



# LEGISLATION

Public Officers' Law Seminar :  
Understanding the Law  
26<sup>th</sup> and 27<sup>th</sup> October 2016

*Norismizan binti Hj Ismail,  
Senior Counsel  
Hjh Norazamiah binti Hj Hambali,  
Deputy Senior Counsel*

[www.agc.gov.bn](http://www.agc.gov.bn)



# SNAPSHOT

## ■ Legislation 1: Know the Law

- Why law is relevant
- Types of legislation
- When to legislate
- Limits to legislative power
- Basic principles of interpreting legislation

## ■ Legislation 2: Exercise the Law

- Exercise of powers
- Law-making process



# LEGISLATION 1: KNOW THE LAW

- Why are laws relevant?
  - Types of legislation
- Who has legislative power?
- When is legislation needed?
  - Alternatives
- Limits to legislative power
  - Statutory interpretation



# **LEGISLATION 1: KNOW THE LAW**

## ***Why are laws relevant?***

### **Private individual**

- Laws regulate the behavior of each member of society
- Laws govern what an individual can or cannot do

### **Government**

- Government is also subject to law
- Laws govern what a government can or cannot do



# LEGISLATION 1: KNOW THE LAW

## *Types of legislation*



### Primary Legislation

- Constitution – Article 83(3) : “makes any **Orders** whatsoever which he considers desirable in the public interest”
- Order/Acts – primary legislation, legal framework, substantive policies and matters



Q: When is the commencement date?

Date of signing

**BRUNEI DARUSSALAM GOVERNMENT GAZETTE**

**CONSTITUTION OF BRUNEI DARUSSALAM**  
(Order under Article 83(3))

**COMPULSORY EDUCATION ORDER, 2007**

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

**Citation and long title.**

1. (1) This Order may be cited as the Compulsory Education Order, 2007.
- (2) The long title of this Order is "An Order to provide for compulsory education and for matters connected therewith or incidental thereto".

**Regulations.**

14. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of fees and any other thing required to be or which may be prescribed under this Order, and for the due administration thereof.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

Made this 14th. day of Zulkaedah, 1428 Hijriah corresponding to the 24th. day of November, 2007 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

**HIS MAJESTY**  
**THE SULTAN AND YANG DI-PERTUAN**  
**BRUNEI DARUSSALAM**



“shall commence  
on ....”

BRUNEI DARUSSALAM GOVERNMENT GAZETTE

CONSTITUTION OF BRUNEI DARUSSALAM  
[Order made under Article 83(3)]

COMPULSORY RELIGIOUS EDUCATION ORDER, 2012

In exercise of the power conferred by Article 83(3) of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

Citation, commencement and long title.

1. (1) This Order may be cited as the Compulsory Religious Education Order, 2012 and shall commence on the 1st. day of January, 2013.

(2) The long title of this Order is “An Order to provide for compulsory religious education and for matters connected therewith or incidental thereto”.

Regulations.

16. (1) The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make regulations which are necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of fees and any other thing required to be or which may be prescribed under this Order, and for the due administration thereof.

(2) Such regulations may include such incidental, consequential and supplementary provisions as the Minister considers necessary or expedient.

Made this 24th. day of Syaaban, 1433 Hijriah corresponding to the 14th. day of July, 2012 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY  
THE SULTAN AND YANG DI-PERTUAN  
BRUNEI DARUSSALAM



“date to be  
appointed....  
notification in the  
*Gazette*”

CONSTITUTION OF BRUNEI DARUSSALAM  
(Order under Article 83(3))

CENTRE FOR STRATEGIC AND POLICY STUDIES ORDER, 2006

In exercise of the power conferred by Clause (3) of Article 83 of the Constitution of Brunei Darussalam, His Majesty the Sultan and Yang Di-Pertuan hereby makes the following Order —

Citation, commencement and long title.

