



LEGISLATION DESIGN AND ADVISORY COMMITTEE

ANNUAL REPORT

1 January 2021 to 31 December 2021

Report of the Legislation Design and Advisory Committee to the Attorney-General

Annual Report of the
Legislation Design and Advisory Committee
for 1 January 2021 to 31 December 2021

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Wellington, New Zealand

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CHAIR'S FOREWORD



Tēnā koutou katoa. Nau mai, haere mai.

This is the Legislation Design and Advisory Committee's sixth Annual Report since its establishment in June 2015. It covers the Committee's operation for the 2021 calendar year. This reporting period aligns with the Parliamentary calendar and the Government's annual legislative programme.

The Legislation Design and Advisory Committee aims to *promote quality legislation*. We do this by providing advice on legislative design during the development of Government Bills, by making submissions to select committees on Bills following introduction, by providing education and training, and by maintaining the Legislation Guidelines. We do this work through committee members appointed by the Attorney-General, with support from the secretariat that sits within the Parliamentary Counsel Office.

Committee members are drawn from both the public and private sector, and include public servants, consultants, academics, and practising lawyers. We continue to do most of our work through Bill-specific subcommittees drawn from our full membership. This year we started trialling a similar subcommittee approach to our Education & Engagement and Guidelines work-programmes. The ability to draw on our full membership flexibly enables us to obtain maximum benefit from the breadth and depth of the expertise across our members. Regular meetings of the whole committee are held every two months.

We have seen a number of key trends this reporting period. To those interested in legislative design these will not be new. They include: determining whether, and if so how, to express policy objectives and purposes in legislation, creating new statutory powers, allocating policy between primary and secondary legislation and designing appropriate offences.

This reporting period marked the second year of significant disruption to the Government's legislative programme caused by the COVID-19 pandemic. Despite these disruptions, we were still able to advise on 35 Bills (compared to 24 Bills in the previous year and 35 in the year before that). We also made a submission to the Environment Committee on its inquiry into the Natural and Built Environments Bill. This demonstrates a significant commitment on behalf of the Committee and departmental advisers given the ongoing challenges in responding to the global pandemic. The Committee appreciates the effort to engage that departments have made during this period.

In addition to its Bill subcommittee work, this year saw the Committee update the Legislation Guidelines to reflect changes made by the Legislation Act 2019, the Secondary Legislation Act 2021, and a number of other changes to key pieces of legislation. The key changes are in

Chapter 13 “Interpretation and application of legislation” and Chapter 14 “Delegating law-making powers”. We also launched the LDAC Webinar series, which is now available on our very own [YouTube channel](#). Watch this space for more LDAC content.

My continued appreciation goes to the Attorney-General for his support for the Committee and its work in the reporting period. I’d also like to take this opportunity to formally acknowledge and thank the Committee’s former chair, Karl Simpson, for the immense contribution he has made to the Committee since taking over the role in 2018. Karl has left the Committee in a strong position and we are delighted that we will continue to have the benefit of his expertise as the ex officio member for the PCO, Deputy Chief Parliamentary Counsel - System and Stewardship.

Finally, I’d like to extend my gratitude to all of our current and former members (and their employers) for continuing to give their valuable time, without charge. It is a true public service. And most importantly I thank the Parliamentary Counsel Office for their support for the work of the Committee.



Mark Steel

Chair

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 Legislation Guidelines (2021 edition) (the Guidelines), which have been adopted by Cabinet.

LDAC seeks 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; and
- providing training and education to develop quality legislation consistent with the Guidelines.

LDAC's principal focus is on reviewing legislative proposals and advising departments before Bills are introduced to Parliament.

See Appendix 1 for LDAC's Terms of Reference.

TRENDS

In this section, key trends LDAC has seen are discussed. LDAC is not under the illusion that perfection in process and design is achievable, but that does not mean that current processes cannot be improved.

SPEED THROUGH THE HOUSE

LDAC continues to be concerned about the speed at which legislation proceeds through the House. "Normal" select committee periods (of more than 4 months under Standing Orders) are always best, as it allows submitters, advisers and lawmakers time to gather their thoughts and provide a fresh perspective on a Bill. It also recognises that the House and the Government has other business to progress.

Having said this, we appreciate that a "Normal" select committee period is not always possible. In our view, even extremely short select committee stages are usually beneficial to legislative quality. We are reluctant to recommend minimum select committee periods (whether measured in weeks or days), on the basis that this risks becoming the norm.

Shortened select committee processes should be avoided but if they are necessary the period for which the Bill is considered by the select committee should be judged on the individual merits and necessity.

EXPRESSING PURPOSES AND PRINCIPLES IN LEGISLATION

LDAC has continued to see an increase in the number of proposals that use purpose and principle clauses in Bills.

