

Guidance issued under section 26 of the
Regulatory Standards Act 2025
15 May 2026

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Introduction

This guidance is issued jointly by the Minister for Regulation and the Attorney-General under section 26 of the Regulatory Standards Act 2025 (the Act).

It is intended to support chief executives of agencies responsible for legislation (or their delegates)¹ to meet their statutory requirements under the Act in relation to the completion of Consistency Accountability Statements (CASs), by setting out recommended best practice and expectations.

Additional resources are also available on [the Ministry for Regulation's website](#).

What is a Consistency Accountability Statement (CAS)?

Section 5 of the Regulatory Standards Act sets out the definition of a CAS.

In summary, a CAS is a statement from the chief executive from the responsible agency² that confirms that the agency has reviewed legislation for consistency with the principles of responsible regulation set out in section 9 of the Act, and summarised any identified inconsistency with these principles.

Who is responsible for preparing a CAS?

The obligation to prepare a CAS sits with the chief executive of the agency responsible for the legislation, although in practice this obligation will usually be delegated. The chief executive (or their delegate) is expected to act independently from their minister in preparing the CAS (see section 22 of the Act).

Who is responsible for preparing a Statement of Reasons?

If the CAS concludes that the legislation is inconsistent with the principles, the minister (or if it is secondary legislation, the maker of the legislation) must provide a statement giving reasons for any inconsistency.

This document does not include guidance about the preparing of Statements of Reasons, as this is outside its scope (see section 25 and 26 of the Act).

¹ Note that the responsibility for preparing a CAS may be delegated by public service chief executives as provided for in clause 2 of Schedule 6 of the Public Service Act 2020. For other chief executives, delegations would rely on other existing methods for delegated decision-making within their agencies, including specific provisions within relevant legislation like the Crown Entities Act 2004 or the Local Government Act 2002.

² A responsible agency is defined in the Act as:

- the central government entity primarily involved in developing a Bill or Government amendment, or
- the administering agency for an Act or part of an Act, or
- the administering agency for secondary legislation (see section 5).

What legislation is subject to CAS requirements?

Acts and Bills

The requirements for completion of CASs apply broadly to all Acts and Government Bills, other than those excluded by Parts 1 and 2 of Schedule 2 to the Act. This exclusion covers Bills and Acts excluded by notice. See: [Exclusions from the Act](#).

Government amendments

The requirements for completion of a CAS apply to every Government amendment to a Bill unless:

- it relates to a Bill introduced before section 12 of the Act comes into force (see Schedule 1, clause 2)
- it relates to a Bill excluded by Part 1 of Schedule 2 (including Bills excluded by notice. See: [Exclusions from the Act](#))
- the Minister for Regulation has agreed that the amendment would not materially change the Bill (see section s 13(1)(c) and 13(3) of the Act). More information about the process for identifying whether a change is material or not can be found here: [Government amendment exemptions](#).

If it is not reasonably practicable for a CAS to be completed prior to parliamentary scrutiny of a Government amendment, the responsible Minister must still ensure that one is completed, presented and published as soon as practicable afterwards (see section 13(1)(b) and 13(2) of the Act).

Secondary legislation

CASs are required to be completed for all new secondary legislation, and all existing secondary legislation that has been amended or remade since section 14 of the Act came into force, unless it is excluded by Part 3 of Schedule 2 to the Act. This exclusion covers secondary legislation excluded by notice See: [Exclusions from the Act](#).

Existing secondary legislation is not subject to regular review and CAS requirements under the Act, unless:

- a CAS was previously prepared for that secondary legislation (see section 18(1)(a)(i) of the Act), or
- a CAS was previously prepared for secondary legislation that amended that legislation (see section 18(1)(a)(ii) of the Act), or

- it has been included via notice (see section 18(1)(b) of the Act).

When a CAS has been prepared for secondary legislation that amends all or part of another secondary legislation instrument, CAS requirements will subsequently apply to the amended secondary legislation.

However, any existing secondary legislation that made consequential amendments to other legislation does not need a CAS completed for those parts (see section 18(2)).

Where an empowering provision has been assessed as inconsistent with one or more of the principles, the expectation is that secondary legislation issued under this provision is nonetheless fully assessed against the principles, and any inconsistencies identified in the CAS.

How is this guidance structured?

There are three broad parts to this guidance.

Part One sets out guidance on how each of the principles of responsible regulation in section 9 of the Act apply when assessing legislation for consistency for the purposes of producing a CAS.

Part Two sets out guidance on how to complete a CAS, and provides CAS templates for proposed and existing legislation.

Part Three sets out guidance on how to prepare, publish, carry out and report on reviews of existing legislation for the purposes of producing CASs.

How should this guidance be used?

Purpose of guidance

This material is guidance jointly issued by the Minister for Regulation and the Attorney-General under section 26 of the Act. The guidance sets out recommended best practice and the joint Ministers' expectations about how the principles of responsible regulation should be applied.

The guidance is intended only for the purpose of preparing CASs, and for preparing reports under subpart 3 of the Act.

Scope of the guidance

This guidance is not intended to provide an exhaustive list of all considerations that might be relevant when completing a CAS, or to define precisely what inconsistency with the principles might look like in all situations.

Instead, it sets out best practice and expectations in relation to what agencies should consider when undertaking their own assessments for the purposes of preparing a CAS, to help promote a standardised approach across agencies.

The individual circumstances and context of a piece of legislation will be relevant to an assessment, and the guidance should be read in light of those circumstances, as well as the purpose of the Act.

This guidance does not cover the preparation of statements of reasons, as this is outside its scope (see section 26 of the Act).

Is there any other supporting information available?

This guidance focuses on supporting responsible chief executives and their agencies to meet key requirements under the Act. It is the only guidance issued under section 26 of the Act.

However, there is other relevant material available to agencies that sets out administrative requirements to support Cabinet decision-making on legislative proposals (see in particular [Expectations for Good Law-making \[CO \(26\) 2\]](#))

The Ministry for Regulation's website also provides further information on the Act, and the broader Regulatory Management System.

In addition, the [Legislation Guidelines](#) maintained by the Legislation Design and Advisory Committee provide extensive information that may support agencies, Ministers or law-makers when preparing CASs or making statements of reasons (see discussion below).

How do requirements under the Regulatory Standards Act relate to other requirements for the development of legislation?

The Act establishes a particular set of principles focused on good law-making processes, and the effect of law-making on existing interests and liberties, to be considered specifically when preparing CASs.

Requirements under the Act have no impact on agencies' obligations to consider other principles or follow other processes in the development and review of legislation, including both statutory and administrative requirements (see section 10 of the Act).³

Agencies will also need to consider other relevant guidance and tools designed to guide law-makers in New Zealand, including relevant Cabinet Office circulars. In addition, agencies' human rights analyses, including any human rights implications discussed with

³ For instance, requirements arising from the Cabinet Manual, New Zealand's international and domestic human rights obligations (including NZBORA and the Human Rights Act 1993), other international agreements, Standing Orders of the House of Representatives, or other legislative requirements.

the Ministry of Justice and any advice on an Act's or Bill's consistency with the New Zealand Bill of Rights Act 1990 (NZBORA) may also be helpful in considering whether any rights are engaged.

Where there are other principles, standards or guidelines that are applicable in the development of a particular piece of legislation, their use may be relevant to any explanation for reasons of inconsistency. In some cases, there will be some overlap between the specific requirements of this Act and other specific requirements – in particular, application of some of the principles may overlap with assessments carried out to determine whether a Bill is consistent with NZBORA. This guidance indicates where this overlap may need to be considered. However, even where there is overlap, agencies are still required to separately both fulfil NZBORA requirements, and fulfil requirements under this Act.

In addition, there is substantial overlap between the principles in the Act and those in the [Legislation Guidelines](#). These are similarly indicated in the relevant parts of this guidance. Given that the broader focus of the principles in the [Legislation Guidelines](#), those guidelines and advice from the Legislation Design Advisory Committee will continue to be a valuable resource in the development of legislation.

Part One: Applying the principles of responsible regulation

This part provides guidance relating to the application of each of the principles of responsible regulation (see section 9 of the Act) to assessments of the consistency of legislation for the purposes of producing a CAS.

A summary of factors indicating inconsistency in relation to each principle can be found in **Annex 1** to this guidance.

9(a) The importance of maintaining consistency with aspects of the rule of law

Section 9(a) sets out selected aspects of the rule of law. Each of these aspects should be considered individually when assessing the consistency of legislation.

However, in making these assessments, each of sections 9(a)(i) to 9(a)(v) of the Act should be considered in the context of their impact on the rule of law. This sets a higher bar for inconsistency than if each of these aspects of the rule of law was considered as a standalone principle. The discussion below sets out how to consider this in relation to each aspect of the rule of law principle.

There are many competing concepts of the rule of law.⁴ But core to all of these is that all persons, whether public or private, and the state itself, should be bound by and entitled to the benefit of laws publicly made, and that laws should generally take effect in the future and be publicly administered in the courts. Sections 9(a)(i) to (v) of the Act provide for particular aspects of the rule of law that support this overarching principle. These are not exhaustive descriptions of the rule of law, but are the aspects of the rule of law that are identified by the Act as relevant for the purposes of producing a CAS.

9(a)(i) Rule of Law – clarity and accessibility

The importance of maintaining consistency with the following aspect of the rule of law: the law should be clear and accessible.

Overview

It is an essential feature of the rule of law that legislation is clear and accessible to those who are bound by it. This aspect of the rule of law aims to ensure that people can find the law and understand the rights and obligations that apply to them – supporting the

⁴ See, for instance, Lord Bingham's definition of the rule of law in *The Rule of Law* (Penguin Books, 2011) and the United Nations [New Vision for the rule of law](#).

certainty and predictability of the law. This follows on from the legal concept that everyone is presumed to know the law.

It is challenging to consistently achieve clear laws for all contexts in practice. Legislation is used by people with differing skills and knowledge, the subject-matter is often complex, and precision may sometimes be required over readability. As a result, the degree of clarity that is expected for the rule of law will depend on the context (including who it applies to), how much risk there is of avoidance or of inappropriate application through unintended interpretations, and the significance of the consequences for those the law applies to.

How do I identify whether this aspect of the rule of law principle applies?

This aspect of the rule of law principle will be relevant for all legislation subject to CAS requirements.

How do I assess whether legislation is inconsistent with this aspect of the rule of law principle?

In completing a CAS for legislation, you should determine whether that legislation lacks clarity and accessibility to the degree that this is contrary to the rule of law.

Is the legislation clear?

Legislation needs to be clear to its intended audience.

For example, if the legislation is intended to be used by consumers, consumers should be able to read and understand it. By contrast, legislation that is mainly used by specialist or technical experts may be clear despite using technical terms. In some cases, the clarity of the law will likely be enhanced through the use of technical content – for instance where detailed, internationally-recognised technical standards are incorporated by reference, rather than provided for in the body of an Act.

Where basic rights or constitutional issues are being addressed, there will be greater expectations for clarity of language.

In this context, the expectation is that legislation should be identified as inconsistent with this principle if any of the following apply:

- The language and structure are so unsuitable for its intended audience that they are unable to determine their rights or obligations.
- The legislation is so vague, or the complexity of the legislation or concepts is so challenging, that certainty about the effect of the legislation is undermined to an extent that is contrary to the rule of law.
- The legislation imposes duties that conflict with other legislative duties, or has not been checked for inconsistency with other legislation to ensure it does not do so.

- Where Parliament is being asked to limit a fundamental constitutional principle⁵, the legislation is insufficiently clear as to that intent (noting that the limitation may itself give rise to a separate inconsistency with the principles in the Act).

Legislation that is cross-referenced (e.g. references to definitions used in other legislation) and material incorporated by reference should be assessed in the same way as the legislation itself.

Is the legislation accessible?

Legislation should be easy to find by those it applies to.

In this context, the expectation is that legislation should be identified as inconsistent with this principle if any of the following apply (subject to the further considerations below):

- The legislation will be not published either on the New Zealand Legislation website or (for agency-published secondary legislation) in full on the relevant agency's website.
- The legislation is not available free of charge.
- The other usual publication requirements under the Legislation Act 2019 will not be met, where these apply.⁶
- The legislation provides for incorporation by reference in a manner that is materially less accessible than provided for in Schedule 2 of the Legislation Act 2019, or sections 29 to 32 of the Standards and Accreditation Act 2015.

However, the legislation will likely still be consistent with this aspect of the rule of law principle if there is a good reason for restricting access, and if those who are bound by the legislation have access to it (for example, an exception to publication requirements for commercial sensitivity under Schedule 3 of the Legislation Act 2019).

Examples

Regulations limit the amount of agricultural chemicals permitted in food, and incorporate by reference a technical standard on how to assess against this threshold. This standard only relates to measuring chemical levels, but is detailed and likely only able to be understood by technical experts. However, the standard's technical nature ensures that the requirements can be well understood and complied with by those it applies to and it is readily available to those applying it. These regulations should be assessed as **consistent** with this principle.

⁵ See [Chapter 4 of the Legislation Guidelines](#) for a discussion of New Zealand's fundamental constitutional principles.

⁶ For instance, they do not apply to secondary legislation made by local government.

A significant number of notices are made that overlap with previous notices without amending or replacing them, leading to a lack of clarity in relation to what obligations apply. This makes it very difficult to understand how exactly the law applies at any one time. These notices should be assessed as **inconsistent** with this principle.

