



Report Title:	Delivering Outcomes through Effective Employment Relations – Implementing a Government Workforce Policy Statement on Public Sector Employment Relations		
Report No:	2023-0280		
Date:	7 December 2023		
To:	Hon Nicola Willis, Minister for the Public Service		
Action Sought:	Agree/disagree	Due Date	15 December 2023
Contact Person:	Alex Chadwick - Deputy Commissioner Workforce		
Contact No:	9(2)(a)		
Encl:	Yes - two appendices	Priority:	Medium
Security Level:	IN CONFIDENCE		

Executive Summary

1. This report provides, for your consideration and feedback, a draft Government Workforce Policy Statement. This Statement, along with Budget guidance, can assist you to set clear expectations for public sector employment relations activity.
2. The report seeks your feedback on the draft Statement. The final content is your decision, and so the report provides examples of other areas that could be included or clarified in the Statement. These include performance pay, management of performance by agencies (regardless of location of work) and allowances for language competencies.
3. We have provided an indicative timeline for implementation but will confirm the timetable for the consultation process with your office once we have your feedback and a Cabinet committee timetable for early 2024.

Recommended Action

We recommend that you:

- a. **note** that there is an existing Government Workforce Policy Statement on Public Sector Employment Relations and that you have indicated that you wish to receive advice on replacing it
- b. **note** that you have an opportunity to align your employment relations and budget expectations through engagement on the Budget guidance and the Government Workforce Policy Statement
- c. **provide** your feedback on the proposed scope and wording of the attached draft Government Workforce Policy Statement, including indicating if there are other areas that you would like to see these expectations cover

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- d. **agree** to the Public Service Commissioner consulting with affected agencies, stakeholders and unions on a replacement Government Workforce Policy Statement based on the draft attached to this report and after incorporating your feedback

Agree/disagree.

- e. **agree** to the coverage of the Government Workforce Policy Statement remaining as Public Service agencies, Crown agents and other Crown entities, the New Zealand Police, the New Zealand Defence Force, and the Parliamentary Counsel Office

Agree/disagree.

- f. **agree** that the Government Workforce Policy Statement is prepared for Cabinet consideration in early 2024 (with final timing subject to timing of any Cabinet Committees) following the consultation process

Agree/disagree.

Hon Nicola Willis

Minister for the Public Service

Purpose of Report

4. This report provides for your consideration and feedback, a draft Government Workforce Policy Statement on Public Sector Employment Relations (Statement) and options for further content. This will assist you to set clear expectations for public sector employment relations activity. Advice on the implementation steps, including consultation obligations, is included.

Role of the Government Workforce Policy statement

5. The role of the Statement is defined in the Public Service Act (the Act) as relating to workforce matters (including employment and workplace matters) for the purpose of fostering a consistent, efficient, and effective approach to those matters across agencies. Without limitation, the Act states that this can include:
 - a) expectations about the negotiation of collective and individual employment agreements in the State services (where they do not determine pay or conditions);
 - b) the development and implementation of workforce strategy;
 - c) the promotion of more effective management of employment relations generally;
 - d) workforce capacity and composition;
 - e) pay equity and workforce diversity and inclusiveness;
 - f) data and information held about agencies contracted to deliver services.
6. The Statement cannot alter existing employment or other legal rights or obligations. This means the Statement cannot require the adoption or prohibition of specific terms and conditions of employment or require other action by agencies which may undermine good faith bargaining. The Statement does, however, provide clear guidance for agencies on the Government's expectations on workforce matters and can therefore influence their approach.
7. The Statement would also be used by the Public Service Commissioner (the Commissioner) when approving bargaining strategies and proposed settlements that have been bargained under delegation by departments. The Commissioner will approve a strategy or settlement that is in line with the expectations in the Statement. Where alignment is not possible, the Commissioner would facilitate further engagement with Ministers (see reference in the Statement to agencies needing to seek approval from specific Ministers where proposals are inconsistent with the Statement or have adverse system wide implications).
8. The Statement is made public by publishing it on the Public Service Commission's (the Commission) website. While the Statement only binds agencies and not unions, publication helps to reinforce the expectations on agencies.

