CHAPTER 10A
THE EXERCISE OF DELEGATED LEGISLATIVE POWER

INTRODUCTION

Background

Chapter 10 concerns the safeguards and constraints that are necessary to ensure that the power to make law is delegated only in acceptable circumstances.

This chapter concerns the exercise of delegated legislative power and deals with the circumstances in which delegated legislation can be found to be invalid.

Delegated legislation may be held to be ultra vires or invalid on the following grounds:

• a failure to comply with any legal rules that control the making of the delegated legislation:

• the delegated legislation is not authorised by the empowering provision:

• the delegated legislation contains an unlawful subdelegation:

• the delegated legislation is inconsistent with Acts other than the empowering Act:

• the power to make the delegated legislation has been exercised for an improper purpose:

• the delegated legislation is uncertain in its application.

Issues

The following issues are discussed in this chapter:

Part 1: Have the terms of the empowering provision and the general law been complied with when making the delegated legislation?

Part 2: Is the proposed delegated legislation beyond the power conferred by the empowering provision?
Part 3: Does the proposed delegated legislation contain an unlawful subdelegation?

Part 4: Is the proposed delegated legislation invalid by reason of repugnancy to any other enactment?

Part 5: Is the proposed delegated legislation invalid by reason of uncertainty?

Part 6: Does the proposed delegated legislation infringe any of the grounds set out in Standing Order 382?

PART 1

HAVE THE TERMS OF THE EMPOWERING PROVISION AND THE GENERAL LAW BEEN COMPLIED WITH WHEN MAKING THE DELEGATED LEGISLATION?

10A.1.1 Outline of issue

Empowering provisions often contain preconditions that must be satisfied before the delegated legislative power can be exercised. For example, the provision might require the delegated legislation to be made only on the recommendation of a Minister.

The general law also contains a number of rules that restrict or control the exercise of the delegated legislative power. The issue in each particular case is whether these preconditions or rules have been complied with.

10A.1.2 Discussion

*Empowering provision in force*

One of the main rules of the general law that controls the exercise of the delegated legislative power is that the empowering provision must be in force when the power is exercised.

However, section 11 of the Interpretation Act 1999 provides that a power conferred by an enactment to make delegated legislation may be exercised before the enactment comes into force or takes effect. The power may be exercised only if the exercise of the power is necessary or desirable to bring, or in connection with bringing, an enactment into operation. The power may
not be exercised if anything that results from exercising the power comes into force or takes effect before the enactment itself comes into force unless the exercise of the power is necessary or desirable to bring, or in connection with bringing, the enactment into operation.

See Part 2 of Chapter 3A “Statutory Interpretation” for further information concerning section 11.

**Retrospective delegated legislation**
Delegated legislation that has retrospective effect must be expressly authorised by the empowering statute.

**Consultation**
There is no formal legal requirement of consultation in New Zealand before delegated legislation is made. However, empowering provisions often contain requirements relating to consultation.

Consultation must be meaningful. A duty to consult requires that the person or body consulted is given sufficient opportunity to state their views “before the mind of the executive becomes unduly fixed”.

In considering whether a consultation requirement has been satisfied, the following principles should be taken into account:

- consultation does not require agreement or even negotiations towards agreement:

- more than mere notification is required:

- for consultation to be meaningful, sufficient information must be made available to enable the other party to be adequately informed so as to be able to make intelligent and useful responses.

For further information concerning the principles relating to consultation, see *Wellington International Airport Limited v Air New Zealand* [1993] 1 NZLR 671.

Some statutes that contain a consultation requirement contain an additional provision, that specifies that a failure to comply with the consultation requirement does not invalidate the delegated legislation. The purpose of the provision is to save delegated legislation where someone was missed out in
the course of a genuine consultation process. It is not intended to protect against a deliberate decision not to consult.

Other preconditions
The empowering provision may provide for the delegated legislation to be made only on the recommendation of a specified Minister or other person or body. There is a distinction between “on” and “in accordance with” and “following” a recommendation. Different formulations can affect the extent to which delegated legislation can depart from what has been recommended.

There may be a statutory requirement for approval of, confirmation of, concurrence in, or consent to the instrument. See, for example, section 51C of the Judicature Act 1908, which only allows the Governor-General in Council to make High Court Rules with the concurrence of the Chief Justice and any 2 or more of the members of the Rules Committee, of whom at least 1 must be a Judge.