For further information

PCO's Plain Language Standard and checklist, Secondary Legislation Access Standards, and Secondary Legislation Drafting Toolkit are relevant to this principle. In particular:

- further guidance on drafting clear legislation can be found at [Using plain language](#)
- further guidance on eliminating complexity in legislation can be found at [Reducing complexity](#).

9(a)(ii) Rule of Law – retrospectivity

The importance of maintaining consistency with the following aspect of the rule of law: the law should not adversely affect rights and liberties, or impose obligations, retrospectively.

Overview

It is essential to the rule of law that people can act with confidence on the basis of the existing law, and are able to predict the outcomes of their actions. Individuals should have a choice about how to order their affairs in the knowledge of the rules that apply. Retrospective legislation, which operates to change the legal effect of past events, undermines this principle and introduces elements of legal uncertainty, arbitrariness, and potentially injustice.

Retrospectivity can be considered as a spectrum. The rule of law is most undermined if legislation retrospectively adversely affects a person's accrued rights, liberties, or obligations, particularly by retrospectively criminalising or punishing conduct that was previously legal, or by depriving them of the benefit of a court decision.

The focus of this aspect of the rule of law principle is on **adverse** impacts caused by direct, retrospective effect. Beneficial or neutral impacts do not undermine the rule of law in the same way and are not inconsistent with the principle as stated in the Act.

In addition, retrospectivity may, even if it has adverse impacts, be overall consistent with broader rule of law values, for instance if it makes the law more fair.

How do I identify whether this aspect of the rule of law principle applies?

This aspect of the rule of law principle will only be relevant to proposed legislation.

How do I assess whether legislation is inconsistent with this aspect of the rule of law principle?

In completing a CAS for legislation, you should determine whether that legislation acts retrospectively to the degree that it is likely to be contrary to the rule of law.

Key considerations to assess this are fairness in all the circumstances, whether the extent of retrospectivity is necessary and in the public interest, and whether it is proportionate (no more than is reasonably necessary) in that context. The expectation is that legislation should be identified as inconsistent with this principle if any of the following apply (subject to the further considerations below):

- The legislation criminalises or punishes past conduct that was legal at the time, or it imposes additional punishment for past unlawful conduct.
- The legislation prevents a person from relying on a right or defence that existed at the time the person undertook the relevant conduct.
- The legislation changes the legal validity or consequence of past transactions or actions, resulting in an adverse impact for anyone affected.
- The legislation alters the law declared in court cases in a way that is retrospective and adverse to those affected. This can be adversely retrospective, for the purposes of this principle, even if it brings the law back to the position that everyone previously thought applied.
- The legislation deprives litigants of the benefits of their victory in a completed court case. Legislation that interferes with existing litigation that is underway, but not yet complete, may not be retrospective, but may engage principles of comity relevant to the principle in section 9(g) of the Act.⁷

However, legislation is likely to be consistent with this principle where:

- it takes a transitional approach consistent with the Legislation Act 2019
- it involves validations of past acts or omissions where there are no adverse outcomes for those affected
- it involves changes to remove or change existing rights (e.g. licences) for the future
- it involves changes to disestablish entities, or concerns future appointments of officers

⁷ Comity is the principle that the three arms of government – the courts, executive and Parliament – will respect each other’s function and role.

- it imposes future consequences for past events or for past behaviour that is not an additional punishment (for example, the application of a fit and proper licence test may take into account prior behaviour)
- it imposes higher tests or requirements to obtain a right granted after the legislation is enacted (for example, adding new criteria for granting a licence or authorisation).

In addition, legislation that creates or imposes future rights or obligations is not retrospective merely because it relates to past acts or omissions (e.g., an obligation to do a financial report in the future for the past year's operations).

Examples

A Bill requires companies to report recorded energy usage against standards in relation to energy usage over the past two years. This Bill is not retrospective because it does not affect the legality of those companies' past conduct, nor punish companies for past conduct that was legal at the time. This Bill should be assessed as **consistent** with this principle.

A Bill increases criminal penalties for dumping rubbish on land administered by the Department of Conservation, and expressly applies to the dumping that occurred prior to commencement of the Bill. This Bill should be assessed as **inconsistent** with this principle.

For further information

A presumption against retrospectivity is set out in section 12 of the [Legislation Act 2019](#); and in respect of criminal offences, in section 10A of the [Crimes Act 1961](#) and section 26(1) of [NZBORA](#).

Proposed legislation that is intended to affect only events taking place after it comes into force can still affect existing situations in a number of different ways. [Chapter 12 of the Legislation Guidelines](#) provides further information on considerations that may be relevant to prevent retrospective effect in such situations.

9(a)(iii) Rule of Law – equality before the law

The importance of maintaining consistency with the following aspect of the rule of law – every person is equal before the law.

Overview

It is an essential feature of the rule of law that all persons (whether individuals or institutions, and whether public and private) and the state itself should be equally bound

by the law and entitled to the benefit of laws, and that laws should be equally enforced and independently adjudicated.

This aspect of the rule of law principle is focused on equality in the administration of the law. It can be contrasted with substantive protections provided through NZBORA relating to the making of laws that treat people unequally, or unlawful discrimination. Immunities for the Crown conflict with the general expectation that the Government should be under the same law as everyone else, so that law does not create unfair benefit to the Crown and/or adversely affect third parties.

However, because this is an aspect of the rule of law rather than a standalone principle, inconsistency should be assessed in the context of the broader effect on the rule of law. In particular, assessments of inconsistency should take into account that the nature of government requires the executive to have certain powers and immunities not available to private persons, and that legislation should not bind the Crown where this would impair the efficient functioning of Government.

How do I identify whether this aspect of the rule of law principle applies?

This aspect of the rule of law principle is applicable to all legislation. Note that many older Acts do not provide that they bind the Crown, so this matter will arise on review of that legislation.

How do I assess whether legislation is inconsistent with this aspect of the rule of law principle?

In completing a CAS for legislation, you should determine whether that legislation could result in the law being administered unequally to the degree that it is likely to be contrary to the rule of law.

This means firstly making an overall assessment of whether making the Crown equally subject to the legislation would impair efficient functioning of government, by considering:

- whether it would hinder operations or activities relating to the special functions of government, such as acting as a regulator (as opposed to the Crown acting in the same way as private persons)
- whether it would create a burden on the Crown over and above that for private persons (in light of those special functions).

If making the Crown subject to the legislation would not impair the efficient functioning of government, the expectation is that legislation should be identified as inconsistent with this principle where any of the following apply:

- The legislation does not bind the Crown or binds the Crown only in part or only for limited and specified circumstances.
- The legislation provides for immunity or limitations on civil liability for the Crown or other persons carrying out governmental functions, where that immunity is not justified on public policy grounds.⁸
- The legislation provides that Crown organisations are immune from criminal liability in relation to provisions that relate to the Crown in the same way as any other person (e.g. where the Crown engages in conduct as an employer), and where other parties are subject to criminal liability.⁹

Examples

An Act setting out a healthy homes requirement binds the Crown, meaning that a Government department responsible for supplying social housing is subject to the same requirements under the Act as private landlords. This Act should be assessed as **consistent** with this principle.

A Bill establishes a new regime to regulate permissible commercial fishing techniques and introduce the ability to apply for an exemption to use prohibited techniques for research purposes, but only Crown-owned research institutes are eligible to apply for an exemption. This Bill should be assessed as **inconsistent** with this principle.

For further information

The following sections of the [Legislation Guidelines](#) provide some more detailed guidance on specific areas that are particularly relevant to this principle:

- [Chapter 4 – Fundamental Constitutional Principles](#)
- [Chapter 11 – Applying an Act to the Crown.](#)

See also [Cabinet Office Circular CO \(O2\) 4](#) for factors to take into account when assessing whether or not it is appropriate to bind the Crown and impose criminal liability on the Crown.

⁸ An example of where immunity is likely justified on public policy grounds is the protection for the Crown under section 48 of the Official Information Act 1982 from any civil or criminal proceedings relating to the release of information in good faith, in order to support the public's ability to access official information, consistent with the purposes of the Act.

⁹ Section 6 of the Crown Organisations (Criminal Liability) Act 2022 lists offences for which the Crown can currently be criminally prosecuted.

9(a)(iv) Rule of Law – independent, impartial judiciary

The importance of maintaining consistency with the following aspect of the rule of law: there should be an independent, impartial judiciary.

Overview

This aspect of the rule of law principle focuses on the importance of having an impartial judiciary that is independent from the other branches of government (i.e. the executive and Parliament) for the purposes of ensuring accountability. The judiciary interprets legislation and develops the common law. It decides disputes between persons and between persons and the Government. It is responsible for imposing criminal convictions and sentences of imprisonment.

How do I identify whether this aspect of the rule of law principle applies?

This aspect of the rule of law principle is relevant to new or existing legislation that directly impacts on judicial appointments and independence from the executive and Parliament, particularly in relation to:

- eligibility, selection and appointment
- conduct
- removal
- terms and conditions of appointment, remuneration, superannuation, and other benefits
- support arrangements.

It is also relevant to any legislation that confers judicial functions on any person (particularly the ability to make binding rulings, impose criminal convictions, or sentence people to imprisonment).

How do I assess whether legislation is inconsistent with this aspect of the rule of law principle?

In completing a CAS for legislation, you should determine whether that legislation affects the independence or impartiality of the judiciary to the degree that it is likely to be contrary to the rule of law.

The expectation is that legislation should be identified as inconsistent with this principle if any of the following apply:

- The legislation increases the influence of the executive or legislature over the judiciary (for example by changing appointment or removal processes, or changing processes for setting remuneration, benefits or other conditions) in a manner that may reduce the independence or impartiality of the judiciary.

- The legislation provides for someone other than a court or judicial officer to provide binding rulings to interpret legislation in a manner that prevents recourse to the courts, or to impose criminal convictions or sentence people to imprisonment.

Examples

A Bill creates a specialist tribunal to hear technical disputes, but preserves court oversight by allowing appeals on questions of law and leaving judicial review available. This Bill should be assessed as **consistent** with this principle.

A Bill proposes to amend the process for managing complaints about sitting judges. The Bill provides that Judicial Conduct Panels must be chaired by the Minister of Justice. This proposal could enable the executive to influence reports about whether to remove judges from office. This Bill should be assessed as **inconsistent** with this principle.

For further information

The following sections of the [Legislation Guidelines](#) provide some more detailed guidance on specific areas of relevance to this principle:

- [Chapter 4 – Fundamental constitutional principles](#)
- [Chapter 28 – Creating a system of appeal, review and complaint](#)

See also principles in sections 9(g) and (h) relating to the role of the courts.

9(a)(v) Rule of Law – resolving issues of legal right and liability

The importance of maintaining consistency with the following aspect of the rule of law: issues of legal right and liability should be resolved by the application of law, rather than the exercise of administrative discretion

Overview

This aspect of the rule of law principle is engaged when the legislation gives a discretion to a decision-maker, for example to a minister, chief executive or a tribunal. Statutory discretions should be exercised against a framework of express or implied criteria and principles. Discretions that are expressed so broadly that no framework can be discerned (e.g. from the structure and purposes of the Act) create a risk of arbitrary decision-making, since the decision-maker is left no yardstick against which to make their decision.

How much discretion to leave to a decision-maker is a question of degree. Even a detailed prescription of rules and standards will require some administrative discretion, and principles-based regulatory systems may involve substantial administrative discretion.

Only the conferral of rights to make unconstrained or arbitrary decisions will create rule of law concerns under this principle.

How do I identify whether this aspect of the rule of principle applies?

This aspect of the rule of law principle will be relevant to any legislation that delegates authority to an administrative body, such as a minister or a regulator, to resolve issues relating to legal rights and liabilities.

How do I assess whether legislation is inconsistent with this aspect of the rule of law principle?

In completing a CAS for legislation, you should determine whether that legislation provides for the resolution of legal rights and liability in a manner that is likely to be contrary to the rule of law.

The expectation is that legislation should be identified as inconsistent with this principle if any of the following apply:

- There are powers that are so lacking in statutory purpose or criteria that they enable arbitrary use of power, and limit the court's ability to review use of those powers, contrary to the rule of law.
- The legislation purports to give the decision-maker the power to determine issues of legal right and liability on the basis of absolute discretion or similarly unconstrained basis.
- The legislation purports to limit or remove the right to judicial review.
- The legislation does not provide for appeal to the courts where the rights or interests of a particular person are affected by an administrative decision, unless there are factors that would make an appeal inappropriate.¹⁰

Examples

An Act provides that a regulator can issue prohibition notices to a business's operations only where statutory thresholds are met, and requires the regulator to apply defined factors in making a decision. The Act allows appeals to a court on questions of law, and does not affect judicial review. This Act should be assessed as **consistent** with this principle.

An Act provides for a Minister to grant a right at their absolute discretion. This Act should be assessed as **inconsistent** with this principle.

¹⁰ See the section 9(h) principle on the role of courts: administrative powers, below, for a discussion of such factors.

For further information

The following sections of the [Legislation Guidelines](#) provide some more detailed guidance on specific areas that are particularly relevant to this principle:

- [Chapter 14 – Delegating law-making powers](#)
- [Chapter 16 – Delegating powers to grant exemptions](#)
- [Chapter 18 – Creating a new statutory power](#)

9(b) Liberties

Legislation should not unduly diminish a person’s liberty, personal security, freedom of choice or action, or rights to own, use, and dispose of property, except as is necessary to provide for, or protect, any such liberty, freedom, or right of another person

Overview of principle

This principle requires consideration of whether legislation unduly diminishes liberties, personal security, freedoms, and property rights, without this diminishment being necessary to protect the liberties, freedoms, and rights of others.

