



LEGISLATION DESIGN AND ADVISORY COMMITTEE

ANNUAL REPORT

1 January 2020 to 31 December 2020

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

Annual Report of the
Legislation Design and Advisory Committee
for 1 January 2020 to 31 December 2020

June 2021
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 fifth Annual Report since its establishment in June 2015. It covers the Committee's operation from 1 January 2020 to 31 December 2020. The reporting period aligns with the Parliamentary calendar and the Government's annual legislative programme; both are based on calendar years.

Our goal is to *promote good 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.

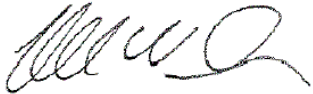
Our current membership is drawn from the public and private sector, and includes public servants, consultants, academics, and practicing lawyers. We now do most of our work through Bill-specific subcommittees drawn from our full membership. We also have an Engagement and Education Subcommittee and a Guidelines Subcommittee, and periodic meetings of the whole committee. This ability to draw on our full membership enables us to obtain maximum benefit from the breadth and depth of the expertise across our membership.

We have seen a number of key trends this reporting period. Most will not be new to those interested in the legislative design, but include: good quality legislation takes time and resources, speed through the House is a problem, and with the onset of COVID-19 designing robust emergency legislation in a time of crisis is important. We are not under the illusion that perfection in process and design is achievable, but believe that this does not mean that current processes cannot continue to be improved.

During the reporting period, despite the disruption of COVID-19, we were still able to advise on 24 Bills (compared to the 35 Bills in the previous year) and made five submissions on Bills before select committees (which was the same as the previous year). This demonstrates the significant commitment on behalf of the Committee and departmental advisers given the circumstances we all found ourselves in. LDAC appreciates the effort departments made to engage with it during this period.

My continued appreciation goes to the Attorney-General for the support for the Committee and its work in the reporting period. As our responsible Minister, this is our key relationship.

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

A handwritten signature in black ink, appearing to read 'Karl Simpson', written in a cursive style.

Karl Simpson

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 (2018 edition) (the **Guidelines**), which have been adopted by Cabinet.

The 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
- providing training and education to develop quality legislation consistent with the Guidelines.

The 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.

GOOD QUALITY LEGISLATION TAKES TIME AND RESOURCES

LDAC has seen the compression of timelines for each stage in the policy and legislative process. In some respects the legislative system is a victim of its own success: it has proven that, by devoting considerable resource, it can produce quality outputs quickly, most recently in relation to COVID-19 emergency legislation, and there have been relatively few public failures.

LDAC's concern is that there appears to be an ever increasing expectation that all legislation can be expedited all at once. This is putting considerable pressure on the system, under which mistakes are and will continue to be made, and the quality of legislation will suffer.

Appropriate planning and realistic timelines for the development of policy and legislation need to be put in place to reduce this risk. Planning in this way also manages expectations and reinforces what good process looks like across the system.

SPEED THROUGH THE HOUSE IS A PROBLEM

LDAC is particularly concerned about a trend for extreme speed through the House, where an extremely short select committee stage (or skipping this stage) is becoming more frequent. “Normal” select committee periods (greater than 4 months under Standing Orders) are always best, as they allow the dust to settle on the Bill, and allow submitters, advisers and lawmakers to gather their thoughts and take a fresh perspective on a Bill. They also recognise that the House and the Government has other business to attend to.

In our experience, even extremely short select committee stages are usually beneficial to legislative quality and should be judged on individual merit and necessity.

LEGISLATING TO BE SEEN TO DO SOMETHING

Legislating is a powerful tool, and it is tempting to reach for that tool when the Government is under public pressure to “do something”. However, passing new legislation or amending existing legislation will not always be the best solution to a problem.

First, while there may be a legislative option, another lever might fix the issue more quickly but less visibly. Secondly, while the Government may not like a particular state of affairs, the cost of intervening may exceed the marginal benefit likely to be achieved. One of the reasons for this is that Governments and stakeholders sometimes perceive changing the law to have no cost (and for some stakeholders, it has no cost for them).

