

Translating policy into legislation - best practice

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

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September 2005



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?

Key principle

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



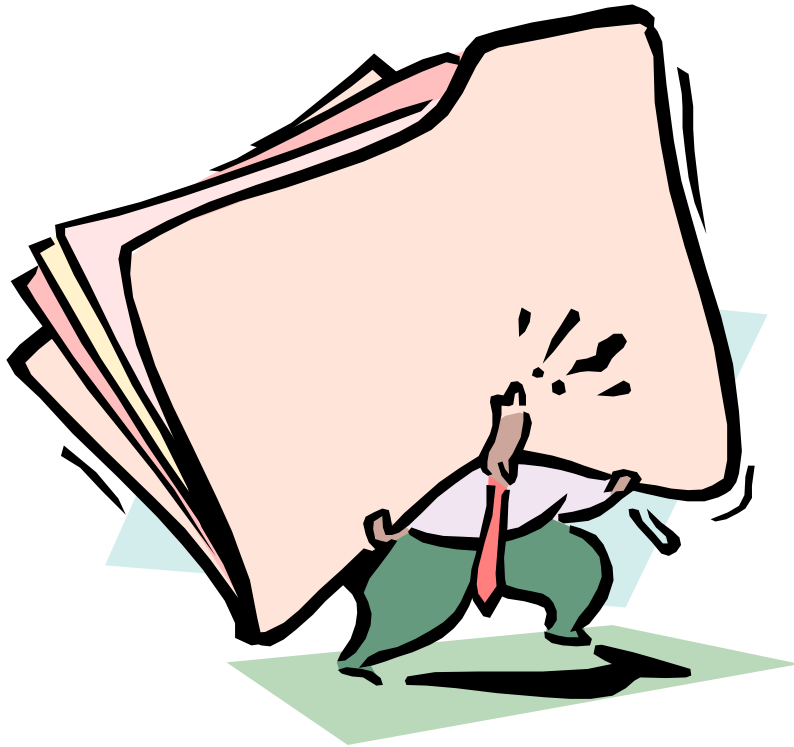
- Will the legislative proposal work in practice?
- Resource requirements
- Develop scenarios to test practicality and comprehensiveness of policy

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



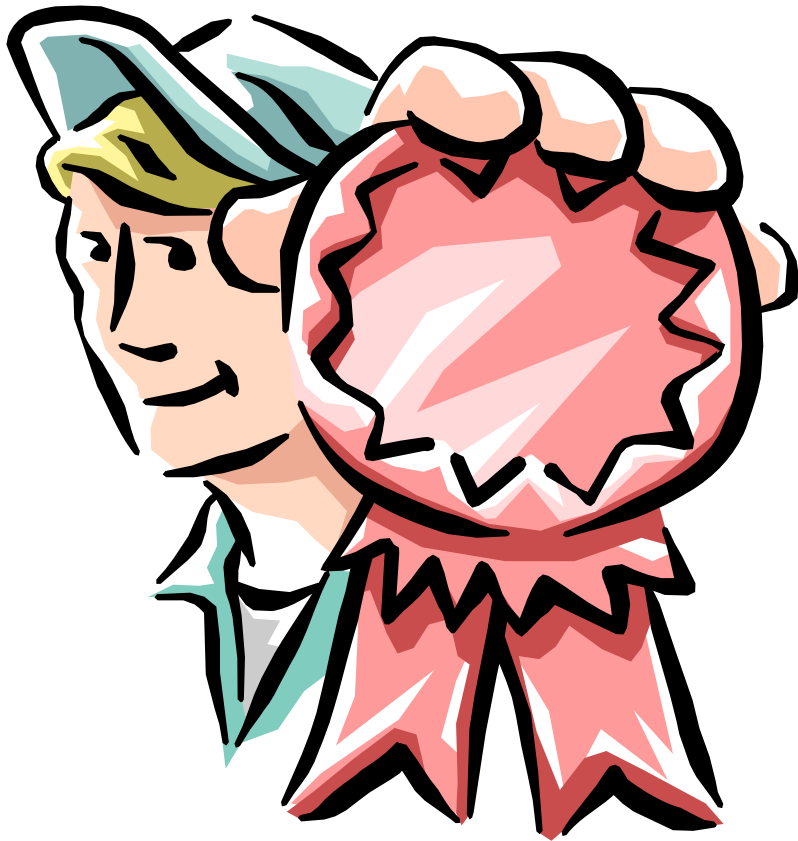
- LAC Guidelines
- Cabinet Office Manual & Step by Step Guide
- Guide to Working with the PCO
- Regulations Review Committee reports (*see* RRC Digest on VUW Law Faculty website)