Balancing rights or liberties is at the core of most criminal and many other legislative prohibitions, including criminalisation of violent conduct.

How do I identify whether this principle applies?

The principle will be relevant to any legislation that affects rights or liberties, including:

- the ability to make choices across all areas of a person’s life
- physical rights and freedoms, including bodily autonomy
- protection from arbitrary actions taken by official authorities
- freedom of conscience, religion, expression, association, assembly, and movement
- the ability to freely use and exchange private property.

While most legislation involves the setting of some form of limit on rights or liberties, the intent is to not to capture every situation where any liberty may be diminished to any degree. Legislation should constitute a more than insubstantial interference with a person’s liberty to be considered *undue diminishment*, and therefore inconsistent with this principle.

Another important point is that some rights or liberties (e.g. bodily autonomy) carry more weight than others, and should therefore be considered more carefully when making or reviewing legislation.

How do I assess whether legislation is inconsistent with the principle?

In completing a CAS for legislation, you should determine whether that legislation **unduly** diminishes rights or liberties, **and** it does this more than is needed to provide for or protect others' rights or liberties.

The expectation is that legislation should be identified as inconsistent with this principle if any of the following apply:

- There are no identified benefits from limiting the rights or liberties.
- The benefits (or reduction in harms) that would likely result are either not sufficiently connected to the objective of the legislation, or the legislation is not a proportionate and reasonable response, given the impact of limiting the relevant rights or liberties.
- The resulting diminishment of liberty is not necessary to provide for, or protect, any such liberty, freedom, or right of another person.

Determinations made under the good law-making principles of the Act should support you in considering the list above, in particular:

- section 9(j)(i) (the importance of carefully evaluating the issue concerned)
- section 9(j)(iii) (whether the public interest requires that the issue be addressed)
- section 9(j)(iv) (the importance of carefully evaluating any options, including non-legislative options, that are reasonably available for addressing the issue)
- section 9(l) (legislation should be expected to produce benefits that exceed the costs of the legislation to the public or persons)
- 9(m) (legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available).

Examples

A Bill enables restaurant inspections without notice, but provides safeguards on who can be inspected, when inspections take place, and the scope and purpose of any inspection. The Bill's Regulatory Analysis Summary identified that inspections without notice are required to accurately assess food safety practices and therefore protect public health. This Act should be assessed as **consistent** with this principle.

An Act prohibits prisoners from keeping any item unless it is authorised. Personal watches are authorised under the prison rules. An amendment to the rules is proposed to remove the authorisation for smart watches. This impacts on the liberties of prisoners

(in particular, the right to own and use private property). The rationale for the amendment is that smart watches can be used as a communication device, which undermines the safety and security of prison staff, other inmates, and the general public (e.g. if devices are used for the purposes of intimidation or harassment) and therefore the amendment is necessary to provide for, or protect, the liberty, freedom, or right of another person. The amendment should therefore be assessed as **consistent** with this principle.

A rule imposes a blanket prohibition on the use of powered vehicles on footpaths for the purposes of protecting the liberty of pedestrians by helping ensure their safety. The blanket rule unduly diminishes the rights and liberties of powered wheelchair users and should be assessed as **inconsistent** with this principle. However, a rule that sought to balance the rights and liberties of footpath users, and that was not an undue limitation, could be consistent with this principle.

For further information

The rights or liberties in this principle overlap significantly with the rights and freedoms established in NZBORA.

The following sections of the [Legislation Guidelines](#) provide some more detailed guidance on specific areas that are particularly relevant to this principle:

- [Chapter 4 – Fundamental constitutional principles and values of New Zealand law](#)
- [Chapter 6 – New Zealand Bill of Rights Act 1990.](#)

9(c) Taking of property

Principle

Legislation should not take or severely impair, or authorise the taking or impairment of, property without the consent of the owner unless:

- (i) there is a good justification for the taking or severe impairment; and*
- (ii) fair compensation for the taking or severe impairment is provided to the owner; and*
- (iii) the compensation is provided, to the extent practicable, by or on behalf of the persons who obtain the benefit of the taking or severe impairment.*

Overview of principle

The intent of this principle is to reflect the common law's respect for people's property rights, by requiring consideration of whether legislation takes or severely impairs property,

whether there is a good justification for that taking or impairment, and how that taking or impairment should be compensated.

The principle reflects a presumption in New Zealand, as in other common law jurisdictions, that if the government takes private property, then compensation will be paid. That presumption may, however, be overridden by Parliament if sufficiently clear words are used to effect a taking of property. This principle ensures explicit consideration of any taking or severe impairment of property, including compensation and who should pay.

How do I identify whether this principle applies?

Is it property?

This principle applies to legislation that provides for the taking or severe impairment of property, including but not limited to physical property (such as land or chattels), but also intangible property, such as intellectual property.

Is property taken?

A taking of property will generally arise where the legislation, or an action enabled by the legislation, results in the owner having no remaining interest in the property. Examples of taking of property could include:

- taking someone's land to build a public road
- ordering destruction of diseased livestock or crops
- extinguishing titles in land or terminating leasehold rights
- banning certain goods where it results in confiscation or giving up of those goods.

Legislation can take property directly (e.g. by directly extinguishing title) or by authorising persons to take property (e.g. as provided for in Part 2 of the Public Works Act 1981 for critical infrastructure projects), including by enabling the issuing of secondary legislation to take property.

Is property severely impaired?

Impairment of property arises where the legislation negatively impacts the value of, or the ability to use or benefit from, property.

In determining whether an impairment is *severe*, the expectation is that the following is considered:

- the degree of impact on the value of the property, or the value associated with use of the property
- the degree of impact on the owner's ability to use or exchange the property

- the extent to which the impairment undermines the ability for the owner to recover the costs of past investments, and adversely affects incentives for future investment
- the duration of the impact, including whether it is temporary or permanent.

Scenarios where an assessment for the purposes of completing a CAS might conclude that property is severely impaired by legislation include:

- introducing planning rules that allow noisy activities to take place next to residential housing, severely diminishing the value of the property or making it impossible for the residents to sell
- red-zoning a property and withdrawing services like electricity and water
- banning certain goods, or placing such restrictions on goods that the goods are rendered worthless or useless.

Is the taking or severe impairment without consent from the owner?

This principle will apply where the taking or severe impairment of the property in question occurs without consent from the owner.

This principle may therefore not apply to legislation that provides for the agreement of the property owner prior to any impact on that property, or where the legislation provides for an agreement or contract between the property owner and the Crown. However, the expectation is that the policy as a whole should be considered in this case, including the degree to which consent from the owner of the property is freely given e.g. where it provides for compulsory acquisition when agreement is not reached.

How do I assess whether legislation is inconsistent with the principle?

In completing a CAS for legislation, you should determine whether that legislation involves a taking or severe impairment of property without good justification and/or with no provision for fair compensation to be paid to the extent practicable from those benefitting.

The expectation is that legislation should be identified as inconsistent with this principle if any of the following apply:

There is no good justification for the taking or severe impairment

- There is no identified public benefit (which might include a reduction in harm caused by the exercise of a private property right), **or** the severe impairment or taking is:
 - not sufficiently connected to the justification
 - not a proportionate and reasonable response in the circumstance.

The options analysis and assessment of costs and benefits required under the good law-making principles in section 9(j) of the Act should help with both these considerations.

There is no provision for fair compensation for the taking or severe impairment

- Compensation is not provided for where it would be fair to do so in light of the justification of the taking or impairment (for example, it would likely be fair that compensation is not paid where property is confiscated in relation to illegal activity).
- The compensation that is to be paid is not fair in light of:
 - the value of the taking or severe impairment
 - any other costs arising directly from the taking or severe impairment
 - whether the costs are equitably distributed, or fall disproportionately on some people.

The expectation is that the default fair compensation is full compensation – i.e. with the result that the owner is restored to the position they were in before the property was taken or severely impaired, holding all other things equal.

However, a lower level of compensation might be fair where the exchange or use of the property in question is causing public harms, or where the action or inaction of the property owner has contributed towards a loss of value of the property.

The compensation will not be provided to the extent practicable by or on behalf of the persons who obtain the benefit

- Where a taking or severe impairment arises through government action to achieve a public benefit, the costs of any compensation are not met by central or local government
- Where a taking or severe impairment results in private benefits to a particular class of people, **and** it would be practicable to require compensation to be paid by those people, the compensation is not paid by or on behalf those people.

In many cases, even though a small number of people may receive the direct benefit from a taking or severe impairment, there may be no practical way of making them pay the compensation, or making them pay the compensation would not be consistent with the public interest.

Examples

Secondary legislation redesignates a road as a state highway. Residential properties on this road are negatively affected by the resulting increased volumes of traffic, including

through increased air and noise pollution. There is a small but discernible reduction in the value of affected properties as a direct result of the redesignation. However, while this legislation negatively impacts the use and exchange of private property, it would not amount to a severe impairment given the change in value relative to each property's total value. This principle should be assessed as **not applicable** to this legislation.

A Bill allows compulsory land acquisition to construct a reservoir for fighting forest fires common to a remote community. These fires have caused significant property losses over a number of years due to the difficulty of accessing water, and the Bill's Regulatory Analysis Summary identifies the reservoir proposal as the most effective, efficient and proportionate response available. While the benefit of the reservoir will be experienced by the whole community, only a small number of property owners will have land acquired. The Bill establishes a levy to be paid by people living within a certain distance to the reservoir, with the proceeds to fully compensate those who have had their property taken. This Bill should be assessed as **consistent** with this principle.

A patent is personal property under the Patents Act 2013. That Act currently provides for a person to apply to a court for a compulsory licence to use a patented invention in certain circumstances, subject to the payment of remuneration. Compulsory licences are an impairment to personal property (the patent). A Bill provides that remuneration is not required to be paid to the patent holder in respect of a compulsory licence. Even if there is a good reason for the impairment, the Bill should be assessed as **inconsistent** with this principle. When reviewing the Act for the purposes of completing a CAS, the provisions relating to compulsory licences would also need to be considered for consistency with the principle.

Regulations prohibit all commercial sale or supply of a type of fish after evidence of significant environmental harms caused by commercial farming of this fish. The regulations impact on a small number of licensed operators, who are legally authorised to breed and farm that species, and whose business model rests entirely on the ability to sell to domestic and approved export markets. The regulation does not seize or destroy the stock, nor require operators to surrender it. However, it prohibits all commercial transactions. Consistent with the empowering Act, no compensation is paid to the operators. These regulations should be assessed as **inconsistent** with this principle.

9(d) to (f) Taxes, fees and levies

Sections 9(d) to (f) of the Act set out principles relating to the use of taxes, fees and levies.

Whether a charge imposed by or under legislation constitutes a tax within the meaning of the Constitution Act 1986 can be a complex issue conceptually, further complicated by the inconsistent use of terms over time. The expectation is that these principles are applied by drawing distinctions between:

- *general taxes*, which are compulsory exactions that accrue to the Crown account, are appropriated as Parliament sees fit and need not be spent on a particular activity (e.g. income tax, GST) – and are subject to principle 9(d)
- *targeted taxes*, which are compulsory charges that are required to be spent on a particular activity or activities but are not in the nature of fees or levies (e.g. rates, road user charges) – and are subject to 9(d)
- *levies* described in principle 9(f), which are a particular form of tax – and are subject to principles 9(d) and 9(f)
- *fees* for goods or services described in principle 9(e), which are not taxes – and are subject to principle 9(e)
- *commercial charges* that are not subject to these principles including:
 - where the user is not bound to use, or the provider is not bound to provide, a service, and the level of the charge could be negotiated contractually when the service is requested
 - where the charge is for access to or use of land or resources owned by the Crown that it has no obligation to provide (such as royalties for minerals, charges to access Conservation land, or fees to use council facilities like community halls).

The expectation is that, the closer the charge is to a general tax, the closer the decision should be to Parliament. For example, if there was justification for a general or targeted tax to be delegated, it should be delegated to secondary legislation made by Order in Council and use the mechanism of confirmation to provide for accountability to Parliament, so that Parliament has ultimately made the decision to impose the tax.¹¹ By contrast, the expectation is that levies should also be set by Order in Council (to provide for accountability to Parliament), but need not require confirmation.

9(d) Taxes

Principle

The importance of maintaining consistency with section 22(a) of the Constitution Act 1986 (Parliamentary control of taxation).

Overview of principle

Only Parliament has the power to authorise the raising of money by way of new or increased taxes.

¹¹ See examples in Schedule 4 of the Legislation Act 2019, that conform to this application of the principle.

This principle requires explicit consideration of whether legislation is consistent with section 22(a) of the Constitution Act 1986¹² – to ensure there is appropriate parliamentary authority for taxation, noting that for legislation to effectively impose a tax, it must do so in clear and express terms.

How do I identify whether this principle applies?

This principle applies to all legislation that provides for the imposition of charges, regardless of how they are described.

How do I assess whether legislation is inconsistent with the principle?

In completing a CAS for legislation, you should determine whether a charge being imposed by or under the legislation constitutes a tax and, if so, whether it does not have the appropriate parliamentary authority.

