



HOW PUBLIC SERVANTS SHOULD DEAL WITH LEGISLATION IN PARLIAMENT

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Graeme Buchanan
Deputy Secretary – Legal
DEPARTMENT OF LABOUR



THE STORY SO FAR

- Overview of developing Policy/preparing Legislation
- Key messages
 - Teamwork, involving lawyers
 - Project manage the exercise
 - Factor in LAC Guidelines at all stages
- Today
 - Managing a Bill in the House

Those of you who came to our original Seminar will recall that I there tried to provide an overview of the process of developing policy and then turning it into legislation.

You may also recall that the key messages of that presentation were:

- To work as a multi-disciplinary team, particularly by involving the lawyers from the start
- To treat the exercise as a project and formally project manage it
- To factor in the messages from the LAC Guidelines at all stages of the process.

I touched very briefly on the actual stages once a Bill is in the House. Today the intention is to expand on that topic, both in this session (which again is an overview) and in the sessions from Catherine Parkin (on the Select Committee stage in particular) and from Ivan Kwok and Donna Tunnicliffe (on the Committee of the Whole stage).



TODAY'S STORY

- Guidance Gap
- New LAC Guidelines Chapter
 - "Bills after Introduction"
- Consistent message
 - LAC Guidelines just as relevant to changes to Bills as they move through the House
 - "Every effort should be made to ensure that the Bill remains consistent with the Guidelines".

At the time of that last Seminar there was not much material aimed at guiding public servants through those House stages.

The Legislation Advisory Committee has now sought to fill that gap by developing a new Chapter for the LAC Guidelines entitled "Bills after Introduction". It has been signed off by the Committee and will soon find its way onto our website in our online version of the Guidelines.

The central theme for that Chapter is not surprising – as a Bill passes through the various stages in the House "every effort should be made to ensure that the bill remains consistent with the Guidelines".



THE COMPETING ROLES OF PUBLIC SERVANTS

- Project manager
 - But timing and ultimate content out of our control!
- Advisers to the Select Committee
 - But there may not be a Government majority!
- Agent of the Minister/Government
 - Champions of the policy objectives

This session is entitled “How Public Servants should deal with Legislation in Parliament”. One of the real challenges for us as Public Servants in this context is managing the competing demands or tensions that are necessarily involved.

We are expected to:

- Manage a project within a process where we have little control over timing or content
- Be advisers to the Select Committee
- Be agents of the Minister/Government
- Sometimes engage with other political parties.

Each of these roles can push in different directions. This can be exacerbated, for example, if the Select Committee doesn't have a Government majority.

So this is not easy stuff!



THE STAKES ARE HIGH

- Maintain consistency with Guidelines
 - Continue to deliver policy objective
 - Ensure a workable Bill
- through***
- Select Committee – structured!
 - Committee of the Whole – pressured!

So the context is a difficult one, and the stakes are high. The juggling act required is to maintain consistency with the Guidelines, continue to deliver on the policy objective, and ensure a workable Bill.

Well, obviously in its passage through the House there are at least two opportunities for the content of a Bill to be changed. The first is at the Select Committee stage, the second at the Committee of the Whole stage.

The issues that arise, and the ways in which they arise, tend to be quite different at each stage. And, as we've just discussed, the context for the public servant to respond is quite different too.

At the Select Committee the process is more structured and there is often time for more considered input and attention to detail.

At the Committee of the Whole, unless you have had access to proposed amendments in advance, issues can emerge on the run and require a steady but decisive hand.



LAC GUIDELINES ISSUES

- Still consistent with policy objective?
- Still understandable and accessible?
- Consistent with common law principles?
- Interpretation Act?
- Bill of Rights Act?
- Treaty issues?

So, back to that question, what does ensuring consistency with the Guidelines mean through these stages?

It's really a matter of going back to the Guidelines Checklist and asking the questions that each Chapter poses, or variations on them:

- Will the Bill remain consistent with its policy objective?
- Will the Bill remain understandable and accessible?
- Is the Bill still consistent with basic common law principles?
- Has the Interpretation Act 1999 been reconsidered?
- Are any changes consistent with the Bill of Rights Act?
- With Treaty principles?



LAC GUIDELINES ISSUES (Cont.)

- International obligations?
- Consistent with existing law?
 - Savings or transitionals?
- New public power?
- New public body?
- Delegated legislation involved?
- Appropriate remedies provided?

