



Cabinet Legislation Committee

LEG (15) 7

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Summary of Paper

5 March 2015

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Remodelling the Legislation Advisory Committee

Portfolio	Attorney-General
Purpose	This paper seeks approval of a proposal to merge the Legislation Advisory Committee (LAC) with the Legislation Design Committee (LDC) to form a smaller design and advisory body to provide advice on legislation.
Previous Consideration	None.
Summary	<p>The NZ Productivity Commission's 2014 report <i>Regulatory Institutions and Practices</i> found that the quality checks on legislation and regulation provided by the LAC and LDC were reducing, fragmented, of varying effectiveness, and under strain. The Commission proposed reorganising the LAC and LDC, or to support them differently, to ensure that they meet their responsibilities.</p> <p>The Attorney-General proposes to revive the LDC and merge it with the LAC into a smaller committee, potentially called the Legislative Design and Advisory Committee (LDAC).</p> <p>It is proposed that the LDAC would be:</p> <ul style="list-style-type: none"> • the responsibility of the Attorney-General; • engaged earlier during the policy and legislative development process when most value may be added; • made up of members of the public service to observe information security requirements. <p>Discussion over the role in vetting Bills of particular interest and to providing submissions to select committees is set out on page 5 of the paper.</p> <p>The proposed role of Ministers in identifying, in their annual legislation bids, legislative proposals that would benefit from LDAC's advice is set out on page 6 of the paper.</p> <p>The role and maintenance of the LAC Guidelines and membership are set out on page 7 of the paper.</p> <p>To evaluate the effectiveness of the proposed changes, it is proposed that the Parliamentary Counsel Office, in consultation with interested departments, report back to Cabinet following the completion of the committee's second year of operation.</p>

Regulatory Impact Analysis	Not required.
Compliance	Not applicable.
Timing Issues	None.
Announcement	<p>The Cabinet Office circular on the 2014 LAC Guidelines will be updated to inform departments about the LDAC and direct them to consult the LDAC when commencing work on proposals and drafting instructions.</p> <p>The proposed changes to the LAC, and the creation of the LDAC will be announced as part of the government's response to the NZ Productivity Commission's report (discussed on pages 2 and 3 of the paper).</p>
Consultation	<p>Paper prepared by Parliamentary Counsel Office. MoJ, Law Commission, SSC, Treasury, MBIE, MPI, MfE, MSD, MoT, Crown Law Office, and IRD were consulted. DPMC were informed.</p> <p>The Attorney-General indicates that discussion is not required with the government caucus or with other parties represented in Parliament.</p>

The Attorney-General recommends that the Committee:

- 1 note concerns:
 - 1.1 that the Legislation Advisory Committee (the LAC) is often brought in too late in the legislation process;
 - 1.2 about the time, resources and effort required by the Law Commission and the Parliamentary Counsel Office (the PCO) to support the LAC in providing submissions on Bills to select committees;
 - 1.3 about the implications of the LAC's large membership of 21 members, drawn from the public sector, universities, and the private sector, some of whom are based outside Wellington;
- 2 note the Legislation Design Committee (LDC) was established in 2006 to complement the LAC by providing high-level, pre-introduction advice to departments to ensure quality legislative frameworks and design prior to introduction of a Bill, but it has not met since Sir Geoffrey Palmer stood down as Chair;
- 3 agree to revive and merge the LDC with the LAC into a smaller committee, potentially called the Legislative Design and Advisory Committee (LDAC), that would operate along the lines of the LDC to provide advice on Bills during their policy and legislative development;