While purpose and principle clauses are useful tools that can carry out multiple functions, LDAC's concern remains that agencies are including such clauses in Bills without first identifying the precise function they are intended to perform.

When poorly articulated or thought through, these clauses can introduce complexity and uncertainty into legislation, resulting in unforeseen outcomes and potentially litigation. One key risk to avoid is creating stand-alone rights or duties in these clauses. A purpose or principle clause is not a substitute for a substantive provision. Rather, they ought to inform, and be informed by, the substantive provision.

ALLOCATING POLICY BETWEEN PRIMARY AND SECONDARY LEGISLATION

Another matter that agencies frequently ask LDAC's advice on is whether the delegation of certain matters to secondary legislation is appropriate. Flexibility is often cited as the justification for delegation.

Whether delegating legislation-making to secondary legislation is appropriate is heavily dependent on the context and scope of the specific Bill in question. In general terms, matters of significant policy should be included in the primary legislation, whereas setting the mechanics of policy implementation will usually be appropriate for delegation.

Where matters are delegated to secondary legislation, there should be appropriate safeguards to ensure that 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 periodic review.

CREATING NEW POWERS

New statutory powers should only be created if there is no suitable existing power capable of achieving the policy objective. Duplication of powers undermines certainty in the law and the coherence of the statute book.

Where new powers are necessary, the power should be limited to what is necessary to achieve the policy objective. If the exercise of the power has the capacity to affect the rights of individuals, it should be subject to safeguards commensurate with the interference with those rights. Powers should be held by those with an appropriate level of expertise, authority and accountability.

COMPLIANCE AND ENFORCEMENT REGIMES

Discussions with departments during the reporting period have often included the best way to achieve compliance with, and enforce, legislation.

LDAC advises agencies preparing a proposed enforcement regime to create a clear and coherent strategy for enforcement. 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.

LDAC is developing supplementary materials, and considering changes to the Guidelines, to assist agencies in the design of compliance and enforcement frameworks.

LDAC MEMBERSHIP AND ADVISORY SUPPORT

LDAC comprises senior public service officials and non-public service advisers from outside of the core public service. Members are either *ex officio* or appointed by the Attorney-General. Collectively, they have expert policy and legislative skills, and backgrounds in economics, law, policy, and academia.

There are currently 20 members including 12 public service members. 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 Crown Law and PCO. See Appendix 2 for LDAC's current membership.

The Parliamentary Counsel Office provides secretariat and advisory support to LDAC out of its baseline. The LDAC secretariat comprises two advisers and an administrative assistant.

LDAC STRUCTURE

LDAC meets every two months as a full committee, where it discusses key strategic issues as well as regular developments in train to support the Guidelines as well as Education and Engagement matters. These meetings are an opportunity for the Chairs of the LDAC pre-introduction Bill subcommittees to report back to the whole committee on the key Guidelines issues the subcommittee engaged on, and the subcommittee's position on key issues. These report backs help to ensure consistent advice across the subcommittees and to identify any recurring themes.

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 with departmental advisers who are developing Bills, followed up with written advice.

LDAC continues to review Government Bills introduced and, if necessary, makes submissions to select committees. On occasion, we work with departmental advisers on issues raised at select committee. See Appendix 3 for LDAC's operating model.

In addition to its Bill-specific work, LDAC carries out two other distinct work-programmes: its Guidelines work-programme and its Education and Engagement work-programme.

GUIDELINES WORK-PROGRAMME

The Guidelines work-programme has two main objectives. The first is to ensure that the Guidelines remain up-to-date and fit for purpose. The second is to develop and publish additional advisory material to supplement the Guidelines. While the objective of each piece of supplementary material will depend on its subject matter, the common objective is to provide more detailed information or guidance to assist advisers to address specific questions or issues raised in the Guidelines. Supplementary material to the Guidelines is available on LDAC's website.¹

Up until the meeting of the full committee in September 2021, the Guidelines work-programme was the responsibility of the Guidelines Subcommittee, which met approximately every two months to discuss recurring themes and to consider whether LDAC should publish supplementary materials on these and other matters.

At the meeting of the full committee in September 2021, LDAC resolved to disestablish the Guidelines Subcommittee and change how it progresses the Guidelines work-programme. The full committee now sets the Guidelines work-programme and each individual piece of work is progressed through bespoke subcommittees of around 4 members drawn from LDAC's full membership. This model is based off the Bill subcommittee model, which has proven to be efficient.

EDUCATION AND ENGAGEMENT WORK-PROGRAMME

The Education and Engagement work-programme focuses on ways to improve both public and private sector knowledge of the Guidelines and good law-making, and raising LDAC's profile.

Prior to September 2021, the work-programme was progressed through the Education and Engagement subcommittee. At the same meeting in September 2021 (referred to above), the

¹ See 'Supplementary material to the Legislation Guidelines' here: <http://www.ldac.org.nz/guidelines/supplementary-materials/>

Education and Engagement subcommittee was disestablished. The Education and Engagement work-programme is now progressed through bespoke subcommittees.

