



**UNDERSTANDING THE LAW :  
ROLE AND RESPONSIBILITIES OF THE GOVERNMENT**

**FAILURES OF LEGISLATION**



# WHAT MAKES A GOOD LEGISLATION

➤ Constitutional and respects the rule of law



➤ No frequent amendments required



➤ Gives effect to policy objectives







# WHAT MAKES A GOOD LEGISLATION

➤ Provides clarity and certainty



➤ Avoids unintended consequences





# WHY DOES LEGISLATION FAIL?



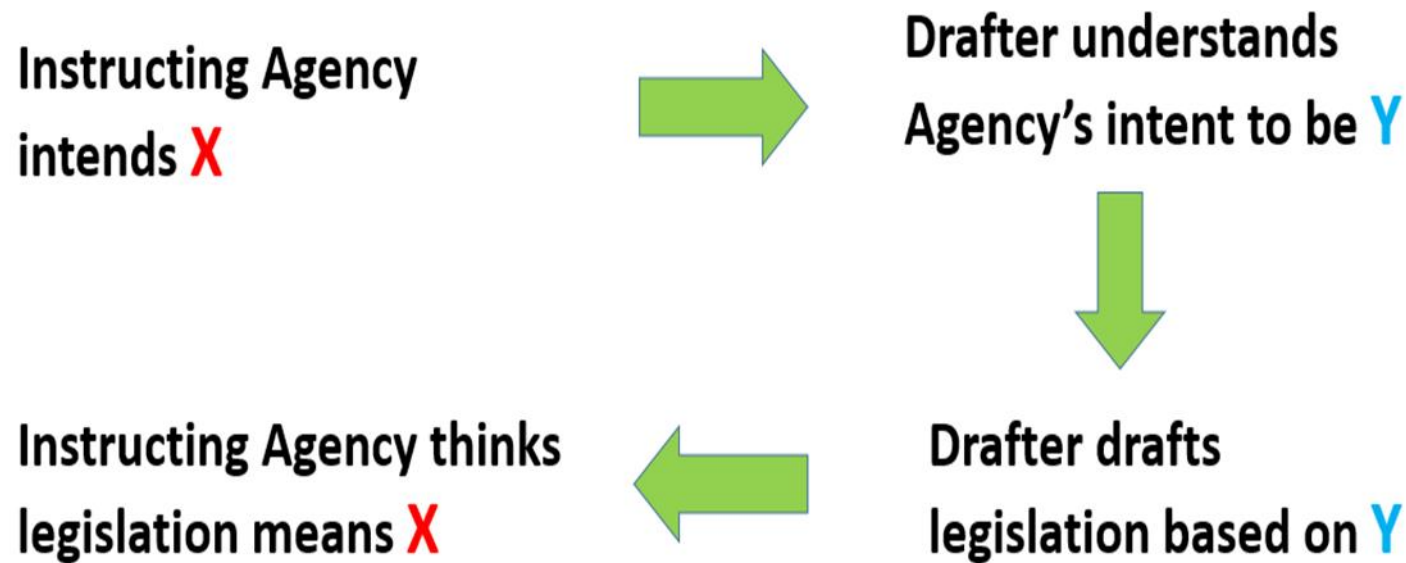
- Failure of communication of law to public
  - Solution – amend legislation to remove uncertainty
  
- Failure of imagination
  - Insufficient analysis of issues and development of specifications
  - Re-wording of legislation will not solve problem
  - Solution – significant changes to legislation needed after analysing problems and working through policy specifications





# REASONS FOR FAILURES OF LEGISLATION

- Failure of communication between instructing agency to drafter





# CONSEQUENCE OF BADLY DRAFTED LAWS

- Legislation is powerful and carries consequences
- Courts will decide what legislation means





# CONSEQUENCE OF BADLY DRAFTED LAWS

- Legal costs



- Uncertainties for public

- Uncertainties for administrators and enforcers





# CONSEQUENCE OF BADLY DRAFTED LAWS

- Insufficient analysis of issues
- Inadequate development of details of policy
- Unclear or inadequate drafting instructions
- Inadequate or no consultations







# WHY WAS THE LAW BADLY DRAFTED?

- Insufficient road-testing or scrutiny of draft text
- Inexperience or disengaged officers managing legislative projects





# WHY WAS THE LAW BADLY DRAFTED?

- Poor planning of legislative project.
  - Underestimation of issues or process
  - Over-promises or unrealistic deadlines
  - Rush to enact Act but delays/difficulties in implementation
  - Disconnect between policy-making and implementation





# WHY WAS THE LAW BADLY DRAFTED?

- Mid-stream surprises.
  - Changes in policies
  - Changes in key personnel



- Matters left too late.





# PROBLEMS WITH URGENT LEGISLATION

(“Legislate in haste, repent in leisure”)

- Proposals often lacking
  - Analysis
  - Clarity
  - Specifications / Details





# PROBLEMS WITH URGENT LEGISLATION

(“Legislate in haste, repent in leisure”)

- Insufficient time for AGC to
  - Analyse
  - Identify problems/gaps
  - Suggest solutions
  - Draft provisions







# WAY FORWARD

- Scheduling: proper and realistic planning before making public commitments that require legislation
  - Factors to consider:
    - Actual resources available to instructing Ministry/ statutory authority and Legislative Drafting Division
    - Cater for contingencies – legislative drafting process may raise new issues which require time to resolve
    - Consultation of stakeholders, industry or public?





# WAY FORWARD

- Time constraints and scheduling
  - Set aside for more than 6 months for
    - Policy development
    - Legal advice and drafting
- Don't commit to timing of law before AGC is consulted –  
Be realistic!





# WAY FORWARD

- Drafting Instructions – Things to note:
  - If another Ministry/statutory authority affected – consultation should be done
  - Questions of policy should be resolved, necessary approvals obtained from all affected agencies (as far as possible)





# WAY FORWARD

- Drafting Instructions – Things to note:
  - Avoid passing law only to keep indefinitely suspended in operation



**Quality instructions essential to giving effect to policy intent  
in legislation**





# THANK YOU