



LEGISLATION DESIGN AND ADVISORY COMMITTEE

Summary of changes to Legislation Guidelines

CH	TITLE	DESCRIPTION OF CHANGE
N/A	What is the Legislation Design and Advisory Committee?	Correct errors and reflect change in style
N/A	When and how to use these Guidelines	Correct errors and reflect change in style
EARLY DESIGN ISSUES		
1	Good legislative design	Update to references and other minor matters including: <ul style="list-style-type: none">• Privacy Act 1993 > Privacy Act 2020• LDAC contact email address• Reference to chapter 14: designing secondary legislation provisions and when something should be classified as secondary legislation• Updates to reflect the Public Service Act 2020
2	Defining the policy objective and purpose of proposed legislation	Update to correct errors and reflect change in style, including: <ul style="list-style-type: none">• New Guideline added (chapter 2.4A) as a cross reference to the considerations in chapter 5 “Have Māori rights and interests that may be affected been identified?”• Update to website links• Updates to reflect the Public Service Act 2020
3	How new legislation relates to the existing law	Update to references and other minor matters including <ul style="list-style-type: none">• Interpretation Act 1999 > Legislation Act 2019• Guideline 3.5 amended: change clarifies that any conflict or interaction between new legislation and the common law should be considered in the new legislation• Update to website links• Updates to reflect the Public Service Act 2020
CONSTITUTIONAL ISSUES AND RECOGNISING RIGHTS		
4	Fundamental constitutional principles and values of New Zealand law	Correct errors and reflect change in style Updates to reflect the Public Service Act 2020
5	The Treaty of Waitangi, Treaty settlements, and Māori interests	General update to references and other matters to better integrate the Crowns approach to the Treaty of Waitangi, Treaty Settlements, and Māori interests including: <ul style="list-style-type: none">• Office of Treaty Settlements (OTS) > Te Arawhiti• Removing the references to the Post Settlement Commitment Unit (PSCU) as this unit sits within Te Arawhiti• References to resources developed by Te Arawhiti to assist agencies to build capability to meaningfully engage with Māori• Cross reference to new Guidelines 2.4A and 5.5 added about whether Māori rights and interests that may be affected have been identified• Correct errors and reflect change in style• Other updates to reflect the Public Service Act 2020
6	New Zealand Bill of Rights Act 1990	Update to website links and Standing Order reference
7	Discrimination and distinguishing between different groups	Correct errors and reflect change in style



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8	Privacy and dealing with information about people	Update to reflect the Privacy Act 2020, including <ul style="list-style-type: none">• References Privacy Act 1993 > Privacy Act 2020• Guideline 8.1 updated to reflect that legislation can override information privacy principles 6, 11, and 12 without containing an express override provision• Guideline 8.4 updated to reflect that if legislation needs to deal with complaints arising from alleged breaches of information privacy principles, it should ensure the Privacy Act procedure applies• Guideline 8.5 updated to reflect that information privacy principle 12 sets out when an agency may disclose information to a foreign person or entity in relation to information privacy principle 11
INTERNATIONAL ISSUES		
9	Treaties and international obligations	Correct errors and reflect change in style
10	Dealing with conduct, people, and things outside New Zealand	No changes
ISSUES RELEVANT TO ALL LEGISLATION		
11	Applying an Act to the Crown	Update to references and other minor matters, including <ul style="list-style-type: none">• State Sector Act 1988 > Public Service Act 2020• Interpretation Act 1999 > Legislation Act 2019• State sector > public service agencies• Other updates to reflect the Public Service Act 2020
12	Affecting existing rights, duties, and situations and addressing past conduct	General update to all references and other minor matters, including <ul style="list-style-type: none">• Interpretation Act 1999 > Legislation Act 2019• Removing references that are no longer current
13	Interpretation and application of legislation [note chapter name change]	Update to align with the Legislation Act 2019, with particular focus on Part 2 that provides for: <ul style="list-style-type: none">• principles of interpretation• default definitions• rules that apply to the commencement, amendment, and repeal of legislation• rules that apply to time and distance.
ISSUES PARTICULARLY RELEVANT TO EMPOWERING SECONDARY LEGISLATION		
14	Delegating law-making powers	Update to align with the Legislation Act 2019, with particular focus on the legislative effect test and matters to take into account when considering whether a delegated power should be identified as a power to make secondary legislation New guideline that provides guidance on when secondary legislation should be subject to confirmation and a link to new supplementary material



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15	Some specific types of empowering provisions	Incorporation by reference section of the chapter updated to align with the Legislation Act 2019, including new requirements for an agency to consider when thinking about incorporation by reference
16	Delegating powers to grant exemptions [note chapter name change]	Update to align with the Legislation Act 2019, with particular focus on the legislative effect test and matters to take into account when considering whether the power will be secondary legislation (and so subject to the publication, presentation, or disallowance procedures in the Legislation Act 2019)
17	Authorising the charging of fees and levies	<p>Update to align with the Legislation Act 2019, including:</p> <ul style="list-style-type: none">• regulations > secondary legislation• inserting references to chapter 14 and how the consideration relating to delegated powers apply to powers to set fees and levies. A delegated power to set fees or levies will ordinarily be considered legislative. <p>Update to the chapter 17.3 principle “An Act must include an empowering provision that specifically authorises secondary legislation to prescribe a fee or levy”</p>
NEW POWERS AND ENTITIES		
18	Creating a new statutory power	General update to all references and other minor matters, including: <ul style="list-style-type: none">• Standing Orders references• Interpretation Act 1999 > Legislation Act 2019• State Sector Act 1988 > Public Service Act 2020
19	Requiring decision-makers to consult	No changes
20	Creating a new public body	Update to references and other minor matters, including: <ul style="list-style-type: none">• State Services Commission > Te Kawa Mataaho Public Service Commission• State Sector Act 1988 > Public Service Act 2020• Other updates to reflect the Public Service Act 2020• Including new definitions under chapter 20.3 for “Interdepartmental Executive Boards”, “Interdepartmental Ventures” and “Statutory Boards”
21	Creating powers of search, surveillance, and seizure	Update to references – enactment > legislation
COMPLIANCE AND ENFORCEMENT		
22	Ways to achieve compliance and enforce legislation	No changes
23	Creating new, or relying on existing, civil remedies	No changes
24	Creating criminal offences	Update to references and other minor matters, including <ul style="list-style-type: none">• Interpretation Act 1999 > Legislation Act 2019• References removed that are out of date
25	Creating infringement offences	No changes
26	Pecuniary penalties	Updates to reflect the Public Service Act 2020



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27	Imposing time limits for enforcement	Principle added to chapter 27.3 “The limitation periods in the Limitation Act 2010 should apply to pecuniary penalties unless there are good reasons for different periods”
APPEAL AND REVIEW		
28	Creating a system of appeal, review, and complaint	Principle added to chapter 28.8 “A process of internal review of decisions may be appropriate, depending on the nature of the decision and the decision maker”
29	Including alternative dispute resolution clauses in legislation	No changes