•Are any changes consistent with our international obligations, or properly informed by other international standards?

•Will the Bill remain consistent with existing law, and in particular for it to do so will you need new savings or transitional provisions?

•Is any new public power now being created?

•Is any new public body now being created?

•Is delegated legislation involved?

•Have appropriate remedies been provided?



LAC GUIDELINES ISSUES (Cont)

- Any new criminal offences?
- Appeal and review issues dealt with?
- New or changed powers of entry and search?
- Privacy interests affected?
- Any cross-border issues?

- Are any new criminal offences being created?
- Have appeal and review issues been properly dealt with?
- Are there any new (or changed) powers of entry and search?
- Are privacy interests affected?
- Are there any cross-border issues?



OTHER ISSUES/OBLIGATIONS

- Attention to detail
- Drafting consistency
- Staying within “scope” (S.O 288 & 297)
- Fiscal impact (S.O 318-322)
- Government decides policy changes

But a public servant’s role in supporting a Bill through the House is obviously much more than just ensuring consistency with the LAC Guidelines.

There are some other things that sit alongside that responsibility that are fundamental to a good process and outcome.

Things like:

- Constant attention to detail
- Drafting consistency
- Staying within “scope” (see S.O 288 & 27)
- Ensuring no untoward fiscal impact (see S.O 318-322)
- Ensuring any policy changes are understood and endorsed by Government.



SELECT COMMITTEE STAGE

- Initial Briefing – tactically important!
- Establish communication channel with Committee Clerk
- Plan submission summarising and analysis

I'll now turn briefly to each of the particular stages as a Bill proceeds through the House and identify some of the practical issues involved.

Firstly, at the Select Committee stage.

A good starting point in any Select Committee process is a briefing to the Select Committee. This is the opportunity to help the Committee members properly understand the issues they will be dealing with (and often just as much the issues they are not dealing with!) You should plan carefully what key messages you need to get through to the Committee. Keep it punchy and short!

It is also important to have a clearly agreed single line of communication with the Committee Clerk. Note too that most Ministers expect all written communications from the Department to the Committee to go through their offices.



SELECT COMMITTEE STAGE (Cont).

- Departmental Report
 - Plan structure and timing

 - Allow time for
 - Discussion with Minister
 - Cabinet decisions

 - Includes both recommendations arising from submissions and Departmental improvements

- QA Committee Clerk's commentary

The Departmental is responsible for summarising and analysing all of the submissions so you need to map out how you are going to approach that – will you need special software, how are you going to ensure you pick up issues made in oral submissions that are not also in written submissions etc?

In planning the delivery of the Departmental Report to the Committee you need to think about what needs to happen if any substantive issues arise (which is nearly always the case).

Because the Bill represents Govt policy any change to that policy needs to be okay with your Minister and with Cabinet. So you need to factor in time for their input to occur. You also need to ensure that in your Report you pick up not only issues arising from submissions but also from your own reassessment of the Bill.

Finally you will usually be asked by the Committee Clerk to check for accuracy the commentary describing the amendments made.



COMMITTEE OF THE WHOLE

- Ensure Government SOPs comply with LAC Guidelines
- Help Minister understand the nature of amendments proposed
- Watch out for scope issues!
- Watch out for fiscal implications
- Leave your cabbage at home!

For the Committee of the Whole stage you'll hear some detailed advice in a later presentation.

I'll just leave you with these key thoughts on this stage:

- Again your role is to ensure that any Government SOP is consistent with the LAC Guidelines (and usually that Cabinet has agreed to the change).

- As the Committee proceeds, you need to be helping your Minister to understand the nature of any amendments being put forward.

- You need to remain alert to scope issues and fiscal implications. And you won't be able to make the same mistake as a former DoL official whose cabbage rolled onto the floor of the House. You can now only take your papers into the Chamber!



OTHER ISSUES

- Second Reading
 - Does your Minister need you?
- Third Reading
 - Does your Minister need you?
- Interaction with other political parties – Ministerial permission!

Finally, for completeness, I'll just point out that these days in my experience it's seldom that Ministers require a departmental presence at Second or Third Readings. But you should still listen to ensure that any points of interest raised can be followed through on.

And be careful about interactions with other political parties. Your Minister must approve or require such engagement!