee's submissions have been accepted by select committees and resulted in amendments to Bills.

As noted above, LDAC has separated its regular meetings into those discussing specific legislative proposals and strategic meetings to discuss cross-cutting and design issues it is seeing across the statute book. Separating out discussions about cross-cutting and design issues has allowed LDAC to identify common threads and identify areas where to extend its influence beyond specific

legislative proposals. LDAC plans to use discussions at strategic meetings as the basis for developing practice notes that can then be developed into guidance to be included in the Guidelines or supplementary material.

Education programme

LDAC's standing Engagement Subcommittee oversees education and training relating to LDAC's role and the Guidelines. In 2016/2017, LDAC held the following seminars/workshops:

- A seminar in conjunction with the Ministry of Justice and Crown Law about how to legislate consistently with the New Zealand Bill of Rights Act 1990 (July 2016)
- A short presentation about LDAC as part of Victoria University's conference *Advancing Better Government Through Legislative Stewardship* (August 2016)
- A seminar about exhortatory provisions in legislation as part of Victoria University's conference *Advancing Better Government Through Legislative Stewardship* (August 2017)
- A two-part workshop about provisions empowering delegated legislation to override, amend, or suspend primary legislation (sometimes called "Henry VIII" provisions) (October 2016)
- A seminar in conjunction with Cabinet Office and the Parliamentary Counsel Office about preparing legislation bids (November 2016)
- A workshop on designing consultations provisions in statutes (May 2017).

The seminars were well attended with 40 – 60 people officials attending each of the seminars/workshops, and more attending those that were part of larger conferences.

The subject of the seminars/workshops was linked to LDAC's work updating the Guidelines and the common issues LDAC has focussed on in its work to date. In particular, the "Henry VIII" and consultation provisions workshop served multiple purposes of raising the profile of the Guidelines, increasing officials' knowledge of the issues, and allowing LDAC to test its thinking with officials for inclusion in the Guidelines and supplementary material.

Additionally, the Engagement Subcommittee has planned the following seminars for the remainder of the 2017 calendar year:

- two short seminars/workshops on specific chapters of the Guidelines
- a public guest lecture
- scope for department specific seminars
- a session for new and returning Members of Parliament as part of Office of the Clerk's and Select Committee Services' induction programme in the new parliamentary term.

LAC Guidelines (2014 edition) and supplementary material

LDAC's standing Guidelines Subcommittee maintains and is preparing further updates to the Guidelines.

Amendments to the Guidelines will be presented to Cabinet for approval early in the new Parliamentary term. Many of the amendments are small changes to update the guidance. A few chapters will be substantially updated and there will be two new chapters—one providing general advice on good legislative design and the other concerning the creation of legislative obligations to consult.

Supplementary material is being prepared for the Guidelines. The objective of each piece of supplementary material will depend on the subject matter. But the common objective 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. Key areas for supplementary material include guidance on delegated law-making powers, retrospective provisions, and transitional provisions.

The Parliamentary Counsel Office has engaged a Legal and Policy Analyst on a 12-month contract to develop the supplementary material. The Analyst is working under the supervision of Professor Geoff McLay, Chairperson of the External Subcommittee, at Victoria University of Wellington.

PARLIAMENTARY COUNSEL OFFICE'S REVIEW OF LDAC AND REPORT TO CABINET

When Cabinet established LDAC, it determined that the Parliamentary Counsel Office, in consultation with interested departments, would report back to Cabinet on the operation of LDAC after two years of operation.

The Parliamentary Counsel Office undertook its review of LDAC in the last part of the 2016/2017 reporting period. It concluded that LDAC is working well, feedback from departments is positive, and LDAC is adding value to the legislative development process. However, it identified three areas where further improvement can be made:

- Because, as intended, LDAC engages with departments early in the development of legislation, often before drafting has commenced, the full content of completed Bills is not routinely scrutinised for compliance with the Guidelines

- The necessary separation between LDAC’s public service membership and its External Subcommittee can lead to inconsistencies (in advice and submissions) and does not take full advantage of the expertise of the external members
- There is opportunity for LDAC to have greater impact on legislative quality, extending beyond its direct engagement on legislative proposals and Bills.

