EARLY DESIGN ISSUES

Chapter 1 Good legislative design

Good design matters …

Legislation is one of the key ways by which governments seek to change behaviour and outcomes for society. Legislation creates and removes rights, powers, and obligations, sets up or disestablishes institutions, gives governments the means to raise and spend money, and enables citizens to hold decision makers to account. Legislation significantly affects both the everyday lives of New Zealanders and their future choices. It affects individual and collective rights, the use of property, the way in which markets operate, the risks to the environment or human safety that are acceptable, and how wealth is distributed in society.

Ensuring that legislation is well designed is important for 3 key reasons.

Poorly designed legislation will often not achieve its goals. Even if the main goals are delivered, legislation that gives rise to significant unintended consequences or fails to adapt to meet society's needs over time may impose unnecessary costs and undermine wider government aims for society.

High quality legislation is also critical to the functioning of New Zealand's democracy. Legislation involves coercive power, and law making comes with responsibility to make legislation that is proportionate, reasonable, rational, and consistent with New Zealand's constitutional principles. Legislation that overreaches can do significant harm by inhibiting freedoms or undermining important values or institutions of our society. The quality of the law-making processes can either reinforce or undermine the legitimacy of a particular piece of legislation, and the State and legislation more generally.

Lastly, good legislation saves significant costs for the system. Making legislation is time-consuming and expensive. The costs come not only from the time needed for Parliament, officials and the public to develop and pass legislation, but also for administrators and the public who need to make changes to implement it. As a result, legislation can be difficult to change once made.

… and it is easy to get it wrong.

The responsibility to make high quality legislation is difficult to discharge well. No one person alone can ensure the quality of legislation, and many things can undermine it. Those involved have diverse and interdependent roles and interests. There are many pressures in terms of politics, time, conflicting interests, agency agendas, and poor co-ordination that can result in poor legislation.

A common goal and set of principles is critical …

For all these reasons, it is important both that we (those involved in making legislation) are committed to a shared goal of having high quality legislation for New Zealand and that there is a common set of principles by which we measure that quality.

The Guidelines set these common principles. They are intended as a tool to guide thinking by those involved in making legislation. They do not provide absolute rules. Some set default principles where

the presumption should be to meet that principle and only depart from it if there is a clear justification. Others call for informed judgement and the role of the principles is to assist. Sometimes it is only possible to achieve "good enough" legislation, for instance, where there is limited time or information available, or where there are matters outside officials' control, whether policy, political, or pragmatic.

However, this does not lessen the value of the principles or officials' responsibility to address them. The work of individual policy and legal advisers, legislative drafters, and other officials is critical to the quality of the decisions made by Ministers and Parliament (and people to whom the power to make legislation is delegated). It is the role of officials to follow good processes and provide clear advice to inform these decisions and so ensure that they are made with knowledge of the principles, the significance of any proposed departure, and the competing interests to be balanced The public sector increasingly sees itself as the long-term steward of the legislative system for the benefit of New Zealand. Stewardship should be at the forefront of law makers' minds. Good design and these Guidelines support departments and departmental chief executives to discharge their regulatory and legislative stewardship obligations under the State Sector Act 1988.

These Guidelines are also designed to support transparency about the exercise of law-making power. They support the parliamentary process by enabling members of select committees and other MPs to assess the quality of the legislation that comes before the House. Having a common set of principles also enables the public to assess legislation against one standard, and so hold law makers to account. Officials' work in ensuring that justifications or judgements are transparently made is vital.

… and reflects 3 core objectives for high quality law.

The principles set out in these Guidelines focus on three fundamental objectives of high quality legislation:

> Legislation should be **fit for purpose**—it should be used only when necessary, but when used it should be effective for that purpose (including by minimising unintended costs). In order to achieve this, that purpose needs to be clearly defined early and robustly tested (*see* Chapter 2). Legislation should be designed to provide certainty as to rights and obligations but also build in sufficient flexibility to enable them to last. Legislation should be comprehensive enough to deal with likely scenarios. Legislation is part of wider regulatory systems and must work effectively within them (including, increasingly, the international legal system) as well as integrating with the existing body of legislation and common law (*see* Chapters 3, 9, 10, and 13).
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> Legislation should be **constitutionally sound**—by this we mean that legislation should reflect the fundamental values and principles of a democratic society (*see* Chapters 4 to 8, 11, and 12), including in the processes by which it is made (*see* Chapter 19). It should also be consistent with the Treaty of Waitangi (*see* Chapter 5).
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> Legislation should be **accessible** for users—legislation should be able to be easily found by citizens, and easy to navigate and understand. As a result, those involved in making legislation must think about how users will find and access it.