If the empowering provision prescribes any preconditions, these are usually referred to in the regulations. Section 24(1) of the Interpretation Act 1999 provides, however, that it is not necessary for a regulation to refer to facts, circumstances, or preconditions that must exist or be satisfied before the regulation can be made. Accordingly, a failure to refer to any preconditions does not invalidate the regulations.

10A.1.3 Guidelines

Before the power to make delegated legislation is exercised, a check should be made to ensure that any preconditions have been satisfied and, if appropriate, referred to in the enacting statement.

PART 2

IS THE PROPOSED DELEGATED LEGISLATION BEYOND THE POWER CONFERRED BY THE EMPOWERING PROVISION?

10A.2.1 Outline of issue

Delegated legislation is *ultra vires* and invalid if that legislation is outside of the scope of the empowering provision. The issue concerns whether the delegated legislation is within the “four corners” of the empowering provision.
Every empowering provision should be interpreted in accordance with section 5(1) of the Interpretation Act 1999. Section 5(1) provides that the meaning of an enactment must be ascertained from its text and in the light of its purpose. This requires consideration of the object and scheme of the Act as a whole.

If the empowering provision enables delegated legislation to be made to “regulate” an activity or matter, then an instrument made under that provision that “prohibits” the activity or matter may be invalid.

Delegated legislation should not narrow an objective set out in the Act that the delegated legislation is intended to implement.

The broader the powers conferred under an empowering provision, the less possibility there is of a court finding that the delegated legislation exceeds the power laid down in the statute. A general power to make regulations to implement an express policy will be liberally interpreted on the basis that the legislature has intended a wide and general power for contingencies whose exact nature it was unable to foresee at the moment of passing the Act.

However, a wide empowering provision does not give the Executive an unfettered power. Such a power is to be used to promote the objects and policy of the Act (Transport Ministry v Alexander [1978] 1 NZLR 306). The test is whether the delegated legislation is necessary or expedient for the general purpose of the Act. A tenuous or remote connection would not be enough, and would invite the inference that the regulations had not really been made for the purpose authorised by Parliament (Brader v Ministry of Transport [1981] 1 NZLR 73).

Providing for any other matters contemplated by this Act, necessary for its administration, or necessary for giving it full effect
Empowering provisions usually include a standard general power to make regulations at the end of a list of more specific purposes. This provision may provide, for example, as follows:

(z) providing for any other matters contemplated by this Act, necessary for its administration or necessary for giving it full effect.

These general words should be interpreted with caution. They will be
construed by the courts in their context and with regard to the purposes of the Act in which they appear. They will cover matters that are incidental or ancillary to what is enacted in the statute itself, but will not support a widening of, or a departure from, the general intent and purpose of the Act. In Shanhan v Scott (1957) 96 CLR 245, the Australian High Court, after examining authorities, concluded that—

... such a power does not enable the authority by regulations to extend the scope or the general operation of the enactment but is strictly ancillary. It will authorise the provision of subsidiary means of carrying into effect what is enacted in the statute itself and will cover what is incidental to the execution of its specific provisions. But such a power will not support attempts to widen the purposes of the Act, to add new and different means of carrying it out or depart from or vary the plan which the legislature has adopted to attain its ends.

Unreasonableness
The Court of Appeal in New Zealand Drivers’ Association v New Zealand Road Carriers [1982] 1 NZLR 374 at 388 said that—

It is elementary that the Court is not concerned with the wisdom or otherwise of regulations, nor with whether the Court considers them necessary, nor with assessing the comparative values of social policies ... The Court is concerned with whether, on the true interpretation of the parent Act, regulations are within the powers conferred by Parliament. They will be invalid if they are shown to be not reasonably capable of being regarded as serving the purpose for which the Act authorises regulations. If the only suggested connection with that purpose is remote or tenuous, the Court may infer that they cannot truly have been made for that purpose. That would not necessarily mean bad faith. It may simply and more probably be that the makers of such regulations have misconceived the scope of their powers.

However, other judgments appear to suggest that, if delegated legislation is unreasonable, it may be invalid as being outside the contemplation of Parliament. McGechan J in Turners & Growers Exports Limited v Moyle (Unreported, High Court Wellington, CP 720/88, 15 December 1988) said that—

... regulations can be attacked as ultra vires an empowering statute if the regulations are so unreasonable that their making would not have been contemplated by Parliament as empowered by that statute ... Such extreme situations will not be frequent. If, by contrast, a regulation does not fall into such an extreme
category, and is within possible Parliamentary contemplation, then it is not open to attack on the basis it is ‘unreasonable’ ... A regulation prohibiting employment of all teachers with red hair would be an example.