- 4 note the proposed membership of 10 to 12 public service members:
 - 4.1 to be appointed by the Attorney-General;
 - 4.2 to include the current LAC members (ex officio and others), who meet specified criteria;
- 5 agree that the Attorney-General may appoint external members to ad-hoc sub-committees to assist the LDAC with maintenance of the 2014 LAC Guidelines and the LAC Manual;
- 6 agree that the LDAC, through its sub-committees of external members, be able to make a submission on a Bill to a select committee in appropriate cases and that public service members of the LDAC would be acting independently for this purpose;
- 7 agree that the LDAC be chaired by the current LAC chair, the President of the Law Commission, and, at the end of this appointment, the Attorney-General may appoint a new chair from the committee's members;
- 8 agree membership criteria will include expert policy and legislative skills and perspectives, deep and broad experience in drafting legislation and designing legislative structures, knowledge of constitutional principle and regulatory systems and backgrounds in economics, law or policy within the public service;
- 9 agree the PCO will provide secretariat services to the LDAC, based either at PCO or at the Law Commission, from within PCO's current baseline;
- 10 agree that:
 - 10.1 annual Legislation bids will specify whether the committee will be consulted on proposals;
 - 10.2 consultation will be determined by Ministers or the Cabinet Legislation Committee when the Legislation Programme is determined, or by Ministers or other Cabinet committees during the year when Bills are being added to the programme;
- 11 agree that, for 2015:
 - 11.1 PCO and the Department of the Prime Minister and Cabinet will select Bills for consultation from the 2015 Legislation Programme;
 - 11.2 any disagreement will be reported to the Attorney-General, who will seek the advice of the Cabinet Legislation Committee;
- 12 agree that the PCO, in consultation with interested departments, report back to Cabinet on the operation of the Committee following the completion of the committee's second year of operation;
- 13 approve the updating by Cabinet Office of:
 - 13.1 the Cabinet Manual and Cabguide to inform departments about the LDAC and to note Ministers' expectation that departments consult the LDAC on policy proposals that would benefit from consultation, for example, that are significant, or involve complicated legislative design issues;

- 13.2 the Cabinet Office Legislation Bid form to indicate whether proposed Bills will be referred to the LDAC and to remind officials when setting legislative timeframes to factor in appropriate time for the involvement of the LDAC.

Juliet Price
Committee Secretary

Distribution:

Cabinet Legislation Committee
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Office of the Attorney-General

Cabinet Legislation Committee

Remodelling the Legislation Advisory Committee

Proposal

1. This paper seeks agreement to recast the Legislation Advisory Committee (the LAC) and merge it with the Legislation Design Committee (the LDC), but into a smaller joint committee with public service members, to provide expert advice in the initial stages of developing legislation, where most value is added, to improve the quality of legislation.

Executive Summary

2. The LAC has noted that most problems with legislation occur early in the design phase, when it is often too late to make major changes to a Bill after it has been introduced. For this reason, the LDC was established in 2006 to intervene earlier during the development of policy and legislation. The LDC was a smaller committee of public servants, unlike the LAC which is made up currently of 21 public servants and private sector members. There were not the same concerns about the LDC's access to confidential proposals as there were with the LAC. The model worked well but it has not met for several years. Concerns have been raised also about the time, resources and effort required from the Law Commission and the PCO for the LAC to provide its submissions on Bills to select committees.
3. The New Zealand Productivity Commission in its 2014 Report *Regulatory Institutions and Practices* found that the quality checks on legislation appear to be reducing and are of varying effectiveness. Submitters commented that the LAC Guidelines, which contain key constitutional and legal principles that Bills should comply with, are often ignored and approximately half of the Bills reviewed by the Law Commission (on behalf of the LAC) in 2013 and 2014 were materially deficient. The Commission supported reorganising the LAC and LDC to ensure that they:
 - a. provide advice on proposals for legislation at an earlier stage in the policy development process (as the LDC was intended to do), including input from PCO;
 - b. maintain Guidelines about good legislative design;
 - c. review all Bills against those Guidelines;
 - d. make submissions to select committees as appropriate.

4. To address these concerns and improve the effectiveness of the LAC in promoting better legislation, the proposal is to turn the LAC into a smaller legislation design and advisory body of 10 to 12 public servants, to operate along the lines of the LDC, to provide advice earlier during the development of policy and legislation. This is when most value can be added. Advice might be given, for example, on innovative structural approaches, the allocation of provisions between primary, secondary and tertiary legislation and the delegation of legislative powers, consistency with fundamental legal and constitutional principles set out in the 2014 revised LAC Guidelines and the overall coherence of the statute book, and the use of exposure draft Bills.
5. It is expected that the committee would be consulted annually on 20 to 25 Bills. These are likely to be Bills with big structural issues or smaller Bills that raise complex detailed issues. Bills will be identified for consultation through the Legislation bid process at the start of each year and by Ministers and Cabinet during the year. An interim process is suggested for 2015 as Legislation bids have been already submitted. PCO will identify suitable Bills but the decision about consultation will be made by Ministers.
6. Providing advice earlier in the process together with the new requirements for departmental disclosure statements, changes to the Cabinet Committee paper templates (to record compliance with the 2014 revised LAC Guidelines), and an increased select committee focus on legislative scrutiny will reduce the need for submissions to select committees. However, the proposal is to retain a residual vetting power so that the committee will still be able to make submissions to select committees on government Bills that it has not seen, and when doing so, the public service members of the committee would be acting independently. This vetting work may be carried out by external members appointed to sub-committees by the Attorney-General.
7. The committee would be responsible for maintaining the 2014 revised LAC Guidelines and undertake the training and education work, currently done by the LAC, relating to its role and to the revised Guidelines. The intention is that PCO will provide the secretariat services to the committee, based at PCO or at the Law Commission, from within its current baseline.