PCO suggested LDAC can improve these areas and enhance its value by:

- working with the departments to improve their ability to self-vet against the Guidelines
- reviewing and, if necessary, refining how LDAC manages its work programme to ensure it is taking a deliberate, risk-based approach to its involvement with Bills
- enhancing consistency and integration between the internal members of LDAC and the External Subcommittee
- working with departments to improve use of the Guidelines and develop mechanisms to extend LDAC’s influence beyond specific legislative proposals
- reviewing procedural levers to achieve more consistent and transparent treatment of, and compliance with, the Guidelines and reporting on engagement with LDAC.

The Cabinet paper and Cabinet decision are available on the LDAC website.

ACKNOWLEDGEMENTS

LDAC would like to acknowledge the following contributions:

- The Parliamentary Counsel Office for providing and supporting the Secretariat to LDAC
- The LDAC’s public service members’ home departments for supporting their membership of the Committee
- Professor Geoff McLay, External Subcommittee Chairperson, for overseeing the work on updating the Guidelines and developing supplementary material
- The External Subcommittee members for volunteering their time and expertise to make submissions to select committees.



Paul Rishworth QC

Chairperson

Legislation Design and Advisory Committee

APPENDIX 1 – Terms of Reference

The terms of reference of the Legislation Design and Advisory Committee 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:
 - 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, secondary and tertiary legislation;
 - provide advice on delegated legislative powers;
 - provide advice on the appropriateness of exposure draft Bills;
- (b) report to the Attorney-General on departures from the LAC 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 LAC 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 2014 revised Guidelines.

APPENDIX 2 – LDAC Membership

Public service members of LDAC

- Paul Rishworth QC, Senior Crown Counsel, Crown Law Office (Chairperson)
- Andrea King, Chief Advisor, Courts and Justice Services Policy, Ministry of Justice (ex officio)
- Andrea Speir, Manager Legislation, Ministry for Primary Industries
- Anthea Williams, Principal Legal Adviser, Ministry for Primary Industries
- Becky MacNeill, Group Manager, Operational Policy, Ministry for Culture and Heritage
- Cassie Nicholson, Deputy Chief Parliamentary Counsel, Parliamentary Counsel Office (ex officio)
- Fiona Leonard, Chief Parliamentary Counsel, Parliamentary Counsel Office (ex officio)
- Geoff Daniels, Principal Advisor, Ministry for Primary Industries
- Jacqueline Derby, Principal Counsel, Parliamentary Counsel Office (ex officio)
- Jason Gough, Senior Crown Counsel, Crown Law Office
- John Sutton, Principal Policy Analyst, Department of Internal Affairs
- Jonathan Ayto, Principal Advisor, The Treasury
- Karl Simpson, Policy Director, Ministry of Business, Innovation and Employment
- Sarah Kerkin, Chief Advisor to the Deputy Secretary, Ministry of Justice
- Stewart Bartlett, Principal Policy Analyst, Ministry of Social Development
- Tania Warburton, Policy Advisor (Legal), Department of Prime Minister & Cabinet (ex officio),
- Wendy Illingworth, Policy Manager, Ministry of Social Development (reserve member)

The following members joined in 2016/2017

- Andrea King, Chief Advisor, Courts and Justice Services Policy, Ministry of Justice
- Jason Gough, Senior Crown Counsel, Crown Law Office
- Wendy Illingworth, Policy Manager, Ministry of Social Development (reserve member)

External members of LDAC (External Subcommittee)

- Professor Geoff McLay (Chair), Victoria University of Wellington Faculty of Law
- Professor Andrew Geddis, University of Otago Faculty of Law
- Brigid McArthur, Partner, Greenwood Roche
- James Wilding, Barrister, Clarendon Chambers
- Jeremy Johnson, Partner, Wynn Williams
- Jonathan Orpin, Barrister, Stout Street Chambers
- Kate Salmond, Senior Legal and Policy Advisor, Law Commission
- Māmari Stephens, Senior Lecturer, Victoria University of Wellington Faculty of Law
- Martha Coleman, Barrister, Martha Coleman Barrister
- Matthew Smith, Barrister, Thorndon Chambers
- Megan Richards, Partner, Minter Ellison Rudd Watts
- Rebecca Rose, Senior Associate, Bell Gully
- Sean Kinsler, Associate, Meredith Connell
- Simon Mount QC, Barrister, Bankside Chambers
- Tiana Epati, Partner, Rishworth Wall & Mathieson