These core objectives are mutually reinforcing. If citizens cannot find the legislation that applies to them or if that legislation cannot be understood, then both the efficacy of the legislation and the rule of law itself are undermined. If legislation is vague about the obligations it imposes or leaves too much to people's discretion, it will create confusion and inconsistency. This places significant costs on those who are regulated. This also causes constitutional concern about the lack of legal clarity over rights and obligations.

These objectives also need to be balanced. For example, to enable legislation to be sufficiently flexible (and so fit for purpose for the future), Parliament may delegate the power to make secondary legislation to the Executive. But too much delegation of significant policy matters will undermine certainty and the legitimacy of legislation. The extent of delegation that is appropriate always needs to be judged according to the particular context and safeguards should be included to address risks posed (*see* Chapters 14 and 16).

No one-value judgement works for every piece of legislation. The Guidelines do not provide "one size fits all" answers. That said, they aim to provide default approaches, inform judgements, and enable transparency about how that judgement has been exercised. The Guidelines can raise a red flag on proposals that are unusual or otherwise call for particular attention. It is important that, where a default principle is departed from, or judgement is exercised, there is clarity both within and outside government about the underlying rationale.

How to use these Guidelines to achieve good legislative design

This rest of this chapter sets out some key advice on how to approach good legislative design using these Guidelines.

Before starting …

Provide enough time to get the answers right

Good legislative design is complex and requires time. If it's done too quickly, it often fails. Of course, sometimes legislation must be produced quickly of necessity. But experience has demonstrated that speed often results in design flaws. Make sure to allow sufficient time for analysis, testing, consultation, revision, drafting, and quality assurance. Talk to legal advisers and the Parliamentary Counsel Office (the PCO) before setting timing expectations.

Consult and work with the right people

Legislation is complex and requires multiple perspectives to design it well—policy, legal, drafting, and operational experience can inform all the above questions. Legislation is best done when a dedicated multi-disciplinary team work together with agreed understandings on these matters. Seek help from LDAC and others experienced in legislation. The PCO also has an important role to play in developing legislation and officials should not hesitate to seek advice from the PCO. The PCO will help to turn policy ideas into legislation that is drafted in plain language, is easy to use, and is accessible to all who will need to use it. Guidance on instructing and working with the PCO can be found on the PCO website.

Policy is also better when it is informed by genuine consultation. Legislation is information-intensive

and ensuring it is effective and reducing the risk of unintended consequences requires consultation at all stages. Consultation also assists the public to plan for change and supports the legitimacy of the law-making process. Chapter 2 sets out some core principles for consultation.

Know the regulatory system

Legislation does not exist in a vacuum. Legislation intersects and depends on many other pieces of legislation. Consider legislation of general application (for example, the Official Information Act 1982, the Privacy Act 1993, or the Crimes Act 1961) and specific legislation that overlaps in the particular legislative area (for example, the many Acts that overlap in the resource management context).

Legislation is part of a regulatory system. The Government Expectations for Good Regulatory Practice (2017) have defined regulatory systems as the set of formal and informal rules, norms, and sanctions, given effect through the actions and practices of designated actors, that work together to shape people's behaviour or interactions in pursuit of a broad goal or outcome. This definition may feel more apt for some contexts (for example, food regulation) than others (for example, privacy, which cuts across many systems) and can feel vague. But whatever the definition, the important thing is to think deeply about the area that is being regulating and to talk to those involved to understand what really shapes their behaviour.

This may sound like a tall order, but the concept of knowing the practical and legal context in which the legislation operates is important to achieve legislation that is well-designed to be fit for purpose, constitutionally sound, and accessible to users. For example, without this context, advisers cannot identify the costs needed to inform a regulatory impact assessment, set appropriate criteria to ensure statutory powers are exercised effectively and transparently, or know how stakeholders will access and work with the legislation.