Ultimately, this issue is a question of statutory interpretation. Does the empowering provision authorise the making of the instrument? If it is extreme in its effect or plainly unreasonable, then it will not be within the ambit of the provision.

10A.2.3 Guidelines

Before the power to make delegated legislation is exercised, a check should be made to ensure that the proposed delegated legislation is within the power conferred by the empowering provision.

PART 3

DOES THE PROPOSED DELEGATED LEGISLATION CONTAIN AN UNLAWFUL SUBDELEGATION?

10A.3.1 Outline of issue

The power to make delegated legislation must only be exercised by the person or body on whom it is conferred. The issue concerns whether the delegated legislative power has been unlawfully subdelegated to another person.

10A.3.2 Comment

A power to make delegated legislation cannot be subdelegated unless the empowering provision expressly permits this.

In Hawke’s Bay Raw Milk Producers Co-operative Co Ltd v New Zealand Milk Board [1961] NZLR 218,—

• the primary legislation provided that the Governor-General by Order in Council may fix prices at which milk may be bought or sold:

• the Governor-General made an order which provided that “the Minister [of Agriculture] may, after consultation with the Board, from time to
time by notice to the parties concerned fix the town milk producer price”.

The Court of Appeal held that—

• the order did not do what the statute authorised it to do, but instead purported to empower the Minister to perform the authorised act. It subdelegated the legislative power; and

• the empowering provision contained no express or implied power of delegation; and

• the rule against delegation does not prevent the making of regulations that confer on another person or body the authority to make decisions and exercise discretionary powers within the limits prescribed by the regulations, but the legislative power itself cannot be delegated; and

• an empowering provision should make it clear beyond doubt if a power of subdelegation is given, and to whom, and any limits to that power.

Hookings v Director of Civil Aviation [1957] NZLR 929 is another leading case on subdelegation. In that case, the High Court identified a distinction between the subdelegation of a legislative power and the subdelegation of the administration of validly made regulations. The mere subdelegation of the administration of validly made regulations does not create a vires problem.

See also the Court of Appeal decision in The Official Assignee, Vautier Shelf Company No 14 Limited and Others v The Chief Executive of the Ministry of Fisheries and the Minister of Fisheries (Unreported, Court of Appeal, CA 165/00, 167/00, 170/00, 171/00, and 193/00, 11 October 2001).

10A.3.3 Guidelines

Before the power to make delegated legislation is exercised, a check should be made to ensure that the proposed delegated legislation does not contain a subdelegation of a legislative power that is not authorised by the empowering provision.
PART 4

IS THE PROPOSED DELEGATED LEGISLATION INVALID BY REASON OF REPUGNANCY TO ANY OTHER ENACTMENT?

10A.4.1 Outline of issue

Delegated legislation cannot override primary legislation. As Lord Goddard CJ said in *Powell v May* [1946] KB 330, 335, “Obviously [a bylaw or regulation] cannot permit that which a statute expressly forbids nor forbid that which a statute expressly permits ...”. The issue concerns whether the proposed delegated legislation is inconsistent with any other Act.

10A.4.2 Comment


Clause 4 of the Customs Export Prohibition Order 1996 (now revoked) prohibited the export of timber products except:

- indigenous timber and indigenous timber products subject to section 67C of the Forests Act 1949 exported in accordance with that section; and

- any other indigenous timber and indigenous timber products exported with the consent of the Minister of Forestry and subject to conditions imposed by the Minister.

Clause 4 was made under section 56(1) and (2) of the Customs and Excise Act 1996, which provided as follows:

56 **Prohibited exports**

(1) It is unlawful to export from New Zealand goods the exportation of which is prohibited by an Order in Council made under subsection (2) of this section.

(2) The Governor-General may from time to time, by Order in Council, prohibit the exportation from New Zealand of—

(a) Any specified goods; or
(b) Goods of a specified class or classes,—

if, in the opinion of the Governor-General, the prohibition is necessary in the public interest.

The empowering provision appeared to authorise the making of the order.

However, section 67A(1)(b)(i) of the Forests Act 1949 provided that nothing in Part IIIA of that Act applied to any indigenous timber from, or on, any land originally reserved or granted under the South Island Landless Maori Act 1906 ("the 1906 Act"). Part IIIA contains various provisions relating to indigenous forests and includes export controls prohibiting the export of indigenous timber except in certain circumstances.