LEGISLATING UNNECESSARILY

LDAC has seen a greater tendency for new legislation to restate matters that are already addressed in existing legislation. Restating matters increases the risk of unintended consequences for the new legislation if the restatement gives rise to a disjunct with that other legislation. It also creates an incentive for other legislation to restate matters (or risk an adverse inference if the legislation does not do so).

Instead of restating existing legislation, it may instead be more appropriate to give effect to the policy objective through other non-legislative means like improving the understanding of the existing law through education.

EMERGENCY LEGISLATION IN A TIME OF CRISIS

The importance of legislation relating to emergencies has most recently been demonstrated in response to COVID-19. LDAC classifies emergency legislation into three broad categories:

- emergency preparedness (for example, the Epidemic Preparedness Act 2006)
- emergency response (for example, the COVID-19 Public Health Response Act 2020)
- emergency recovery (for example, the COVID-19 Recovery (Fast-track Consenting) Bill).

Sometimes response and recovery are combined, as was the case in some of the legislation relating to the Christchurch and the Kaikōura/Hurunui earthquakes.

In practice, an immediate response will inevitably rely on existing legislative tools. However, it is not possible or desirable to legislate accurately and comprehensively for every eventuality in advance. To attempt this would likely result in broad-reaching legislation that would be disproportionate and draconian without a specific context, and give rise to the risk of “misuse”. This is where emergency response legislation plays its role.

Departmental regulatory stewardship also plays a crucial role here to provide an ongoing focus on the scope of any emergency legislation administered and any limitations of that legislation. Departments should know and understand their existing emergency response framework to ensure a clear understanding in advance of what can be done when a crisis occurs. Departments should also understand the limits of the legislation, and the triggers for an emergency legislative response.

DISCONNECT BETWEEN PURPOSE AND DETAIL

LDAC has frequently provided advice on proposals to include purpose and principle clauses in legislation. Purpose clauses are seen as an attractive way of directly communicating the policy intent of legislation, but carry challenges and risks that need to be managed. When a purpose or principle clause is to be included in legislation, it:

- needs to be designed to work within the particular legislation (for example, substantive decision-making criteria)
- should perform a useful function
- must be designed to avoid key risks.

One of the key risks to avoid is creating stand-alone rights or duties. A purpose clause is not a substitute for substantive provisions that contain the detail of the policy. A purpose clause also needs to be consistent with the substantive provisions.

LDAC MEMBERSHIP AND ADVISORY SUPPORT

LDAC comprises senior public service officials and a pool of 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 22 members including 13 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 work on the Guidelines and 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. This is usually only on Bills that have not been reviewed by LDAC before introduction. On occasion, we work with departmental advisers on issues raised at select committee. See Appendix 3 for LDAC's operating model.

The LDAC members (other than the LDAC Chair) are either members of its Guidelines Subcommittee or its Education and Engagement Subcommittee.

GUIDELINES SUBCOMMITTEE

The Guidelines Subcommittee generally meets approximately every two months. In addition to developing supplementary material to the Guidelines, this Subcommittee's role is to discuss recurring themes and to consider whether LDAC should publish supplementary materials on these and other matters.

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. The supplementary material will often contain legislative examples to assist advisers to make decisions that are at the margins of issues, and guidance on areas not covered by the Guidelines.

Supplementary material to the Guidelines is available on LDAC's website.¹

EDUCATION AND ENGAGEMENT SUBCOMMITTEE

The Education and Engagement Subcommittee generally meets approximately every two months, and oversees education and training relating to LDAC's role and the Guidelines. The Subcommittee focuses on ways to improve both public and private sector knowledge of the Guidelines and good law-making, and raising LDAC's profile. COVID had an impact on the number of educational offerings LDAC was able to provide this year.

In 2020, LDAC held the following seminars/workshops:

- A seminar to the Inland Revenue Department on 2 November on a "practical guide to working with LDAC"
- A seminar to the Office of the Clerk on 5 November on the Legislation Guidelines and LDAC's role

These seminars were well-attended, with the Inland Revenue seminar attended by 50–60 officials, and all 12 of the Committee clerks participating in the Office of the Clerk seminar.