The key questions to assess a regulatory system or context before starting are:

- What is the purpose of the current regulatory system? What is it trying to achieve? Who is the system trying to protect or help (for example, consumers)?
- What are the costs and benefits of the current regulatory system? What works and what doesn't?
- Who is being regulated within the system? What are their incentives for compliance? How do they behave within this system? How much flexibility vs certainty does this system require? This is important for the issues discussed in Chapters 14 to 17 and 22.
- Who are the regulators within the system? What roles do they play? What are their relationships? Is a new regulator required? What co-ordination is required and where will overlap be problematic? This is important to the issues discussed in Chapters 18 and 20.
- What is the existing law (both legislation and common law) in the system on which the proposed legislation depends, or where does it currently interact or overlap?

Knowing this enables you to address the issues discussed in Chapters 3 and 12.

Know the purpose

Being clear about the policy objective or purpose of the legislative change sought is fundamental to every subsequent design question (*see* Chapter 2). The purpose may change over the course of the policy's development as the policy problem becomes clearer through consultation, research and analysis. A current understanding of the problem should always underpin analysis of the possible solutions.

Understanding the purpose is fundamental to assessing:

- What is needed (or not needed) in the legislation to implement the policy objective and solve the policy problem (*see* Chapter 2)—remember to step back and assess whether legislation is really needed and make sure to look at whether the existing regime, common law, or non-legislative solutions are already apt to meet the purpose.
- The necessary building blocks of the legislation (*see* below). Do they go further than is needed to solve the policy problem?
- How to design discretions to make secondary legislation (*see* Chapters 14 to 17) or exercise powers (*see* Chapter 18).
- How to design any new regulators or other bodies that may regulate or exercise powers in the system (*see* chapter 20).

The purpose of the legislation will continue to have an ongoing key function once the legislation is enacted as it will govern how regulators organise themselves and exercise powers under legislation, and how the courts interpret the legislation. A well-articulated purpose should be capable of explaining the regime, guide interpretation of its provisions when there is uncertainty, and act as a test for decision making. *See* Chapter 2 for more detail on defining the policy objective and purpose of the legislation.

Choose the building blocks of the legislation carefully

The building blocks of any piece of legislation are the rules, powers, institutions, and enforcement structure contained in it. These Guidelines provide many key principles to assist in designing these building blocks in ways that will achieve legislation that is well-designed, fit for purpose, and accessible. However, some key points should be highlighted:

- Well-intentioned legislation may have unintended consequences. The highest risk is often not legislation that is intended to undermine fundamental rights or override Treaty obligations but legislation that does wrong unintentionally or overreaches carelessly. To safeguard against this risk, it is important to know the basics, which are set out in Chapters 4 to 9.
- Consider past models but be careful. In applying these Guidelines, it helps to look at

examples known to do a similar job. Assess these existing examples against the regulatory purpose of the proposed legislation and the wider goals of high quality legislation. Look at how they have resolved issues raised by these Guidelines. However, don't borrow uncritically, as the proposed legislation has its own context and past solutions may need adjusting. For example, overseas models need to be adapted for a New Zealand context. *See* Chapter 3.

- A key design question is "where the rules get set" in the system. The detail of what is required to comply with legislation may be set in the Act itself (through prescriptive requirements), delegated to regulators or other bodies (to be decided through administrative or legislative tools), or be left for individual actors to decide (if the legislation sets only open-ended principles or outcomes leaving a discretion as to how to comply). These choices have implications for certainty compared to flexibility, risk tolerance, and who ultimately decides what is required to comply. *See* Chapters 14 to 17, which will assist with how to appropriately allocate material between Acts and secondary legislation.

- Another key question is whether the State needs to enforce the legislation and, if so, what tools are needed for enforcement. There are key trade-offs between criminal and civil tools and other softer compliance methods, which need to be considered alongside questions about who will enforce the legislation. *See* Chapter 22 and onwards.

- It is also important to look at the issue of *who* will enforce or have other regulatory roles under the legislation, particularly in light of the answers to the questions about roles and responsibilities of the existing regulatory system. Who will do what now? Do they have the tools? Has their mandate been set in a way that supports the purpose of the legislation? How is co-ordination provided for so that there are no gaps in the regime or unworkable overlaps? *See* Chapters 18 and 20.