Background

8. As Attorney-General, I am responsible for the LAC. The LAC is an independent committee that was established in 1986 comprising senior government legal advisors, academics and private practitioners. It is concerned with improving the quality, relevance and effectiveness of government legislation, with a special interest in legal and constitutional principle, and reports to me on public law legislative issues.

9. The LAC's functions in its terms of reference include to:
 - a. provide advice to departments on the development of legislative proposals and on drafting instructions to the Parliamentary Counsel Office;
 - b. report to the Attorney General on the public law aspects of legislative proposals that the Attorney General refers to it;
 - 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. scrutinise and make submissions to the appropriate body or person on aspects of Bills introduced into Parliament that affect public law or raise public law issues;
 - e. help improve the quality of law-making by attempting 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.
10. Because the LAC found most problems occur early in the design phase, when it is often too late to make major changes to a Bill after it has been introduced, the LDC was established in 2006, with Sir Geoffrey Palmer (then President of the Law Commission) as the Chair. The members were the chief executives, or their delegates, of the Ministry of Justice, the Department of Prime Minister and Cabinet, the Crown Law Office, the Parliamentary Counsel Office (the PCO) and the Treasury. Its function was to provide high-level, pre-introduction advice to departments to ensure quality legislative frameworks and design well before introduction of a Bill.
11. The LDC was originally intended to complement the LAC with its high-level, pre-introduction advice. A 2008 evaluation of its operation found that it added value to the development of legislation and its mandate was extended. In its first year, it provided advice on 15 separate legislative matters and users surveyed were positive about it. The LDC model worked well but it has not met since Sir Geoffrey Palmer stood down as Chair.

Comment

12. Primary responsibility for ensuring good legislative design sits with departments promoting new legislation and PCO in drafting new legislation. Recent changes to the LAC Guidelines, requirements for departments to prepare disclosure statements and the proposed Cabinet Office circular that strengthens the compliance statement in the template for Cabinet and Cabinet Committee papers seeking approval to introduce legislation will provide greater consistency and transparency in relation to legislative design. However, there is a further opportunity to make better use of the LAC to support good legislative design. The LAC is often brought in too late in the process to resolve problems in the basic framework and architecture of legislation or to identify potential rule of law issues early on when issues could be designed out of the legislation. Concerns have been raised about the time, resources and effort required from the Law Commission and the PCO for the LAC to provide its submissions on Bills to select committees.

13. The LAC currently has a large membership of 21 members, drawn from the public sector, universities, and the private sector, with some members based outside Wellington. The committee meets regularly but with only some of its members able to attend, although this has improved a little since the Law Commission installed video-conferencing technology.

NZ Productivity Commission

14. The NZ Productivity Commission found in its 2014 report *Regulatory Institutions and Practices* that the quality checks on legislation and regulation appear to be reducing, and are fragmented, of varying effectiveness, and in some cases under strain. The NZ Productivity Commission heard that while officials and Ministers are currently supposed to consider whether draft Bills comply with the LAC Guidelines, in practice they are often ignored. During a meeting with the Law Commission (on behalf of the LAC), the Commission was told that approximately half of the Bills reviewed in 2013 and 2014 were materially deficient. The Law Commission noted that its scrutiny of Bills for the LAC was reducing due to resource constraints.
15. The NZ Productivity Commission proposed reorganising the LAC and LDC, or to support them differently, to ensure that they:
 - e. provide advice on proposals for legislation at an earlier stage in the policy development process (as the LDC was intended to do), including input from PCO;
 - f. maintain Guidelines about good legislative design;
 - g. review all Bills against those Guidelines;
 - h. make submissions to select committees as appropriate.

