

Departmental Disclosure Statement

Public Service Legislation Bill

The departmental disclosure statement for a government Bill seeks to bring together in one place a range of information to support and enhance the Parliamentary and public scrutiny of that Bill.

It identifies:

- the general policy intent of the Bill and other background policy material;
- some of the key quality assurance products and processes used to develop and test the content of the Bill;
- the presence of certain significant powers or features in the Bill that might be of particular Parliamentary or public interest and warrant an explanation.

This disclosure statement was prepared by the State Services Commission.

The State Services Commission certifies that, to the best of its knowledge and understanding, the information provided is complete and accurate at the date of finalisation below.

14 November 2019

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Part One: General Policy Statement

This omnibus Bill repeals the State Sector Act 1988 (the **1988 Act**), replaces it with a new Public Service Act, and makes a small number of related amendments to the Public Finance Act 1989 (the **PFA**). These are the main statutes governing the management of the State sector and public finances in New Zealand. *Parts 1 to 6* of the Bill include provisions for a new Public Service Act, and the repeal of the State Sector Act, while provisions in *Part 7* amend the PFA.

The Bill is informed by a review of the 1988 Act that built on various reviews and public commentary on the public management system from the past 30 years and involved an extensive consultation process. Public consultation was based on the aims of –

1. enabling the public service to deliver better outcomes and better services:
2. creating a modern, agile, and adaptive public service:
3. affirming the constitutional role of the public service in supporting New Zealand's democratic form of government.

The review found that the current system narrows each department's focus to its own particular outputs, incentivising officials to focus on their own agency rather than encouraging a wider, collaborative public service identity. A collaborative and cohesive public service is necessary in order to address complex issues that span agency boundaries, and to provide wraparound services based on New Zealanders' needs, rather than agency convenience.

In order to address this problem, and to achieve the objectives above, the Bill does the following things:

- clearly establishes the purpose, principles, and values of an apolitical public service, as well as its role in government formation:
- recognises the role of the public service to support the Crown in its commitment to its relationships with Māori:
- provides a more flexible set of options for organisational arrangements to support the public service in better responding to priorities and joining up more effectively:
- increases interoperability across the public service workforce and preserves the future public service as an attractive and inclusive place to work:
- strengthens leadership across the public service, and provides for system- and future-focused leadership.

The Bill also amends the PFA to provide the necessary financial powers and reporting obligations for the various organisational arrangements that will be established through the Public Service Act.

Clearly establishes the purpose, principles, and values of an apolitical public service, as well as its role in government formation

While the 1988 Act sets out the framework for the State sector, it focuses on the actors within the public management system, and does not articulate the purpose or role of the public service. Public servants do not always clearly understand their constitutional role in supporting New Zealand's system of government, nor are there incentives to act as a unified system.

This Bill –

- states the purpose, principles, and values of the public service, and acknowledges the spirit of service as a fundamental characteristic of the public service:
- puts responsibilities on public service chief executives and boards of Crown agents to ensure that the principles of the public service are upheld:
- provides for the Public Service Commissioner (currently the State Services Commissioner) to set standards of and issue guidance on integrity and conduct:
- acknowledges that public service employees have all the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 in accordance with the provisions of that Act:
- provides that Crown agents are part of the public service for some purposes:

- provides that the Commissioner will manage involvement by officials in the government formation process, including granting access to public service agencies and functional chief executives.

Supports the Crown in its commitment to its relationships with Māori

The 1988 Act is silent on the Treaty of Waitangi (te Tiriti o Waitangi) and the Māori-Crown relationships aside from good employer requirements on public service employers in relation to Māori.

This Bill continues the good employer requirements established under the 1988 Act, and further—

- explicitly recognises the role of the public service in supporting the Crown in its relationships with Māori under Te Tiriti o Waitangi/the Treaty of Waitangi:
- provides that, in order to carry out that role –
 - public service leaders are responsible for developing and maintaining the capability of the public service to engage with Māori and to understand Māori perspectives; and
 - the Commissioner, in the development and implementation of the leadership strategy, must recognise the good employer requirements in relation to Māori.