The following members left in 2016/2017

- David Cochrane, Special Counsel, Simpson Grierson

The following members joined in 2016/2017

- Kate Salmond, Senior Legal and Policy Advisor, Law Commission
- Māmari Stephens, Senior Lecturer, Victoria University of Wellington Faculty of Law
- Rebecca Rose, Senior Associate, Bell Gully

APPENDIX 3 – External Subcommittee submissions 1 July 2016 – 30 June 2017

Submissions made to select committees are available on the LDAC and Parliament websites.

Bill	
1.	Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill
2.	Arbitration Amendment Bill
3.	Domestic Violence – Victims’ Protection Bill
4.	Education (Tertiary Education and Other Matters) Bill
5.	Electoral Amendment Bill
6.	Fire and Emergency New Zealand Bill
7.	Health (Fluoridation of Drinking Water) Amendment Bill
8.	Hurunui/Kaikōura Earthquakes Emergency Relief Bill
9.	New Zealand Intelligence and Security Bill
10.	Trans-Pacific Partnership Agreement Amendment Bill
11.	Trusts Bill (exposure draft)

APPENDIX 4 – Common issues LDAC advised departments on before introduction 1 July 2016 – 30 June 2017

The common issues LDAC advised departments on in relation to legislative proposals before introduction is set out below according to chapters of the Guidelines. The most common chapters LDAC advised on before introduction (Chapters 2, 13, and 16) are further broken down by principles within the chapters.

Relevant Chapter	Specific guideline/principle	Number of legislative proposals that raised issue
Chapter 1 - Defining the policy objective		3
Chapter 2 - How new legislation relates to the existing law		Total: 10
	Any existing legislation that relates to the same matters or implements similar policies to those of the proposed legislation should be identified (2.1)	7
	Any conflict or interactions between new and existing legislation should be explicitly addressed in the new legislation (2.2)	6
	New legislation should not re-state matters that are already addressed in existing legislation (2.3)	4
	Relevant common law rules and principles should be identified (2.4)	1
	Any conflict or interaction between new legislation and the common law should be explicitly addressed in the new legislation (2.5)	3
	New legislation should not address matters that are already satisfactorily dealt with by the common law (2.6).	2
Chapter 3 - Basic constitutional principles of New Zealand		5
Chapter 4 - The Treaty of Waitangi and Treaty Settlements		4
Chapter 5 - New Zealand Bill of Rights Act		2

Relevant Chapter	Specific guideline/principle	Number of legislative proposals that raised issue
Chapter 6 - Discrimination and distinguishing between different groups		1
Chapter 7 - Privacy and dealing with information about people		3
Chapter 8 - Treaties and international obligations		2
Chapter 9 - Dealing with conduct, people and things outside New Zealand		3
Chapter 10 - Applying the statute to the Crown		1
Chapter 11 - Affecting existing rights, duties, situations and addressing past conduct		5
Chapter 12 - Statutory interpretation and the Interpretation Act 1999		0
Chapter 13 - Delegated legislation		Total: 20
	Legislation should not authorise delegated legislation to be made in respect of matters which are appropriate for primary legislation (13.1)	20
	The empowering Act should define clearly the purposes for creating delegated legislation (13.2)	3
	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 (13.3).	4
	All delegated legislation should be subject to an appropriate level of scrutiny, publication and review (13.4)	3
	Appropriateness of Henry VIII powers (13.5)	3
	Incorporation by reference should only be used where it is impractical to do otherwise (13.6)	2
Chapter 14 - Creating powers of exemption		7
Chapter 15 - Authorising the charges of fees and levies		2
Chapter 16 - Creating a new statutory power		Total: 10
	A new statutory power should only be created if no suitable existing power or alternative exists that can achieve the policy objective (16.1)	1