- Consider how to move from the current world to the new world. What transitional and savings arrangements are needed to move from the old law to the new law in an orderly, fair, and efficient manner that avoids retrospective effects? *See* Chapter 12.

- What changes may be needed to other legislation to ensure that the new law becomes part of an integrated system of law?

Think about the long term

To design high quality legislation, we need to think about the demands that will be placed on the legislation over the medium to long term and actively consider the big picture. How will it operate in the transition? How will that be different once it is fully implemented? How will the legislation be regarded in 20, 30, 40 years' time? Is there sufficient durability and flexibility? It's important to consider the regulatory system in this context, including the extent of likely technological advances or other changes.

This means designing a system that can adapt to change and allow for continuous improvement. We

need to consciously design mechanisms to guard against a "set and forget" tendency for legislators.

Think beyond the present proposed change. Are the existing regulatory and legislative systems healthy? If there is an existing Act, is it better to substantially rewrite or replace the Act in addition to, or instead of, amending it? This is particularly important where existing legislation is heavily amended and inaccessible. *See* Chapter 3.

Think about the whole legislative package

Acts and secondary legislation should together create a coherent legislative package. To achieve this, the Act and any secondary legislation that is essential to implement the Act should be developed in tandem as much as possible. Officials should at least have fully considered the content of secondary legislation by the time a Bill is at select committee. This will allow MPs and the public to consider the full legislative regime, and is particularly valuable where secondary legislation contains important operational and technical policy detail.

Think about how users will find and navigate the legislation

Designing legislation that users can find and use easily is critical for both the rule of law and its efficacy. So it is worth thinking about whether legislation should be amended or replaced, how it overlaps with other laws, and whether the legislation is multi-layered or fragmented in terms of these needs.

Use these Guidelines to help

The Guidelines are a valuable tool and will help users to work through matters touched on in this chapter, and much more. See the preliminary material at the front of these Guidelines about when and how to use them.

Reflect and learn for next time

Finally, don't set and forget. Reflect on what worked, what didn't, and what might be done differently next time. Feed back into the public service's stewardship and good design goals by letting LDAC know if there are areas in the Guidelines that are missing or would benefit from supplementary material.

Chapter 2 Defining the policy objective and purpose of proposed legislation

The objective of a 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

2.1 Is the policy objective and purpose of the legislation clearly defined?

The policy objective must be clearly defined and discernible.

Achieving the policy objective should drive the design of the legislation and all the detailed decisions made when drafting. Therefore, the broad underlying objective (the policy it is implementing or the reason for it) should be clearly defined before substantive work begins and clearly discernible in the legislation and policy documents (including the Cabinet policy papers and the departmental disclosure statement).

While it is not necessary to determine every detail of the policy at the beginning, it is highly desirable to settle as much policy detail as possible prior to writing drafting instructions and undertaking consultation on the proposed legislation. Providing more policy detail will enable others to properly assess the effects of the proposal and the ultimate legislation.

It may be helpful to look at examples of similar legislation to determine the level and nature of the policy analysis required. When developing policy, officials may also find it helpful to produce an outline of the key elements of the proposed bill as this can sometimes assist in identifying issues, especially more detailed ones, that need to be addressed.

2.2 Do all the provisions of the proposed legislation clearly relate to the policy objective and purpose of the proposed legislation?

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

Each provision should relate to a policy objective that underlies the legislation. A regular review of the content of proposed legislation can also 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.

2.3 Is legislation the most appropriate way to achieve the policy objective?

Legislation should only be made when it is necessary and is the most appropriate means of achieving the policy objective.

Unnecessary legislation should be avoided because it involves significant costs.[2] Those costs

[2] Cabinet Office *Cabinet Manual 2017* at 7.23.

take various forms, including:

- the costs of enacting the legislation itself, including its preparation (drafting, consulting, and reviewing); the process through the House (including House sitting time and the costs of the select committee process); and the publication of the legislation;
- the costs of complying with the legislation (including learning about it and adjusting processes); and
- the costs in administering, implementing, and enforcing it.