1. (1) This Order may be cited as the Centre for Strategic and Policy Studies Order, 2006 and shall commence on a date to be appointed by the Minister, with the approval of His Majesty the Sultan and Yang Di-Pertuan, by notification in the *Gazette*.

(2) The long title of this Order is "An Order to provide for the establishment of the Centre for Strategic and Policy Studies and for matters connected therewith".

Rules.

25. The Minister may, with the approval of His Majesty the Sultan and Yang Di-Pertuan, make such rules as may be necessary or expedient for giving effect to and carrying out the provisions of this Order, including the prescription of fees and of any other thing required to be or which may be prescribed under this Order, and for the due administration thereof.

Made this 20th. day of Rabiulakhir, 1427 Hijriah corresponding to the 18th. day of May, 2006 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY  
THE SULTAN AND YANG DI-PERTUAN  
BRUNEI DARUSSALAM



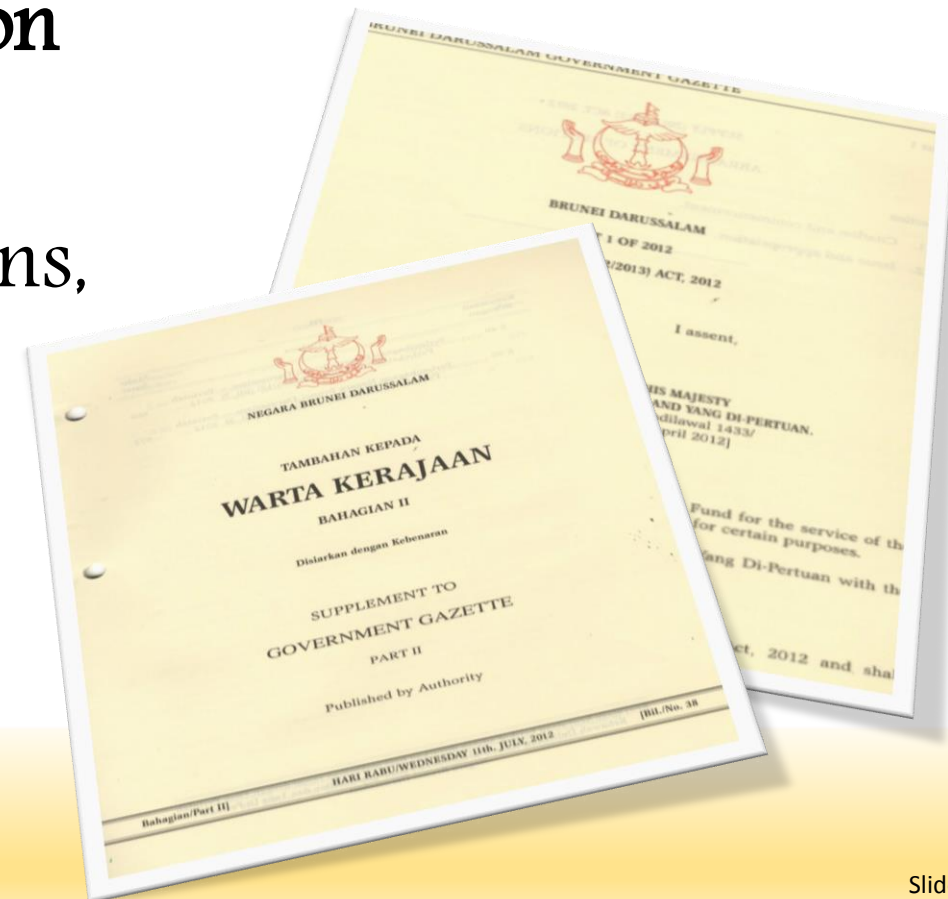


# LEGISLATION 1: KNOW THE LAW

## *Types of legislation*

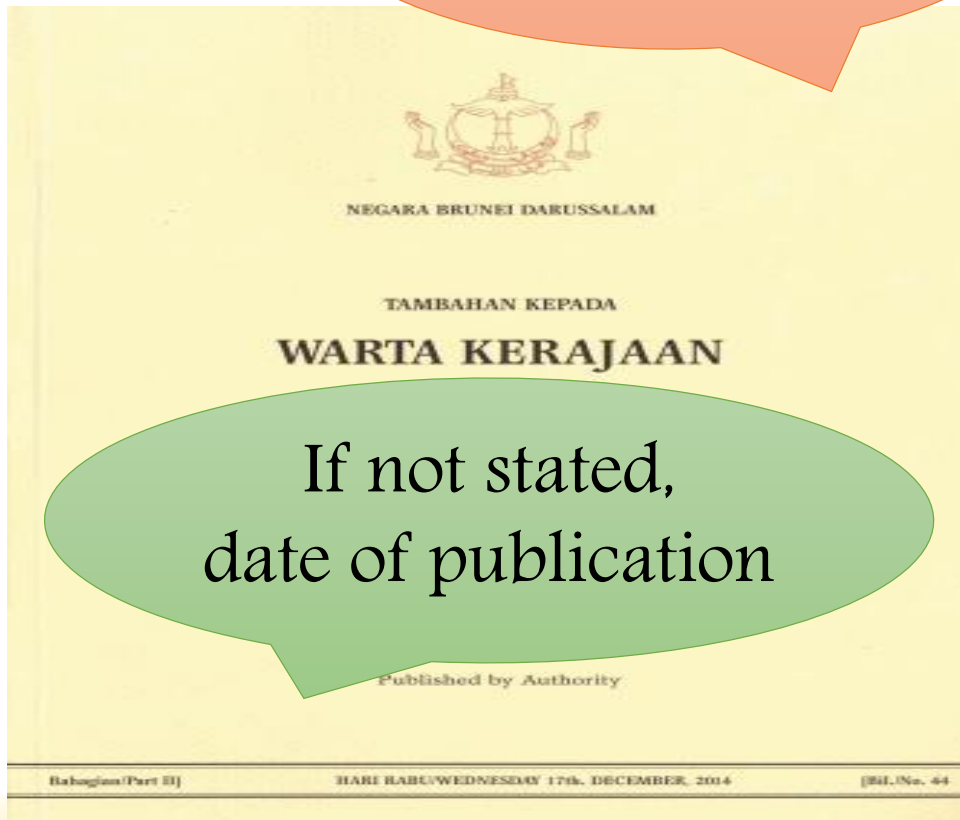
### Subsidiary Legislation

- Operational and technical details
- Rules, Regulations, By-Laws, Notifications, Orders, Proclamations





“same date as  
the .... Order”



If not stated,  
date of publication

**BRUNEI DARUSSALAM GOVERNMENT GAZETTE**

**BUILDING CONTROL ORDER, 2014**

**BUILDING CONTROL REGULATIONS, 2014**

In exercise of the power conferred by section 74 of the Building Control Order, 2014, the Minister of Development, with the approval of His Majesty the Sultan and Yang Di-Pertuan, hereby makes the following Regulations —

**PART I**

**PRELIMINARY**

**Citation and commencement.**

1. These Regulations may be cited as the Building Control Regulations, 2014 and shall commence on the same date as the Building Control Order, 2014.

**Interpretation.**

2. In these Regulations, unless the context otherwise requires —

“acceptable solution” means the specifications, design, material or method of construction set out in an Approved Document as provided in regulation 31(1);

“alternative solution” means a solution that entails the use of any design, material or method of construction that differs completely or partially from those in the acceptable solution;

“approved” means approved by the Authority;

“Approved Document” means an Approved Document issued by the Authority under regulation 31;



# LEGISLATION 1: KNOW THE LAW

## *Who has legislative power*

### By His Majesty the Sultan and Yang Di-Pertuan

- Make an Order

### By Legislature

- Make an Act
- Legislative Council passes Bill
- His Majesty assents to Bill =  
Act