LDAC also participated in the annual Policy to Legislation seminar for those new to government, hosted by the PCO and the Office of the Clerk.

¹ See 'Supplementary material to the Legislation Guidelines (2018 edition) here: <http://www.ldac.org.nz/guidelines/supplementary-materials/>.

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 be involved on LDAC pre-introduction Bill subcommittees on the advice of LDAC's Chair, after consultation with the chief legal adviser of the department for the relevant Bill. In 2020, the Attorney General delegated this approval power to the LDAC Chair until such time as it is revoked in writing.

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

- a significant 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 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 2020

REVIEW OF BILLS AND SUBMISSIONS

In the reporting period (from January 2020 to December 2020), LDAC advised departments on 24 Bills. For two of those Bills, LDAC met with departments and PCO in the period between Parliaments after the election to provide advice post-introduction. 13 of the 24 Bills were new to LDAC in the reporting period, and 11 were carried over from 2018/2019.

LDAC made submissions to select committees on three Bills and two inquiries from January 2020 to December 2020. The submissions can be found on LDAC's website.²

It is important to note that despite the impacts of COVID, because we might have expected to look at fewer Bills, the LDAC advised on 24 Bills compared to 35 in 2019. LDAC made five submissions to select committees, the same number that it made in 2019. This represents a significant commitment on behalf of the LDAC members and departmental advisers given the circumstances.

² See 'Submissions for 2020' here: <http://www.ldac.org.nz/submissions/new-submission-year-page-3/>.

Bills LDAC engaged with and submissions LDAC made in 2020

Total Bills reviewed by LDAC	24
New to LDAC 01/01/2020 – 31/12/2020	13
Carried over from 2019/2020	11
Total Bills LDAC made submissions on to select committees	5
Total Bills/submissions	29

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

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

Discussions that LDAC had with departments most frequently focused on:

- assisting departments to identify the policy objective and purpose of the new legislation
- the relationship between the new legislation and existing law, particularly the need for legislation to explicitly address any conflicts
- ensuring proposed legislation is consistent with fundamental constitutional principles and values of New Zealand law
- the appropriateness of subject matter for an Act or secondary legislation
- whether a new statutory power should be created, who will hold the power, and the nature of that power.

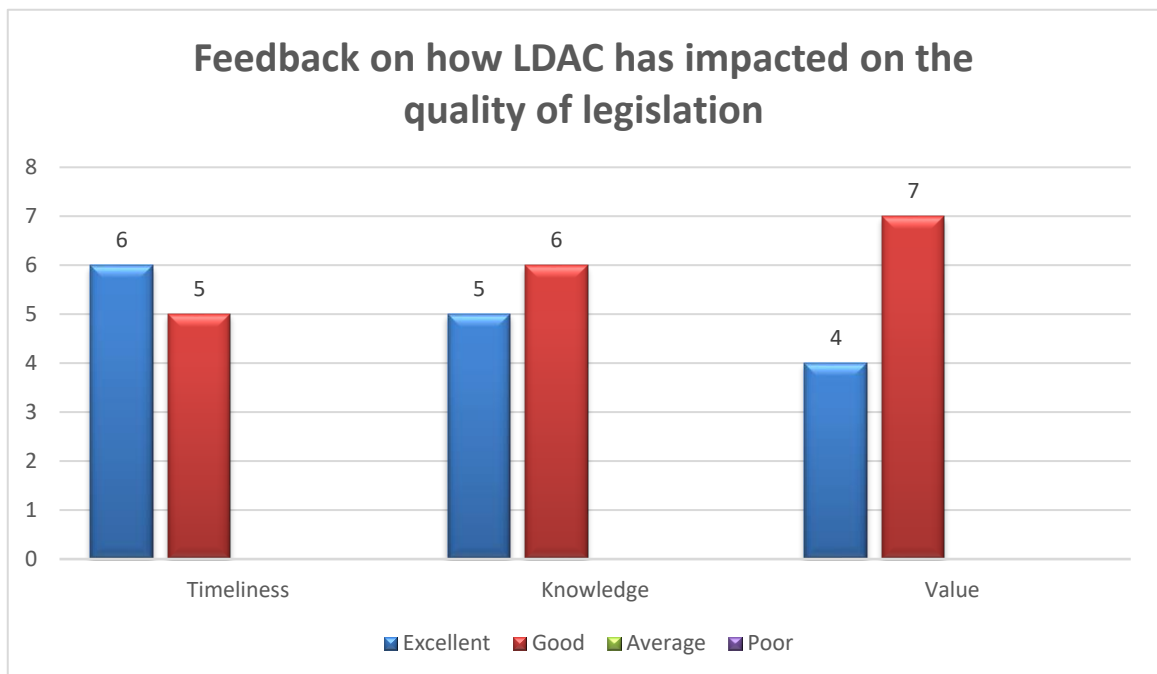
The following are the most common issues on which LDAC made submissions to select committees on Bills after introduction:

- conflict or interaction between new and existing legislation should be explicitly addressed in the new legislation
- the appropriateness of a matter for secondary legislation
- whether the creation of a new statutory power was appropriate and whether there were sufficient safeguards.

FEEDBACK ON HOW LDAC HAS IMPACTED ON THE QUALITY OF LEGISLATION

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

During 2019, LDAC developed a new feedback survey to assess the value of its engagement with departments on Bills. The new survey better reflected changes in the committee structure. The graphs below show the results received since 1 January 2020 using this revised survey. The responses are from 11 completed surveys relating to the LDAC's timeliness, knowledge and value.



ACKNOWLEDGEMENTS

The Legislation Design and Advisory Committee would like to acknowledge the following contributions:

- PCO for providing and supporting the Secretariat to LDAC
- LDAC's public service members' home departments for supporting their membership of the Committee
- non-public service members for volunteering their time and expertise
- departments' willingness to engage with LDAC
- both public service and non-public service members for their time this year, especially during the Level 4 lockdown
- 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
Karl Simpson (Chair of LDAC)	Director, System and Regulatory Design, Ministry of Transport
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)	Deputy Chief Parliamentary Counsel, Drafting, Parliamentary Counsel Office
Dagny Baltakmens (ex officio)	Principal Solicitor, Office of Legal Counsel, Ministry of Justice
Fiona Leonard (ex officio)	Chief Parliamentary Counsel, Parliamentary Counsel Office
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
Mark Steel	Director, Regulatory Systems Leadership, Ministry of Business, Innovation and Employment
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

The following members joined during the 2020 reporting period

Name	Role
Justine Falconer (alternate member)	Manager, System Advice, Crown Law Office
Mark Steel	Director, Regulatory Systems Leadership, Ministry of Business, Innovation and Employment
Stuart McGilvray	Chief Legal Adviser, Office of the Ombudsman

The following members left during the 2020 reporting period

Name	Role
Susan Hall	Manager, Business Law, Commerce, Consumers and Communications, Ministry of Business, Innovation and Employment

NON-PUBLIC SERVICE LDAC MEMBERS

Name	Role
Brigid McArthur	Partner, Greenwood Roche
Guy Beatson	Director, Beatson Company
James Wilding QC	Barrister, Clarendon Chambers
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 (co-opt)	Chief Legal Adviser, Office of the Ombudsman
Paul Rishworth QC	Barrister, Britomart Chambers