There is also a range of indirect costs of legislation. For example, new legislation can add size and complexity to the statute book resulting in costs to accessibility. It can also make the policy inflexible because amendments when circumstances change will require new legislation.

These costs should be considered in every proposal for legislation to ensure that the benefit of a legislative solution outweighs the costs. Particular caution should be taken when:

- the policy can be implemented equally well by non-legislative means;
- obligations are proposed without consequences or an intention that they will be enforced;
- obligations already in the common law or other statutes are proposed to be included in new legislation for an educative purpose; or
- legislation will provide a power to do something that can be achieved without legislation for example, providing a power for the Crown to acquire shares.

Legislation or provisions in legislation that expressly provide they have no legal effect or that are not intended to be enforced risk needless expenditure of public funds and bringing the law into disrepute. If material that does not have a legal effect is enacted in legislation, possible risks to the clarity or certainty of the legislation should be identified and considered. For example, is there a risk that a court may subsequently read in a legal effect to the provision that was not contemplated by the law maker?

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 civil remedies (*see* Chapter 22). 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.[3]

[3] Cabinet Office *Cabinet Manual 2017* at 7.23.

2.4 Has there been appropriate consultation within the government?

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

It is important to consult with all relevant departments and resolve any inter-agency differences in respect of the proposed legislation before seeking Cabinet approval for both the policy papers and draft bill. This will help to identify possible conflicts or inconsistencies with any legislation or policies 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.[4] The CabGuide also provides some useful guidance on who to consult within the government.

2.5 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 the government) in a manner that enables people affected by the proposed legislation to make their views known. Public consultation can help to better identify the nature of the policy problem and more effective solutions for that problem. It also contributes to the legitimacy of the legislation in the eyes of the public and those affected. An effective consultation programme can increase public acceptance of the legislation, increase compliance with it, and lower the administration costs of implementing and enforcing it.

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. Public consultation should occur as early as possible in the process of developing the legislation, preferably in the early stages of the policy development. At the least, it should occur at a point when it can still make a difference to the outcome.

Further information on planning and carrying out effective consultation is found in the Treasury's Guidance Note on Effective Consultation for Impact Analysis.

[Link to supplementary material: Exposure draft Bills]

[4] Cabinet Office *Cabinet Manual 2017* at 7.27.

Chapter 3 How new legislation relates to the existing law

New legislation must fit into the existing body of law in a coherent way. A failure to properly address existing legislation or the common law may make the law difficult to understand in its full context or lead to uncertainty or errors. Those problems may, in turn, lead to higher rates of non-compliance, litigation, or remedial legislation.

New legislation will interact with the existing body of law (found in both legislation and the common law) in a variety of ways. Some statutes are relevant to all new legislation (such as the Interpretation Act 1999 and the New Zealand Bill of Rights Act 1990). Other statutes also apply generally, but operate only in relation to certain subject matter (such as the Search and Surveillance Act 2012 and the Official Information Act 1982).

Lastly, for any new legislation there will likely be specific existing legislation that is affected or connected to the new legislation.

In addition, new legislation will interact with the common law. The common law is a body of law developed by the judiciary. It consists of both deeply embedded constitutional principles and rules that arise from particular judgments or a series of cases. The common law is relatively stable. It can be altered by the judiciary, but fundamental shifts do not occur quickly and the courts are careful not to stray into territory that is more properly addressed by Parliament.

It is necessary to have as thorough an understanding as possible of the relevant existing body of law before undertaking substantial work on the legislation. This is especially important where the intention is to reverse a particular judicial decision or trend that has developed through a line of decisions.

This chapter will help ensure that new legislation is developed consistently with, and properly addresses, the existing body of law.

Guidelines

3.1 Has all relevant existing legislation been identified and considered?

Any existing legislation that relates to the same matters or implements similar policies to those of the proposed legislation should be identified.

Almost all new legislation will deal with matters that are governed to some extent by other legislation. Existing relevant legislation should be identified early in the development process so that any interactions or conflicts can be identified and addressed. In some cases, legislation that implements similar policies to that of the proposed legislation may provide a useful precedent.