### By Minister or Statutory body

- Done under the authority of the legislation – subsidiary legislation
- Cannot be inconsistent with any Order/Act
- NO delegation to persons who are not accountable eg. civil servants



# **LEGISLATION 1: KNOW THE LAW**

## ***When is legislation needed?***

### **Checklist:**

- **To regulate behavior**
- **To override common law**
- **To introduce certainty of legal effect**
- **To change existing legal rights or obligations**
- **To create new rights or obligations**
- **To impose a new power**
- **To impose tax or charge on public funds**
- **To take on new international obligations**



# LEGISLATION 1: KNOW THE LAW

## *Alternatives?*

Consider alternatives to legislation:

- Status quo
- Use existing law
- Step up enforcement
- Information and educational campaigns
- Voluntary arrangements/contracts
- Self-regulation
- Codes/standards = quasi laws

*“Parliamentary time is limited, so Ministries and statutory authorities should always consider whether the objectives they wish to achieve may be effectively reached by purely administrative means”*



# **LEGISLATION 1: KNOW THE LAW**

## ***Limits to legislative powers***

- Separation of powers
- Subject to rule of law – nobody is above the law
- Constitution is supreme – inconsistency = void
- Fundamental rights – should not legislate to deprive individuals of fundamental rights
- No discrimination
- Everyone is equal before the law – equal protection of the law



# **LEGISLATION 1: KNOW THE LAW**

## ***Limits to legislative powers***

### **WHAT TO AVOID**

- Judicial power should not be conferred on Executive or Legislature
- Stopping due process applying
- Arbitrariness
- Retrospective legislation
- Getting Government or persons out of bad deals



# LEGISLATION 1: KNOW THE LAW

## *Limits to legislative powers*

### WHAT TO DO

- Rule of law
- Remember our international obligations
- Laws must be published
- Legislate with whole of Government perspective
- Ensure the correct body carries out new power
- Aim for proportionate legislative response
- Punishment must fit the crime
- Clearly define discretionary powers





# **LEGISLATION 1: KNOW THE LAW**

## ***Statutory interpretation***

- Interpretation and General Clauses Act
- Definition of certain words – can be found in parent Act or SL
- Purposive interpretation
- Canons of constructions
- Legislative presumptions



## **LEGISLATION 2: EXERCISE THE LAW**

- **Exercise of powers**
  - **Source of power**
  - **Exercise of discretion**
  - **Delegation of powers**
  - **Judicial review**
- **Law-making process**
  - **How to make legislation**
  - **Drafting instructions**



# LEGISLATION 2: EXERCISE THE LAW

## *Source of power*

- Primary and subsidiary legislation
- Know the legislation

ATTORNEY GENERAL'S CHAMBERS  
PRIME MINISTER'S OFFICE | BRUNEI DARUSSALAM

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### The Laws of Brunei - I

ACTS, RULES, REGULATIONS AND OTHER NOTIFICATIONS	CHAPTER / NOTIFICATION NO	DATE COMING INTO FORCE	B.L.R.O.
IMMIGRATION ACT [2006 Ed.]	CAP. 17	01-07-1958	4/2014
<i>Subsidiary Legislations:</i>			
Immigration Regulations	CAP.17 Rg 1	01-07-1958	4/2014
Immigration (Brunei Darussalam-Sarawak Border Area) (Exemption) Order, 2013	S 66/2013	19-03-2012	
Immigration (Residence Permit) Regulations	CAP.17 Rg 2	01-07-1958	2/2006
Immigration (APEC Business Travel Card) Regulations	CAP.17 Rg 3	02-08-2003	2/2006



# LEGISLATION 2: EXERCISE THE LAW

## *Source of power*

- Example – Autoriti Monetari Brunei Darussalam (AMBD)
  - Autoriti Monetari Brunei Darussalam Order, 2010

**Functions, powers and duties of Authority.**

36. (1) In implementing its objects, the Authority may, exercise and discharge the following functions, powers and duties —