In 2021, LDAC held its inaugural webinar LDAC 101 “*Introduction to LDAC*” and launched its own YouTube channel. The webinar was well received and can be viewed by following the links on LDAC’s website.

In addition, LDAC partnered with other organisations to deliver various multi-disciplinary presentations including:

- two Policy to Legislation seminars for those new to government, hosted by the PCO and the Office of the Clerk;
- a webinar with the Government Legal Network exploring the different roles policy makers and government lawyers play in the legislative process; and
- a presentation to the Chairs of Select Committees relating to the roles of LDAC and the Parliamentary Counsel Office.

LDAC continues to maintain relationships with other cross-government organisations, such as the Office of the Ombudsman, the Policy Project, and the Government Legal Network.

HOW LDAC OPERATES

This reporting period covers the sixth year of LDAC’s operation. LDAC has continued to develop and refine its processes and operation to offer timely advice. Feedback from departments that LDAC has engaged with has been fundamental to LDAC’s continued development.

Bills are usually identified for LDAC consultation through the annual legislation programme. Officials indicate whether they intend to refer a Bill to LDAC in legislation bids seeking priority for a Bill on the legislation programme. Once a Bill is referred to LDAC, a subcommittee of around four members will meet with the relevant department to discuss the Bill. Parliamentary Counsel also participate in these discussions.

The Attorney-General is able to approve specific non-public service members to sit on 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.

Departments are expected to consult LDAC on legislative proposals if the proposal is:

- for a significant new principal Act
- likely to impact on the coherence of the statute book (for example, because of a significant degree of overlap or interaction with other legislation)

- likely to be inconsistent with the principles in the Guidelines (particularly those relating to fundamental and constitutional principles).

Departments may also refer a legislative proposal to LDAC if the proposal:

- raises basic framework or design issues, or choice of secondary legislation
- would benefit from advice on how to best to apply or ensure consistency with the Guidelines.

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. LDAC appreciates the effort departments make to engage with it early.

Ministers must identify in Cabinet papers seeking approval of Bills for introduction (or authorisation for submitting secondary legislation 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 from the Guidelines.

LDAC may report to the Attorney-General when it considers departures from the Guidelines are serious or contentious. If LDAC forms a view that is at odds with a department's or Minister's view about the existence or extent of a departure, LDAC may consider it 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 relevant Cabinet papers.

LDAC reports to the Attorney-General sparingly. LDAC is generally able to work through its concerns with the applicable department, but recognises that reporting to the Attorney-General is an important escalation option in certain cases, especially where it would be useful for the Cabinet Legislation Committee to have a substantial discussion on the issue.

LDAC may also make submissions to select committees on Bills that raise legislative design issues. In rare cases, the LDAC Chair may decide that it is appropriate to make a submission on a Bill already considered by LDAC before introduction. For example, LDAC may make a submission where the Chair believes there is a significant public interest involved or there are significant matters in a Bill that were not considered by LDAC before the Bill's introduction.

ACTIVITIES DURING 2021

REVIEW OF BILLS AND SUBMISSIONS

In the reporting period (from January 2021 to December 2021), LDAC advised departments on 35 Bills. 24 of the 35 Bills were new to LDAC in the reporting period, and 11 were carried over from previous years.

LDAC made a submission to the Environment Committee on the Natural and Built Environments Bill. That submission can be found on LDAC's website.²

LDAC expected that the continued effects of the COVID pandemic might have led to a decrease in the number of Bills LDAC was able to advise on. However, the Committee advised on 35 Bills in 2021, compared to 24 in 2020 and 35 in 2019 (pre-COVID 19). This represents a significant and continuing commitment on behalf of the LDAC members and departmental advisers given the circumstances.

Bills LDAC engaged with and submissions LDAC made in 2021

Total Bills reviewed by LDAC	35
New to LDAC 01/01/2021 – 31/12/2021	24
Carried over from previous years	11
Total Bills LDAC made submissions on to select committees	1
Total Bills/submissions	36

COMMON ISSUES ARISING IN THE COMMITTEE'S WORK DURING THE PERIOD

Appendix 4 lists the issues that LDAC focused on when advising departments on Bills and in submissions to select committees after a Bill's introduction. The issues indicate the common aspects of the Guidelines that have been a focus in the course of LDAC's work across a number of Bills. These are not necessarily trends for the statute book as a whole.

LDAC's discussions with departments focused most frequently on:

- the relationship between the new legislation and existing law, particularly the need for legislation to explicitly address any conflicts;
- assisting departments to identify the policy objectives and purposes of the new legislation and how this should be expressed in the legislation;
- the appropriateness of subject matter for primary or secondary legislation;
- assisting departments to develop a coherent enforcement regime that is both effective and proportionate; and
- whether a new statutory power should be created, who will hold the power, and the nature of that power.