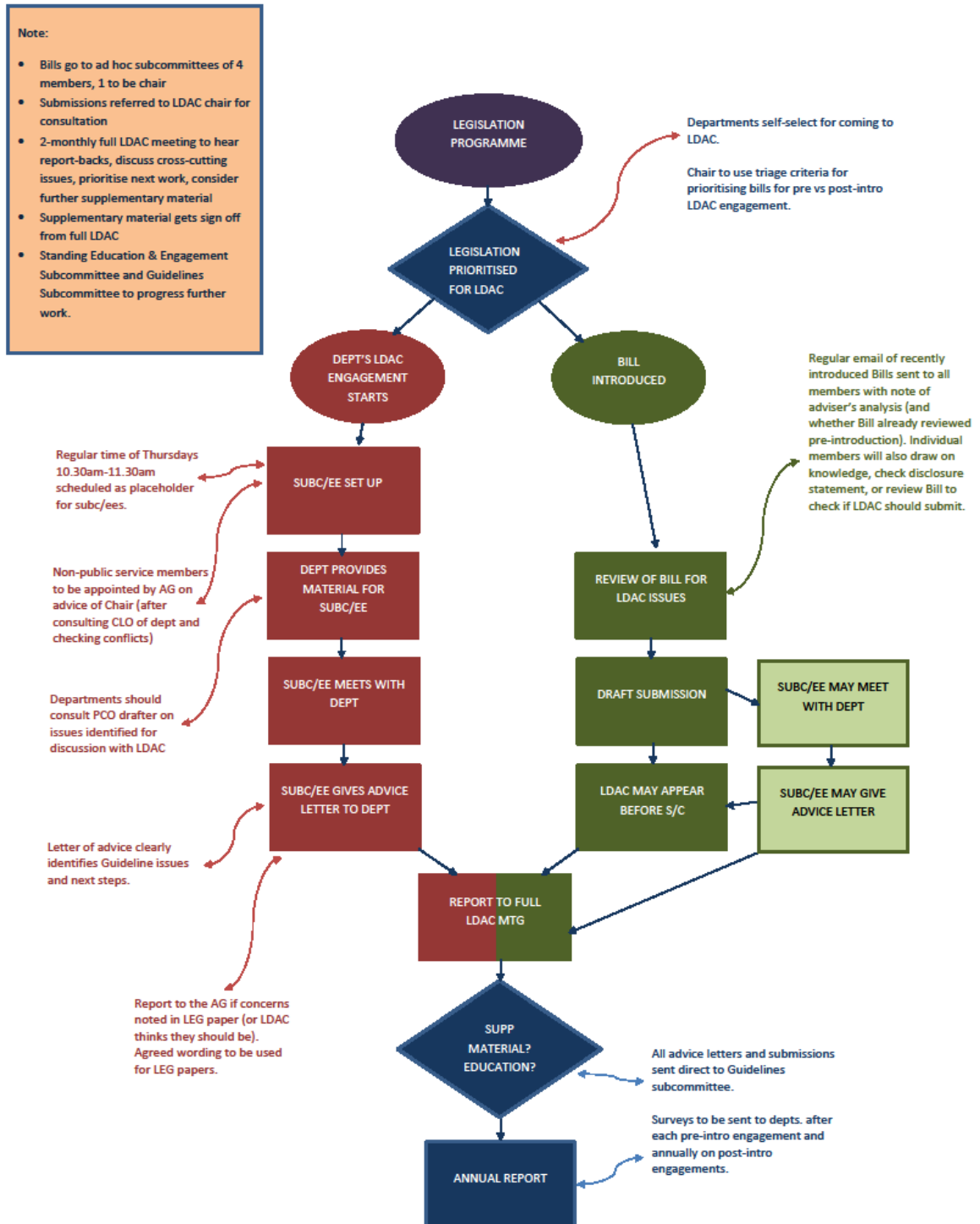
ACTING LDAC MEMBERS

Public service members who have been on leaves of absence have arranged for an acting member from their department. This ability to have acting members has proved valuable, especially in times of high workload for the LDAC.

The following were acting LDAC members during the 2020 reporting period

Name	Role
Adam Rossiter	Senior Solicitor, Legal Services, Corporate, Governance and Information, Ministry of Business, Innovation and Employment (acting for Allison Bennett)
Matthew Green	Manager Legal Services (Legislation), Legal Services, Corporate, Governance and Information, Ministry of Business, Innovation and Employment (acting for Susan Hall)

APPENDIX 3 – LDAC OPERATING MODEL



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. The chapters most commonly referred to were chapters 2.1, 2.2, 2.3, 3.1, 3.2, 14.1 and 14.3.