Content of a Statement - Analysis and Options

9. We have developed a draft Statement for your consideration that is attached as Appendix A. This Statement would replace the existing May 2021 Government Workforce Policy Statement. A copy of the 2021 version was attached to the earlier paper *Delivering Outcomes through Effective Employment Relations* [2023-0293].
10. The draft Statement has been informed by the Government's 100-day plan as set out in *Coalition Government 100-Day Plan*. This includes commitments to:
 - a) reduce public sector expenditure, including on contractors and consultants;
 - b) set and manage for Government priorities, including through developing targets for public services to help maintain momentum at the end of the 100-day period;

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- c) restore 90-day trial periods and repeal fair pay agreements;
 - d) drive public sector performance.
11. The Statement is also informed by wider contextual statements made by members of the Government including on performance pay, public service delivery and productivity.
12. It differs from the last Government Workforce Policy Statement in a number of ways:
- a) it has a clear expectation that agencies will settle within baselines and look to make productivity gains to support workforce investment. It also removes an expectation that agencies bring tenure-based pay progression into remuneration structures.
 - b) it removes the emphasis on driving towards common terms and conditions across the public service, which had existed in part for equity reasons. However, it continues to provide for a degree of commonality in employment terms and conditions for some occupations where that will support greater mobility of the workforce around Government priorities.
 - c) it does not retain the same overriding emphasis on prioritising the pay of the lowest paid and closing pay gaps and instead provides flexibility for chief executives to make informed, evidence-based decisions on targeting increases.
 - d) it does not prioritise collective bargaining over other forms of engagement with employees (while still acknowledging the impact that the high levels of union density and collective bargaining have in our sector).
 - e) it contains some process changes to support efforts to build a stronger picture of the cost and implications of employment relations to support the Government and chief executive with informed decision making.
 - f) it includes specific reference to workforce size and composition expectations. This has not existed in the expectations before now.
13. In preparing this Statement, we have designed it to allow for the Commission to issue more specific guidance on areas of interest to be developed and applied at a later date. This provides the Government with flexibility and will allow the application of the Statement to evolve with the Government's agenda. There may be other areas, however, on which you would like the Statement to have a greater initial emphasis.

Commitment to changes in employment legislation

14. The draft Statement currently requires all chief executives to give effect to any employment legislation (see roles and responsibilities), which would include the changes proposed to restore 90-day trial periods and repeal fair pay agreements. Typically, we do not articulate specific legislation changes in expectations, but if you wished to make a clear statement about adoption of trial periods (for instance), then we could suggest some wording for consideration.

Performance pay

15. You have received a briefing entitled *Driving Public Sector Performance* [2023-0292] that provides you with some initial advice on performance pay for chief executives. To support decision making arising from that paper, the Statement provides a hook for later guidance from the Commissioner to agencies that supports them to mirror that advice for senior leadership roles, if desired.
16. We have also reflected the language in the 6 December *Speech from the Throne* where it made a specific commitment that the pay of public sector chief executives and their deputies will be linked to outcomes to encourage high performance and ensure accountability. This commitment by the Government is reflected in priority two. The Statement also removes any restrictions on agencies who wish to introduce their own performance-based pay increases.

17. You may wish, however, for there to be more specific commentary on this issue.

Expectation that employers manage performance, regardless of work location

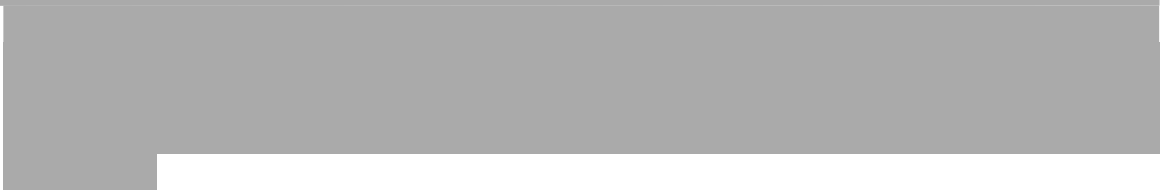
18. Statements made during the campaign period indicate that the Government may wish to place a greater emphasis on the public sector ensuring that productivity is monitored regardless of work location.

19. The current Statement provides that the Government expects that chief executive will foster a culture within the public sector based on continuous improvement and enhancing productivity. We could strengthen that expectation to articulate that every chief executive must ensure they take appropriate steps to manage and monitor productivity across their workforce, regardless of work location.

20. We can provide you with further advice if you wish to explore this possibility.

Payments for language skills that are not required to perform the employee's role

9(2)(f)(iv) confidentiality of advice



22. Typically, these schemes provide for an allowance paid to employees that have been certified as achieving a particular competency level, as assessed by the Māori Language Commission. The value of the payment varies from agency to agency and will depend on the skill level reached. Potential payments are commonly between around \$1000 and \$3500 per annum, however very few public servants will be able to access the highest allowance due to the level of fluency required.