² See 'Submissions for 2021' here: <http://www.ldac.org.nz/submissions/new-submission-year-page-4/>.

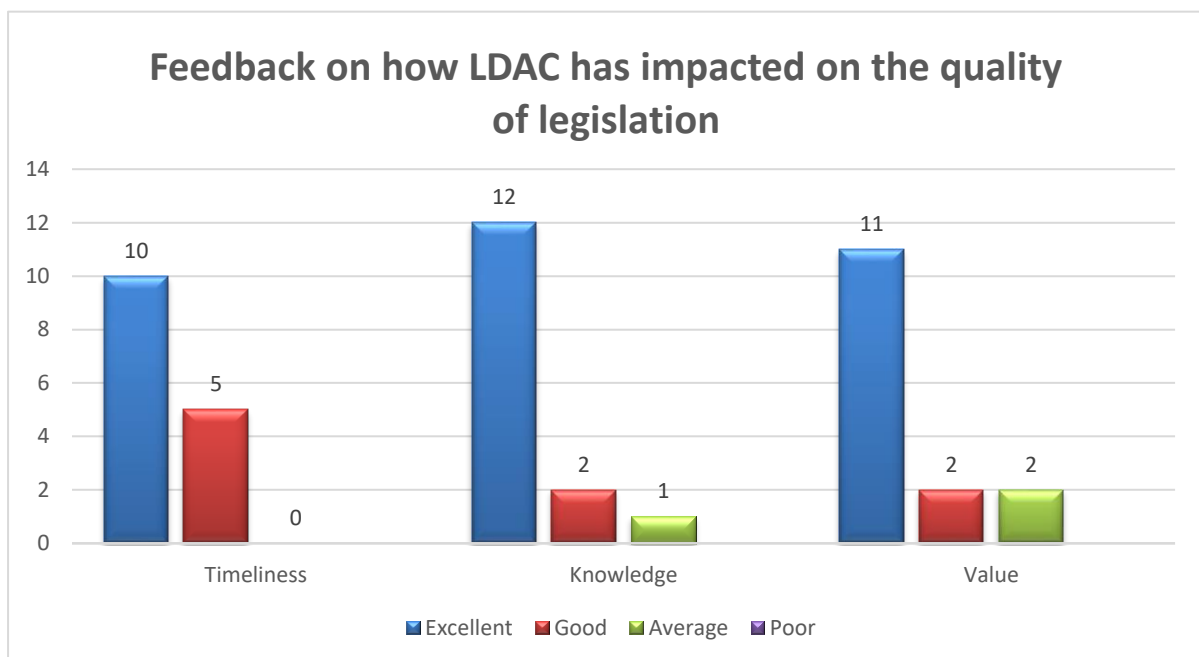
LDAC's submission on the Natural and Built Environments Bill was focussed on:

- addressing the precise functions that purpose and principle clauses are intended to perform, including balancing conflicting purposes and principles;
- ensuring that the Bill's underlying principles are properly integrated in the operative provisions of the Bill; and
- the scope of delegated secondary legislation-making powers.

FEEDBACK ON HOW LDAC HAS IMPACTED ON THE QUALITY OF LEGISLATION

During the reporting period, LDAC has primarily continued to engage with departments prior to final policy decisions, or after policy decisions but before drafting is completed.

The graphs below show the results received in 2021. The responses are from 15 completed surveys relating to LDAC's timeliness, knowledge and value.



ACKNOWLEDGEMENTS

LDAC would like to acknowledge the following contributions:

- PCO for providing and supporting the Secretariat to LDAC;
- both public service and non-public service members for their time this year, especially given the ongoing challenges caused by Covid 19; and
- LDAC's public service members' home departments for supporting their membership of the Committee;
- departments' willingness to engage with LDAC; and
- the secretariat for keeping things organised and delivering advice, often under difficult circumstances.

APPENDIX 1 – TERMS OF REFERENCE

Terms of reference of the LDAC	
(a)	<p>provide advice to departments in the initial stages of developing legislation when legislative proposals and drafting instructions are being prepared, including to:</p> <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 • 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.

