



Report Title:	Government Workforce Policy Statement on Public Sector Employment Relations		
Report No:	2024-0020		
Date:	7 February 2024		
To:	Hon Nicola Willis, Minister for the Public Service		
Action Sought:	Agree to lodge attached Cabinet paper	Due Date	TBD
Contact Person:	Alex Chadwick - Deputy Commissioner Workforce		
Contact No:	9(2)(a)		
Encl:	Yes - revised draft Government Workforce Policy Statement and Cabinet Paper	Priority:	Medium
Security Level:	IN CONFIDENCE		

Executive Summary

1. This paper provides a summary of the feedback from the recent consultation on the draft Government Workforce Policy Statement on Public Sector Employment Relations (the Statement).
2. A draft Cabinet paper is attached for your consideration.
3. Proposed changes to the Statement as a result of feedback during the consultation process cover:
 - a. the provision of new allowances in the public sector
 - b. an expectation that agencies will avoid backdating of settlements
 - c. reference to the importance of Māori Crown Relations
 - d. areas of prioritisation for remuneration setting
4. Advice is also provided on a forum for Ministers to be engaged on the application of the Statement and oversight of public sector employment relations more generally.
5. It is intended that the Statement is publicly released following Cabinet consideration and once you have approved the Statement.

Recommended Action

We recommend that you:

- a **note** that the Public Service Commissioner has consulted affected agencies and unions on the content of the draft Government Workforce Policy Statement on Public Sector Employment Relations (the Statement) and has updated the Statement to reflect that feedback

IN CONFIDENCE

- b **indicate** any changes you wish to make to the Statement including:
- a. amending the current wording in priority two that refers to allowances as outlined in the attached draft Statement (bullet point 4)
Agree/disagree
 - b. amending the current wording to include “reward practices that are fair” in priority two that refers to employment settings as outlined in the attached draft Statement (bullet point 6)
Agree/disagree
 - c. amending the expectation on backdating as outlined in the attached draft Statement at priority two (bullet point 8)
Agree/disagree
 - d. adding to priority three an expectation that agencies take steps to close unjustified pay gaps as outlined in the attached draft Statement
Agree/disagree
 - e. adding to priority three an expectation that refers to workplace development as outlined in the attached draft Statement (bullet point 3)
Agree/disagree
 - f. adding a reference to the responsibility of the public service to support the Crown in its relationships with Māori under the Treaty of Waitangi (te Tiriti o Waitangi) in the roles and responsibilities section, as outlined in the attached draft Statement (paragraph 4 under “Roles and Responsibilities”)
Agree/disagree
 - g. amending the Statement as otherwise indicated in Appendix C.
Agree/disagree
- c **agree** to lodge the attached Cabinet Paper and Draft Statement at the Cabinet Expenditure and Regulatory Review Committee
- d **indicate** your preference for how Ministers can provide oversight of the application of the Statement and the public sector employment relations environment:
- a. Via a cabinet committee (and make a subsequent change to the Statement to reflect that process); or *Yes/No*
 - b. Through regular written reporting to the relevant Minister(s); or *Yes/No*
 - c. Through the establishment of a ministerial oversight group *Yes/No*
- e **agree** that the Public Service Commissioner releases the Statement following Cabinet’s consideration and the incorporation of your feedback.
Agree/disagree
- f **agree** that the Commission provides further advice on how the public sector could be supported to encourage more efficient employment relations engagements.
Agree/disagree

IN CONFIDENCE

Hon Nicola Willis
Minister for the Public Service

IN CONFIDENCE

Purpose of Report

6. This paper provides a summary of the feedback from the recent consultation on the draft Government Workforce Policy Statement on Public Sector Employment Relations (the Statement). Proposed changes to the Statement are outlined in this report and signalled in the marked-up version of the Statement attached (Appendix A).
7. A draft Cabinet paper is attached (Appendix B).

Content of the Statement –feedback and resulting changes to the draft

8. The role of the Statement, its scope and background is contained in the December 2023 report *Delivering Outcomes through Effective Employment Relations – Implementing a Government Workforce Policy Statement on Public Sector Employment Relations* [2023-0280]. Following your feedback on the draft Statement, including confirmation of its coverage, a consultation process was run from 8 January to 19 January.
9. Following that feedback, we have proposed some changes to the Statement (see Appendix A). The more substantive proposed changes are canvassed in this report, but for completeness we also summarise the more straight forward changes in Appendix C.