The expectation is that legislation should be identified as inconsistent with this principle if any of the following apply:

- General taxes or targeted taxes are set by secondary legislation where there are no good reasons for delegating them to secondary legislation.
- General taxes or targeted taxes are set by secondary legislation where there is good reason for doing so, but without:
 - providing for certain and confined limits on the power to do so (for example, a cap) **and**
 - requiring the secondary legislation to be made by Order in Council **and**
 - requiring the secondary legislation to be subject to confirmation by Parliament.
- Levies are set by a means other than by an Act or secondary legislation that is made by Order in Council.

For the purposes of this assessment, a tax is treated as being set by an Act or secondary legislation if the legislation specifies the amount of the tax, or method of calculating or ascertaining the amount of the tax.

Examples

An Act establishes a ‘levy’ that funds subsidies to rural households to install rooftop solar, with revenue collected through a charge on e-waste recycling. While the charge is called a levy, there is no requirement that the revenue is spent on activities that relate to the class of payers, and so this charge should be assessed against this principle as a

¹² Section 22(a) of the Constitution Act 1986 provides that “[i]t shall not be lawful for the Crown, except by or under an Act of Parliament, [...] to levy a tax

targeted tax. The levy value will need adjusting, so it is not practical to set in the Act. The Act instead specifies a maximum amount and the collection method, and requires the actual levy to be set by Order in Council that is subject to House confirmation. This Act should be assessed as **consistent** with this principle.

Legislation establishes a fund dedicated to improving flood protection infrastructure around New Zealand, with revenue collected through a charge on international visitors. There is no requirement that the revenue is spent on activities that relate to the class of payers, and so this charge is a targeted tax. The primary legislation empowers this targeted tax to be set by a Minister (rather than by Order in Council), and it is not subject to confirmation by Parliament, which means this legislation should be assessed as **inconsistent** with this principle.

For further information

For further information on empowering provisions and ensuring appropriate statutory authority to charge, refer to:

- *Legislation Guidelines* [Chapter 17 – Authorising the charging of fees and levies](#)
- Section 2.4 of the [Guidelines for Setting Charges in the Public Sector: April 2017](#) (Treasury)
- Part 2 of [Setting and administering fees and levies for cost recovery: Good practice guide](#) (Office of the Auditor-General).

9(e) Fees

Principle

Legislation should impose, or authorise the imposition of, a fee for goods or services only if the amount of the fee bears a proper relation to the cost of providing the good or service to which it relates.

Overview of principle

The intent of this principle is to ensure that fees charged by the government for goods or services that require statutory authority are done on a cost recovery basis.

How do I identify whether this principle applies?

This principle applies to legislation that empowers fees to be imposed and legislation that imposes fees.

The principle does not apply to general or targeted taxes, levies or commercial charges, whatever they are called in the legislation. Neither does it apply to voluntary charges that are negotiated contractually, even if primary legislation specifies that an agency may charge for voluntary goods or services.

How do I assess whether legislation is inconsistent with the principle?

In completing a CAS for legislation, you should determine whether that legislation does not provide for a **proper relation** between the amount of a fee and the costs of providing a good or service.

The expectation is that legislation should be identified as inconsistent with this principle if any of the following apply:

- In the case of an empowering provision:
 - the legislation does not provide for regulations made by Order in Council to impose fees, **or**
 - does not clearly identify when regulations may impose a fee, **or**
 - does not provide for the regulations to specify the amount or the method or formula for determining the fee, or provide for the recovery of the fee.
- In the case of regulations or other secondary legislation that impose a fee, the fees do not bear a proper relation to the cost of providing the good or service to which they relate – in most cases, this will mean a fee should be set at the level of cost recovery over the medium term, including both the direct costs as well as overheads that relate to the provision of a good or service.

If a charge imposed by legislation does not bear a proper relation to costs, it is likely a levy or a general or targeted tax. Where this is the case, consistency with the principles in section 9(d) and 9(e) of the Act will be relevant.

Examples

Legislation establishes a new digital regulator intended to initially be Crown-funded but that will eventually shift to full cost recovery. The Act specifies the functions of the regulator that can be cost recovered through fees imposed by regulations made by Order in Council. However, there are no associated regulations to set the amount of the fees. At this stage the Act should be assessed as **consistent** with this principle (though the future regulations will need to be assessed as to whether they bear a proper relation between the amount of the fee and the costs of providing the good or service).

An agency responsible for multiple regulatory systems has undertaken a review of its licencing fees under one of its regulatory systems. Separate to this fee review, it identifies there are significant funding shortfalls in its other regulatory systems. Following the fee review, regulations are made to update licencing fees to a level that includes recovering the funding shortfall from the other regulatory systems. Because the updated fee does not bear a proper relation to the cost of providing the good or service to which it relates, these regulations should be assessed as **inconsistent** with this principle.

For further information

[Chapter 17 of the Legislation Guidelines](#) provides more information on authorising the charging of fees, and determining if a fee bears a proper relationship to costs.

Agencies should also refer to Treasury's [Guidelines for Setting Charges in the Public Sector](#) and the Office of the Auditor-General's [Setting and administering fees and levies for cost recovery: Good practice guide](#).

9(f) Levies

Principle

Legislation should impose, or authorise the imposition of, a levy to fund an objective or a function only if the amount of the levy is reasonable in relation to both:

- (i) the benefits that the class of payers is likely to derive, or the risks attributable to the class, in connection with the objective or function; and*
- (ii) the costs of efficiently achieving the objective, or providing the function.*

Overview of principle

The intent of this principle is to ensure that charges in the nature of a levy are reasonable and efficient, and that levy revenues are spent on functions relating to the levy payers. The principle also enables levies to be distinguished from charges that are in the nature of general or targeted taxes.

How do I identify whether this principle applies?

This principle applies to legislation that empowers levies to be imposed and legislation that imposes levies.

How do I assess whether legislation is inconsistent with the principle?

In completing a CAS for legislation that authorises or imposes a levy, you should determine whether the amount of a levy is unreasonable in the context of the costs and benefits for the levy payers and the broader public.

The expectation is that legislation should be identified as inconsistent with this principle if any of the following apply:

- In the case of an empowering provision, the provision does not provide for all of the following:
 - secondary legislation made by Order in Council to set the levy, and
 - the classes of levy payers on whom the levy may be imposed, and
 - how the amounts to be recovered by the levy are to be determined.

- In the case of secondary legislation imposing a levy, the levy is not reasonable in relation to:
 - the benefits that the class of payers is likely to derive, or the risks attributable to the class, in connection with the objective or function, and
 - the costs of efficiently achieving the objective, or providing the function

In relation to the **benefits that the class of payers is likely to derive**, considerations include whether the levy revenues are spent on functions relating to that class. This does not mean that each individual levy payer must benefit. For example, a levy may be imposed on an export sector to fund overseas market development. While an individual levy payer may not export to that market, the sector as a whole would still benefit. Similarly, in the case of levies to manage a risk, a levy may be imposed on a class where the level of risk relating to a particular member of the class varies.

In relation to the **costs of efficiently achieving the objective, or providing the function**, considerations include whether the costs imposed by a levy are as low as possible while still effectively delivering on the objectives or functions that the levy is intended to fund.

Examples

A pensions regulator is entirely funded through a levy on pension funds. An independent review of the regulator's operating model finds it needs to change its levels of service delivery to ensure it is effectively meeting its statutory objective to manage risks attributable to pension funds. After consulting on how to most efficiently manage the risk, the levy rates set in secondary legislation are updated to reflect the new level of service delivery and can be demonstrated to be reasonable in relation to the risks attributable to the class, and the cost of efficiently achieving the objective. In this situation, the Order in Council should be assessed as **consistent** with this principle.

A levy on retailers and manufactures of vape products is being amended so that levy revenues can fund a wider range of activities. While currently the levy funds research and programmes that aim to mitigate the potential health impacts from the use of vapes, a new Bill will enable the levy to fund wider health initiatives unrelated to the use of vapes. This means there would no longer be a relationship between the class of payers and all the activities funded by levy revenues. In this situation, the levy should now be treated as a targeted tax and assessed against the taxes principle to assess whether it is subject to appropriate parliamentary oversight.

A levy on manufacturers of an industrial chemical funds remediation of land contaminated by its production. A review finds that changes in technology and manufacturing processes means that the risk of land being contaminated during production has significantly reduced since the levy was originally set. A review of the levy amount that is set in secondary legislation finds that the amount is no longer reasonable, particularly in relation to the risks attributable to manufactures of the

chemical. In this case the secondary legislation should be assessed as **inconsistent** with this principle.

For further information

[Chapter 17 of the *Legislation Guidelines*](#) provides more information on authorising the charging of fees.

. Agencies should also refer to Treasury’s [Guidelines for Setting Charges in the Public Sector](#) and the Office of the Auditor-General’s [Setting and administering fees and levies for cost recovery: Good practice guide](#), which includes specific guidance around ensuring the efficiency of levies.

9(g) Role of courts: Courts’ constitutional role

Legislation should preserve the courts’ constitutional role of ascertaining the meaning of legislation.

Overview of principle

The courts are one of the three branches of Government, and have the constitutional role of interpreting and applying the law. The principle reflects that interpretation of legislation to authoritatively determine its meaning is for the Courts, and not for the executive.

This principle does not mean that the Government or anyone else is not entitled to form a view as to the proper interpretation of legislation. However, the principle requires that recourse be available to the Courts to make the authoritative determination of the meaning of legislation, which will then bind the Government and everyone else.

There is a further aspect of this principle. Parliament may make and amend any law, (including altering the law declared in completed court cases, or by amending or otherwise clarifying the law that is likely to arise in pending cases). However, this needs to be balanced with the convention, arising out of the separation of powers and the principle of comity, that legislation should not generally interfere with the judicial process (in particular cases before the courts) unless it is justified in the public interest and impairs the rights of litigants no more than is reasonably necessary to serve that interest.

How do I identify whether this principle applies?

This principle will likely apply to legislation that seeks to substantively or procedurally limit access to the courts.

How do I assess whether legislation is inconsistent with this principle?

In completing a CAS for legislation, you should determine whether that legislation impacts on or alters the courts’ constitutional role of ascertaining the meaning of legislation.

The expectation is that legislation should be identified as inconsistent with this principle if any of the following applies:

- The legislation excludes judicial review or the ability to make declaratory judgements, or severely limits judicial review (for example, to the extent that it amounts to an exclusion). These clauses directly interfere with the courts' constitutional role as interpreters of the law.
- The legislation gives a regulator, Minister or other administrative body the power to issue binding interpretations or rulings on the meaning of legislation in a manner that prevents recourse to the courts. However, giving an administrative entity the ability to make decisions under legislation, or to issue guidance, "no action" statements,¹³ position statements or similar are not inconsistent with the principle, as long as the courts can review the decision or definitively ascertain the meaning of the legislation.
- The legislation introduces alternative appeal or review mechanisms that remove the jurisdiction of the courts. A mandatory requirement to attempt a resolution by alternative dispute resolution is not in itself inconsistent with the principle. However, such a requirement could be inconsistent if it prevents recourse to the courts after it has been attempted.
- The legislation interferes with a judicial process before the courts in circumstances where it is not justified in the public interest, or where the rights of litigants are impaired more than is reasonably necessary to serve that interest.

Examples

An Act enables an expert panel to make determinations on how key provisions apply to particular situations. These determinations can be appealed on points of law, and are subject to judicial review. This preserves the court's constitutional interpretive role. This Act should be assessed as **consistent** with this principle.

A Bill intended to facilitate a response to an emergency situation gives powers to the responsible Minister to authoritatively determine whether a particular action is an "essential" response to that emergency. The Bill provides that such a determination is final, not subject to appeal, and excludes judicial review. This undermines the court's constitutional interpretive role. This Bill should be assessed as **inconsistent** with this principle.

¹³ See, for example, section 9(1)(a)(v) of the Financial Markets Authority Act 2011

For further information

There are some potential overlaps between this principle and rights and freedoms established in NZBORA. In particular, section 27 of NZBORA provides for a right to judicial review.

Agencies' own assessments of whether their legislation is likely to comply with this right may therefore be helpful in identifying whether legislation is inconsistent with this principle – that is, if legislation is likely to be inconsistent with these NZBORA rights, it may also be inconsistent with this principle.

The following chapters of the *Legislation Guidelines* provide some more detailed guidance on specific areas of relevance to this principle:

- [Chapter 4 – Fundamental constitutional principles](#)
- [Chapter 14 – Delegating law-making powers](#)
- [Chapter 28 – Creating a system of appeal, review, and complaint.](#)

9(h) Role of courts: administrative powers

Legislation should make rights and liberties, or obligations, dependent on administrative power only if the power is sufficiently defined and subject to appropriate review.

Overview of principle

This principle seeks to ensure that administrative powers affecting rights, liberties, and obligations are sufficiently defined. It overlaps with the aspect of the rule of law relating to resolving issues of legal right and liability, but goes further to require legislation relating to rights or liberties, or obligations to identify what the power is and how it will be exercised.

It also requires the power to be subject to appropriate review. The principle recognises that a person affected by a decision should have an adequate pathway to challenge that decision, and appeal or review may be appropriate depending on the circumstances.

How do I identify whether this principle applies?

This principle is likely to apply where both:

- the legislation provides for a decision-maker to exercise an administrative power
- the exercise of that power can interfere with rights, liberties or obligations.

How do I assess whether legislation is inconsistent with the principle?

In completing a CAS for legislation, you should determine whether that legislation inappropriately provides for powers that can interfere with rights, liberties or obligations.