The Alan Johnston case concerned timber from land reserved or granted under the 1906 Act. This timber was not “subject to section 67C of the Forests Act 1949" for the purposes of clause 4(1)(a) of the Customs Export Prohibition Order 1996. Accordingly, under clause 4(1)(b), the export of that timber was prohibited, except with the consent of the Minister of Forestry, and subject to any conditions that the Minister thought fit to impose.

The key elements of Wild J’s decision are:

• section 67A(1)(b)(i) of the Forests Act 1949 created an exemption for timber from land reserved or granted under the 1906 Act from export controls. In effect, in promulgating clause 4 of the Customs Export Prohibition Order 1996, the Executive sought to remove or defeat the section 67A(1)(b)(i) exemption. The land concerned was exempt from the sustainable management regime for forests in Part IIIA of the Forests Act 1949. Clause 4 sought to make them subject to the regime by a different mechanism. The clause was accordingly repugnant to Parliament’s expressed intention and was invalid:

• the order breached Article 1 of the Bill of Rights Act 1688 (Imp) because it suspended the law (section 67A(1)(b)(i) of the Forests Act 1949) by regal authority without the consent of Parliament:

• the order was not made for the purpose authorised by the empowering statute. It was made for an improper purpose and was therefore invalid.
Extraneous or improper purposes or considerations will not invalidate a regulation if the dominant or substantial purpose was a proper one. The test is whether the regulation would have been made “but for” the improper purpose. Although less clear cut, the order had been made for an improper purpose.

The decision is significant because it requires an examination, not just of the Act under which the delegated legislation is made, but of the statute book as a whole.

Inconsistency with the New Zealand Bill of Rights Act 1990

The Court of Appeal has recently said in *Drew v Attorney-General* [2002] 1 NZLR 58 that if an empowering provision does not authorise the making of a regulation that is inconsistent with the New Zealand Bill of Rights Act 1990 (the Bill of Rights Act), a regulation that is inconsistent with the Bill of Rights Act will be *ultra vires*.

The facts in *Drew* are as follows:

- Drew was an inmate who appealed against a conviction at a superintendent’s hearing of a disciplinary offence under the Penal Institutions Act 1954:

- his case had been heard by a deputy superintendent who found that the offence had been proved:

- Drew appealed to the Visiting Justice:

- regulation 144 of the Penal Institutions Regulations 1999 entitled an inmate in an appeal to a Visiting Justice to contact a lawyer but stated that “the legal adviser may not represent the inmate at the appeal.”.

- regulation 144 was purportedly made under section 45(1)(19) of the Penal Institutions Act 1954, which enabled regulations to be made for:

  “(19) Ensuring the discipline of inmates, including (without limitation) regulating the laying of complaints relating to offences against discipline and prescribing the procedures for the hearing of such complaints”:

- at the hearing before the Visiting Justice, Drew was
refused permission to be represented by a lawyer. The Visiting Justice found that the case was proved:

- Drew applied for a judicial review and argued that regulation 144 was *ultra vires* section 45(1)(19).

Blanchard J, delivering the majority judgment, said at para 66 that:

> It would have been permissible under section 45(1)(19) to make a regulation which denied legal representation where that was appropriate to the particular circumstances and the particular inmate, but this empowering provision cannot have been intended by Parliament to authorise the making of a regulation which, in its operative effect, results in some hearings which may be conducted in a manner contrary to the principles of natural justice ... we are satisfied that this is bound to occur if legal representation is *always* denied to an inmate regardless of the seriousness of the charge, the complexity of the case or the analytical ability of the inmate ... We accordingly conclude that reg 144 is *ultra vires* the regulation-making power in section 45.

The Court of Appeal said that it had reached this conclusion by applying common law principles of construction, guided by principles of natural justice. The Court felt that there was no need to refer to section 27(1) of the New Zealand Bill of Rights Act 1990 (Bill of Rights Act). Section 27(1) provides as follows:

> Every person has the right to the observance of the principles of natural justice by any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law.

Section 4 of the Bill of Rights Act provides as follows:

### 4 Other enactments not affected

No court shall, in relation to any enactment (whether passed or made before or after the commencement of this Bill of Rights),—

(a) Hold any provision of the enactment to be impliedly repealed or revoked, or to be in any way invalid or ineffective; or

(b) Decline to apply any provision of the enactment—
by reason only that the provision is inconsistent with any provision of this Bill of Rights.”.