Flexible set of options for organisational arrangements

The 1988 Act provides for departments as the basic building block of the public service. While this model works well for most public service work, it is not always flexible enough to carry out certain roles.

The departmental agency model was developed as a new model of entity, sitting within a host department and operating within the host department's policy and funding framework, but with its own chief executive directly responsible to a Minister, avoiding the need for a fully separate department. However, the model has not proved flexible enough to provide for its application in a range of different contexts. This Bill makes changes to the departmental agency model, to increase its flexibility and enable the model to be tailored to specific functions in each case.

The Bill also provides for 2 new organisational forms within the public service that build on current collaborative models as follows:

- interdepartmental executive boards will consist of a group of chief executives, working together towards common outcomes, who are individually and jointly responsible for a board's work. A board will have the ability to employ staff, enter into contracts, and administer appropriations. This model will enable joined-up strategic policy, planning, and budgeting around shared outcomes:
- interdepartmental ventures that will allow resources to be brought together into a single distinct entity that will be able to hold assets, employ staff, enter into contracts, and administer appropriations just as a public service department does.

The Bill also provides a formal structure for co-operative and collaborative working arrangements between public service agencies in the form of:

- joint operational arrangements that will consist of a commitment to joint work through a formal agreement between chief executives or boards of public service agencies but with relevant funding, assets, and staff remaining under the formal control of participating agencies.

Increases interoperability across the public service workforce and preserves the future public service as an attractive and inclusive place to work

The 1988 Act treats each individual department as a distinct employer, which makes it difficult for the public service to act as a single unified service, capable of cross-agency collaboration. It also means that agencies have varying terms and conditions, and approaches to fostering inclusion.

This Bill –

- provides for public servants (in public service departments and joint ventures) to be appointed to the public service, while preserving the role of departmental chief executives as the employer of employees in their agencies:
- provides for the Commissioner to place conditions on their powers of delegation regarding negotiation of collective agreements, to enable fostering of consistent employment terms and conditions across departments of the public service:
- provides the Commissioner with the same powers of delegation for pay equity negotiations as for collective agreement negotiations:
- expands the potential scope of Government Workforce Policy Statements to enable their use in the wider State sector, and clarifies the range of subjects that these statements may cover:
- provides explicit recognition of the value of diversity and fostering inclusiveness, puts a responsibility on chief executives to promote inclusiveness in employment and workforce practices, and requires the Commissioner to lead on diversity and inclusion:
- provides for public servants to transfer accumulated annual leave and other statutory leave when moving between public service departments.

Strengthens leadership across the public service, and provides for system and future focused leadership

Although steps have been taken in the right direction to join up leadership in the public service, and put more emphasis on system- and future-focused leadership, the current model for the public service emphasises leadership of discrete entities, with a focus on short- to mid-term planning.

In order to strengthen system leadership, the Bill –

- requires the Commissioner to establish a Public Service Leadership Team. The purpose of this team is to provide strategic leadership spanning the whole of the public service that contributes to an effective and cohesive public service. The team will work collaboratively and model leadership behaviours for the public service, while also assisting the members to fulfil their responsibilities under the new Act. This essentially formalises the current non-statutory State Sector Leadership Team:
- provides for the designation of chief executives as system leaders, responsible for leading and co-ordinating work in a particular subject-matter area across the State services system. This essentially formalises the current model of Functional Leads and Heads of Profession:
- establishes a new type of chief executive – called a functional chief executive, who will not lead a separate agency but will be responsible for specific functions within a department:
- requires the Commissioner to work with public service leaders to develop a strategy for senior leadership and management capability, for the purposes both of leadership development and to meet system needs:
- provides for the appointment of a second statutory Deputy Public Service Commissioner, who could have responsibilities to achieve objectives in a designated area:
- requires the Commissioner to produce a briefing on the state of the public service at least once every 3 years, tabled in Parliament by the appropriate Minister:
- requires chief executives (either individually or as a collective representing a sector) to produce long-term insights briefings.