The expectation is that legislation should be identified as inconsistent with this principle if any of the following applies:

- The legislation does not clearly specify what the power is, for what purposes it can be used, and in what circumstances it can be used.
- Judicial review is limited or removed.
- A right of appeal has not been provided - except where such a right of appeal would be inappropriate in light of:
 - the potential costs
 - the implications of any delay
 - the insignificance of the subject matter
 - the competence and expertise of the decision-maker in the first instance
 - the need for finality.

It is consistent with this principle for administrative bodies to make judicial-type decisions. It is common, for example, for occupational regulatory bodies to have a disciplinary role for their relevant professions (including the imposition of fines), and some systems provide for alternative dispute resolution or for administrative bodies to give binding rulings or determinations that are equivalent to judicial decision-making. However, this principle requires that the courts have an appropriate oversight role in these circumstances either by way of appeal or, if this is not justified, by way of judicial review.

Examples

An Act authorises a regulator to suspend or cancel an occupational licence where specified statutory grounds are met, such as serious misconduct or risk to clients. The Act provides for an internal review and a right of appeal to an independent tribunal on the merits of the decision, with further appeal on questions of law to the courts. Given the impact of the decision on professional livelihood, the availability of independent merits-based review and technical appeals provide appropriate safeguards. This Act should be assessed as **consistent** with this principle.

An Act authorises a regulator to suspend an individual's occupational licence with immediate effect where it considers there is a risk to clients, but does not provide a right of appeal on the merits of the decision. Although judicial review remains available, an independent merits-based review is not available for a decision that directly affects an individual's ability to practise their profession. This Act should be assessed as **inconsistent** with this principle.

For further information

There are significant overlaps between this principle and rights and freedoms established in NZBORA. In particular, section 27 of that Act provides for a right to the observance of the principles of natural justice by any public authority, and a right to judicial review.

Agencies' own assessments of whether their legislation is likely to comply with this right may therefore be helpful in identifying whether legislation is inconsistent with this principle – that is, if legislation is found to be inconsistent with these NZBORA rights, that may indicate that the legislation is also inconsistent with this principle.

The following chapters of the *Legislation Guidelines* provide some more detailed guidance on areas relevant to this principle:

- [Chapter 14 – Delegating law-making powers](#)
- [Chapter 18 – Creating a new statutory power](#)
- [Chapter 28 – Creating a system of appeal, review, and complaint.](#)

9(i) Consultation

Principle

The importance of consulting, to the extent that is reasonably practicable, the persons or representatives of the persons that the responsible agency considers will be directly and materially affected by the legislation.

Overview of principle

There are a range of legal and policy reasons for consultation when developing or reviewing legislation. This principle recognises the importance of taking into account the likely impacts of legislation on those directly and materially affected by it both to improve the quality of the legislation and support public participation in law-making.

Consultation does not require that there be agreement. Instead, it requires sharing a proposal that is not yet finally decided upon, listening to what others have to say, considering their responses and then deciding what will be done.

How do I identify whether this principle applies?

This principle applies to all proposed legislative proposals that are subject to the requirements of the Act.

It does not apply to existing legislation (see s 19).

How do I assess whether proposed legislation is inconsistent with the principle?

In completing a CAS for legislation, you should determine whether consultation has or will be undertaken with the persons that the responsible agency considers will be directly and materially affected by the legislation (or their representatives) before the legislation is finally decided upon.

The expectation is that legislation should be identified as inconsistent with this principle if any of the following apply:

- Consultation on a legislative policy proposal has not been undertaken with directly and materially affected people, or their representatives, to the extent reasonably practicable prior to Cabinet consideration of a Bill or secondary legislation.
- In the case of secondary legislation that is not considered by Cabinet, directly and materially affected people or their representatives have not been consulted to the extent reasonably practicable prior to the legislation being made.
- A select committee stage is not proposed for a Bill, or only a severely shortened select committee stage (i.e. four months or less) is proposed,¹⁴ unless there is a genuine urgency to enact the legislation that would not allow for a full select committee stage.
- In relation to a Government Amendment Paper that implements a significant new policy or change in policy, the Amendment Paper has not been referred to a select committee for consideration, unless there is a genuine urgency to enact the legislation that would not allow for this consideration.

The expectation is that the focus of the assessment should be on consultation with persons outside Government. Consultation with a government agency may be relevant where that agency could be seen to represent persons outside government who are directly and materially affected by legislation. However, the expectation is that consultation with government agencies should not substitute for more direct consultation with affected persons, where direct consultation is reasonably practicable.

Considerations made under principle 9(j)(v) (the importance of identifying who is likely to benefit and who is likely to suffer a detriment from the legislation) should support you in determining who would be directly and materially affected by legislation. It would include those whose rights or liberties are directly impacted by legislation.

¹⁴ Noting that, under Standing Order SO 303(1) a select committee must finally report to the House on a bill within six months of the bill being referred to it or by such other time as fixed by the House or the Business Committee.

Determining whether consultation has been undertaken **to the extent that is reasonably practicable** involves consideration of whether there were genuine factors that limited the ability to consult or prevented consultation taking place, including in relation to the need for confidentiality, time, expense, or feasibility.

Examples

Minimal consultation has been undertaken on legislation passed under urgency that is needed to respond to a national emergency and prevent imminent harm to New Zealanders. In this case, it would not be reasonably practicable to consult those directly and materially affected, and the legislation should be assessed as **consistent** with the principle.

Legislation has been passed under urgency as part of the Government's 100-day plan that makes significant changes to driver licensing. The pace of the legislation gives limited or no opportunity for those directly affected by the changes to provide feedback. In this case, it would have been reasonably practicable to undertake consultation if the decision had not been made to pass the legislation under urgency to meet the 100-day deadline, and the legislation should be assessed as **inconsistent** with this principle.

For further information

Cabinet Office Circular [Expectations for Good Law-making \[CO \(26\) 2\]](#) has more information on Cabinet requirements for consultation.

[Chapter 2 of the Legislation Guidelines](#) (Defining the policy objective and purpose of proposed legislation) provides some more detailed guidance relevant to this principle.

9(j) Good law-making process

Principle

The importance of carefully evaluating:

- (i) *the issue concerned; and*
- (ii) *the effectiveness of any relevant existing legislation and common law; and*
- (iii) *whether the public interest requires that the issue be addressed; and*
- (iv) *any options (including non-legislative options) that are reasonably available for addressing the issue; and*
- (v) *who is likely to benefit, and who is likely to suffer a detriment, from the legislation.*

Overview of principle

This principle focuses on ensuring that:

- new legislative proposals have been developed through a robust, transparent and evidence-based process
- existing legislation is effective, efficient and reasonably necessary.

It sets out some of the key things to be considered in the process for developing or reviewing legislation.

How do I identify whether this principle applies?

This principle applies to all new legislative proposals and existing legislation that are subject to the requirements of the Act.

However, some aspects of the principle apply differently to existing legislation through the application of section 19 of the Act, so the guidance provides for proposed and existing legislation separately below.

How do I assess whether proposed legislation is inconsistent with the principle?

In completing a CAS for proposed legislation, you should determine whether careful evaluation has been undertaken in relation to the importance of the problem being addressed and the options for, and impacts of, addressing it.

The expectation is that legislation should be identified as inconsistent with this principle if any of the following apply:

9(j)(i) Careful evaluation of the issue concerned

- The agency responsible for developing the legislation has not developed a clear problem definition that identifies and (to the extent feasible) quantifies the problem that the proposed legislation seeks to address. This would involve:
 - identifying the problem and its root causes, including consideration of whether any market failure¹⁵ is involved
 - assessing the nature, scale, and urgency of the issue, to the extent possible, based on available evidence
 - assessing why the issue is significant and what will happen if it is not addressed, including any opportunity cost.

¹⁵ Market failure is one of a set of situations that cause a market to result in economically inefficient outcomes, leading to a loss of society's welfare. These situations include market power, externalities, information failures, public goods, and behavioural biases.

9(j)(ii) Effectiveness of existing law

- The agency responsible for developing the legislation has not assessed whether existing legislation and common law already effectively address the problem that the proposed legislation aims to address. This would involve:
 - identifying what current legislation or common law is relevant to the issue, and assessing whether and how it is already working to address the issue or issues
 - identifying any gaps, overlaps, or inefficiencies.

9(j)(iii) Public interest

- The agency responsible for developing the legislation has not assessed whether it is necessary in the public interest to address the issue. This would involve:
 - considering whether (based on available evidence) the scale, urgency, and impact of the issue indicates that it needs to be addressed in the public interest.¹⁶

9(j)(iv) Available options

- The agency responsible for developing the legislation has not identified and assessed all reasonably available alternative options to the proposed legislation. This would involve:
 - considering non-legislative options – noting that the policy objective might be achieved more effectively through education programmes, reliance on the common law or existing legislation, or reliance on existing civil remedies
 - identifying all feasible options (or groups of options) that would address the identified problem or achieve the identified objective, including any deregulatory options
 - assessing the effectiveness, cost, and feasibility of these options relative to each other and to the status quo.

9(j)(v) Distributional impacts

- The agency responsible for developing the legislation has not considered the impacts of proposed legislation on different groups (including both direct and indirect impacts). This would involve:
 - identifying those affected by the legislation and how those effects may differ across different groups

¹⁶ Note that there is likely to be some overlap between this aspect of the principle and the guidance on section 9(j)(i) above.

- identifying any equity or fairness issues
- identifying any risks or expected unintended consequences for any groups.

How do I assess whether existing legislation is inconsistent with the principle?

In completing a CAS for legislation, you should determine whether careful evaluation has been undertaken in relation to the importance of the problem being addressed and the options for, and impacts of, addressing it.

The expectation is that legislation should be identified as inconsistent with this principle if any of the following apply:

9(j)(i) Careful evaluation of the issue concerned

- The agency responsible for administering the legislation has not identified and (to the extent feasible) quantified the problem that the existing legislation is designed to address. This will involve:
 - identifying the problem and its root causes that the legislation was designed to address, including consideration of whether any market failure was involved
 - an assessment of whether this problem is still relevant, based on available evidence and considering the scale and/or impact of the issue
 - an assessment of whether the problem has evolved or been resolved and what would happen if the legislation were no longer in place.

9(j)(ii) Effectiveness of existing law

- The agency responsible for administering the legislation has not assessed whether the legislation is working effectively in the context of other existing legislation and common law. This would involve:
 - identifying what other current legislation or common law is relevant to the problem
 - assessing whether the legislation is operating effectively in the context of other relevant legislation or the common law, with particular regard to any gaps, overlaps, or inefficiencies.

9(j)(iii) Public interest

- The agency responsible for administering the legislation has not considered whether retaining the legislation under review still benefits the broader public interest. This would involve:

- assessing whether the legislation continues to deliver a clear public benefit (including preventing or mitigating a public harm).¹⁷

9(j)(iv) Available options

- The agency responsible for administering the legislation has not considered whether there are available alternatives to the legislation, including full or partial deregulation, or non-regulatory options,¹⁸ to the legislation. This would involve:
 - identifying alternative options (or groups of options) that are reasonably available and that could more effectively, cheaply, or practicably address the identified problem or achieve the identified objective relative to the legislation under review, including consideration of any deregulatory options, and
 - assessing the effectiveness, cost, and feasibility of any such options identified relative to each other and to the status quo.

9(j)(v) Distributional impacts

- The agency responsible for administering the legislation has not considered the impacts that the legislation under review has had on different groups (directly or indirectly). This would involve:
 - identifying those that have been affected by the legislation and how those effects have differed across different groups
 - identifying any equity or fairness issues that have arisen as a result of the legislation
 - identifying any unintended consequences that have resulted for any groups.

Examples

A Bill reforming occupational licensing is developed following a clear identification of the regulatory problem, an assessment of the effectiveness of existing legislative and non-legislative tools, and consideration of alternative options, including deregulation. There is a clear case set out in the relevant RAS that reforming the scheme is in the public interest. The resulting legislation is targeted, coherent with existing law, and

¹⁷ Note that there will likely be some overlap between this aspect of the principle and sections 9(j)(i) and (ii) above.

¹⁸ Some more specific examples of alternatives include self-regulation, co-regulation (shared responsibility between government and industry); industry codes of practice or standards; guidance-based approaches, including non-binding guidelines or best-practice frameworks; market-based instruments, such as incentives, levies, or disclosure regimes; information and education initiatives; contractual or procurement-based mechanisms; and/or targeted exemptions, rather than blanket regulation.

supported by analysis of distributional impacts. This reflects a good law-making process. This Bill should be assessed as **consistent** with this principle.

A Bill establishes a new regulatory regime but leaves core policy settings, obligations, and enforcement mechanisms to be determined by secondary legislation. The Bill and the documentation of the process to develop it do not clearly identify the problem the Bill seeks to resolve or explain why key design choices have been deferred. This limits effective Parliamentary scrutiny and reflects an under-developed legislative design process. This Bill should be assessed as **inconsistent** with this principle.

An agency completes a CAS for an existing Act. The agency identifies that the effects of key technological developments in the area may have reduced or resolved the original problem that the Act sought to address. However, the agency has not considered whether the regulatory regime could be removed or scaled back, or what could happen if the legislation were no longer in place. The Act should therefore be assessed as **inconsistent** with the principle.

For further information

Cabinet Office Circular [Expectations for Good Law-making \[CO \(26\) 2\]](#) has more information on Cabinet requirements for good law-making process.

[Chapter 2 of the Legislation Guidelines](#) provides further guidance on defining the policy objective and purpose of proposed legislation.