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

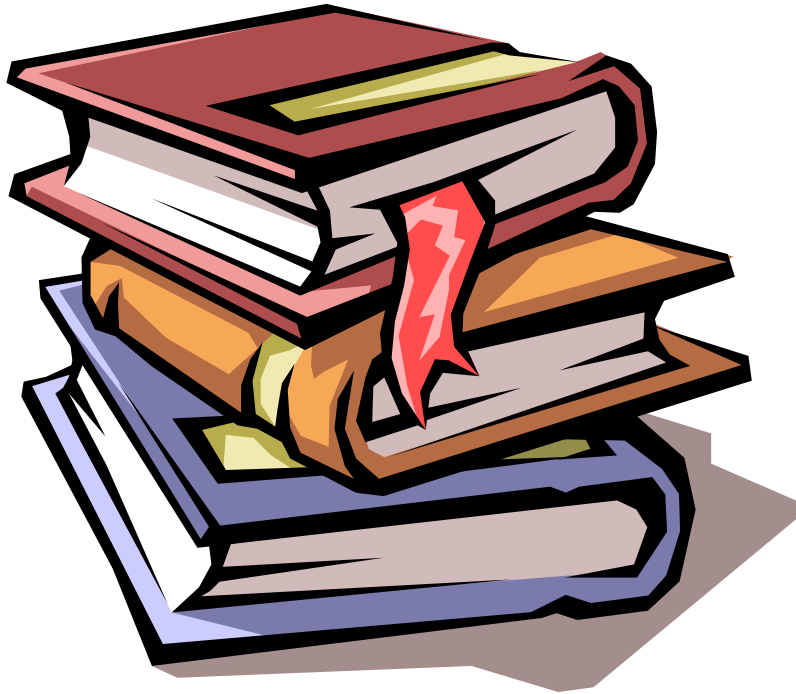
- ✓ Delegated legislation required?
- ✓ Highlight any unresolved difficulties
- ✓ Expected timetable, time constraints, commencement dates
- ✓ Consultation with other agencies
- ✓ Contact details

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 (eg 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



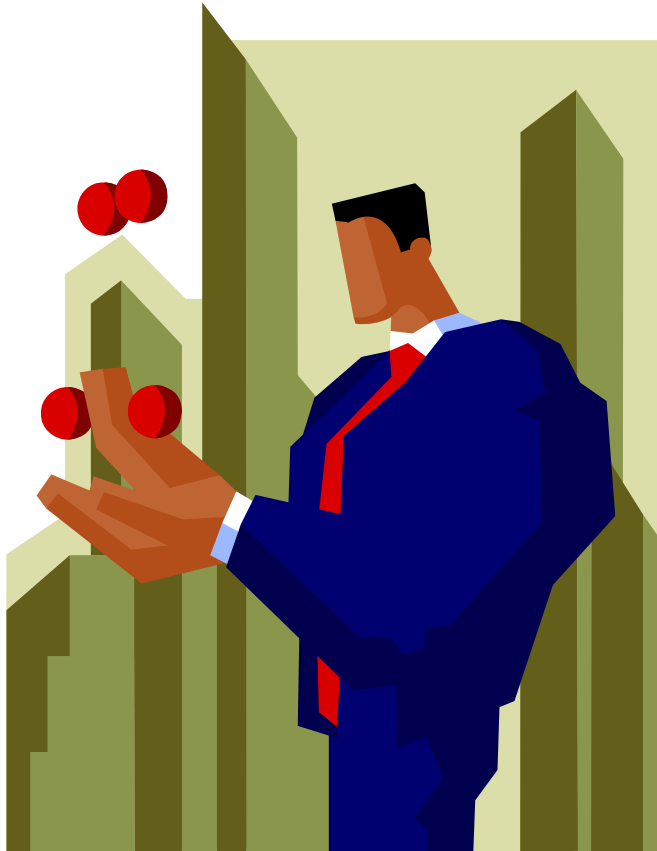
- Format and style
- Legislative structures
- Plain language
- Parliamentary procedure
- Printing and publishing process

