

1. Defining the policy objective

The objective of the bill is its backbone and should be identified early in the development process. As the legislation or policy develops, the principles that follow should be revisited to ensure the policy objective is clear, and that the legislation is the best way of achieving that objective.

Guidelines

1.1. Is the policy objective and purpose of the legislation clearly defined?

The policy objective must be clearly defined and discernible.

The broad underlying objective (the policy it is implementing or the reason for it) should be identified before substantive work starts. This does not mean that every minor policy decision must be settled, but the broad objective must be clear to everyone working on the bill.

Officials may find it helpful to produce an outline of the proposed bill, as this can sometimes assist in identifying issues, especially more detailed ones, that need to be addressed.

1.2. Is legislation the most appropriate way to achieve the policy objective?

All alternative means to legislation should be considered.

In many cases, a number of alternatives to creating new legislation will exist. The policy objective might be achieved more effectively through the use of education programmes, reliance on the common law or existing legislation, or reliance on existing private law civil remedies (see Chapter 19). Where legislation is preferred over another suitable, non-legislative alternative, this decision should be capable of justification. It is a Cabinet Manual requirement that unnecessary legislation is avoided (paragraph 7.20).⁶

1.3. Has there been appropriate consultation within government?

All relevant government departments should be consulted at an early stage.

It will generally be more efficient to consult with all relevant departments, and resolve any inter-agency differences in respect of the proposed legislation, before seeking Cabinet approval. This will help to identify possible conflicts or inconsistencies with any legislation or policies that that may already exist or currently be in development. It will also help to identify interest groups or other sections of the public that should be consulted.

Effective and appropriate consultation within government is a Cabinet requirement (paragraphs 7.24–7.45). The CabGuide also provides some useful guidance on who to consult within government.⁷

⁶ <http://cabinetmanual.cabinetoffice.govt.nz/7.19>

⁷ <http://cabguide.cabinetoffice.govt.nz/procedures/consultation/departmental-consultation>

1.4. Has effective consultation with the public occurred?

Public consultation should take place.

Public consultation is key to ensuring that the Government has all the information it requires to make good law. Information should be made available to the public (those outside government) in a manner that enables people affected by the proposed legislation to make their views known. An effective consultation programme can contribute to higher-quality legislation, the identification of more effective alternatives, lower administration costs, better compliance, increased public “buy in”, and faster regulatory responses.

Public consultation is not required or possible in all cases. However, a failure to consult may result in valuable perspectives and information being overlooked and also risks unintended consequences. It may also result in a failure to identify alternative means of achieving the policy objective. Further information on planning and carrying out effective consultation is found in the Regulatory Impact Analysis Handbook.⁸

1.5. Do all the provisions of the proposed legislation clearly relate to the policy objectives and purpose of the proposed legislation?

The provisions of the proposed legislation should be consistent with its purpose and the policy that underlies it.

Each provision should relate to a policy objective that underlies the legislation. Conducting a regular review of the content of proposed legislation will help ensure consistency with the legislative objective, particularly in circumstances where the broad policy objectives have not been clearly identified at the outset or have developed during the legislative process.

Due to the pressures on Parliamentary time, it is becoming increasingly common for bills already in the House to be used as a means of passing provisions that might otherwise have justified separate legislation. Additional provisions must be consistent with the policy objective and purpose of the bill; or the description of the purpose of the bill should be amended to reflect the introduction of the new provisions.

⁸ <http://www.treasury.govt.nz/publications/guidance/regulatory/impactanalysis>