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	5	
		Total: 5	
Chapter 2 – Defining the policy objective and purpose of proposed legislation	Whole chapter	1	
	The policy objective must be clearly defined and discernible. (2.1)	8	
	The provisions of the proposed legislation should be consistent with its purpose and the policy objective that underlies it. (2.2)	10	
	Legislation should only be made when it is necessary and is the most appropriate means of achieving the policy objective. (2.3)	11	1
	Public consultation should take place. (2.5)	3	
		Total: 33	Total: 1
Chapter 3 – How new legislation relates to the existing law	Whole chapter	1	
	Any existing legislation that relates to the same matters or implements similar policies to those of the proposed legislation should be identified. (3.1)	8	1
	Any conflict or interactions between new and existing legislation should be explicitly addressed in the new legislation. (3.2)	8	3
	New legislation should not restate matters already addressed in existing legislation. (3.3)	4	1
	Relevant common law rules and principles and tikanga should be identified. (3.4)	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)	6	
		Total: 29	Total:5

Relevant chapter	Specific guideline/principle	Number of legislative proposals that raised issue	Number of submissions that raised issue
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)	4	1
	Legislation should be consistent with the dignity of the individual and the presumption in favour of liberty. (4.3)	2	
	New legislation should respect property rights. (4.4)	1	
	Legislation should be consistent with the right to natural justice. (4.5)	3	
	Legislation should not restrict the right of access to the courts. (4.6)	1	
		Total: 12	Total: 1
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	
	The Government must make informed decisions where legislation will affect, or have the potential to affect, the rights and interests of Māori. (5.4)	1	
	Consultation must target Māori whose interests are particularly affected. (5.5)	2	
	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)	3	
		Total: 9	
Chapter 6 – New Zealand Bill of Rights Act 1990	Whole chapter	2	
		Total: 2	
Chapter 10 – Dealing with conduct, people, and things outside New Zealand	Significant cross-border issues relevant to the policy area should be identified. (10.1)	1	
	Legislation should expressly state when it applies to cross-border situations if these situations are significant and likely to arise often. (10.2)	1	
	Legislation should expressly authorise a regulatory agency to work with overseas counterparts if that is necessary for the agencies to carry out their functions. (10.5)	1	
		Total: 3	

Relevant chapter	Specific guideline/principle	Number of legislative proposals that raised issue	Number of submissions that raised issue
Chapter 11 – Applying an Act to the Crown	Legislation should apply to the Crown unless there are good reasons for it not to do so. (11.2)	1	
	Government departments may be liable to criminal prosecution only if there are compelling reasons. (11.4)	1	
		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)	1	
	All transitional provisions should be contained in the new legislation. (12.6)	1	
		Total: 3	
Chapter 13 – Statutory interpretation and the Interpretation Act 1999	Whole chapter	2	
	The primary rules of statutory interpretation should be considered when designing legislation. (13.1)	6	
		Total: 8	
Chapter 14 – Delegating law-making powers	Whole chapter	2	
	Legislation should not authorise secondary legislation to be made in respect of matters that are appropriate for an Act. (14.1)	12	
	The empowering Act should clearly and precisely define the permitted subject matter of secondary legislation and the purposes for which it may be made. (14.2)	4	
	The person authorised 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. (14.3)	7	1
	All secondary legislation should be subject to an appropriate level of scrutiny, a good process, publication requirements, and review. (14.4)	3	1
		Total: 28	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)	2	
		Total: 2	
Chapter 17 – Authorising the charging of fees and levies	Whole chapter	3	
	Fees should be charged only if the nature of the service or function is appropriate and the fee can be quantified and efficiently recovered. (17.1)	1	

