Translating policy into legislation
- best practice

Some do’s and don’ts in the
preparation of legislative drafting
instructions

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How can you help us to help you?
Outline

• Roles and expectations
• Developing initial policy proposals
• Instructing the PCO
• Supporting the Bill through the House
  – Select committee
  – Committee of the whole House
• How else can we help you?
A good workable piece of legislation involves a partnership between instructors & drafters where each understands & respects one another's role.
Role of the instructor

- Provide **instructions**: administrative policy expressed as legislative policy
- Take responsibility for policy matters
- Primary point of contact for drafter
- Answer questions from the drafter
- Provide timely feedback on drafts
- Prepare/co-ordinate cabinet papers, general policy statement, RIS/BCCS, speech notes, etc
- Project manager for overall job
Role of the drafter

• Aims to produce a draft that-
  – gives effect to Government policy
  – is legally correct
  – is expressed as clearly & simply as possible
• Has regard to the “Statute Book” as a whole
• Helps identify & solve problems associated with the proposal
• Has ultimate responsibility for way legislation is expressed & presented
• Committed to achieving best possible result for your project
Talk to us!

- At policy development stage (advisable)
- Before making a bid for annual legislation programme
- Before submitting a Cabinet paper seeking approval to issue drafting instructions
- During drafting & legislative process
Developing the policy
Talk to us

- Advice on translating policy proposals into workable legislative schemes
- Form that legislation may take
- Timeframes, procedural requirements, ways to expedite the process
Involve legal advisers early

- Identify & clarify legal issues
- Establish conflicts with legal principles
- Identify non-legislative options
Involve operational people if possible

- Will the legislative proposal work in practice?
- Resource requirements
- Develop scenarios to test practicality and comprehensiveness of policy
Consult other agencies

• Early consultation can save time later
• Help to identify and solve inter-agency issues
• Consider consulting the Legislation Advisory Committee
Think about regulations

- Will regulations or other delegated legislation be required?
- What is required? (Relevant to drafting of empowering provision)
Think about transitional arrangements

- Transition from old to new scheme
- Close down existing scheme
- Preservation of existing rights, obligations, proceedings
Be familiar with guidance material

- LAC Guidelines
- Cabinet Office Manual & Step by Step Guide
- Guide to Working with the PCO
- Regulations Review Committee reports (*see* RRC Digest on VUW Law Faculty website)
Public consultation draft?

- Think about whether a public consultation draft might be useful, to gain early public input/reaction
- May save time during Parliamentary process
- Ministerial/Cabinet approval needed
Getting policy approvals

- Don’t put up timeframes without consulting PCO
- Don’t attach drafts
- Don’t seek endorsement of particular words or phrases
- Provide PCO with draft Cabinet paper
Before sending instructions

✓ Policy approvals obtained
✓ Explain the legislative problem to be remedied
✓ Explain what the legislation will do
✓ How does the proposal relate to existing law?
✓ Transitional and savings provisions?
Before sending instructions

✓ Delegated legislation required?
✓ Highlight any unresolved difficulties
✓ Expected timetable, time constraints, commencement dates
✓ Consultation with other agencies
✓ Contact details
Provide as much helpful material as appropriate

- Cabinet papers and minutes
- Discussion papers
- Crown Law opinions
- Judicial decisions
Departmental/external drafts

- Can be useful (consult PCO team leader)
- Waste of time for routine matters (e.g., fees changes)
- Not a substitute for narrative instructions
- Don’t get wedded to your own drafting
Knowledgeable and engaged instructors

- Know area of law
- Authorised and able to answer questions quickly and definitively
- Able to turn drafts around promptly
- Consistency of policy and personnel
Be aware of PCO’s constraints

- Format and style
- Legislative structures
- Plain language
- Parliamentary procedure
- Printing and publishing process
Be patient

- Drafters aren’t experts in the policy area
- Drafters ask lots of questions
Help us juggle priorities

- Government’s legislative programme
- Priorities assigned to Bills
- House business programme
- Select committees
- Other work
Be open-minded

- Wording
- Structure
- Aids to interpretation
- Examples
- Diagrams (e.g., flow charts)
- New ways of communicating
Parliamentary procedures

- Omnibus Bill rules
- Scope issues
- Timing of debates
- Financial veto
- General procedures
Legislation Co-ordinator

• Get to know this person!
Bill of Rights vetting

- Allow time
- See *The Non-Discrimination Standards for Government and the Public Sector* (Ministry of Justice booklet)
At the select committee

• Send us a copy of the departmental report in draft

• Don’t discuss/suggest drafting changes without consulting PCO

• “Scope” issues
Talk to us!
At the committee of the whole House

- “Scope” issues
- Not a good time to make substantial changes
- Major changes may require new policy approvals
Talk to us!
Avoid surprises

- Changes in priorities (whether urgency or delay)
- Changes in policy
- Changes in personnel
- Manage expectations
Have realistic commencement dates

- Generally desirable to have a gap between enactment and commencement
- Allow sufficient time for delegated legislation to be prepared
Mistakes are hard to fix

• Alert PCO early to any mistakes
• Check, check, check!
We appreciate feedback

- How can PCO improve its service?
- Are our publications useful?
- Annual client survey
- Feedback on individual drafting jobs
What else can we offer you?

- Seminars for departments
- Guide to working with the PCO
- PCO Newsletter
- Client section of PCO website
- www.legislation.govt.nz
What’s coming

- Revision of “The Guide” on website
- PCO Drafting Manual on the website
- PCO Style Manual on the website