Section 29 of the Interpretation Act 1999 defines “enactment” as meaning “the whole or a portion of an Act or regulations”.

On the face of it, because regulations are “enactments”, the courts cannot, by virtue of section 4, hold that the regulations are revoked, or in any way invalid or ineffective by reason only of an inconsistency with the Bill of Rights Act.

However, the Court felt that the argument that section 4 protected the regulations was “so plainly erroneous that it is desirable that we despatch it in the present case rather than leave any lingering doubt that it might have validity”. To the extent that it was necessary to refer to the Bill of Rights Act, the regulation was invalid because the empowering section, in accordance with section 6 of the Bill of Rights Act, does not authorise the regulation. In other words, the Court gave section 45 of the Penal Institutions Act 1954 a meaning consistent with section 27 of the Bill of Rights Act which, in accordance with section 6 of the Bill of Rights Act, is to be the meaning preferred over all other meanings.

What this means is that if a particular regulation is inconsistent with the Bill of Rights Act there will be an issue as to whether it is ultra vires its empowering provision. If Parliament wants to authorise the Executive to make regulations that are inconsistent with the Bill of Rights Act, then the empowering provision needs to expressly permit this. The empowering provision itself would then be inconsistent with the Bill of Rights Act and a report from the Attorney-General would need to be made to Parliament under section 7 of that Act.

Although Drew can be viewed as a straightforward ultra vires case (the empowering provision did not authorise a denial of legal representation), its significance in the context of the Bill of Rights Act cannot be underestimated. Consider the implications for delegated legislation that may arguably infringe other protected rights and freedoms, such as the freedom of expression (section 14) and freedom from discrimination (section 19).

**10A.4.3 Guidelines**

Before the power to make delegated legislation is exercised, a check should
be made to ensure that the proposed delegated legislation is not inconsistent with any other enactment (especially the Bill of Rights Act).

PART 5

IS THE PROPOSED DELEGATED LEGISLATION INVALID BY REASON OF UNCERTAINTY?

10A.5.1 Outline of issue

It is a fundamental principle of good law making that the obligations imposed by legislation should be certain and understandable by those affected. The issue concerns whether the proposed delegated legislation is invalid by reason of uncertainty.

10A.5.2 Comment

The leading case on uncertainty of delegated legislation in New Zealand is the Court of Appeal case of *Transport Ministry v Alexander* [1978] 1 NZLR 306. In that case-

- regulation 34(1)(a) of the Civil Aviation Regulations 1953 provided that except in the case of emergencies no aircraft may land or take off from an authorised or licensed aerodrome unless prior approval had been obtained:

- from the government department or other public body controlling or administering that place or administering the Noxious Animals Act 1956 in respect of that place; or

- if there was no such controlling or administrating authority, from the occupier of the land:

- the defendant landed in a helicopter on a piece of land without the permission of the occupier and was charged with a breach of regulation 34.

The Court noted that there was a difficulty with the words “administering the Noxious Animals Act 1956 in respect of that place” in regulation 34(1)(a)(i) in that it could not accurately be said that any government department or
public body administered the Noxious Animals Act 1956 in respect of a place.

The Court added that this:

brings one into the realm of voidness for uncertainty … That there is in theory a separate ground of uncertainty for which regulations may fail, as distinct from ordinary ultra vires, was denied by Dixon J in King Gee Clothing Co Pty Ltd v The Commonwealth (1945) 71 CLR 184. Be that as it may, there is a persistent tendency for courts to accept, as indeed was accepted in the King Gee case itself, that in considering regulations claimed to be justified by a particular statutory power the stage may be reached of concluding that the regulation is so ambiguous that Parliament cannot have meant the power to cover it. We think such a stage is reached here … To regulate civil aviation is to lay down rules to be observed by those participating in the activity: the reference to the Noxious Animals Act in reg 34(a)(i) is so obscure that it does not lay down a reasonably ascertainable rule. Consequently it is invalid.

It is interesting to note however that the invalidity did not extend to regulation 34(1)(a)(ii), which concerned landing with the consent from the occupier of the land. The conviction stood because the invalidity of regulation 34(1)(a)(i) did not bring down regulation 34(1)(a)(ii) with it.

10A.5.3 Guidelines

Before the power to make delegated legislation is exercised, a check should be made to ensure that the rights and obligations set out in the proposed delegated legislation are certain and understandable.

PART 6

DOES THE PROPOSED DELEGATED LEGISLATION INFRINGE ANY OF THE GROUNDS SET OUT IN STANDING ORDER 382?