Relevant Chapter	Specific guideline/principle	Number of legislative proposals that raised issue
	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 (16.2)	3
	Legislation should state the extent to which a new power can be delegated (16.3).	2
	Legislation should not create a power that is wider than is necessary to achieve the policy objective (16.4).	3
	Legislation should identify what the power is, for what purposes, and in which circumstances it may be exercised (16.5).	6
	Legislation should include safeguards that will provide adequate protection for the rights of individuals affected by the decision (16.6)	4
Chapter 17 - Creating a new public body		1
Chapter 18 - Creating powers of search, surveillance and seizure		5
Chapter 19 - Ways to achieve compliance and enforce legislation		4
Chapter 20 - Creating new, or relying on existing, civil enforcement remedies		4
Chapter 21 - Creating criminal offences		2
Chapter 22 - Creating infringement offences		2
Chapter 23 - Creating new pecuniary penalties		3
Chapter 24 - Imposing time limits for enforcement		0
Chapter 25 - Creating a system of appeal, review, and complaint		7
Chapter 26 - Including alternative dispute resolution clauses in legislation		0
Design issues (not corresponding to specific Guidelines chapter)	Legislation must be easy to use, understandable, and accessible to those who are required to use it (page 4, Guidelines introduction)	2
	Statutory obligations to consult	1
	Purposes and principles	8
	Regulations should be developed in tandem with primary legislation	2
	Exhortatory/aspirational provisions - “[l]egislation or provisions in legislation that have no legal effect and that are not intended to be enforced are a waste of	5

Relevant Chapter	Specific guideline/principle	Number of legislative proposals that raised issue
	Parliament's time, a needless expenditure of public funds, and bring the law into disrepute."	
	Functions and duties	2
	Legislation should be rewritten / reformed rather than amended	5
	Rushed legislative process may detrimentally impact the quality of legislation	3
	"Principled based legislation" i.e. bald provisions (not primary vs delegated)	2
	Broad design / framework	4

APPENDIX 5 – Common issues LDAC External Subcommittee submitted on in 2016/2017

The common issues the LDAC External Subcommittee submitted on in relation to legislative proposals are set out below according to chapters of the Guidelines. The most common chapters the External Subcommittee submitted on (Chapters 5 and 16) are further broken down by principles within the chapters where possible.

Relevant Chapter	Specific guideline/principle	Submissions made on Bills	Frequency
Chapter 1 - Defining the policy objective		Domestic Violence – Victims’ Protection Bill Health (Fluoridation of Drinking Water) Amendment Bill	2
Chapter 2 - How new legislation relates to the existing law		Domestic Violence – Victims’ Protection Bill Education (Tertiary Education and Other Matters) Amendment Bill Fire and Emergency New Zealand Bill New Zealand Intelligence and Security Bill Trusts Bill	5
Chapter 3 - Basic constitutional principles of New Zealand		Arbitration Amendment Bill Fire and Emergency New Zealand Bill Electoral Amendment Bill	3
Chapter 5 - New Zealand Bill of Rights Act		Arbitration Amendment Bill Electoral Amendment Bill Fire and Emergency New Zealand Bill Hurunui/Kaikōura Emergency Relief Bill New Zealand Intelligence and Security Bill Trans-Pacific Partnership Agreement Amendment Bill	6
Chapter 6 - Discrimination and distinguishing between different groups		New Zealand Intelligence and Security Bill	1
Chapter 7 - Privacy and dealing with information about people		New Zealand Intelligence and Security Bill Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill	2