New Legislation Design and Advisory Committee

16. I propose that the LDC be revived and merged with the LAC into a smaller committee, potentially called the Legislative Design and Advisory Committee (LDAC) that would operate along the lines of the LDC. The LDAC would bring the benefits of both bodies together without the costs and drawbacks of overlapping membership and functions that existed in the LAC/LDC dual arrangement.
17. I would be responsible as Attorney-General for the remodelled committee. The LDC was usually brought in at an early stage before Bills had been drafted (often as policy or drafting instructions were being developed), but not in all cases. The intention is that the LDAC will be engaged much earlier during the policy and legislative development process as this is when most value may be added. If the committee is to be involved at this stage of the process, it is important that Ministers have confidence that Cabinet Office's information security requirements would be observed. To ensure this, I recommend that the remodelled committee's members be drawn from the public service. There are no transitional issues expected to result from the proposed changes.
18. Focussing more on improving quality and preventing deficiencies in legislation before introduction would help remove the current separation between policy development and legislative design. Advice might be given on innovative structural

approaches, the allocation of provisions between primary, secondary and tertiary legislation and the delegation of legislative powers, consistency with fundamental legal and constitutional principles set out in the 2014 revised LAC Guidelines and the overall coherence of the statute book, and the use of exposure draft Bills. Sorting out these key issues earlier should avoid the introduction of Bills with significant flaws, which should in turn reduce the need for the Law Commission, on behalf of the LAC, to spend resources preparing submissions on Bills for select committees.

Residual vetting role

19. The Law Commission would prefer, however, that the committee retain the ability to vet Bills of particular interest and to provide submissions to select committees. I acknowledge that there could be concerns about a committee, made up wholly of public servants, making submissions on government Bills to select committees (even though through external non-public service members appointed by me as Attorney-General to a sub-committee). There is also potential for a subcommittee of non-public servant members to vet Bills to create the potential for conflicting advice if, for example, a subcommittee's views differed from earlier LDAC advice. This is unlikely, however, as the intention is that the LDAC will not make submissions on Bills that it earlier provided design advice on. The LDAC will be able to see Bills at different stages of their development before introduction and make representations to departments and to me as Attorney-General. If I consider a significant matter has not been addressed I will seek Cabinet's decision about it. Exposure draft Bills may provide opportunities for external members of sub-committees to comment and as Attorney-General, I may approach responsible Ministers or seek Cabinet's guidance on issues raised. The proposal that the committee provide advice on Bills, usually before they are introduced, and the new requirements for departmental disclosure statements and changes to the Cabinet Committee paper templates (to record compliance with the 2014 revised LAC Guidelines), lessen the need for the committee to make submissions to select committees on Bills. The new strategic focus of the Office of the Clerk on legislative quality issues (as set out in the Office's Strategic Intentions document 2015 – 2018) which includes increasing staff capability to support select committees in scrutinising disclosure statements may also assist with better legislative design, post-introduction.
20. However, PCO and the Law Commission consider that the role of the committee in providing submissions to select committees should be retained for Bills that the committee has not advised on at the design or later pre-introduction stages – as a fall-back mechanism to enable those Bills that have not been seen by the committee to be vetted against the 2014 LAC Guidelines. This will ensure that an independent and critical voice acts as a guardian of the LAC Guidelines. PCO notes that the LAC has always provided submissions with a mixed membership of public servants and outsiders, and retaining a role for the committee to comment on bills will be an added assurance that the LAC Guidelines are being implemented.
21. I therefore seek Cabinet's agreement that the LDAC be able to make a submission on a Bill to a select committee in appropriate cases and that public service members of the LDAC would be acting independently for this purpose.