The Ministry for Regulation has developed a resource [Problem definition and options identification](#) to support agencies to apply economic frameworks to identify the problem that government intervention is seeking to address, including identification of whether there is market failure, and the options available to address it:

- For problem definition, this may be of relevance when considering principles (j)(i) and 9(j)(iii) above, regarding the evaluation of the issue concerned and whether the public interest requires that the issue be addressed.
- For options identification, the related provisions are 9(j)(ii), regarding the effectiveness of existing legislation and common law, and 9(j)(iv), regarding options (including non-legislative options) to address the problem.

9(k) Implementation

Principle

The importance of the responsible agency identifying and developing effective arrangements for implementing the legislation.

Overview of principle

This principle focuses on ensuring that responsible agencies establish clear and effective arrangements for implementing proposed legislation, to make it more likely that it will achieve its intended outcomes.

How do I identify if this principle applies?

This principle applies to all new legislative proposals that are subject to the requirements of the Act.

It does not apply to existing legislation.

How do I assess whether proposed legislation is inconsistent with the principle?

In completing a CAS for legislation, you should determine whether effective arrangements have been developed for implementing the legislation.

The expectation is that legislation should be identified as inconsistent with this principle if any of the following apply:

- The agency responsible for developing the legislation has not developed an overall strategy for implementing the chosen option, including the steps and actions required.
- The agency responsible for developing the legislation has not identified the key risks associated with the implementation of the legislation, and developed possible mitigation strategies to address these risks.
- The agency responsible for developing the legislation has not identified the roles and responsibilities of all parties involved in the implementation process, including the responsible agency and any other stakeholders.
- The agency responsible for developing the legislation has not identified the resources required for implementation, including financial, human, and technical resources.

Examples

Planning for a new licensing scheme identifies a need for the Bill to be enacted with staged commencement and a realistic backstop date, giving specific agencies time to build the necessary operational processes, forms, and systems, and enabling the development of a detailed approach to informing the public about changes. This Bill should be assessed as **consistent** with the principle.

A Bill creates a new regime that commences immediately, with no planning for implementation, and giving the administering agency no time to finalise operational processes, forms, or systems, or to prepare its stakeholders. This results in ad hoc decision-making and inconsistent application, undermining effectiveness and predictability. This Bill should be assessed as **inconsistent** with this principle.

For further information

Cabinet Office Circular [Expectations for Good Law-making \[CO \(26\) 2\]](#) has more information on Cabinet requirements for planning implementation.

9(l) Costs and benefits

Principle

Legislation should be expected to produce benefits that exceed the costs of the legislation to the public or persons.

Overview of principle

This principle focuses on ensuring that the benefits of any proposed legislation are likely to outweigh, or the benefits of any existing legislation have outweighed, any costs associated with it.

How do I identify if this principle applies?

This principle applies to all proposed and existing legislation that is subject to the requirements of the Act.

However, the principle applies differently to existing legislation through the application of section 19 of the Act, so the guidance provides for proposed and existing legislation separately below.

How do I assess whether proposed legislation is inconsistent with the principle?

In completing a CAS for proposed legislation, you should determine whether an assessment of the expected costs and benefits of that legislation has identified that the expected benefits would outweigh the expected costs.

The expectation is that legislation should be identified as inconsistent with this principle if any of the following apply:

- The agency responsible for developing the legislation has not assessed the expected costs and benefits of the legislation, including:
 - identifying all expected major costs and benefits of the legislation

- quantifying and monetising costs and benefits in dollar terms to the extent feasible
 - identifying and disclosing any expected effects that cannot be monetised
 - identifying who is expected to benefit and who is expected to bear the costs
 - disclosing any risks or uncertainties, or any key assumptions affecting the analysis.
- An assessment of the expected costs and benefits has not shown that the expected benefits of the proposed legislation exceed the expected costs (including where it has not been feasible to determine the costs and benefits).

How do I assess whether existing legislation is inconsistent with the principle?

In completing a CAS for existing legislation, you should determine whether an assessment of the expected costs and benefits of that legislation has identified that the actual benefits have outweighed the actual costs.

The expectation is that legislation should be identified as inconsistent with this principle if any of the following apply:

- The agency responsible for administering the legislation has not assessed the costs and benefits produced by the legislation over the time that it has been in place, including
 - identifying all costs and benefits that have resulted from the legislation
 - quantifying and monetising costs and benefits in dollar terms to the extent feasible
 - identifying and disclosing any effects that cannot be monetised
 - identifying who has benefited and who has borne the costs
 - disclosing any risks or uncertainties, or key assumptions affecting the analysis.
- An assessment of the actual benefits of the legislation has not shown that they exceed the actual costs of the legislation.

Examples

A Bill proceeds on the basis of a transparent assessment of expected costs and benefits (including who bears the costs), and the design is adjusted to reduce unnecessary

compliance burden while preserving the core objective. This Bill should be assessed as **consistent** with this principle.

A Bill proceeds where no serious assessment of costs and benefits has been done, or where analysis shows costs likely exceed benefits, leading to a regime that is expensive to administer and comply with for marginal gains. This Bill should be assessed as **inconsistent** with this principle.

An agency completes a CAS for an existing Act. The agency determines that the regime brought into force under the Act has imposed higher costs on regulated parties than originally estimated, due to the regulator using the discretion given to them under the Act to impose much stricter obligations than anticipated. The agency determines that the costs have likely exceeded the benefits of the legislation. The Act should therefore be assessed as **inconsistent** with the principle.

For further information

The Ministry for Regulation has developed a [Cost-benefit analysis](#) resource to support agencies to undertake cost-benefit analysis in relation to proposed or existing legislation, including a step-by-step guide.

9(m) Most effective, efficient and proportionate response

Principle

Legislation should be the most effective, efficient, and proportionate response to the issue concerned that is available.

Overview of principle

This principle focuses on ensuring that the legislation is the optimal response to the policy problem or objective it aims to address or achieve, within the options reasonably available, including both legislative and non-legislative options.

For the purposes of producing a CAS, assessments of consistency against this principle can draw on assessments made against each of the previous principles to help you come to a conclusion on whether the proposed or existing legislation is the most effective, efficient, and proportionate response to the issue concerned that is available. Inconsistency with other principles, particularly the other good law-making principles, will generally be an indication that a CAS should assess the legislation as inconsistent with this principle.

How do I identify if this principle applies?

This principle applies to all proposed and existing legislation that is subject to the requirements of the Act.

However, the principle applies differently to existing legislation through the application of section 19 of the Act, so the guidance provides for proposed and existing legislation separately below.

How do I assess whether proposed legislation is inconsistent with the principle?

In completing a CAS for legislation, you should determine whether that legislation is the most effective, efficient, and proportionate response to the issue concerned that is available.

The expectation is that legislation should be identified as inconsistent with this principle if any of the following apply:

- The legislation is not the most effective response available – that is, there are other options available that better achieve the defined objectives, or deliver more net benefits than the proposed legislation. This determination could draw on assessments made under other good law-making principles in section 9 of the Act, including whether:
 - the problem is defined clearly and/or the desired outcomes identified (see section 9(j)(i))
 - existing law or policies already address the problem (see section 9(j)(ii))
 - a case for government intervention has been made (see section 9(j)(iii))
 - there are alternative, reasonably available responses that better address the problem or better achieve the desired outcome (see section 9(j)(iv))
 - it is likely to be feasible to implement (see 9(k)).
- The legislation is not the most efficient response available – that is, there are other options available that achieve the defined objectives with the same benefit at less cost. This determination could draw on assessments made under other good law-making principles in section 9 of the Act, including whether:
 - there are alternative options that address the problem or achieve the outcome for the same benefit, but are less costly (see section 9(j)(iv))
 - the costs and benefits fall disproportionately on some groups (see section 9(j)(v))
 - the benefits of the legislation exceed its costs (see section 9(l)).
- The legislation is not the most proportionate response available – that is, other responses would better align with the level of severity, urgency and/or scope of the

issue in question, and/or would be more flexible or less costly. This determination could draw on assessments made under other good law-making principles in section 9 of the Act, including whether:

- a case for government intervention has been made (see section 9(j)(iii))
- the legislation is consistent with the aspects of the rule of law set out in section 9(a)
- the legislation unduly diminishes liberties, personal security, freedom of choice or action, or property rights beyond as necessary to provide for those of others (see section 9(b))
- there is sufficient justification and compensation for any taking or severe impairment of property (see section 9(c))
- any fee or levy is proper and reasonable (see sections 9(e) and (f))
- any administrative powers are sufficiently defined and subject to appropriate review (see section 9(h))
- there are alternative options that address the problem or achieve the outcome for the same benefit, but at lower cost (see section 9(j)(iv))
- the costs and benefits fall disproportionately on some groups (see section 9(j)(v)).

How do I assess whether existing legislation is inconsistent with the principle?

In completing a CAS for legislation, you should determine whether that legislation is the most effective, efficient, and proportionate response to the issue concerned that is available.

It may be the case that legislation that was previously the most effective, efficient and proportionate approach when it was put in place may no longer be the most effective, efficient and proportionate approach – for instance if expected benefits have not materialised to the degree anticipated, or the issue that it sought to address has evolved or been resolved in other ways.

The expectation is that existing legislation should be identified as inconsistent with this principle if any of the following apply:

- The legislation is not the most effective response available – that is, there are other options available that better achieve the defined objectives, or would deliver higher net benefits than the current legislation. This determination could draw on

assessments made under other good law-making principles in section 9 of the Act, including whether:

- the problem is defined clearly and/or the desired outcomes identified (see section 9(j)(i))
 - other existing law or policies would (or did) address the issue in the absence of this legislation (see section 9(j)(ii))
 - there is still a case for government intervention (see section 9(j)(iii))
 - there are alternative reasonably available responses that better address the problem or better achieve the desired outcome (see section 9(j)(iv)).
- The legislation is not the most efficient response available – that is, there are other options available that achieve the objectives of the legislation to the same or a greater extent at less cost. This determination could draw on assessments made under other good law-making principles in section 9, including whether:
 - there are alternative options that address the problem or achieve the outcome for the same benefit, but are less costly (see section 9(j)(iv))
 - the costs and benefits fall disproportionately on some groups (see section 9(j)(v))
 - the benefits of the legislation are exceeding its costs (see section 9(l)).
- The legislation is not the most proportionate response available – that is, there are other responses available that would better align with the level of severity, urgency and/or scope of the issue in question. This determination could draw on assessments made under other good law-making principles in section 9 of the Act, including whether:
 - there is still a case for government intervention (see section 9(j)(iii))
 - the legislation is consistent with the aspects of the rule of law set out in section 9(a)
 - the legislation unduly diminishes liberties, personal security, freedom of choice or action, or property rights beyond as necessary to provide for those of others (see section 9(b))
 - there is sufficient justification and compensation for any taking or severe impairment of property (see section 9(c))
 - any fee or levy is proper and reasonable (see sections 9(e) and (f))

- any administrative powers are sufficiently defined and subject to appropriate review (see section 9(h))
- there are alternative options that address the problem or achieve the outcome to the same or a great extent, but at lower cost (see section 9(j)(iv))
- the costs and benefits fall disproportionately on some groups (see section 9(j)(v)).

Examples

A Bill was identified by the responsible agency as the best option in the relevant RAS compared to other reasonably available options (including the status quo) on the basis of its relative effectiveness, efficiency and proportionality. This Bill should be assessed as **consistent** with the principle.

A Bill proceeds despite another option being identified by the responsible agency as the best option in the relevant RAS compared to other reasonably available options (including the status quo) on the basis of its relative effectiveness, efficiency and proportionality. This Bill should be assessed as **inconsistent** with the principle.

Part Two: Producing a CAS

This section sets out guidance on how to complete a CAS for different types of legislation, and provides CAS templates for proposed and existing legislation.

Part 1 of this guidance sets out how legislation can be assessed for consistency against each of the principles as part of the process of completing a CAS.

CASs comprise a statement that:

- confirms the responsible agency has reviewed the legislation and (for proposed legislation) its process for developing it, with the principles of responsible regulation
- summarises any inconsistency with the principles that is identified in the review (see section 5 of the Act).

Chief executives must act independently when preparing a CAS (see section 22 of the Act).

For the purposes of producing a CAS, the Act provides that:

- a **chief executive** is a person occupying the position of chief executive officer, by whatever the position name is called (see section 5).¹⁹
- the **responsible agency** in the case of a Bill or Government amendment is the central government entity primarily involved in developing that Bill or amendment (see section 5).
- the **responsible agency** in the case of an Act is the administering agency for the Act or part (see section 5).
- the **responsible agency** in the case of proposed or existing secondary legislation is the administering agency for the legislation (see section 5).

How do I prepare a CAS for a proposed Bill?

The chief executive of the responsible agency for any Bill is required to prepare a CAS.

A template to produce a CAS for proposed legislation, including Bills can be found at Annex 2.

¹⁹ Note that the responsibility for preparing a CAS may be delegated by public service chief executives as provided for in clause 2 of Schedule 6 of the Public Service Act 2020. For other chief executives, delegations would rely on other existing methods for delegated decision-making within their agencies, including specific provisions within relevant legislation like the Crown Entities Act 2004 or the Local Government Act 2002.

The responsible Minister is then responsible for ensuring that the Bill's explanatory note includes (or contains a link to) a CAS (see section 11 of the Act).

The **responsible Minister** in the case of a Bill is the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the development of the Bill (see section 5 of the Act).

Exclusions

Certain types of Bills are excluded from the requirement to prepare a CAS (see Schedule 1, and Part 1 of Schedule 2 to the Act).