If existing legislation is to be heavily amended (or it is already old or heavily amended), consideration should be given to replacing it instead. A key factor to consider is accessibility. If multiple amendments will cause the resulting law to be so complex it becomes difficult to understand, replacing the legislation should be preferred. Complexity can arise through grafting new policies onto existing frameworks so that the overall coherence of the

legislation is lost. On the other hand, accessibility should be balanced against any disadvantage in disrupting settled understandings of the law. Advice on this matter should be sought from the Parliamentary Counsel Office (the PCO).

[Link to supplementary material: Bespoke legislative solutions]

3.2 Are any conflicts or interactions between new legislation and existing legislation addressed?

Any conflict or interactions between new and existing legislation should be explicitly addressed in the new legislation.

If there is an unavoidable or intentional conflict between new legislation and existing legislation, or where there is any interaction between two or more provisions in different legislation, the new legislation should make clear which provision shall prevail or how it is intended that the two provisions should operate together.

3.3 Are any matters addressed by the new legislation covered by existing legislation?

New legislation should not restate matters already addressed in existing legislation.

Where a provision in existing legislation satisfactorily addresses an issue, it is preferable not to repeat that provision in new legislation. This kind of duplication often results in unintended differences, especially where legislation is amended over time or where the legislation is intended to address a different policy objective.

In some cases, existing legislation can be used to supplement new legislation. Some Acts are of general application (the Interpretation Act 1999). Others must be expressly applied by the new legislation (*see* the Ombudsmen Act 1975).

Where appropriate, flag provisions may be used in the new legislation to identify (but not restate) the relevant provisions of the other legislation (*see*, for example, section 8 of the Local Government (Auckland Council) Act 2009 or section 30B(3) of the Receiverships Act 1993).

3.4 Have all relevant common law rules and principles and tikanga been identified and considered?

Relevant common law rules and principles and tikanga should be identified.

New legislation should, as far as practicable, be consistent with fundamental common law principles and tikanga (which may require appropriate consideration of Māori language, customs, beliefs and the importance of community, whānau, hapū and iwi). Some of the fundamental common law principles are discussed in Chapter 4.

A considerable amount of substantive law (large portions of the law of tort (civil wrongs), contract, equity (such as the law of trusts and fiduciary obligations), as well as many of the principles of judicial review) is still found in the common law, albeit subject to some statutory modifications. If proposing to legislate in these fields, legal advice should be sought

to identify the extent to which the common law still applies.

3.5 Have any interactions between the common law and the new legislation been identified and addressed?

Any conflict or interaction between new legislation and the common law should be explicitly addressed in the new legislation.

New legislation can alter, work in parallel with, or entirely override the common law. However, the new legislation must clearly identify whether or not it is doing so. If the legislation is not intended to affect the common law, then this should also be explicitly set out in the new legislation.

3.6 Does the common law already satisfactorily address those matters that the new legislation is proposing to address?

New legislation should not address matters that are already satisfactorily dealt with by the common law.

New legislation should only address matters already covered by the common law where it can result in improvement (such as increased clarity or a policy change). The common law is able to evolve flexibly and so is more adaptable than legislation. The cost and the potential risks of legislating should not outweigh the benefits of the new legislation.

3.7 Are there any precedents in existing legislation?

Precedents from existing legislation should only be used if they are consistent with the scheme and purpose of the new legislation.

The following matters should be considered before deciding to follow an existing precedent:

- The search for appropriate precedents should not be limited to legislation administered by the particular department that is developing new legislation (the courts will often consider the legislation of other departments when seeking to identify precedents).
- The reasons for following a particular precedent, or for not following an apparently suitable precedent, must be considered and articulated in the policy documentation.
- If there is an intention for a provision to have the same effect as a provision in other legislation, then this should be articulated in the policy documentation and instructions to the PCO.
- New legislation must not copy New Zealand or overseas precedents without first considering whether the precedent will be efficient and effective having regard to the circumstances of the new legislation.
- If following a precedent where the outcome is to be duplicated, be wary of making inconsequential amendments (such as the reordering of words or

provisions to no substantive effect) in case there are unintended consequences.

- If a precedent is being used from foreign legislation (for example, where implementing trans-Tasman or other international agreements), the terminology used in foreign legislation must be appropriate for the New Zealand context.