Identification of Bills for consultation

22. The proposal is for relevant Ministers to identify, in their annual legislation bids, legislative proposals that would benefit from the Committee's advice. PCO would be able to make recommendations to departments during the development of those bids and, if departments did not agree with PCO's recommendations, PCO could report directly to me as the Attorney-General. I would then raise the matter with Ministers at the Cabinet Legislation Committee's meeting when it approves the legislation programme. Ultimately the decision on which proposals should be referred to the committee would be made by the Cabinet Legislative Committee. This method will also apply to later additions to the programme where the Bill is not so urgent as to preclude involvement of the LDAC. Cabinet papers seeking approvals to implement policy reforms in legislation (that are not on the legislation programme) would indicate whether the LDAC would be involved. Again PCO could report to me if it considered consultation desirable.
23. There will need to be a process for selecting Bills for consultation this year because the Legislation Bid process for 2015 has been completed. I propose that members of the new committee with access to the current Legislation programme, PCO and the Cabinet Office Legislation Co-ordinator, select Bills for consultation from the 2015 Legislation programme. PCO will contact responsible departments about these selected Bills and report to me as Attorney-General. If agreement cannot be reached with individual Ministers on consultation, I will seek the decision of the Cabinet Legislation Committee.
24. The intention is that the committee would provide advice annually on more than the 15 – 20 Bills previously covered by the old LDC but would not include "standard" Bills, such as the Appropriation, Tax, Revision, Statutes Amendment, and Subordinate Legislation Confirmation and Validation Bills. It may identify a range of Bills for consultation, including some that will have big structural issues or other smaller Bills that raise detailed issues. I expect the committee may advise annually on 20 to 25 Bills. The LDAC may not always be involved, as some Bills are developed urgently, and this is a good reason for retaining the committee's residual vetting role.
25. As the LDC did, the LDAC would contact and meet with responsible departments to offer its assistance, discuss and explore legislative vehicle options, the structure of the legislation and any implementation issues. Departments would be expected to consult the LDAC on draft Cabinet Policy and Cabinet Legislation Committee papers for those Bills. In exceptional cases, as discussed above, the committee would be able to report to the responsible department on a Bill and to me as Attorney-General on government Bills that are before select committees. At any time, Ministers or departments would be able to seek advice from the LDAC and PCO would be able to recommend that departments seek advice or to refer Bill proposals directly to the LDAC.

2014 LAC Guidelines

26. The LDAC should be responsible for maintaining the 2014 revised LAC Guidelines (published on the new LAC website at www.lac.org.nz) and the more comprehensive LAC Manual (the old Guidelines). Subcommittees, possibly drawing on academics and others from the private sector, could assist with any updating work, which could continue to be resourced, as the latest rewrite was by PCO secondee(s) to the Law Commission, assisted by parliamentary counsel, departmental lawyers and Crown Law. The LDAC could also oversee the new website provided by PCO and take over the training and education work, currently done by the LAC, relating to the LDAC's role and the 2014 revised Guidelines.

Membership

27. The proposal is for the remodelled committee to have a smaller membership of, perhaps, 10 to 12 public service members appointed by me as the Attorney-General drawn from a larger pool of officials who meet specified criteria. I will also appoint external members to ad-hoc sub-committees to assist with the maintenance of the 2014 LAC Guidelines and the Manual, and with any submissions to select committees on Bills. The appointments of the public servants would be made in consultation with departmental chief executives. A reduced membership would be more flexible and relieve pressure on the Law Commission's resources. It is envisaged that a smaller number of committee members with a special expertise in a particular area may attend meetings on specific legislative projects being assisted by the committee.
28. The functions of the remodelled committee set out in the attached terms of reference would require a significant resource commitment from members with support from the secretariat. The work will be additional to existing workloads in their home departments and the time involved in contributing to the work of the new committee will, therefore, need to be recognised as part of formal position descriptions. Members would need to make sure they could dedicate the necessary time and effort to this work since the work will tend to be time-consuming given the nature of early advisory work to departments on legislative frameworks and based on the experience of former LDC members. They will need to be responsive to requests for assistance from departments and be accessible.
29. Concerns have been raised about disclosing government proposals and Bills to LAC members who work outside Government. This has made it difficult for the LAC to be involved at the early stage of the legislative process. Restricting main committee membership to public sector members will give Ministers confidence that the Cabinet Office's information security requirements would be observed.
30. The new members will need expert policy and legislative skills and perspectives. They should have deep and broad experience in drafting legislation and designing legislative structures, with backgrounds in economics, law and policy within the public service. Ideally, they should have knowledge of constitutional principle and regulatory systems thinking. I am advised that having public servants who were economists and senior policy analysts with substantial legislative experience on the committee helped departments enormously at the design stage. The right

membership is important to bring a broad, whole-of-government approach to legislative design proposals and problems to assist departments in developing their policy proposals into legislation. Members will also need to be able to respond when asked by departments for advice and they may be called on for advice on several initiatives relating to a Bill at different stages during its progress.

