



Cabinet Office

CO (18) 1

Circular

20 July 2018

Intended for

- All Ministers
- All Chief Executives
- Chief Parliamentary Counsel
- Clerk of the House of Representatives
- All Senior Private Secretaries
- All Private Secretaries
- All officials involved in the preparation of legislation

Legislation Guidelines: Cabinet Requirements and Expectations

Introduction

- 1 The *Legislation Guidelines* (2018 edition) are the government's key point of reference for assessing whether draft legislation conforms to accepted legal and constitutional principles. Cabinet has agreed that the *Legislation Guidelines* replace the *Guidelines on Process and Content of Legislation* (2014 edition).
- 2 The *Legislation Guidelines* set out guidance on matters of legislative design and quality, and on matters fundamental to the rule of law in New Zealand. The guidelines are a key part of government efforts to promote quality legislation and transparency about the exercise of law-making power. They are designed to be used from early in the policy development process.

Requirements for Cabinet papers

Policy papers

- 3 A Cabinet or Cabinet committee paper seeking approval for policy that will involve the use of legislation must:
 - 3.1 identify, and set out the reasons justifying, each departure from the default principles in the guidelines that is known when the paper is developed; and
 - 3.2 note, under "legislative implications", whether:
 - 3.2.1 any further guidelines issues are likely to arise during drafting; and
 - 3.2.2 whether officials have worked or will work with the Legislation Design and Advisory Committee (LDAC) on the proposal (see paragraph 10).
- 4 The guidelines' default principles are set out in italics within each chapter. A checklist consolidating all the default principles is available on the [LDAC's website](#).

- 5 The [CabGuide](#) has more about Cabinet expectations for how the guidelines should be considered in the development of policy papers.

Legislation papers

- 6 A Cabinet or Cabinet committee paper seeking permission to introduce a Bill or submit regulations to the Executive Council must:
- 6.1 indicate whether the Bill or regulations comply with the guidelines;
 - 6.2 identify whether any aspects of the draft Bill or regulations depart from the default principles in the guidelines; and
 - 6.3 set out the reasons that justify each departure.

How departments should use the *Legislation Guidelines*

- 7 Officials should:
- 7.1 consider the guidelines as a whole at the outset of policy development, if legislation is an option for implementing policy decisions;
 - 7.2 continue to refer to the guidelines as policy develops and new issues arise;
 - 7.3 use the guidelines checklist to track and set down the department's views on issues arising under the guidelines; and
 - 7.4 use the guidelines in preparing advice for Ministers and Parliament, so that they are informed about the principles of good law-making and the significance of any proposed departure from the guidelines.
- 8 Compliance with paragraph 7 will also help officials to support Ministers in meeting the requirements in paragraphs 3 and 6.
- 9 Chief executives should ensure that officials involved in the development of policy and legislation:
- 9.1 understand the scope and function of the *Legislation Guidelines*; and
 - 9.2 meet the requirements and expectations set out in this circular.

How the Legislation Design and Advisory Committee can assist

- 10 The *Legislation Guidelines* have been prepared by the LDAC. The LDAC can advise departments on how the guidelines might apply to, or be implemented in, specific proposals. Normally, the LDAC engages with departments on Bills that have been identified for referral to the LDAC through the annual legislation programme. However, the LDAC is also available to advise on other Bills, and can be flexible in its processes for urgent legislation if needed. See the LDAC's website for more information, including the LDAC's contact details.

How the *Legislation Guidelines* relate to requirements for disclosure statements

- 11 Departments are required to prepare disclosure statements that include information about significant or unusual legislative provisions for most government Bills and substantive Supplementary Order Papers. Some information in disclosure statements will be similar to information contained in Cabinet or Cabinet committee papers about departures from the default principles in the *Legislation Guidelines*. This information is important to provide transparency to the public about the exercise of law-making power and inform the work of select committees on Bills. The requirements for disclosure statements are set out in [Disclosure Requirements for Government Legislation](#) [Cabinet Office circular CO (13) 3].

The Legislation Guidelines replace the LAC Guidelines

- 12 The *Legislation Guidelines* replace the *Guidelines on Process and Content of Legislation* (2014 edition) (which were commonly known as the *LAC Guidelines*). A summary of the differences between the two documents is set out in the Appendix.

Publication

- 13 The *Legislation Guidelines* are available on the [LDAC website](#).

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Appendix: Summary of differences between the *Legislation Guidelines* and the *LAC Guidelines*

- 1 The *Legislation Guidelines* carry over much of the *LAC Guidelines*, but have been revised to:
 - 1.1 fill gaps in the *LAC Guidelines* that were identified in consultation with key regulatory departments;
 - 1.2 update the guidance to reflect changes in law and emerging issues; and
 - 1.3 provide clearer and more detailed guidance in identified areas.
- 2 The most substantive changes are as follows:
 - 2.1 three new chapters:
 - 2.1.1 *Good Legislative Design*—this gives an overview on best practice approaches to using the guidelines when designing legislation;
 - 2.1.2 *Legislative Requirements for Public Consultation*—this addresses when, and how best to, include legislative requirements for consultation, rather than rely on good practice; and
 - 2.1.3 *Civil Pecuniary Penalties*—this covers matters to consider in the design of pecuniary penalty regimes. The chapter gives effect to a Law Commission recommendation that a chapter on this topic be added to the *LAC Guidelines*;
 - 2.2 new guidance on when to consider replacing, rather than amending, existing legislation;
 - 2.3 new guidance on enabling information sharing;
 - 2.4 an increased emphasis on principles to balance in assessing what is appropriate for delegated legislation;
 - 2.5 more detailed guidance on delegated legislation that amends or overrides primary legislation;
 - 2.6 new guidance on exemptions; and
 - 2.7 clarification that the guidance on search powers relates to searches for law enforcement purposes and that a more nuanced approach is needed for inspection-type powers in a regulatory setting.