How do I prepare a CAS for a proposed Government amendment?

The chief executive of the responsible agency for any Government amendment to a Bill is required to prepare a CAS.

A template to produce a CAS for proposed legislation, including Government amendments can be found at Annex 2.

The responsible agency should focus on the consistency of the relevant provisions in the bill as amended by, or affected by, the Government amendment. The agency is not required to consider the consistency of provisions not amended or affected by the amendment. This will require some judgement about the effect of the proposed amendment.

The responsible Minister is then responsible for ensuring that the Government amendment's explanatory note includes (or contains a link to) a CAS (see section 12 of the Act).

The **responsible Minister** in the case of a Government amendment is the Minister of the Crown who, under the authority of any warrant or with the authority of the Prime Minister, is responsible for the development of the Government amendment (see section 5 of the Act).

In cases where it is not reasonably practicable to produce a CAS for a Government amendment in time for parliamentary scrutiny of that amendment at Committee of the Whole stage, the Act requires a CAS to be completed afterwards. In these cases, the responsible Minister must ensure that the CAS is presented to the House of Representatives, and published on an internet site, as soon as is reasonably practicable after parliamentary scrutiny occurs.

Exclusions

Some Government amendments do not require a CAS to be prepared (see section 13 of the Act):

- Government amendments that relate to a Bill introduced before section 12 of the Act comes into force (see Schedule 1, clause 2 of the Act) do not require a CAS to be prepared.
- Government amendments that relate to a Bill of a kind excluded under Schedule 1 or Part 1 of Schedule 2 to the Act do not require a CAS to be prepared.
- Government amendments that, in the opinion of the Minister for Regulation, would not materially change the Bill they relate to, do not require a CAS to be prepared. In these cases, the responsible Minister must ensure that the Government amendment's explanatory note includes (or contains a link to) a statement to that effect by the Minister for Regulation. More information setting out the details on how to seek an exemption from producing a CAS for a non-material amendment, can be found at [Government amendment exemptions](#).

How do I prepare a CAS for proposed secondary legislation?

The chief executive of the responsible agency for proposed secondary legislation (both new and amended) is required to prepare a CAS.

A template to produce a CAS for proposed legislation, including secondary legislation can be found at Annex 2.

Secondary legislation is an instrument (whatever it is called) that:

- is made under an Act, if the Act (or any other legislation) states that the instrument is secondary legislation, or
- is made under the Royal prerogative in a form and for a purpose set out in Schedule 1A of the Legislation Act 2019.

The responsible agency must ensure that the secondary legislation's explanatory note²⁰ includes (or contains a link to):

- a CAS
- a statement from the maker that briefly explains the reasons for any inconsistency (see section 14 of the Act).

The **maker** in relation to any secondary legislation means the person empowered to make the secondary legislation or instrument. If the Governor-General is that person, **maker** refers to the relevant Minister for that secondary legislation (see section 5 of the Act).

²⁰ This requirement means that all secondary legislation subject to CAS requirements will require an explanatory note in order to comply with the Regulatory Standards Act, including bylaws. PCO's [guidance for drafting secondary legislation](#) includes a template with an explanatory note.

Exclusions

CASs do not have to be prepared for secondary legislation that is excluded by Schedule 1, or Part 3 of Schedule 2.

How do I prepare a CAS for Acts?

The responsible agency for legislation must develop and publish plans for regularly reviewing the legislation for consistency with the principles (see section 17 of the Act). Part Three of this guidance sets out how to prepare, publish, carry out and report on reviews of existing legislation for the purposes of producing CASs.

The chief executive of the responsible agency for any Act reviewed under section 17 of the Act is required to prepare a CAS.

Agencies can choose whether to complete a CAS for:

- individual Acts that the agency is responsible for
- parts of an Act that the agency is responsible for (for instance, where an agency is responsible for only part of an Act, or in relation to a particularly long or complex Act)
- multiple pieces of existing legislation (for instance, where an agency is reviewing a regulatory system that the legislation is a part of, or where an agency is reviewing an Act and secondary legislation made under that Act).

However, CASs should only be completed for multiple pieces of legislation where there is a clear and meaningful connection between those pieces of legislation, as in the two examples in the third bullet point above.

The responsible agency must provide a CAS to the responsible Minister as soon as is reasonably practicable after the review is completed.

The responsible Minister must present the CAS to the House of Representatives as soon as is reasonably practicable after receiving it.

The **responsible Minister** in the case of an Act is the Minister of the Crown who is responsible for the administration of the Act (or part) (see section 5 of the Act).

Exclusions

CASs do not have to be prepared for Acts excluded by Part 2 of Schedule 2 to the Act.

How do I prepare a CAS for existing secondary legislation?

For secondary legislation that is subject to CAS requirements, the responsible agency must develop and publish plans for regularly reviewing the legislation for consistency with the

principles (see section 17 of the Act). Part Three of this guidance sets out how to prepare, publish, carry out and report on reviews of existing secondary legislation for the purposes of producing CASs.

A CAS is required to be produced for existing secondary legislation only if:

- a CAS was prepared for it when it was made or amended
- the secondary legislation is of a class specified in a notice (see section 18 of the Act).

The responsible agency for in-scope existing secondary legislation is required to prepare a CAS.

Agencies can choose whether to complete a CAS for:

- an individual piece of secondary legislation that the agency is responsible for
- multiple pieces of legislation (for instance, where an agency is reviewing a whole regulatory system including Acts and secondary legislation, or where an agency is reviewing an Act and secondary legislation made under that Act).

However, CASs should only be completed for multiple pieces of legislation where there is a clear and meaningful connection between those pieces of legislation, as in the two examples given above. There may not be a meaningful connection for a CAS to be completed for multiple pieces of secondary legislation simply on the basis that this legislation is issued under the same empowering provision.

The responsible agency must publish the CAS on an internet site as soon as is reasonably practicable after the review is completed.

Exclusions

A CAS is not required to be prepared for existing secondary legislation to the extent that it contains amendments to other legislation (see section 18(2) of the Act).

Secondary legislation made under particular types of Acts and some specific Acts is also excluded from the requirement to prepare a CAS (see Schedule 1, and Part 3 of Schedule 2 to the Act).

What form should a CAS take?

Two separate templates are available to assist agencies to produce CASs:

- a [template for proposed legislation](#) attached as **Annex 2** to this guidance
- a [template for existing legislation](#) attached as **Annex 3** to this guidance.

The principles apply differently to CASs produced for proposed and existing legislation (see section 19 of the Act). There are therefore two separate templates to support agencies

to undertake the correct assessment for the type of legislation reviewed. The template for proposed legislation at Annex 2 applies to all proposed legislation subject to the requirements of the Act, including secondary legislation made outside of Cabinet processes.

In addition to the CAS templates, templates are available to capture and summarise the underpinning analysis needed to produce the information required in the CAS (see: [Summary of Underpinning Analysis template - proposed legislation](#) and [Summary of Underpinning Analysis template - existing legislation](#)) – however, these templates do not form part of this guidance.

What happens if legislation is assessed as inconsistent with the principles?

Where CASs have identified inconsistencies with one or more of the principles, the responsible Minister or maker will be required to issue a further statement giving reasons for any inconsistency and (in relation to existing legislation) setting out what steps if any will be taken to remedy any inconsistency identified. This Statement of Reasons should be made publicly available in line with the requirements of the Act.

However:

- there are no legislative requirements for the agency proposing or reviewing the legislation to remedy an inconsistency.²¹
- the validity or the operation of the legislation will not be affected by any identification of inconsistency (see section 24 of the Act).

The Act also does not set any further requirements in relation to the required Statement of Reasons – e.g. what form it should take, or what it should contain.

Optional templates have been developed to assist in the preparation of a Statement of Reasons (see: [Minister/maker Statement of Reasons template - proposed legislation](#) and [Minister/maker Statement of Reasons template - existing legislation](#)) – however, these templates do not form part of this guidance.

What should be published?

Consistency Accountability Statements and Statements of Reasons (if applicable) must be made publicly available in line with the requirements of the Act. More information on publication can be found on the Ministry for Regulation’s website: [Regulatory analysis documents - publication requirements](#).

²¹ Some agencies might undertake additional work if indicated in a statement of reasons. However this is not a legislative requirement in the Act.

Part Three: Regularly reviewing existing legislation

Section 17 of the Act sets out two requirements in relation to responsible agencies' obligations to regularly review existing legislation against the principles:

- developing and publishing plans for regularly reviewing legislation for consistency with the principles of responsible regulation
- preparing and publishing regular reports on agencies' performance in carrying out the plans.

These requirements apply to any Acts and existing secondary legislation that are subject to CAS requirements (see **Part 2** of the guidance above) – noting that existing secondary legislation is only subject to CAS requirements if:

- a CAS was prepared for it when it was made or amended: or
- the secondary legislation is of a class specified in a notice (see section 18(1)(b)).

Secondary legislation is not subject to CAS or review requirements to the extent it consequentially amends other secondary legislation (i.e. outside of amendments to a principal piece of secondary legislation).

How do I develop and publish plans?

How do I develop plans?

What should I consider when developing a plan?

The intent of the requirement to develop and publish plans is to encourage agencies to, over time, assess their entire stock of existing legislation for consistency with the principles.

In developing their plans, agencies should therefore:

- identify how much existing legislation they have that is subject to review requirements
- identify over what timeframe they intend to review the whole of their stock, and how this would be sequenced
- determine the appropriate timeframe for regular review of particular legislation (i.e. whether some legislation should be assessed more regularly than other legislation).

In determining what legislation should be prioritised for review (i.e. in the short, medium or longer-term) agencies should consider:

- the significance of that legislation
- the length of time since that legislation was substantially reviewed
- how fast the regulatory environment in that area is changing
- the extent of known problems with the legislation
- alignment with existing government policy priorities, including other planned regulatory reform work.

As discussed in Part 2 above, agencies can choose whether to complete a CAS for:

- individual pieces of legislation that the agency is responsible for (for instance, where a particular Act is being reviewed)
- parts of Acts that the agency is responsible for (for instance, where an agency is responsible for only part of an Act, or in relation to a particularly long or complex Act)
- multiple pieces of legislation (for instance, where an agency is reviewing a whole regulatory system, or where an agency is reviewing an Act and secondary legislation made under that Act).

Note that section 22 of the Act requiring the chief executive to act independently from the responsible Minister does not relate to the development of plans under section 17. Therefore, for the plans to be realistic and successful, agencies will need to take resource availability and Ministerial work priorities into account.

In addition, agencies should consider whether there is merit in working collaboratively with other agencies on reviews (e.g. as part of a review of a broader regulatory system), or to carry out assessments of consistency as part of broader reviews (e.g. regulatory reform of a particular area).

Agencies with responsibility for an Act should also consider providing support to smaller agencies who have responsibilities for secondary legislation under that Act to help them fulfil their CAS and review obligations.

What should a plan contain?

Agencies should consider including in their review plans, for each review producing a CAS:

- any helpful context (including how it relates to any broader work being carried out) and/or a rationale of why this legislation has been selected for planned review at this time

- the scope of the review – i.e. is it in relation to part of the legislation or a whole piece of legislation? If it is of an Act, does it include secondary legislation made under that Act if it is also subject to review requirements?
- the expected timing of the review and any key milestones
- the stakeholders and regulated parties who may be interested in the review
- the nature and expected timing of any consultation opportunities.

How do I publish plans?

The requirement for plans to be published can be met by making plans publicly available on the agency's website. Plans should be published in a clear and accessible way for the benefit of regulated parties and the wider public. Agencies should publish plans on an enduring webpage that provides information about their regulatory systems and responsibilities, and links to the legislation being reviewed.

How do I prepare and publish reports?

The requirement set in the Act is that agencies should report **regularly** on their performance in carrying out the plans above to ensure it is clear whether the commitments in the plan are being met.

These reports should focus on succinctly summarising any review work completed and their results, and reasons for any amendments, delays or cancellations since the last performance report.

Reports should be published on the same webpage as the plans to which they relate.

