

GUIDE

PUBLIC POLICY DEVELOPMENT FOR EFFECTIVE LEGISLATION

Contents

Introduction	4
Public Policy Defined	5
Public Policy Responsibilities	5
Development of public policy	6
Legislative Agenda	6
Policy Paper.....	6
Policy Paper: Check List.....	7
Cabinet Memorandum	8
Cabinet Memorandum: Check List	8
Drafting Instructions	9
Submission of Drafting Instructions to the Legislative Drafting Unit.....	9
Use of Drafting Instructions	10
Effective Drafting Instructions.....	10
Check list for Drafting Instructions	10

Introduction

The Legislative Drafting Unit (Unit) is part of the Attorney General's Chambers. The Unit is tasked with the preparation of legislation, essentially Acts and Statutory Instruments.

To facilitate the drafting of effective legislation, the process must include properly articulated public policy.

The purpose of this Guide is to inform Ministries and Departments of the considerations that should be included in public policy relating to the drafting of legislation. This Guide does not operate to supersede any other academic teaching, template or standard.

Public Policy Defined

This is the function of creating in written form the specific actions the Government intends to take to deal with an issue, usually by a Ministry or

Public Policy Responsibilities

Each Ministry/Department and the Legislation Drafting Unit have functions in relation to public policy. These roles are presented in the table below:

Ministry/Department	Legislative Drafting Unit
Develops public policy	Changes the public policy into legislation
Prepares drafting instructions	Converts drafting instructions into legislation
Provides constructive observations on draft legislation	Corrects the legislation based on the comments provided
Holds consultations	Provides assistance at consultations
Understands basic laws	Provides statutory interpretation and guidance

Development of public policy

The documents that are relevant to the development of public policy include the Legislative Agenda, a policy paper, Cabinet Memorandum or Drafting Instructions. The duty of each Ministry or Department as regards these documents is stated below:

Legislative Agenda

The Legislative Agenda forms part of the Throne Speech that is given by the Governor General. It essentially states the public policy priorities of the Government for the financial year.

In order to assist with the preparation of the Legislative Agenda each Ministry/Department must submit at least three months in advance of the Throne Speech its requirements for legislation for the coming year.

Policy Paper

A Policy Paper must be prepared for new legislation. Some examples of new legislation are

- Establishment of a statutory corporation or other body, such as a Tribunal or Appeals Board
- Licensing or Registration systems
- Government finance
- Taxation
- Validation

Policy Paper: Check List

- ☐ Title is vivid, clear, brief, engaging and focuses on the topic area
- ☐ Definitions are used to describe unfamiliar, technical or special terms in alphabetical order
- ☐ Introduction and Background states the issue, its importance and steps towards developing the policy
- ☐ Problem Description
- ☐ Current policies including laws
- ☐ Scope as it relates to What? Who? Why? When? and Where?
- ☐ Policy options including
 - ✓ Information
 - ✓ Capacity building
 - ✓ Economic instruments e.g. tax
 - ✓ Insurance requirements
 - ✓ Rules generally (not only legislation but guidelines or codes)
 - ✓ Organizational structure required, if any
 - ✓ Combination and timing of solutions
 - ✓ Legal, procedural and organizational implications
- ☐ Effect of policy options
- ☐ Policy recommendations
 - ✓ Solution that best achieves the policy objectives chosen
 - ✓ Comparative analysis of costs and benefits used
- ☐ Other considerations
 - ✓ Table of Contents
 - ✓ Abstract/Executive Summary
 - ✓ Appendices
 - ✓ Bibliography
 - ✓ Endnotes
 - ✓ Revision to state period of review and amendment of policy
 - ✓ Inform of the consultations that were held with stakeholders.

Cabinet Memorandum

A Cabinet Memorandum is normally used by a Ministry or Department if

- ⇒ The Prime Minister has given a direction that a Cabinet Memorandum is required
- ⇒ For Cabinet approval is needed for the Minister to take action
- ⇒ Legislation requires Cabinet approval before action can be performed under an Act or statutory instrument.

Cabinet Memorandum: Check List

Structure	Style	Contents
☐ In writing ☐ Contains a title ☐ Background information provided ☐ Analysis of considerations and options ☐ Recommendations	☐ Logical ☐ Clear and concise and unambiguous ☐ Long complicated sentences and paragraph avoided ☐ Plain English used ☐ Limited use of technical jargon and acronyms	☐ Name of relevant legislation specified ☐ Particular section of the legislation specified ☐ Appropriateness of particular person or body under the legislation indicated, if relevant ☐ Relevant documentation submitted

Drafting Instructions

Definition: Written instructions from a Ministry or Department that is submitted to the Legislative Drafting Unit to prepare legislation that is intended to achieve a specific objective.

Submission of Drafting Instructions to the Legislative Drafting Unit

Permanent Secretary submits drafting instructions for Ministry or Department

Must be addressed to the Attorney General in the Attorney General's Chambers

Instructions submitted to the Unit by the Attorney General.

Use of Drafting Instructions

Drafting Instructions must be used by a Ministry or Department when the aim of the instructions relates to

1. The amendment of existing legislation
2. Preparation of a Statutory Instrument
3. To incorporate a Convention, Agreement or Treaty.

Effective Drafting Instructions

For Drafting Instructions to be valuable to the Legislative Drafting Unit, a Ministry or Department should provide the

- Written instructions
- Instructions that are complete, accurate and comprehensive containing
 - What has to be done
 - Why it has to be done
 - By what time it has to be done
 - By whom it has to be done
- Instructions in plain language and in narrative form.

The following are not considered to be proper Drafting Instructions by the Legislative Drafting Unit

- ❌ Model Legislation
- ❌ Draft Legislation

- | | |
|---|--|
| ☐ Date included | ☐ Legislative priority indicated |
| ☐ Points set out in numbered paragraphs | ☐ Principal objectives stated |
| ☐ Pages numbered | ☐ All policies identified including existing laws |
| ☐ Instructing officer identified with position, title and contact information | ☐ Commencement identified |
| ☐ Relevant section for amendment or making of statutory instrument identified | ☐ Consequential amendments to other laws stated |
| | ☐ Penalties for offences fixed |
| | ☐ Savings and transitional provisions considered |
| | ☐ Information regarding consultations included |
| | ☐ Documentation submitted including |
| | ☐ Legal Opinions and Case Law |
| | ☐ Cabinet Conclusion |
| | ☐ Copy of signed Convention, Agreement or Treaty |