Part Two: Background Material and Policy Information

Published reviews or evaluations

2.1. Are there any publicly available inquiry, review or evaluation reports that have informed, or are relevant to, the policy to be given effect by this Bill?	YES
<p>State Services Commission, Better Public Services Advisory Group Report, 2011. Available at: https://www.ssc.govt.nz/sites/all/files/bps-report-nov2011_0.pdf</p> <p>State Services Commission, Ministerial Advisory Group on the Review of the Centre, 2001. Available at: http://www.ssc.govt.nz/upload/downloadable_files/review_of_centre.pdf</p> <p>Schick, A, The Spirit of Reform: Managing the New Zealand State Sector in a Time of Change; a Report Prepared for the State Services Commission and the Treasury, 1996. Available at: http://www.ssc.govt.nz/sites/all/files/spirit_of_reform_all.pdf</p> <p>Perry, James L., and Annie Hondeghe, eds. Motivation in public management: The call of public service. Oxford University Press on Demand, 2008. Available at: https://books.google.co.nz/books?hl=en&lr=&id=5F91m1DaOmYC&oi=fnd&pg=PR5&ots=bi4hC-UwQq&sig=tL4ypNeMN3hCFyPS1N3ESjQU-s&redir_esc=y#v=onepage&q&f=false</p> <p>Vandenabeele, Wouter. Toward a public administration theory of public service motivation: An institutional approach. Public management review 9.4 (2007): 545-556. Available at: https://www.tandfonline.com/doi/abs/10.1080/14719030701726697</p>	

Relevant international treaties

2.2. Does this Bill seek to give effect to New Zealand action in relation to an international treaty?	NO

Regulatory impact analysis

2.3. Were any regulatory impact statements provided to inform the policy decisions that led to this Bill?	YES
<p>Impact Statement: State Sector Act Reform, State Services Commission, 2019. Available at: https://ssc.govt.nz/assets/Legacy/resources/Impact-Statement-State-Sector-Act-Reform.pdf</p>	

2.3.1. If so, did the RIA Team in the Treasury provide an independent opinion on the quality of any of these regulatory impact statements?	YES
<p>Quality Assurance Statement provided on 24 April 2019:</p> <p>“A cross-agency Quality Assurance Panel with representatives from the Treasury and the Civil Aviation Authority has reviewed the Regulatory Impact Assessment “State Sector Act Reform” produced by the State Services Commission (SSC) and dated April 2019. The review team considers that it partially meets the Quality Assurance criteria.</p> <p>The QA panel’s assessment against each of the criteria is as follows:</p> <p><i>Clear and concise:</i> While the RIA is long, the length is proportionate to the number and complexity of over a dozen issues. We strongly recommend the inclusion of an executive summary, as it is unlikely that the average reader will be easily able to navigate a RIA that size.</p> <p><i>Convincing:</i> There are large assumptions that the proposed solution to an issue will address the problem or opportunity. We acknowledge that the proposals are enabling in nature and that regulations will be made to implement the changes. We expect this subsequent regulation to be supported by quality impact analysis, as more detailed analysis of potential impacts should then be possible.</p> <p><i>Complete:</i> The RIA contains the necessary information. The implementation section focuses mainly on the role of a Public Service Leadership Team to implement and embed the proposed changes. Some proposals will require agencies and the wider public sector to make significant changes to how their organisations are run, and there is little analysis of possible flow-on costs or the cumulative cost of the changes. There will, therefore, be a considerable onus on further work programmes to work closely with agencies to implement the changes.</p> <p><i>Consulted:</i> SSC has consulted extensively on the proposals, and revised many of the options on the basis of stakeholder feedback.</p> <p>The QA panel has not seen the draft Cabinet submissions at the time this assessment was finalised. Due to the large number of issues and options, we have sought and received assurances from the State Services Commission that the preferred options in the RIA align with the recommendations in the Cabinet papers.”</p>	