APPENDIX 2 – LDAC MEMBERSHIP

PUBLIC SERVICE LDAC MEMBERS

Name	Role
Mark Steel (Chair of LDAC)	Director, Regulatory Systems Leadership, 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
John Sutton	Principal Policy Analyst, Policy Group, Department of Internal Affairs
Justine Falconer (Crown Law alternate member)	Manager, System Advice, Crown Law
Karl Simpson (ex officio)	Deputy Chief Parliamentary Counsel - System and Stewardship, Parliamentary Counsel Office
Scott Murray (Parliamentary Counsel Office alternate member)	Principal Counsel, Parliamentary Counsel Office
Tania Warburton (ex officio)	Advisor (Legal), Policy Advisory Group, Department of the Prime Minister and Cabinet

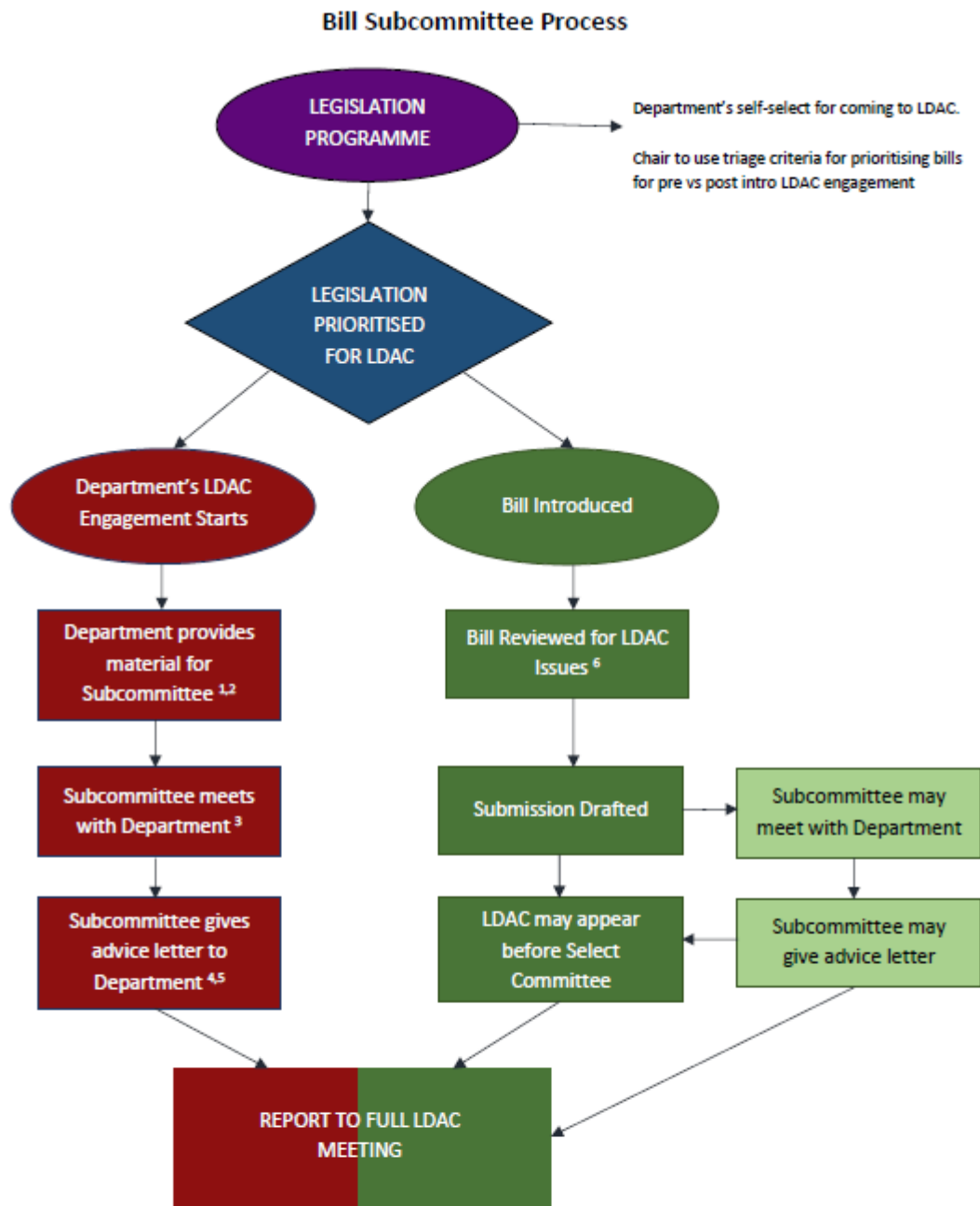
NON-PUBLIC SERVICE LDAC MEMBERS

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

The following members left during the 2021 reporting period

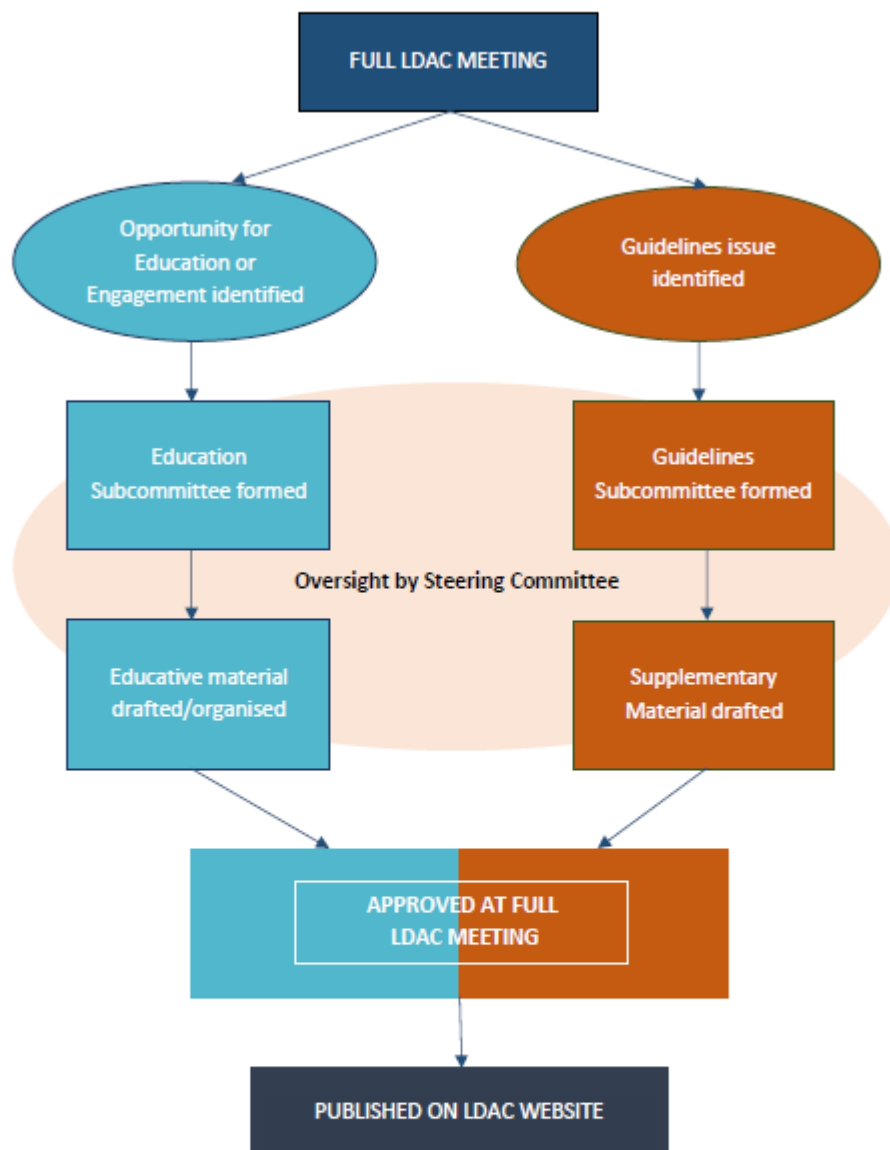
Name	Role
Fiona Leonard	Chief Parliamentary Counsel, Parliamentary Counsel Office
James Wilding QC	Barrister, Clarendon Chambers

APPENDIX 3 – LDAC OPERATING MODEL



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.

Work Programme



Note:

- Bills go to ad hoc subcommittees of 4 members, 1 to be chair.
- Submissions referred to LDAC chair for consultation.
- 2-monthly full LDAC meeting to hear report-backs, discuss cross cutting issues, prioritise next work, consider further supplementary material.
- Ad hoc Guidelines and Education & Engagement subcommittees to progress further work.

APPENDIX 4 – ISSUES LDAC ADVISED DEPARTMENTS ON BEFORE AND AFTER INTRODUCTION AND IDENTIFIED IN SUBMISSIONS