Relevant chapter	Specific guideline/principle	Number of legislative proposals that raised issue	Number of submissions that raised issue
	Levies should be imposed only if it is appropriate for a certain group to contribute money for a particular purpose. (17.2)	1	
	Legislation must set out the manner by which the levy is determined. (17.5)	2	
	Legislation should identify any procedural requirements that must be satisfied in connection with the fee or levy. (17.7)		1
		Total: 7	Total: 1
Chapter 18 – Creating a new statutory power	Whole chapter	1	
	A new statutory power should be created only if no suitable existing power or alternative exists that can achieve the policy objective. (18.1)	2	
	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)	3	
	Legislation should not create a power that is wider than necessary to achieve the policy objective. (18.4)	1	
	Legislation should identify what the power is and for what purposes, and in which circumstances, it may be exercised. (18.5)	2	1
	Legislation should include safeguards that will provide adequate protection for the rights of individuals affected by the decision. (18.6)	2	1
		Total: 11	Total: 2
Chapter 19 – Requiring decision-makers to consult	Legislation should include a requirement to consult when that is necessary to clearly ensure good decision-making practice. (19.1)	2	
		Total: 2	
Chapter 20 – Creating a new public body	Whole chapter	2	
	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: 5	

Relevant chapter	Specific guideline/principle	Number of legislative proposals that raised issue	Number of submissions that raised issue
Chapter 22 – Ways to achieve compliance and enforce legislation	Whole chapter	5	
	The Government should not generally become involved in enforcing rules or otherwise regulating in an area where the rules can be reliably enforced by those who are subject to them. (22.1)		1
	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	1
	The role, functions, and powers of a regulator should be linked to the purpose of the regime in which it operates. (22.3)	1	
		Total: 10	Total: 2
Chapter 24 – Creating criminal offences	Whole chapter	3	
	Compelling reasons must exist to justify applying the criminal law to conduct. (24.1)	1	
	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)	1	
	Legislation must state the maximum fine and/or term of imprisonment. (24.7)	1	
		Total: 7	
Chapter 25 – Creating infringement offences	Whole chapter	1	
	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)	1	
	Infringement offences must be in or authorised by an Act. (25.2)	1	
	Section 21 of the Summary Proceedings Act 1957 should apply to all new infringement offences. (25.3)	1	
		Total: 4	
Chapter 26 – Pecuniary penalties	Whole chapter	2	
	Pecuniary penalties are not appropriate to address truly criminal conduct. (26.1)	1	
		Total: 3	

Relevant chapter	Specific guideline/principle	Number of legislative proposals that raised issue	Number of submissions that raised issue
Chapter 28 – Creating a system of appeal, review, and complaint	Legislation should not restrict the right to apply for judicial review. (28.1)	2	
	A person affected by a statutory decision should have an adequate pathway to challenge that decision. (28.2)	6	
	The rights to bring first and subsequent appeals should not be unreasonably limited. (28.5)	3	
	Will the legislation provide for a process of internal review? (28.8)	1	
	Total: 12		
Chapter 29 – Including alternative dispute resolution clauses in legislation	The form of ADR adopted should help to achieve the policy objective and be appropriate to the nature of the dispute and the issues in question. (29.2)	1	
	Legislation should include those elements of the ADR scheme necessary to ensure that the appropriate desired outcomes and procedures are adopted. (29.3)	1	
	Total: 2		
Supplementary Material	Bespoke legislative solutions		1
	Designing purpose provisions and statements of principle	7	
	Total: 7		Total: 1

GUIDELINES RAISED IN SUBMISSIONS BY BILL OR INQUIRY NAME

Name of Bill	Specific guideline/principle
Forests (Regulation of Log Traders and Forestry Advisers) Amendment Bill	4.1, 14.3, 14.4, 18.5, 18.6, 22.1, 22.2
Infrastructure Funding and Financing Bill	3.2
Urban Development Bill	3.2
RRC Inquiry into Confirmable Instruments	17.7
Inquiry into Covid-19 Public Health Response Bill	2.3, 3.1, 3.2, 3.3 and supplementary material on bespoke legislative solutions