(a) act as the central bank of Brunei Darussalam, including the conduct of monetary policy, the issuance of the currency of Brunei Darussalam, the oversight of payment systems and serving as banker to and financial agent of the Government;

(b) manage the exchange rate regulation regime, in particular by entering into foreign exchange arrangements, without prejudice to the principal objects of the Authority and after consultation with the Government;

(c) determine, where applicable, the conditions of employment of the Authority's agents, including receivers of banks and financial institutions, auditors and correspondents;



# LEGISLATION 2: EXERCISE THE LAW

## *Source of power*

- Banking Order, 2006

### **Power of Authority to secure compliance.**

41. (1) If at any time called upon in writing by the Authority to do so, a bank shall satisfy the Authority by the production of such evidence or information as it may require, that the bank is not in contravention of any of the preceding provisions of this Part.

(2) For the purpose of securing compliance with the preceding provisions of this Part and with sections 11, 25 and 38, the Authority may by notice in writing require any licensed bank to prepare a statement aggregating its assets, liabilities or profits, as the case may be, with the assets, liabilities or profits of all or related companies or parties; and the bank shall comply with that requirement within such time as is specified in the notice.

(3) A bank which fails to comply with any of the provisions of this section is guilty of an offence and liable on conviction to a fine not exceeding \$150,000.



## LEGISLATION 2: EXERCISE THE LAW

### *Exercise of discretion*

- Discretion exists when decision-maker has power to make a choice –
  - to act or not to act
  - to approve or not approve
  - to approve with conditions





# LEGISLATION 2: EXERCISE THE LAW

## *Delegation of powers*

- **General rule:** Person named in the legislation **must exercise** the statutory power and no one else **unless** permitted by –
  - express authorisation by specific legislation
  - pursuant to Interpretation and General Clauses Act (section 31A: Delegation of power of Minister)
  - Carltona Principle – Ministerial responsibility and administrative necessity



# LEGISLATION 2: EXERCISE THE LAW

## *Delegation of powers*

- Delegation expressly provided by legislation

- Section 2 of the Accountants Order, 2010

"Registrar" means the Registrar of Public Accountants appointed by His Majesty the Sultan and Yang Di-Pertuan under section 10(1)(a) and includes a Deputy Registrar and an Assistant Registrar appointed under section 10(1)(b);

- Section 7(4) of the Workplace Safety and Health Order, 2009

(4) The Commissioner may, with the approval of the Minister, delegate the exercise of all or any of the duties imposed and the powers conferred upon him by this Order (except the power of delegation conferred by this subsection) to any Deputy Commissioner, inspector or authorised officer, subject to such conditions as the Commissioner may specify.