The issues LDAC advised departments on in relation to legislative proposals and identified in submissions are set out below by chapter and principle of the Guidelines (2021 edition). The chapters most commonly referred to were chapters 2.3, 3.2, 2.1, 1, 2.2, 3.1 and 14.1.

Relevant chapter	Specific guideline/principle	Number of legislative proposals that raised issue	Number of submissions that raised issue
Chapter 1 – Good legislative design	Whole chapter	13	1
		Total: 13	Total: 1
Chapter 2 – Defining the policy objective and purpose of proposed legislation	The policy objective must be clearly defined and discernible. (2.1)	15	1
	The provisions of the proposed legislation should be consistent with its purpose and the policy objective that underlies it. (2.2)	13	
	Legislation should only be made when it is necessary and is the most appropriate means of achieving the policy objective. (2.3)	17	
	Māori rights and interests should be identified. (2.5)	2	
	Public consultation should take place. (2.6)	4	
		Total: 51	Total: 1
Chapter 3 – How new legislation relates to the existing law	Whole chapter	3	
	Any existing legislation that relates to the same matters or implements similar policies to those of the proposed legislation should be identified. (3.1)	11	
	Any conflict or interactions between new and existing legislation should be explicitly addressed in the new legislation. (3.2)	16	1
	New legislation should not restate matters already addressed in existing legislation. (3.3)	6	
	Any conflict or interaction between new legislation and the common law should be considered in the new legislation. (3.5)	1	
	New legislation should not address matters that are already satisfactorily dealt with by the common law. (3.6)	1	
	Precedents from existing legislation should only be used if they are consistent with the scheme and purpose of the new legislation. (3.7)	4	