2.3.2. Are there aspects of the policy to be given effect by this Bill that were not addressed by, or that now vary materially from, the policy options analysed in these regulatory impact statements?	NO

Extent of impact analysis available

2.4. Has further impact analysis become available for any aspects of the policy to be given effect by this Bill?	NO

2.5. For the policy to be given effect by this Bill, is there analysis available on:	
(a) the size of the potential costs and benefits?	NO
(b) the potential for any group of persons to suffer a substantial unavoidable loss of income or wealth?	NO
<p>a) There are limitations on the extent to which the costs and benefits of these options can be assessed specifically or quantitatively. This is mainly because the policy proposals aim to have an enabling effect on operations of the Public Service. They will provide the tools and instruments to bring about change in a managed way to meet current and future requirements. The measurable impacts of these reforms will not be realised until the subsequent work programmes and plans enabled by this legislation have been prepared.</p> <p>b) The Bill has no direct bearing on private businesses, organisations or citizens. As such, changes to the legislative framework would not introduce any loss of income or wealth for private businesses, organisations or citizens.</p>	

2.6. For the policy to be given effect by this Bill, are the potential costs or benefits likely to be impacted by:	
(a) the level of effective compliance or non-compliance with applicable obligations or standards?	YES
(b) the nature and level of regulator effort put into encouraging or securing compliance?	YES
<p>Non-compliance of chief executives to fulfil their responsibilities relating to the public service principles, the Māori-Crown relationship, and diversity and inclusion, could impact adversely on the benefits sought. However, the Commissioner's role in leading and supporting the chief executives, as well as the ability to issue standards and guidance, should act as a strong mitigating factor. In fact, the Commissioner has a particular responsibility to lead on diversity and inclusion, and chief executives must report to the Commissioner on progress in relation to their responsibilities under the Māori-Crown clauses.</p> <p>The Bill also gives the Commissioner a broader mandate to issue standards, and the ability for system leads to issue mandatory standards for the public service, if agreed by Cabinet. The effectiveness of these mechanisms will rely on compliance of agencies with these standards. Any risk of non-compliance by an agency is mitigated by accountability arrangements to the Public Service Commissioner and Ministers.</p>	

Part Three: Testing of Legislative Content

Consistency with New Zealand's international obligations

3.1. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with New Zealand's international obligations?
<p>The Bill affirms the principle of open government in the public service. This principle is consistent with the commitments New Zealand has made under the international Open Government Partnership.</p> <p>The State Services Commission is unaware of any other international obligations relevant to the policy to be given effect by the Bill.</p>

Consistency with the government's Treaty of Waitangi obligations

3.2. What steps have been taken to determine whether the policy to be given effect by this Bill is consistent with the principles of the Treaty of Waitangi?
<p>SSC have worked to ensure the Bill recognises the role of the Public Service in supporting the Crown's relationship with Māori. SSC undertook a wide-ranging consultation and engagement process that proposed referring to the Māori Crown relationship. As a result of the consultation it became clear that stakeholders expected a reference to the Treaty of Waitangi in this legislation, which Cabinet subsequently agreed to. Consultation involved other government agencies, a Māori Reference Group, Māori public servants and the PSA.</p>

Consistency with the New Zealand Bill of Rights Act 1990

3.3. Has advice been provided to the Attorney-General on whether any provisions of this Bill appear to limit any of the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990?	YES
<p>If the Attorney-General chooses to waive legal privilege to this advice, it will be published on the Ministry of Justice website at: https://www.justice.govt.nz/justice-sector-policy/constitutional-issues-and-human-rights/bill-of-rights-compliance-reports/</p>	