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 (eg flow charts)
- New ways of communicating

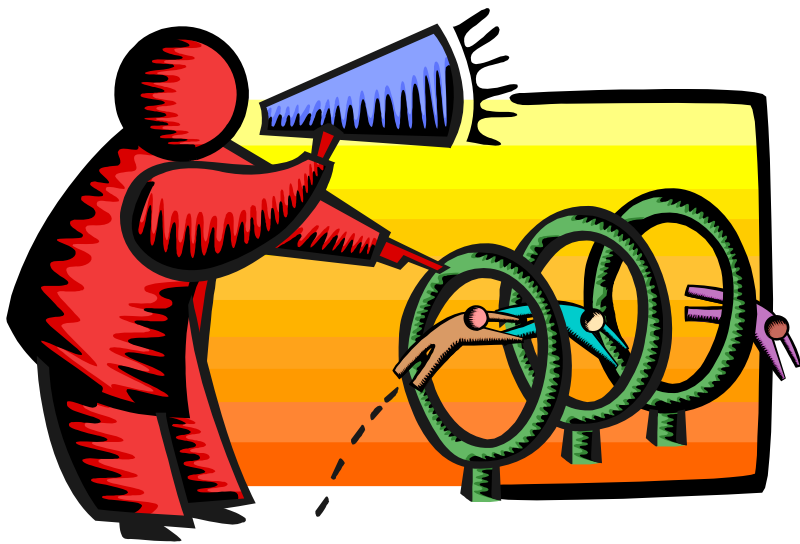
Parliamentary procedures



- 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



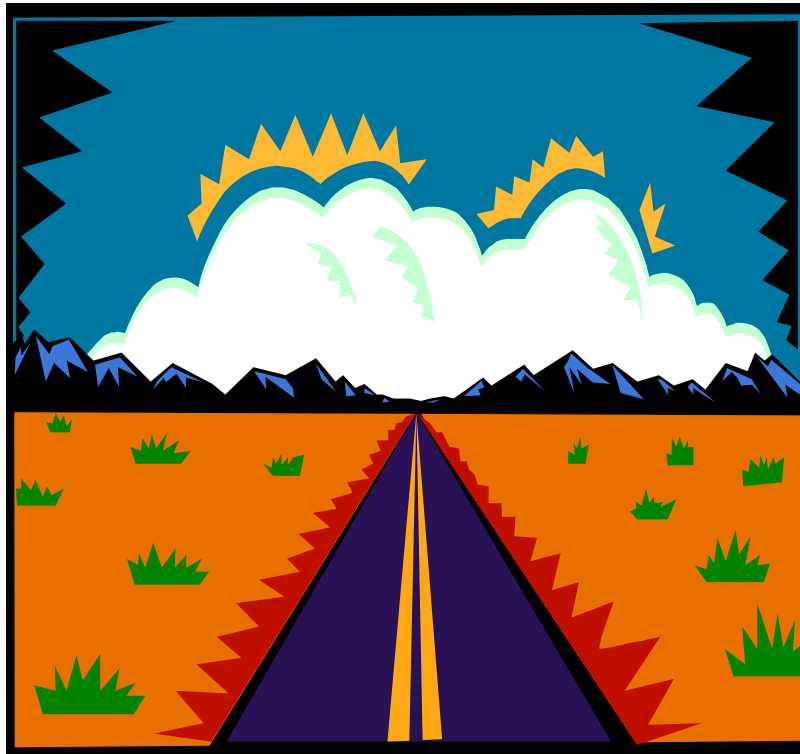
- How can PCO improve its service?
- Are our publications useful?
- Annual client survey
- Feedback on individual drafting jobs

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