Relevant chapter	Specific guideline/principle	Number of legislative proposals that raised issue	Number of submissions that raised issue
		Total: 42	Total:1
Chapter 4 – Fundamental constitutional principles and values of New Zealand Law	Whole chapter	1	
	Legislation should be consistent with fundamental constitutional principles, including the rule of law. (4.1)	1	
	Legislation should be consistent with the right to natural justice. (4.5)	1	
		Total: 3	
Chapter 5 – The Treaty of Waitangi, Treaty settlements, and Māori interests	Whole chapter	2	
	Māori interests that will be affected by the proposed legislation should be identified. (5.1)	1	
	Consultation must target Māori whose interests are particularly affected. (5.5)	1	
	If legislation has the potential to come into conflict with the rights or interests of Māori under the Treaty, additional measures should be considered to ensure recognition of the principles of the Treaty or the particular rights concerned. (5.6)	1	
		Total: 5	
Chapter 6 – New Zealand Bill of Rights Act 1990	Whole chapter	1	
	NZBORA rights should not be limited, or should be subject only to such reasonable limits as can be justified in a free and democratic society. (6.1)	2	
		Total: 3	
Chapter 8 – Privacy and dealing with information about people	Whole chapter	1	
	Legislation should be consistent with the requirements of the Privacy Act 2020, in particular the information privacy principles. (8.1)	1	
	The Privacy Commissioner, the Ministry of Justice and, when appropriate, the GCPO should be consulted when developing new policies and legislation that may affect the privacy of individuals. (8.5)	1	
		Total: 3	
Chapter 9 – Treaties and international obligations	Whole chapter	1	
	New legislation must not be inconsistent with existing international obligations. (9.1)	2	
		Total: 3	
Chapter 10 – Dealing with conduct, people, and things outside New Zealand	Whole chapter	3	
	Significant cross-border issues relevant to the policy area should be identified. (10.1)	2	

Relevant chapter	Specific guideline/principle	Number of legislative proposals that raised issue	Number of submissions that raised issue
	Legislation should expressly state when it applies to cross-border situations if these situations are significant and likely to arise often. (10.2)	3	
	Generally, the existing rules of court procedure for commencing proceedings against someone overseas should apply. (10.3)	1	
		Total: 9	
Chapter 11 – Applying an Act to the Crown	Any immunity from civil liability should be separately justified and should not be overly broad. (11.3)	2	
		Total: 2	
Chapter 12 – Affecting existing rights, duties, and situations and addressing past conduct	Whole chapter	1	
	Legislation should not have retrospective effect. (12.1)	4	
	Potential transitional or savings issues should be identified early in the policy development process. (12.3)	4	
	Legislation should not include specific transitional provisions if the generic provisions in the Legislation Act 2019 satisfactorily address the issues. (12.4)	2	
	All transitional or savings issues that have been identified should be addressed. (12.5)	3	
	All transitional provisions should be contained in the new legislation. (12.6)	1	
		Total: 15	
Chapter 13 – Interpretation and Application of Legislation	The primary rules of interpretation should be considered when designing legislation. (13.1)	6	
		Total: 6	
Chapter 14 – Delegating law-making powers	Whole chapter	5	
	Legislation should not delegate a power to make secondary legislation in respect of matters that are more appropriate for an Act. (14.1)	8	1
	If the delegated power is, in substance, a power to make the law or alter its content (rather than just apply the law to a particular case), the empowering Act should identify the power as creating secondary legislation. (14.2)	6	1
	The person delegated a power to make secondary legislation must be appropriate having regard to the importance of the issues and the nature of any safeguards that are in place. (14.4)	5	

Relevant chapter	Specific guideline/principle	Number of legislative proposals that raised issue	Number of submissions that raised issue
	All secondary legislation should be subject to an appropriate level of scrutiny, a good process, publication requirements, and review. (14.5)	5	
	If secondary legislation may be made by a subdelegate, that must be clearly authorised in the empowering provision. (14.8)	1	
		Total: 30	Total: 2
Chapter 15 – Some specific types of empowering provisions	Legislation should empower secondary legislation to amend or override an Act only if there is a strong need or benefit to do so, the empowering provision is as limited as possible to achieve the objective, and the safeguards reflect the significance of the power. (15.1)	6	
	Incorporation by reference should be used only if there are clear benefits to doing so or it is impractical to do otherwise. (15.3)	1	
		Total: 7	
Chapter 16 – Delegating powers to grant exemptions	There must be good reasons to delegate a power of exemption. (16.1)	1	
	Legislation must specify appropriate safeguards to apply to powers of exemption. (16.2)	1	
	If the exemptions are to be secondary legislation, the empowering legislation must state that. (16.3)	1	
	Legislation must contain express authority to impose conditions on an exemption. (16.4)	1	
		Total: 4	
Chapter 17 – Authorising the charging of fees and levies	Whole chapter	4	
	Legislation must set out the manner by which the fee should be determined. (17.4)	1	
		Total: 5	
Chapter 18 – Creating a new statutory power	Whole chapter	3	
	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. (18.2)	4	
	Legislation should not create a power that is wider than necessary to achieve the policy objective. (18.4)	3	
	Legislation should identify what the power is and for what purposes, and in which circumstances, it may be exercised. (18.5)	1	