Offences, penalties and court jurisdictions

3.4. Does this Bill create, amend, or remove:	
(a) offences or penalties (including infringement offences or penalties and civil pecuniary penalty regimes)?	YES
(b) the jurisdiction of a court or tribunal (including rights to judicial review or rights of appeal)?	NO
<p>The Bill continues the existing offence in current section 85 (which makes it an offence to attempt to influence the Commissioner or a public service chief executive for particular employment matters). The Bill also ensures the group for which it is an offence to influence would now include the statutory Deputy Public Service Commissioners (when carrying out functions of the Commissioner), inter-departmental executive boards, boards of inter-departmental ventures, and functional chief executives. No changes are made to the penalty for committing this offence.</p> <p>In effect, chief executives on inter-departmental executive boards and boards of inter-departmental ventures (as chief executives of departments in their own right) and Deputy Commissioners acting as Commissioner would already be covered under the current Act. So in practice, the Bill only extends the provisions to functional chief executives. This aligns with the policy intent, that functional chief executives are to be treated on par with chief executives of departments.</p>	

3.4.1. Was the Ministry of Justice consulted about these provisions?	NO
The Ministry of Justice was consulted generally as part of departmental consultation on the Bill. No concerns were raised regarding the offence provision.	

Privacy issues

3.5. Does this Bill create, amend or remove any provisions relating to the collection, storage, access to, correction of, use or disclosure of personal information?	NO
The Office of the Privacy Commissioner was consulted and raised no issues.	

External consultation

3.6. Has there been any external consultation on the policy to be given effect by this Bill, or on a draft of this Bill?	YES
<p><u>Public consultation on initial policy proposals</u></p> <p>From 3 September to 12 October 2018, SSC gathered public feedback on proposals in the discussion document 'Reform of the State Sector Act 1988 – Directions and Options for Change'. The proposals focused on:</p> <ul style="list-style-type: none"> • providing a wider range of options for organisational and workforce development • unifying the Public Service around a common purpose, principles and values • ensuring strong and capable leadership of the system. <p>More than 300 written submissions were received. The majority of submissions (178) were by public servants, but submissions were also received from members of the public, Crown entities, NGOs, academics, unions and Māori groups.</p> <p>The State Services Commission also directly engaged with more than 1,100 people in Auckland, Wellington, Whangarei, Hamilton, New Plymouth, Gisborne and Christchurch. This involved public servants, Crown entities, members of the public, NGOs, Māori public servants and Pasifika public servants.</p> <p>The State Services Commission also convened an academic reference group who provided valuable input through regular discussions.</p> <p>Engagement across the country highlighted there was support for the overall direction of the reforms and an appetite for change.</p> <p>Further detail on this public consultation is available on pages 9 – 11 of the Impact Statement, with consultation feedback on the relevant proposals discussed in each chapter. https://www.ssc.govt.nz/sites/all/files/Impact%20Statement%20-%20State%20Sector%20Act%20Reform.pdf</p> <p><u>Agency consultation on final policy proposals</u></p> <p>The proposals in the discussion document were refined in response to the feedback received during consultation, and further policy work undertaken. The final proposals were included in a suite of Cabinet papers. SSC officials consulted with all public service departments, the academic reference group, and selected Crown agents on these Cabinet papers, which sought Cabinet agreement to the final policy proposals. Feedback was given on a wide range of issues, and refinements were made to the policy proposals to reflect this feedback before the papers received Cabinet approval.</p> <p><u>Consultation on the Bill</u></p> <p>SSC has engaged closely with specific agencies and organisations during the drafting of the Bill where needed:</p> <ul style="list-style-type: none"> • Public Service Association • Crown Law • Department of the Prime Minister and Cabinet • The Treasury • Legislation Design and Advisory Committee • Ministry of Business, Innovation and Employment (workforce provisions) • Te Arawhiti (Māori/Crown provisions) • Te Puni Kōkiri (Māori/Crown provisions) <p>All departments were consulted on a draft of the Bill, and some other agencies including the Office of the Privacy Commissioner and the Office of the Auditor-General.</p>	

