



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

Revised Legislation Advisory Committee Guidelines: Cabinet Requirements

Introduction

- 1 In November 2014, Cabinet agreed that the 2001 *Legislation Advisory Committee Guidelines: Guidelines on Process and Content of Legislation* (the 2001 LAC Guidelines) be replaced with a revised set of [Guidelines](#) (the 2014 LAC Guidelines), as the government's key point of reference for assessing whether draft legislation conforms to accepted legal and constitutional principles.
- 2 Cabinet also agreed that, from 1 January 2015, Cabinet or Cabinet committee papers seeking permission to introduce a Bill or to submit a regulation to Executive Council should identify whether there are any aspects of the draft Bill or regulation that depart from the default approach in the 2014 Guidelines, and provide the justification for any departure. This circular provides further guidance on those requirements.

Features of the 2014 LAC Guidelines

- 3 The 2014 LAC Guidelines contain material on issues that are fundamental to the development of legislation and the operation of the rule of law in New Zealand, such as proper processes and legal and constitutional principles. The other element in this assessment process is the New Zealand Bill of Rights Act 1990.
- 4 The key features of the 2014 LAC Guidelines are:
 - 4.1 shorter chapters to make them easier to use;
 - 4.2 updates to address changes in the law (such as changes in criminal procedure and search and surveillance law);
 - 4.3 new chapters on topics such as statutory powers of exemption and authorising the charging of fees and levies.

- 5 The default approach should be to adopt the principles that the LAC believes should normally be applied when drafting legislation. The 2014 LAC Guidelines note that departures from this approach will be appropriate in some circumstances.
- 6 In March 2015, Cabinet agreed that the LAC be remodelled and merged with the Legislation Design Committee into the Legislation Design and Advisory Committee (the LDAC) to provide advice about bills earlier in the development of policy and legislation to resolve problems in the basic framework and architecture of legislation and to identify potential rule of law issues. The LDAC will take over responsibility for the 2014 LAC Guidelines and the LAC website. Over the next 12 to 24 months it will also produce detailed supporting material, which will include case law, academic analysis and commentary, and further examples of existing legislation that demonstrate the particular issues discussed in each chapter. This document will be referred to as the Manual.
- 7 In the interim, it is intended that the 2001 LAC Guidelines operate as an additional reference source that supplements the 2014 LAC Guidelines. If any part of the Manual is inconsistent with the 2014 LAC Guidelines, the 2014 LAC Guidelines will apply.

Ministerial and departmental use of the 2014 LAC Guidelines

- 8 The 2014 LAC Guidelines contain the principles that the LAC considers to be most important to the legislative design process. To have the most effective impact on that process, the 2014 LAC Guidelines must be:
- 8.1 considered as a whole at the outset for each item of government legislation;
 - 8.2 continue to be consulted as new issues arise to ensure that the legislation remains consistent with the 2014 LAC Guidelines.
- 9 Chief executives are asked to ensure that all departmental officials that may be involved in the preparation of legislation:
- 9.1 understand the function and scope of the 2014 LAC Guidelines, and when and how the government expects them to be used;
 - 9.2 are aware of the need to explain departures from the default approach identified in the 2014 LAC Guidelines.

Compliance reporting requirements in Cabinet papers

- 10 Cabinet or Cabinet committee papers seeking permission to introduce a Bill or to submit a regulation to Executive Council should identify whether there are any aspects of the draft Bill or regulation that depart from the default approach in the 2014 LAC Guidelines. In any areas where the draft legislation does not comply with the default approach, the justification for any variation must be stated.
- 11 A checklist is available on the LAC website that departments may find helpful in assessing whether any aspects of their draft Bill, Supplementary Order Paper (SOP), or regulation departs from the default approach set out in the 2014 LAC Guidelines. The [CabGuide website](#) has been updated to reflect the new requirements.

Relationship to requirements for disclosure statements

- 12 Departments are also required to prepare [disclosure statements](#) that include information about particular significant or unusual legislative provisions for most government Bills and substantive SOPs. While some of the information required in disclosure statements will be similar to the information contained in relevant Cabinet or Cabinet committee papers about departures from the LAC's default approach, the two sets of requirements serve different purposes and differ in presentation, coverage, and prime audience.
- 13 It is desirable, however, that the two sets of requirements use consistent concepts and terminology and have the 2014 LAC Guidelines as their common reference point. The Treasury will develop revised templates and guidance for departmental disclosure statements that take appropriate account of, and provide direct references to, relevant aspects of the 2014 LAC Guidelines.

Publication

- 14 The 2014 LAC Guidelines are available on the [LAC website](#).
- 15 The Cabinet Office's [CabGuide website](#) has been updated to reflect the new requirements.
- 16 The requirements for disclosure statements are set out in Cabinet Office circular CO (13) 3, entitled [Disclosure Requirements for Government Legislation](#).

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