# LEGISLATION 2: EXERCISE THE LAW

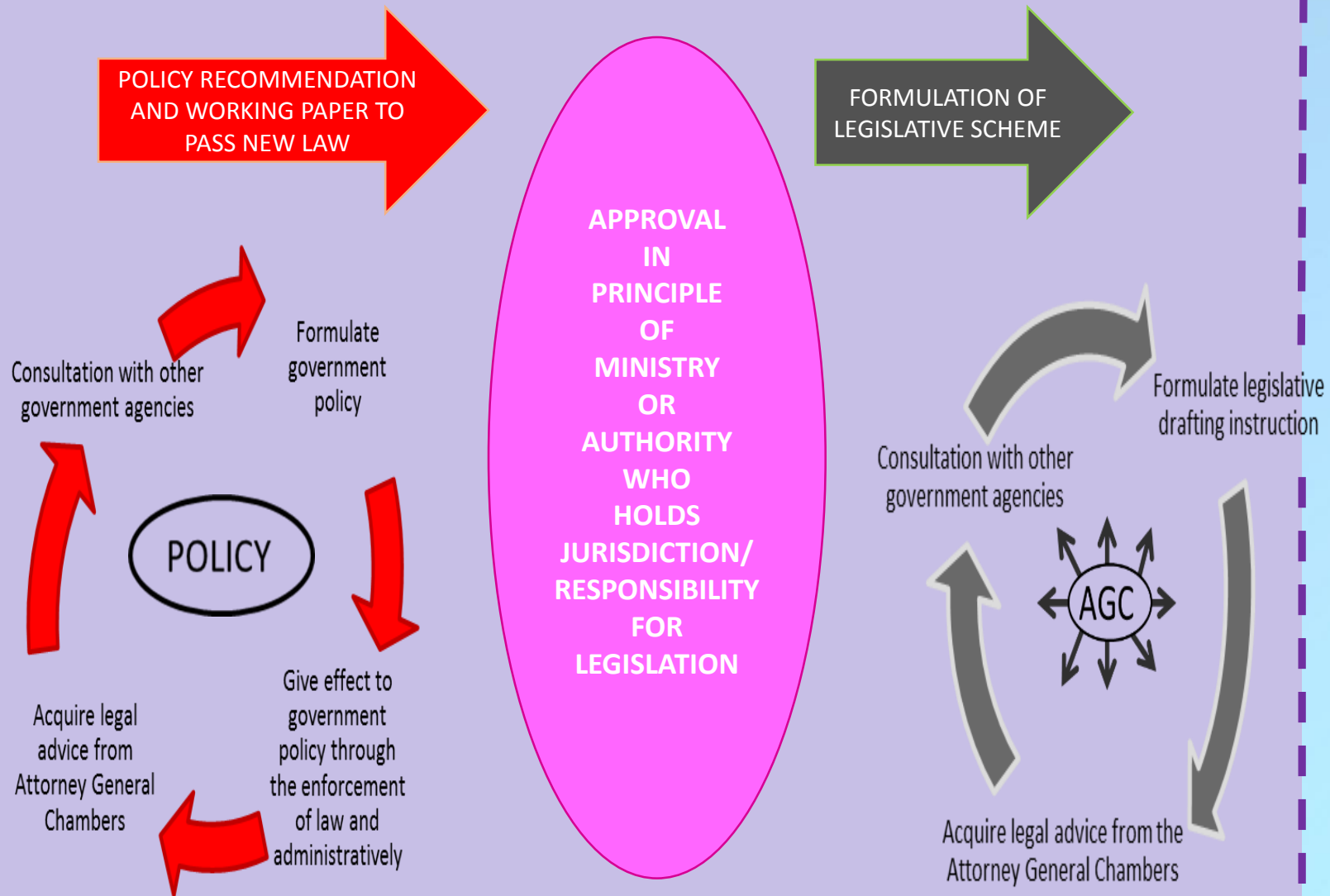
## *Judicial review*

- **Principle:** A court process whereby a person who feels aggrieved by the decision, act or omission of a public body can seek redress from the High Court
- **Rationale:** Ensures that public bodies act properly, rationally and within the law
- **Grounds:**
  - Illegality
  - Irrationality
  - Procedural impropriety



## POLICY-MAKING PROCESS

## LEGISLATIVE DRAFTING PROCESS





## **LEGISLATION 2: EXERCISE THE LAW**

### ***How to make legislation***

- Good to have time frame but **DON'T COMMIT TO TIMING OF LAW BEFORE AGC IS CONSULTED – BE REALISTIC!**
- How to make legislation:
  - READ: “Drafting Instructions Handbook” and “Practical Approach on Preparation of Initial Draft”
  - Scheduling: Proper and realistic planning before making public commitments that require legislation
  - Early engagement with drafters advisable
  - Drafting instructions



## **LEGISLATION 2: EXERCISE THE LAW**

### ***Drafting instructions***

**“QUALITY INSTRUCTIONS ESSENTIAL  
TO GIVING EFFECT TO POLICY INTENT  
IN LEGISLATION”**



# QUESTION AND ANSWER SESSION

Public Officers' Law Seminar :  
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**THANK YOU**

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*[norismizan.ismail@agc.gov.bn](mailto:norismizan.ismail@agc.gov.bn)  
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