



# Cabinet Legislation Committee

## Minute of Decision

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### Adjustment of Legislation Design and Advisory Committee

**Portfolio**                      **Attorney-General**

On 13 September 2018, the Cabinet Legislation Committee:

- 1        **noted** that the Legislation Design and Advisory Committee (LDAC) was formed in 2015 to engage with departments early in the development of legislative proposals and, by providing advice on design and structure, to improve the quality and effectiveness of legislation, and to help best clarify Parliament's policy objectives and ensure they conform with constitutional conventions;
- 2        **noted** LDAC's role includes the vetting of selected Bills after their introduction against the Legislation Guidelines through a subcommittee of external advisers (the External Subcommittee), working pro bono, to make submissions to select committees and, in practice, the External Subcommittee has operated largely independently of the LDAC;
- 3        **noted** the PCO's 2017 report on LDAC's operations identified that the LDAC is working well overall, but enhancements could be made. In particular, the current 2-committee structure does not optimise its combined public sector and external adviser expertise, and there is a risk of inconsistent pre-introduction and post-introduction advice from the committees, which may limit the LDAC's impact and undermine its credibility;
- 4        **agreed** to merge the LDAC and the External Subcommittee into a single committee to combine, reconcile, and build on both public service and external perspectives, and to bring together their expertise in 1 place, which will allow greater participation of those outside the government in the development of legislation;
- 5        **agreed** to reduce to 18 the number of members in the combined committee so that there are approximately 10 to 12 public service members (rather than 17) with the balance as external members (6 to 8 rather than the current 14);
- 6        **authorised** the chair to have the ability to co-opt up to 3 additional members to work on specific issues or for limited periods (such as parental leave);

- 7 **authorised** the Attorney-General to approve specific external members to be involved on subcommittees to provide pre-introduction advice on particular Bills on the basis set out in paragraphs 26.2 to 26.5 to the submission under LEG-18-SUB-0127, and subject to appropriate controls, noting in particular that:
- 7.1 the Attorney-General's decision to approve external advisers for involvement in pre-introduction advice on a Bill would be made on a case-by-case basis following advice from the LDAC chair in consultation with the relevant Department's chief legal adviser;
  - 7.2 external advisers approved to be involved in pre-introduction advice on a Bill would be bound by confidentiality obligations and conflict of interest controls (including, in particular, undertakings ensuring that LDAC's independent role is not undermined by advisers submitting on legislation for clients where they have had pre-introduction involvement via LDAC);
  - 7.3 pre-introduction advice on Bills would generally be limited to LDAC's public service members in a standing subcommittee to minimise the risk of limiting officials' willingness to engage with LDAC early when proposals are most sensitive;
- 8 **authorised** the Attorney-General to approve an amendment to the 2014 Attorney-General's Protocol for Release of Draft Government Legislation outside the Crown [Cabinet Office circular CO (14) 4] to enable:
- 8.1 the release of draft legislation to external advisers approved by the Attorney-General to be included in pre-introduction subcommittees;
  - 8.2 easier consultation with Crown entities that require consultation as a matter of the Cabinet approval process or by legislation;
- 9 **agreed** that all members of the combined LDAC be able to share information on policy proposals and Bills before and after introduction to the extent relevant to the committee's general discussions, including on the Legislation Guidelines, related supplementary material, and education seminars;
- 10 **noted** that, consistent with original Cabinet approvals, submissions on Bills after their introduction would be undertaken by a standing subcommittee of external and public service members, and public service members would act independently in making submissions;
- 11 **authorised** the Attorney-General to appoint members to the combined LDAC to achieve a mix of legal, policy, and economic backgrounds, key subject area expertise, and a diversity of views and perspectives based on the following criteria:
- 11.1 a strong interest in legislative design, and relevant expertise (either in specific subject areas or generally);
  - 11.2 a commitment to invest time (acknowledging that, for external members, this is on a pro bono basis);
  - 11.3 for external members, a low risk in practice of conflicts of interest arising that may limit their ability to be involved (with strict confidentiality obligations being applied);

- 12 **authorised** the Attorney-General to approve the release of a new Cabinet Office circular to replace Cabinet Office circular CO (14) 4 to advise Chief Executives, Chief Legal Advisers and agencies about the change to the Protocol.

Vivien Meek  
Committee Secretary

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**Present:**

Rt Hon Winston Peters  
Hon Chris Hipkins (Chair)  
Hon Andrew Little  
Hon David Parker  
Hon Stuart Nash  
Hon Iain Lees-Galloway  
Hon Tracey Martin  
Hon Kris Faafoi  
Hon Eugenie Sage

**Officials present from:**

Officials Committee for LEG

**Hard-copy distribution:**

Attorney-General