Relevant Chapter	Specific guideline/principle	Submissions made on Bills	Frequency
Chapter 11 - Affecting existing rights, duties, situations and addressing past conduct		Health (Fluoridation of Drinking Water) Amendment Bill	1
Chapter 13 - Delegated legislation		Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill Domestic Violence – Victims’ Protection Bill Fire and Emergency New Zealand Bill Trans-Pacific Partnership Agreement Amendment Bill	4
Chapter 14: - Creating powers of exemption		Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill Fire and Emergency New Zealand Bill Trans-Pacific Partnership Agreement Amendment Bill	3
Chapter 15 - Authorising the charges of fees and levies		Education (Tertiary Education and Other Matters) Amendment Bill Fire and Emergency New Zealand Bill	2
Chapter 16 - Creating a new statutory power	A new statutory power should only be created if no suitable existing power or alternative exists that can achieve the policy objective (16.1)	Health (Fluoridation of Drinking Water) Amendment Bill Trans-Pacific Partnership Agreement Amendment Bill	6
	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 (16.2)	Fire and Emergency New Zealand Bill Health (Fluoridation of Drinking Water) Amendment Bill New Zealand Intelligence and Security Bill	
	Legislation should not create a power that is wider than is necessary to achieve the policy objective (16.4)	Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill Fire and Emergency New Zealand Bill Hurunui/Kaikōura Emergency Relief Bill New Zealand Intelligence and Security Bill	
	Legislation should identify what the power is, for what purposes, and in which circumstances it may be exercised (16.5)	Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill Health (Fluoridation of Drinking Water) Amendment Bill Hurunui/Kaikōura Emergency Relief Bill Fire and Emergency New Zealand Bill	
	Legislation should include safeguards that will provide adequate protection for the rights of individuals affected by the decision (16.6)	Anti-Money Laundering and Countering Financing of Terrorism Amendment Bill Health (Fluoridation of Drinking Water) Amendment Bill	

Relevant Chapter	Specific guideline/principle	Submissions made on Bills	Frequency
Chapter 18 - Creating powers of search, surveillance and seizure		Hurunui/Kaikōura Emergency Relief Bill New Zealand Intelligence and Security Bill	
		Domestic Violence – Victims’ Protection Bill	3
		Health (Fluoridation of Drinking Water) Amendment Bill New Zealand Intelligence and Security Bill	
		Trans-Pacific Partnership Agreement Amendment Bill	
Chapter 19 - Ways to achieve compliance and enforce legislation		Domestic Violence – Victims’ Protection Bill	2
		Health (Fluoridation of Drinking Water) Amendment Bill	
Chapter 20 - Creating new, or relying on, existing civil remedies (Chapter 20)		Electoral Amendment Bill	1
Chapter 21 - Creating criminal offences		Hurunui/Kaikōura Emergency Relief Bill	1
Chapter 25 - Creating a system of appeal, review, and complaint		Health (Fluoridation of Drinking Water) Amendment Bill	3
		Fire and Emergency New Zealand Bill	
		New Zealand Intelligence and Security Bill	
Chapter 26 - Including alternative dispute resolution clauses in legislation		Fire and Emergency New Zealand bill	1
Design issues (not corresponding to specific Guidelines chapter)	Legislation must be easy to use, understandable, and accessible to those who are required to use it (page 4, Guidelines introduction)	Domestic Violence – Victims’ Protection Bill Electoral Amendment Bill Fire and Emergency New Zealand Bill New Zealand Intelligence and Security Bill Trans-Pacific Partnership Agreement Amendment Bill Trusts Bill	6
	Workability / practicality	Arbitration Amendment Bill Domestic Violence – Victims’ Protection Bill Hurunui/Kaikōura Emergency Relief Bill New Zealand Intelligence and Security Bill Trusts Bill	5
	Statutory obligations to consult	Fire and Emergency New Zealand Bill Health (Fluoridation of Drinking Water) Amendment Bill Hurunui/Kaikōura Emergency Relief Bill	3

Relevant Chapter	Specific guideline/principle	Submissions made on Bills	Frequency
	Purposes and principles	New Zealand Intelligence and Security Bill	1
	Exhortatory provisions - “[l]egislation or provisions in legislation that have no legal effect and that are not intended to be enforced are a waste of Parliament’s time, a needless expenditure of public funds, and bring the law into disrepute.”	New Zealand Intelligence and Security Bill	1
	Functions and duties	New Zealand Intelligence and Security Bill	1
	Prescriptive / detailed legislation vs leaving to fundamental statutory and common law principles	New Zealand Intelligence and Security Bill	1
	Legislation should be rewritten / reformed	Electoral Amendment Bill	1
	Rushed legislative process may detrimentally impact the quality of legislation	Electoral Amendment Bill	1
	Relationship with / overriding Local Authorities	Health (Fluoridation of Drinking Water) Amendment Bill	1