Annex 1: Summary of indicators of inconsistency with the principles of responsible regulation

The table below sets out potential indicators of inconsistency for each principle. However, even where one of these indicators applies, legislation may still be consistent with the principle or sub-principle in question – and you should refer to the more detailed discussion under each principle in the body of the guidance to check whether this is the case.

| Principle/sub-principle | Potential indicators of inconsistency |
|--|--|
| 9(a)(i) Rule of Law – clarity and accessibility | The language and structure are so unsuitable for its intended audience that they are unable to determine their rights or obligations. |
| | The legislation is so vague, or the complexity of the legislation or concepts is so challenging, that certainty is undermined to the extent that is contrary to the rule of law. |
| | The legislation imposes duties that conflict with other legislative duties, or has not been checked for inconsistency with other legislation to ensure it does not do so. |
| | Where Parliament is being asked to limit a fundamental constitutional principle, the legislation is insufficiently clear as to that intent. |
| | The legislation will be not published either on the NZ legislation website or (for agency-published secondary legislation) in full on the relevant agency’s website. |
| | The legislation is not available free of charge. |
| | The other usual publication requirements under the Legislation Act 2019 will not be met, where these apply. |
| | The legislation provides for incorporation by reference in a manner that is materially less accessible than provided for in Schedule 2 of the Legislation Act 2019 or sections 29 to 32 of the Standards and Accreditation Act 2015. |
| 9(a)(ii) Rule of Law – retrospectivity | The legislation criminalises or punishes past conduct that was legal at the time, or it imposes additional punishment for past unlawful conduct |
| | The legislation prevents a person from relying on a right or defence that existed at the time the person undertook the relevant conduct |

| Principle/sub-principle | Potential indicators of inconsistency |
|--|--|
| | The legislation changes the legal validity or consequence of past transactions or actions, resulting in an adverse impact for anyone affected |
| | The legislation alters the law declared in court cases, in a way that is retrospective and adverse to those affected. |
| | The legislation deprives litigants of the benefits of their victory in a completed court case |
| 9(a)(iii) Rule of Law – equality before the law | The legislation does not bind the Crown or binds the Crown only in part or only for limited and specific circumstances. |
| | The legislation provides for immunity or limitations on civil liability for the Crown or other persons carrying out governmental functions where that immunity is not justified on public policy grounds. |
| | The legislation provides that Crown organisations are immune from criminal liability in relation to provisions that relate to the Crown in the same way as any other person (e.g. where the Crown engages in conduct as an employer) and where those other parties are subject to criminal liability. |
| 9(a)(iv) Rule of Law – independent, impartial judiciary | The legislation increases the influence of the executive or legislature over the judiciary (for example by changing appointment or removal processes, or changing processes for setting remuneration, benefits or other conditions) in a manner that may reduce the independence or impartiality of the judiciary. |
| | The legislation provides for someone other than a court or judicial officer to provide binding rulings to interpret legislation in a manner that prevents recourse to the courts, or to impose criminal convictions or sentence people to imprisonment. |
| 9(a)(v) Rule of Law – resolving issues of legal right and liability | There are powers that are so lacking in statutory purpose or criteria that they enable arbitrary use of power, and limit the court’s ability to review use of those powers, contrary to the rule of law. |
| | The legislation purports to give the decision-maker the power to determine issues of legal right and liability on the basis of absolute discretion or similarly unconstrained basis. |
| | The legislation purports to limit or remove the right to judicial review. |
| | The legislation does not provide for appeal to the courts where the rights or interests of a particular person are |

| Principle/sub-principle | Potential indicators of inconsistency |
|--------------------------------|--|
| | affected by an administrative decision, unless there are factors that would make an appeal inappropriate. |
| 9(b) Liberties | There are no identified benefits from limiting the rights or liberties. |
| | The benefits (or reduction in harms) that would likely result are either not sufficiently connected to the objective of the legislation, or the legislation is not a proportionate and reasonable approach given the impact of limiting the relevant rights or liberties. |
| | The resulting diminishment of liberty is not necessary to provide for, or protect, any such liberty, freedom, or right of another person. |
| 9(c) Taking of property | <p>There is no identified public benefit (which might include a reduction in harm caused by the exercise of a private property right), or the severe impairment or taking is:</p> <ul style="list-style-type: none"> • not sufficiently connected to the justification • not a proportionate and reasonable response in the circumstance. |
| | Compensation is not provided for where it would be fair to do so in light of the justification of the taking or impairment. |
| | <p>The compensation that is to be paid is not fair in light of:</p> <ul style="list-style-type: none"> • the value of the taking or severe impairment • any other costs arising directly from the taking or severe impairment • whether the costs are equitably distributed, or fall disproportionately on some people. |
| | Where a taking or severe impairment arises through government action to achieve a public benefit, the costs of any compensation are not met by central or local government |
| | Where a taking or severe impairment results in private benefits to a particular class of people, and it would be practicable to require compensation to be paid by those people, the compensation is not paid by or on behalf those people. |

| Principle/sub-principle | Potential indicators of inconsistency |
|-------------------------|---|
| 9(d) Taxes | General taxes or targeted taxes are set by secondary legislation where there are no good reasons for delegating them to secondary legislation. |
| | <p>General taxes or targeted taxes are set by secondary legislation where there is good reason for doing so, but without:</p> <ul style="list-style-type: none"> • providing for certain and confined limits on the power to do so (for instance, a cap) and • requiring the secondary legislation to be made by Order in Council and • requiring the secondary legislation to be subject to confirmation by Parliament. |
| | Levies are set by a means other than an Act or secondary legislation that is made by Order in Council. |
| 9(e) Fees | <p>In the case of an empowering provision:</p> <ul style="list-style-type: none"> • the legislation does not provide for regulations made by Order in Council to impose fees, or • does not clearly identify when regulations may impose a fee, or • does not provide for the regulations to specify the amount or the method or formula for determining the fee, or provide for the recovery of the fee. |
| | In the case of regulations or other secondary legislation that impose a fee, the fees do not bear a proper relation to the cost of providing the good or service to which they relate – in most cases, this will mean a fee should be set at the level of cost recovery over the medium term, including both the direct costs as well as overheads that relate to the provision of a good or service. |
| 9(f) Levies | <p>In the case of an empowering provision, the provision does not provide for all of the following:</p> <ul style="list-style-type: none"> • secondary legislation made by Order in Council to set the levy and • the classes of levy payers on whom the levy may be imposed and • how the amounts to be recovered by the levy are to be determined. |

| Principle/sub-principle | Potential indicators of inconsistency |
|--|---|
| | <p>In the case of secondary legislation imposing a levy, the levy is not reasonable in relation to:</p> <ul style="list-style-type: none"> • the benefits that the class of payers is likely to derive, or the risks attributable to the class, in connection with the objective or function and • the costs of efficiently achieving the objective, or providing the function |
| 9(g) Role of courts: Courts' constitutional role | The legislation excludes judicial review or the ability to make declaratory judgements, or severely limits judicial review (for example, to the extent that it amounts to an exclusion). |
| | The legislation gives a regulator, Minister or other administrative body the power to issue binding interpretations or rulings on the meaning of legislation in a manner that prevents recourse to the courts |
| | The legislation introduces alternative appeal or review mechanisms that remove the jurisdiction of the courts. |
| | The legislation interferes with a judicial process before the courts in circumstances where it is not justified in the public interest, or where the rights of litigants are impaired more than is reasonably necessary to serve that interest |
| 9(h) Role of courts: administrative powers | The legislation does not clearly specify what the power is, for what purposes it can be used, and in what circumstances it can be used. |
| | Judicial review is limited or removed. |
| | <p>A right of appeal has not been provided - except where such a right of appeal would be inappropriate in light of:</p> <ul style="list-style-type: none"> • the potential costs • the implications of any delay • the insignificance of the subject matter • the competence and expertise of the decision-maker in the first instance • the need for finality. |
| 9(i) Consultation (for proposed legislation only) | Consultation on a legislative policy proposal has not been undertaken with directly and materially affected people, or their representatives, to the extent reasonably practicable prior to Cabinet consideration of a Bill or secondary legislation. |

| Principle/sub-principle | Potential indicators of inconsistency |
|--|--|
| | In the case of secondary legislation that is not considered by Cabinet, directly and materially affected people or their representatives have not been consulted to the extent reasonably practicable prior to the legislation being made. |
| | A select committee stage is not proposed for a Bill, or only a severely shortened select committee stage is proposed (i.e. four months or less), unless there is a genuine urgency to enact the legislation that would not allow for a full select committee stage. |
| | In relation to a Government Amendment Paper that implements a significant new policy or change in policy, the Amendment Paper has not been referred to a select committee for consideration, unless there is a genuine urgency to enact the legislation that would not allow for this consideration. |
| 9(j) Good law-making process (for proposed legislation) | The agency responsible for developing the legislation has not developed a clear problem definition that identifies and (to the extent feasible) quantifies the problem that the proposed legislation seeks to address. |
| | The agency responsible for developing the legislation has not assessed whether existing legislation and common law already effectively address the issue that the proposed legislation aims to address. |
| | The agency responsible for developing the legislation has not assessed whether it is necessary in the public interest to address the issue. |
| | The agency responsible for developing the legislation has not identified and assessed all reasonably available alternative options to the proposed legislation. |
| | The agency responsible for developing the legislation has not considered the impacts of proposed legislation on different groups (including both direct and indirect impacts). |
| 9(j) Good law-making process (for existing legislation) | The agency responsible for administering the legislation has not identified and (where feasible) quantified the problem that the existing legislation is designed to address. |
| | The agency responsible for administering the legislation has not assessed whether the legislation is working effectively in the context of other existing legislation and common law. |

| Principle/sub-principle | Potential indicators of inconsistency |
|---|---|
| | The agency responsible for administering the legislation has not considered whether retaining the legislation under review still benefits the broader public interest. |
| | The agency responsible for administering the legislation has not considered whether there are available alternatives, including full or partial deregulation, or non-regulatory options, to the legislation. |
| | The agency responsible for administering the legislation has not considered the impacts that the legislation under review has had on different groups (directly or indirectly). |
| 9(k) Implementation (proposed legislation only) | The agency responsible for developing the legislation has not developed an overall strategy for implementing the chosen option, including the steps and actions required. |
| | The agency responsible for developing the legislation has not identified the key risks associated with the implementation of the legislation, and developed possible mitigation strategies to address these risks. |
| | The agency responsible for developing the legislation has not identified the roles and responsibilities of all parties involved in the implementation process, including the responsible agency and any other stakeholders. |
| | The agency responsible for developing the legislation has not identified the resources required for implementation, including financial, human, and technical resources. |
| 9(l) Costs and benefits (for proposed legislation) | The agency responsible for developing the legislation has not assessed the expected costs and benefits of the legislation. |
| | An assessment of the expected costs and benefits has not shown that the expected benefits of the proposed legislation exceed the expected costs (including where it has not been feasible to determine the costs and benefits). |
| 9(l) Costs and benefits (for existing legislation) | The agency responsible for administering the legislation has not assessed the costs and benefits produced by the legislation over the time that it has been in place. |
| | An assessment of the actual benefits of the legislation has not shown that they exceed the actual costs of the legislation. |
| 9(m) Most effective, efficient and proportionate | The legislation is not the most effective response available – that is, there are other options available that better achieve |

| Principle/sub-principle | Potential indicators of inconsistency |
|---|--|
| response (for proposed legislation) | the defined objectives, or deliver more net benefits than the proposed legislation. |
| | The legislation is not the most efficient response available – that is, there are other options available that achieve the defined objectives with the same benefit at less cost. |
| | The legislation is not the most proportionate response available – that is, other responses would better align with the level of severity, urgency and/or scope of the issue in question, and/or would be more flexible or less costly |
| 9(m) Most effective, efficient and proportionate response (for existing legislation) | The legislation is not the most effective response available – that is, there are other options available that better achieve the defined objectives, or would deliver higher net benefits than the current legislation |
| | The legislation is not the most efficient response available – that is, there are other options available that achieve the objectives of the legislation to the same or a greater extent at less cost. |
| | The legislation is not the most proportionate response available – that is, there are other responses available that would better align with the level of severity, urgency and/or scope of the issue in question. |

Annex 2: CAS template for proposed legislation

Replace this image with the logo of the authoring agency

Consistency Accountability Statement: [Title of Bill, Government amendment or proposed secondary legislation]

[Delete: This template is for **proposed legislation**. There is a separate template for [existing legislation](#)]

| | |
|------------------------------|--|
| Agency responsible | [Insert name of responsible agency] |
| Portfolio | [Insert Ministerial Portfolio] |
| Date finalised | [Date document signed out] |
| Identification number | [For example, REG-XXXX obtained from RIA Online (the same as RAS or RAS exemption request number). Leave blank for secondary legislation made outside of Cabinet processes.] |

Statement of Review

I confirm that [agency name] has assessed the above legislation, and the process for developing it, for consistency with the principles of responsible regulation as set out in section 9 of the Regulatory Standards Act 2025.

[DELETE ONE: This assessment identified no inconsistencies with the principles of responsible regulation (delete the following table) OR

This assessment identified the following inconsistencies with the principles of responsible regulation: (add/delete rows as required)]

| Relevant principle of responsible regulation | Relevant clauses in proposed legislation |
|--|---|
| [Include reference to the relevant principle in section 9 of the Regulatory Standards Act 2025] | [List the clauses of the proposed legislation where the inconsistency was identified] |
| Summary of inconsistency | |

Relevant principle of responsible regulation

Relevant clauses in proposed legislation

Summary of inconsistency

[Signature block]

[Name]

[Job title of the chief executive or approved delegate]

[Agency name]

Annex 3: CAS template for existing legislation

Replace this image with
the logo of the
authoring agency

Consistency Accountability Statement: [Title of Act (include part if not reviewing in full) and/or secondary legislation and version]

[Delete: This template is for **existing legislation**. There is a separate template for [proposed legislation](#)]

Agency responsible [Insert name of responsible agency]
Portfolio [Insert Ministerial Portfolio(s)]
Date finalised [Date document signed out]

Statement of Review

I confirm that [agency name] has assessed the above legislation for consistency with the principles of responsible regulation as set out in section 9, and modified by section 19, of the Regulatory Standards Act 2025.

[DELETE ONE: This assessment identified no inconsistencies with the principles of responsible regulation (*delete the following table*) OR

This assessment identified the following inconsistencies with the principles of responsible regulation: (*add/delete rows as required*)

| Relevant principle of responsible regulation | Relevant sections in legislation |
|--|---|
| [Include reference to the relevant principle in section 9 of the Regulatory Standards Act 2025] | [List the sections of the legislation where the inconsistency was identified] |
| Summary of inconsistency | |

| Relevant principle of responsible regulation | Relevant sections in legislation |
|--|----------------------------------|
| Summary of inconsistency | |

[Signature block]

[Name]

[Job title of the chief executive or approved delegate]

[Agency name]