10A.6.1 Outline of issue

Standing Order 382 sets out the grounds on which the Regulations Review Committee may consider whether it ought to draw a regulation to the special
attention of the House. The issue concerns whether the delegated legislation infringes any of those grounds.

10A.6.2 Comment

General objects and intentions of the statute
The first ground is that the regulation “is not in accordance with the general objects and intentions of the statute under which it is made”. In relation to this ground, the Statutes Revision Committee has noted that—

• the ground “is not intended to open the Regulations Review Committee to discussion on matters of policy. It is intended that the Committee deal only with the policy as written in general terms”;

• the ground is distinct from a question of whether or not the regulations are ultra vires.

In considering the ground, the Regulations Review Committee has regard to—

• the objects and intentions of the statute and whether the regulation is consistent with those objects and intentions; and

• whether the regulation has been authorised by the empowering provision.

Trespass on rights and liberties
The second ground is that the regulation “trespasses unduly on personal rights and liberties”. This ground involves the Regulations Review Committee having regard to whether the regulations trespass on a personal right or liberty and, if there has been a trespass, whether it is undue.

There is some uncertainty as to whether or not a “right” must be a right that is enforceable by the courts or otherwise recognised at law. It is possible that the Regulations Review Committee may accept that international treaties or conventions may establish a “right” for the purposes of this ground. (See, for


Whether or not the trespass is undue may involve consideration of—

- the nature and degree of the trespass; and

- the public interest that the regulations are designed to achieve; and

- whether an unreasonable duty has been created.

*Unusual or unexpected use of the powers conferred*

The third ground is that the regulation “appears to make some unusual or unexpected use of the powers conferred by the statute under which it is made”.

In considering whether this ground is infringed, regard should be had to the objects and intentions of the statute. Given these objects and intentions, have the powers been used in an usual or unexpected way?

*Makes rights and liberties dependent on administrative decisions which are not subject to review on their merits*

The fourth ground is that the regulation “unduly makes the rights and liberties of persons dependent on administrative decisions which are not subject to review on their merits by a judicial or other independent tribunal”.

The Regulations Review Committee has indicated, that if an administrative decision can affect a person’s legal rights, privileges, or legitimate expectations, there should be a right of appeal to, or review by, an independent body or person.

A right to judicially review a decision may not be enough as this remedy may not examine the merits or substance of the decision.

*Excludes the jurisdiction of the courts*

The fifth ground is that the regulation “excludes the jurisdictions of the courts without explicit authorisation in the enabling statute”.

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This ground may apply in circumstances where a regulation is made that impacts on the rights or obligations of parties to litigation proceedings that have been commenced.

More suited to Parliamentary enactment
The sixth ground is that the regulation “contains matters more appropriate for Parliamentary enactment”. This would include matters of policy and principle that should be considered by Parliament.

Retrospective
The seventh ground is that the regulation “is retrospective where this is not expressly authorised by the empowering statute”.

This ground is designed to protect rights and obligations that exist immediately before the regulation comes into force.

Notification and consultation
The eighth ground is that the regulation “was not made in compliance with particular notice and consultation procedures prescribed by statute”.

This ground involves the Committee—

• identifying what notice and consultation requirements have been prescribed in the empowering provision; and

• determining, in any particular case, whether those requirements have been complied with.

In terms of consultation it is important to ensure that the persons consulted are given sufficient time and information to ensure that the consultation is meaningful. See Part 1 for further details concerning consultation.

Form or purport of regulations calls for elucidation
The final ground is that the regulation “for any other reason concerning its form or purport, calls for elucidation”.

This ground may be breached if a particular regulation is unclear or uncertain. The Regulations Review Committee has noted in relation to this ground that:

We agree with the Crown that findings of substantive unreasonableness are not appropriate under this ground ... Findings should be restricted to the
clarity of the language of the [regulation] itself, rather than the substance of
the [regulation].\textsuperscript{163}

10A.6.3 Guidelines

Before the power to make delegated legislation is exercised, a check should be made to ensure that the delegated legislation does not infringe any of the grounds set out in Standing Order 382. For further information concerning Standing Order 382, see the Regulations Review Committee Digest at www.vuw.ac.nz/nzcpl.

\textsuperscript{163} Complaint Relating to Land Transport Rule 32012 - Vehicle Standards (Glazing), Report of the Regulations Review Committee [1988] AJHR I16K.