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Problems Experienced in the Past with the Drafting of New Regulations

I have experienced major frustrations in the past with the process used to amend existing regulations and/or draft new regulations.

Current Process

1. The Ministry concerned produces draft proposed regulations, which are sent to the industry for comment.
2. After considering comments from the industry, often including suggested new 'improved' wording of the regulations from the industry, an updated version of the draft regulation(s) is sent to the Parliamentary Council Office (PCO)(?) for comment (and approval?).
3. The new regulations are gazetted – **without any changed wording first being run past industry experts for 'technical soundness'.**

Net Result

Despite having agreement between the industry and the Ministry on what the regulations should say, we regularly get gazetted regulations that say something quite different from this. The problem occurs in the final stages of the process, when the Ministry and/or the Crown Law Office consider and change the final wording of the Regulations **without seeking any further feedback from the industry**.

I have been left with the impression that people in the Ministry and/or Crown Law Office feel they're not doing their job properly unless they change some wording of the Regulation somewhere. So we start with a perfectly good draft regulation, and end up with a different regulation, changed by people (in government) who do not fully understand the technical implications of the changes they make (even though they may think they do). In many cases the person(s) concerned don't seem to even understand how to construct english sentences properly. They change the structure of sentences, without intending to change their meaning, but end up with a sentence that has a completely different and unintended meaning. This would not be such a problem if the final version of these 'changed' regulations was run past industry experts as a final check that they were still technically sound, and still say what was intended. However this doesn't happen. Once we are in the Ministry/Crown Law Office stage, the industry hears nothing until the regulations are gazetted – at which stage it is too late.

For some regulations, this means having to amend the regulation two, three or four times, over a period of 4 to 6 years, before finally getting a 'good enough' version in law. This is very inefficient and very frustrating.

Perhaps I have been unlucky, but it seems to me that a high proportion of the few regulations that are very relevant to my work have had a very poor success rate (30%) at getting amendments ‘right enough’.

In one notable case, a perfectly good regulation was amended, even though nothing new needed to be added to it, or changed in it. Instead the english was changed slightly, and this change was not checked with the industry for ‘technical soundness’. The result was the regulation gained a quite different and unintended meaning. We’re still spending time trying to get the meaning back to what it was.

In the meantime, I and most others in the industry are ignoring what this regulation actually says, and instead apply what we know it was supposed to say. This brings the whole Regulations into disrepute, as we ‘ignore’ regulations with these ‘typos’ in them.

I can provide specific examples of the regular frustrations we have trying to get Regulations amended so they actually say what they were always intended to say. The problem is not agreeing on what the Regulations should say, it’s in getting the Regulations to actually say this.

Most of these problems seem to be attributed to PCO involvement, who I’m told insist on not just checking the wording for ‘legal soundness’, but instead regularly change the technical wording at the last moment (with a surprising high ‘stuff-up’ rate), without then referring any revised technical wording back to the industry experts to check for ‘technical soundness’. I have been told this is just the way things work and this can’t be changed.

Proposed Solution

1. The Ministry concerned produces draft proposed regulations (often in response to concerns raised by the industry), which are sent to the industry for comment – same as now.
2. After agreement has been reached on what the Regulations should say, and the technical experts in the industry have either agreed to the Ministry‘s proposed version, or proposed a different version, NO changes should be made to the wording of this version by the Ministry and/or the Crown Law Office unless:
    a. The version is significantly ‘unsound’, or major improvements could be made to it (NOT just because the reader would personally have written it differently), AND, if so
    b. The new proposed version of the draft regulation MUST then be run past the industry technical experts for comment, to check whether it is still ‘technically sound’, and the above process repeated.

This will result in a gazetted version of the regulations that the industry, Ministry and PCO all agree is ‘good enough’.

The guiding principle has to be “If it ain’t broke, don’t change it”, NOT “I would write it differently” (especially if the person does not have technical expertise in the area – this does include some Ministry staff, and probably all PCO staff).

Alan Marshall
Senior Electrical Engineer (Lightning & Power Protection)
Opus International Consultants Ltd

Ph: 0-3-371 9453
Mob: 021-244 1024
Email: alan.marshall@opus.co.nz