31. I propose that membership should be drawn from the existing LAC members *ex officio* and others by invitation via chief executives of key government departments, with a large regulatory portfolio, to those who meet the specified criteria. The current chair of the LAC, the President of the Law Commission, Sir Grant Hammond, would contribute to the LADC's respected and authoritative voice. At the end of his appointment, the Attorney-General may appoint a new chair from its members.

Secretariat

32. Currently MOJ provides administrative secretariat services to the LAC and the Law Commission hosts the new LAC website and Guidelines and handles public inquiries about the Guidelines. The PCO funded the rewrite project for the Guidelines and provided the resourcing for the design and hosting of the LAC website.
33. A smaller committee will require less support than MOJ and the Law Commission are currently providing to the LAC. The Law Commission and MOJ support the proposal for the secretariat function to be provided by PCO from within its current baseline. However, the secretariat will be based at the Law Commission with the current chair for administrative convenience.

Review

34. The committee has the potential to bring about significant improvements in the quality of legislation. To evaluate its effectiveness, I recommend that PCO, in consultation with interested departments, report back to Cabinet on the operation of the committee following the completion of the committee's second year of operation in order that an evaluation of the committee can be undertaken after one cycle of the Legislation Bid process has been completed fully.

Cabinet Office guidance

35. The Government agreed last year to the issue of a Cabinet Office circular about the 2014 LAC Guidelines to alert departments to their revision and to a change from January 2015 to the compliance question in the Cabinet paper templates.
36. I seek approval for the Cabinet Office to update the Cabinet Manual and Cabguide to inform departments about the LDAC and to note the ministerial expectation that departments consult the LDAC on policy proposals that are significant in scope or involve complex legislative design issues. Departments should seek advice about, for example, exposure draft Bills. The Cabinet Manual could remind Ministers and departments that, when timeframes are being set for the development and delivery of legislation, appropriate time should be factored in for the involvement of the LDAC in developing high quality legislation.

37. Unless directed by Cabinet (at a meeting of the Cabinet Legislation Committee or another Cabinet committee), consultation with the LDAC would be voluntary and advice would not be binding. Ministers and departments would remain responsible for the legislation and this would address concerns that this process could slow down or impede ministerial decisions. The advice received could be disclosed in the regulatory impact and legislative disclosure statements prepared for legislation.
38. I seek approval for Cabinet Office to update the Cabinet Manual and Cabguide, and to note Ministers' expectation that departments consult the LDAC on policy proposals that would benefit from consultation, for example, that are significant, or involve complicated legislative design issues to direct them to consult the LDAC when commencing work on significant or complex proposals and drafting instructions. I also seek approval for Cabinet Office to update the Legislation bid template form to indicate whether proposed Bills should be referred to the LDAC.

Consultation

39. The Ministry of Justice, the Law Commission, the State Services Commission, the Treasury, the Ministry for Business, Innovation, and Employment, the Ministry for Primary Industries, the Ministry for the Environment, the Ministry of Social Development, the Ministry of Transport, the Crown Law Office and the Inland Revenue Department were consulted on this paper. The Department of Prime Minister and Cabinet was informed.
40. The LAC members were informed at a committee meeting last year about possible changes of emphasis for the LAC to get the LAC involved at an earlier stage in LDC-type work. But the committee was not given the details of the current proposal, such as the proposal to cut down the membership. Current private sector members may be co-opted onto the smaller ad hoc committees.

Financial and Legislative Implications

41. The paper has some financial implications in that the Law Commissions' cost pressures will be reduced if it no longer has the vetting function, and PCO funds the committee's secretariat services, so that resources currently allocated to these functions can be re-employed in its core law reform work. There will be an increase in costs for those departments from whom the LDAC members are drawn but it is expected this cost will be met from within existing baselines.
42. The paper has no direct legislative implications in that legislation is not required to implement the proposals.

Human Rights

43. Not applicable.

Regulatory Impact Analysis

44. Not applicable.

Publicity

45. The Cabinet Office circular about the 2014 LAC Guidelines will be updated to inform departments about the LDAC and to direct them to consult the LDAC when commencing work on proposals and drafting instructions.
46. The proposed changes to the LAC, and the creation of the LDAC, will be announced as part of the Government's response to the NZ Productivity Commission's report (as discussed in paragraphs 8 to 9).