Other testing of proposals

3.7. Have the policy details to be given effect by this Bill been otherwise tested or assessed in any way to ensure the Bill's provisions are workable and complete?	NO

Part Four: Significant Legislative Features

Compulsory acquisition of private property

4.1. Does this Bill contain any provisions that could result in the compulsory acquisition of private property?	NO

Charges in the nature of a tax

4.2. Does this Bill create or amend a power to impose a fee, levy or charge in the nature of a tax?	NO

Retrospective effect

4.3. Does this Bill affect rights, freedoms, or impose obligations, retrospectively?	NO

Strict liability or reversal of the usual burden of proof for offences

4.4. Does this Bill:	
(a) create or amend a strict or absolute liability offence?	NO
(b) reverse or modify the usual burden of proof for an offence or a civil pecuniary penalty proceeding?	NO

Civil or criminal immunity

4.5. Does this Bill create or amend a civil or criminal immunity for any person?	NO

Significant decision-making powers

4.6. Does this Bill create or amend a decision-making power to make a determination about a person's rights, obligations, or interests protected or recognised by law, and that could have a significant impact on those rights, obligations, or interests?	NO

Powers to make delegated legislation

4.7. Does this Bill create or amend a power to make delegated legislation that could amend an Act, define the meaning of a term in an Act, or grant an exemption from an Act or delegated legislation?	YES
<p><u>Power to amend schedules 2 and 5</u></p> <p>Schedule 2 lists current departments and departmental agencies, and provides for the inclusion of inter-departmental executive boards and inter-departmental ventures. The Bill provides for the Governor-General to amend Schedule 2 by Order in Council, to reflect any future establishment, disestablishment or change of name. These clauses are equivalent to those that already exist in the current Act for changes to the department and departmental agency lists.</p> <p>Schedule 5 provides for functional chief executive roles to be listed. The Bill provides for the Governor-General to amend Schedule 5 by Order in Council, to reflect any new, changed, or disestablished functional chief executive roles.</p> <p>These standard regulation-making powers are necessary to maintain legally accurate lists and definitions of core components of the public service. The provisions carry over the existing power in s30A of the State Sector Act, with necessary modifications.</p> <p><u>Savings and transitional matters</u></p> <p>The Bill provides for the Governor-General to make regulations, by Order in Council, that provide for savings and transitional matters connected with reorganisations in the public service. This clause is based off the current section 30K in the State Sector Act which provides for the Governor-General, through Order in Council, to provide for savings and transitional matters connected with the disestablishment, name change, transfer of functions or establishment of a department.</p> <p>This clause has been updated to include the new types of public service agencies for consistency.</p>	

4.8. Does this Bill create or amend any other powers to make delegated legislation?	YES
<p>The Bill creates a power for the Governor-General to make regulations, by Order in Council, which prescribe requirements on public service agencies regarding the transfer of statutory leave entitlements (under the Holidays Act 2003 and the Parental Leave and Employment Protection Act 1987 - separately identifiable from other leave), between agencies, specifically:</p> <ul style="list-style-type: none"> • recording of leave entitlements and leave taken • the order in which leave entitlements are treated as being taken • specifying any leave that is not to be treated as continuous • timeframes for which the transfer of leave balance must occur • specifying a cap on the amount of leave which may transfer. <p>This power is being created to ensure that the continuous employment provisions, which provide for the transfer of leave between agencies, will work in practice.</p> <p>Regulations will be subject to the Acts and Regulations Publication Act 1989, disallowance under the Regulations Disallowance Act 1989, and subject to review by the Regulations Review Committee under the Standing Order 314.</p>	

Any other unusual provisions or features

4.9. Does this Bill contain any provisions (other than those noted above) that are unusual or call for special comment?	NO
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