23. You could choose to include an expectation that reflects the Government's intention to stop these allowances being paid in the future while recognising that the use of the skill, as part of a role, should be recognised. We provided possible wording for a draft expectation in the earlier report:

The Government expects that agencies will adequately plan for and recognise specific skills required for the employee to undertake their role within the base salary for that specific role. Proposals that would provide financial compensation for the development of skills, such as language, that are not required to perform the role (as recognised by the job description for that role) are not supported.

Interaction with Budget process

24. The Statement does not specify expected rates of increases. Instead, it offers clear guidance to agencies that they should expect to ensure all remuneration strategies and settlements are affordable and responsible, and that changes are sustainable, it does not specify expected rates of increases (see Priority 1).

25. This reflects the restriction on the Statement prescribing specific terms or conditions or the risk of undermining the responsibility of chief executives to be able to bargain in good faith under our employment legislation. It would also be challenging to set a single rate of increase across such a diverse workforce.

26. The main lever for managing costs in our system of devolved responsibility for remuneration setting is control over the Budget process and scrutiny of bids that have workforce implications along with the management of access to in-between contingencies. Scrutiny by Ministers with wider system employment relations oversight has also proved useful to reduce the size and frequency of exceptions to expected outcomes and fiscal surprises from workforce activity.
27. You will have an opportunity to align your employment relations and budget expectations through engagement on the Budget guidance and these Statements. We have shared a draft of this Statement with the Treasury Budget team to assist the development of the guidance.

Scope of the Government Workforce Policy Statement

28. The scope of the Statement is defined in the Public Service Act as any or all of the following:
- a) public service agencies
 - b) the New Zealand Police, the New Zealand Defence Force, and the Parliamentary Counsel Office
 - c) Crown agents or other Crown entities
 - d) organisations listed in Schedule 4, and companies listed in Schedule 4A, of the Public Finance Act 1989 (this includes a range of entities such as Fish and Game Councils, Asia New Zealand Foundation and companies where the Crown is a majority shareholder such as Education Payroll, Predator Free 2050).
 - e) the Reserve Bank of New Zealand
29. The Act stipulates, that if covered:
- a) a Public Service agency or Crown agent **must give effect** to the Statement and any request for information made under it.
 - b) an autonomous Crown entity **must have regard** to the Statement and consider any request for information made under it.
 - c) other types of Crown entities, the New Zealand Police, the New Zealand Defence Force, the Parliamentary Counsel Office, the Reserve Bank (if covered) and organisations listed in Schedule 4 or companies listed in Schedule 4A of the Public Finance Act 1989 **must have regard** to a Statement, and consider any request for information made under it, if the statement says so.
30. In practice, we have only applied the Statement to Public Service agencies, Crown agents; Autonomous Crown entities (such as Heritage NZ or the Public Trust); Independent Crown entities (such as the Broadcasting Standards Authority and the Electoral Commission); School Boards of Trustees; Crown Entity Companies; Tertiary Education Institutes; the New Zealand Police, the New Zealand Defence Force, and the Parliamentary Counsel Office. You have the choice to widen or narrow the scope of the Statement.
31. Our recommendation is that the scope is not widened at this point. This will help to ensure that the focus can be maintained on those areas that can make a significant difference to your employment relations priorities.
32. Attached, as Appendix B, is an overview of the agencies that a Statement could cover, with the current coverage status, and the legal role that the Commission plays in the agencies' employment relations settings.

Consultation and implementation process

33. You have the full authority to agree a new Statement, including who it will apply to, but historically most Ministers have sought the support of Cabinet to the Statement. This might be helpful because providing visibility of the Statement is also an opportunity to help your colleagues manage their relationships with their own agencies and their strategies for their workforces.
34. If you choose to establish a ministerial oversight group for public sector employment relations (see *Delivering Outcomes through Effective Employment Relations* paper), it can operate as an advisory body on the content of the Statement, reinforce Cabinet's expectations, and could review the employment relations strategies of any agencies that seek to take action that sits outside of the Statement's expectations.
35. In addition, the Act requires that consultation, but not agreement, occurs with all affected agencies and unions prior to the issuing of a Statement. This is typically done through providing a draft for comment and we can manage this process on your behalf.
36. As part of the consultation process we have typically organised an update and feedback session for Public Service chief executives (who must implement the expectations), employment relations practitioners from affected agencies, and the New Zealand Council of Trade Unions and Public Service Association to reflect union views.
37. The timetable for this consultation can be confirmed with your office once we have your agreement to commence. However, if we were to receive your feedback next week and we prioritise pace of consultation, we believe that we could provide a final Statement and draft Cabinet paper for you to consider in late January 2024.