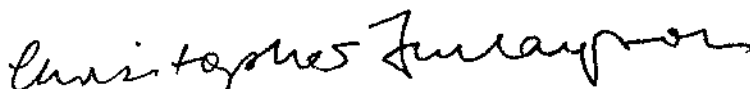
Recommendations

47. I recommend that the Committee:

1. **note** concerns that the Legislation Advisory Committee (the LAC) is often brought in too late in the legislation process to resolve problems in the basic framework and architecture of legislation or to identify potential rule of law issues early on when issues could be designed out of the legislation, and concerns about the time, resources and effort required from the Law Commission and the PCO for the LAC to provide its submissions on Bills to select committees.
2. **note** the LAC's large membership of 21 members, drawn from the public sector, universities, and the private sector, has resulted in concern about disclosing government proposals and Bills to LAC members who work outside Government and the difficulty in getting all members, some of whom are based outside Wellington, to attend meetings.
3. **note** the Legislation Design Committee (LDC) was established in 2006 to complement the LAC by providing high-level, pre-introduction advice to departments to ensure quality legislative frameworks and design prior to introduction of a Bill, but it has not met since Sir Geoffrey Palmer stood down as Chair.
4. **agree** to revive and merge the LDC with the LAC into a smaller committee, potentially called the Legislative Design and Advisory Committee (LDAC), that would operate along the lines of the LDC to provide advice on Bills during their policy and legislative development, with, perhaps, 10 to 12 public service members appointed by the Attorney-General, including the current LAC members ex officio and others, by invitation via chief executives of relevant departments to those who meet specified criteria.
5. **agree** that the Attorney-General may appoint external members to ad-hoc sub-committees to assist the LDAC with maintenance of the 2014 LAC Guidelines and the LAC Manual.
6. **agree** that the LDAC, through its sub-committees of external members, be able to make a submission on a Bill to a select committee in appropriate cases and that public service members of the LDAC would be acting independently for this purpose.
7. **agree** that the LDC be chaired by the current LAC chair, the President of the Law Commission, and, at the end of this appointment, the Attorney-General may appoint a new chair from the committee's members.
8. **agree** membership criteria will include expert policy and legislative skills and perspectives, deep and broad experience in drafting legislation and designing

legislative structures, knowledge of constitutional principle and regulatory systems and backgrounds in economics, law or policy within the public service.

9. **agree** the PCO will provide secretariat services to the LDAC, based either at PCO or at the Law Commission, from within PCO's current baseline.
10. **agree** annual Legislation bids will specify whether the committee will be consulted on proposals and consultation will be determined by Ministers or Cabinet Legislation Committee when the Legislation Programme is determined, or by Ministers or other Cabinet committees during the year when Bills are being added to the programme.
11. **agree** that for 2015, PCO and the Department of the Prime Minister and Cabinet (members of the committee), will select Bills for consultation from the 2015 Legislation programme and report to the Attorney-General if there is disagreement and the Attorney-General will seek decisions about consultation by Ministers of Cabinet Legislation Committee.
12. **agree** that the PCO in consultation with interested departments report back to Cabinet on the operation of the Committee following the completion of the committee's second year of operation.
13. **approve** the updating by Cabinet Office of:
 - a. the Cabinet Manual and Cabguide to inform departments about the LDAC and to note Ministers' expectation that departments consult the LDAC on policy proposals that would benefit from consultation, for example, that are significant, or involve complicated legislative design issues;
 - b. the Cabinet Office Legislation Bid form to indicate whether proposed Bills will be referred to the LDAC and to remind officials when setting legislative timeframes to factor in appropriate time for the involvement of the LDAC.



Hon Christopher Finlayson

Attorney-General

27/2/2015

Attachment: Terms of Reference for the remodelled committee

Legislation Design and Advisory Committee: Terms of Reference

Functions

The functions of the Legislation Design and Advisory Committee (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:
 - 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.

Membership

A committee of 10 to 12 members drawn from a larger pool of officials who meet specified criteria, consisting of existing LAC members ex officio and others, by invitation via chief executives of relevant departments. Criteria include expert policy and legislative skills and perspectives, deep and broad experience in drafting legislation and designing legislative structures, knowledge of constitutional principle and regulatory systems and backgrounds in economics, law or policy within the public service. The committee would be chaired by the current chair of the LAC, the President of the Law Commission, and at the end of this appointment, the Attorney-General may appoint a new chair from the members

The Attorney-General would be able to appoint external members to ad-hoc sub-committees to assist with maintenance of the 2014 LAC Guidelines and the Manual, and with any submissions to select committees on Bills.