Relevant chapter	Specific guideline/principle	Number of legislative proposals that raised issue	Number of submissions that raised issue
	Legislation should include safeguards that will provide adequate protection for the rights of individuals affected by the decision. (18.6)	1	
	New powers that are given to a specialist tribunal must be consistent with the particular field of expertise of that tribunal, must be appropriate in light of the procedure adopted by the tribunal, and must not impair the tribunal's independence and impartiality. (18.7)	1	
		Total: 13	
Chapter 20 – Creating a new public body	Whole chapter	1	
	A new public body should be created only if no existing body possesses the appropriate governance arrangements or is capable of properly performing the necessary functions. (20.1)	2	
	Legislation should ensure appropriate accountability arrangements best suited to the relevant functions. (20.3)	1	
		Total: 4	
Chapter 21 – Creating powers of search, surveillance, and seizure	Whole chapter	1	
	New search powers should apply the rules and procedures set out in Part 4 of the Search and Surveillance Act 2012. (21.4)	1	
	Search and surveillance powers should be held by a person with the appropriate level of expertise and accountability. (21.5)	1	
		Total: 3	
Chapter 22 – Ways to achieve compliance and enforce legislation	Whole chapter	4	
	Regulatory options should be effective and efficient, workable in the circumstances that they are required to operate in, and appropriate in light of the nature of the conduct and potential harm they are intended to address. (22.2)	4	
	The role, functions, and powers of a regulator should be linked to the purpose of the regime in which it operates. (22.3)	2	
		Total: 10	
Chapter 23 – Creating new, or relying on existing, civil remedies	Whole chapter	1	
		Total: 1	
Chapter 24 – Creating criminal offences	Whole chapter	5	

Relevant chapter	Specific guideline/principle	Number of legislative proposals that raised issue	Number of submissions that raised issue
	Compelling reasons must exist to justify applying the criminal law to conduct. (24.1)	2	
	Legislation must precisely define the prohibited conduct. (24.2)	1	
	Legislation should state the mental element (mens rea) required for an offence to be committed. (24.3)	3	
	Legislation should identify any specific defences that are available. (24.4)	1	
		Total: 12	
Chapter 25 – Creating infringement offences	Whole chapter	6	
	Infringement offences should be reserved for the prohibition of conduct that is of concern to the community, but which does not justify the imposition of a criminal conviction, significant fine, or imprisonment. (25.1)	2	
	Infringement offences must be in or authorised by an Act. (25.2)	2	
		Total: 10	
Chapter 26 – Pecuniary penalties	Whole chapter	2	
	Pecuniary penalties are not appropriate to address truly criminal conduct. (26.1)	2	
	Legislation should specifically protect against the risk of double jeopardy. (26.7)	1	
		Total: 5	
Chapter 27 – Imposing time limits for enforcement	Whole chapter	1	
	The limitation periods in the Limitation Act 2010 should apply to all new civil proceedings. (27.2)	1	
		Total: 2	
Chapter 28 – Creating a system of appeal, review, and complaint	Whole chapter	2	
	A person affected by a statutory decision should have an adequate pathway to challenge that decision. (28.2)	2	
	Appeals to existing appeal bodies should be governed by the generic procedures that apply to appeals to those bodies. (28.4)	1	
	The rights to bring first and subsequent appeals should not be unreasonably limited. (28.5)	1	
		Total: 6	
Chapter 29 – Including alternative dispute resolution clauses in legislation	Whole chapter	2	

Relevant chapter	Specific guideline/principle	Number of legislative proposals that raised issue	Number of submissions that raised issue
		Total: 2	
Supplementary Material	Bespoke legislative solutions	7	1
	Designing purpose provisions and statements of principle	2	
	Exposure draft Bills	1	

GUIDELINES RAISED IN SUBMISSIONS BY BILL OR INQUIRY NAME

Name of Bill	Specific guideline/principle
Inquiry on the Natural and Built Environments Bill	1, 2.1, 3.2, 14.1, 14.4, supplementary material – designing purpose provisions and statements of principle