Allowances

10. A number of stakeholders (agencies and unions) raised concerns with the new expectation under priority two on allowances. This provided that agencies “adequately plan for and recognise specific skills required for the employee to undertake their role within the base salary for that specific role [and that] proposals that would provide financial compensation for the development of skills that are not required to perform the role (as recognised by the job description for that role) would not be supported”.
11. Part of the union concern with the clause was a belief that this clause would require agencies to remove existing allowances. Agencies also raised questions as to whether it would inhibit future capability building and development as they would not easily be able to recognise the development of new skills. We have proposed changes to the expectation to address these concerns, below.
12. Some of the feedback has linked this expectation to the earlier media coverage on te reo Māori allowances¹.
13. The clause is not seeking to target te reo Māori allowances, although it may impact the introduction of some types of allowances for competency in te reo in future agreements. The intent of the expectation is to draw agencies’ attention to the challenges of designing clauses that are effective and targeted, are cost effective to the Crown and avoid the appearance of personal gain. On this last point, the Auditor General publishes specific advice in his guide: *Controlling Sensitive Expenditure: Guide for Public Organisations*. This is relevant to extra payments that we have observed across the public sector, for instance wellness allowances, and is not limited to skills-based allowances.
14. We note, in respect of the Crown’s role in the support and revitalisation of te reo Māori, that the Statement aims to actively support the uptake of te reo Māori by the public sector. It emphasises

¹ We have previously provided advice to you on the use of allowances to support language skills in the report - *Delivering better public services and strengthening democracy: Use of the Māori language by public sector agencies* [2023-0302] and on allowances in general in the report *Allowances in the Public Service* [2023-0287].

proper compensation for skills, where they are used, in base salary. This helps to mitigate a common concern that those skills, especially language and cultural skills, are drawn on regularly by agencies but not recognised in the value placed on the role because it has been an unintended gain by the agency (eg a financial adviser who is fluent in te reo may be asked to support the agency, but that skill is not recognised in their primary role description or remuneration package).

15. As you know, issues concerning protection and fostering of te reo are likely to face close public scrutiny, and are being tested in the Waitangi Tribunal, and the courts. It is therefore highly likely that the inclusion of an expectation that will impact the availability of allowances for te reo Māori in the future will be the subject of legal challenge.

9(2)(h) legal privilege

17. To help address some of the concerns regarding the impact of a change to expectations affecting future te reo allowances, we propose two changes.
18. The first is to provide more scope for the use of allowances in limited circumstances. Specifically we propose replacing “...proposals that would provide financial compensation for the development of skills that are not required to perform the role (as recognised by the job description for that role) are not supported” with “New policies and employment conditions for the payment of allowances in addition to base salary may be acceptable in limited circumstances, for example, to recognise skills or duties which are occasional, rather than core to the role”.
19. The second change is to add a specific expectation in priority three (“have a workforce that is responsive to the needs of all New Zealanders”) that “Agencies can provide workplace development, where it is needed to deliver on this priority, including to enhance the public service’s ability to support the Crown in its relationships with Māori under the Treaty of Waitangi (te Tiriti o Waitangi) and to support Maihi Karauna: the Crown’s Māori Language Strategy under the Māori Language Act 2016.”. This addition would reassure agencies and unions that appropriate development of staff is still a core responsibility of the sector and also help to demonstrate the value placed on te reo Māori as a capability within the public sector workforce.
20. A reference to the Crown-Māori relationship (paragraph 25 below) would also support the interpretation of this expectation in a manner that is consistent with the Crown’s obligations to protect and foster te reo. The Commission will be able to further clarify and articulate our expectations for the implementation of this clause in guidance that supports the Statement. We will work with Te Taura Whiri i te Reo Māori/the Māori Language Commission to ensure that communication that accompanies the Statement supports these principles.

Backdating of settlements

21. The draft Statement includes the expectation that agencies “avoid backdating any components of adjustments to pay and conditions (either through effective dates or compensatory lump sum payments)”. A version of this expectation has been included in all recent Government Workforce Policy Statements (or similar) and has been helpful in encouraging efficient and effective bargaining, particularly in the Public Service. The effect of this is that we expect agencies to apply increases and other changes in conditions from the date a new collective agreement comes into force, rather than backdating to the expiry date of the last collective

agreement or some other agreed date. This expectation also applies to other employment relations activity such as pay equity, or when remuneration design work is done with unions.

9(2)(g)(i) free and frank

Crown Māori Relationship

25. A number of respondents noted the absence in this Statement of a specific reference to the Treaty of Waitangi and questioned whether it signalled a change in expectations, including a diminishment of the obligations under the Public Service Act 2020.
26. While the Statement already provides that chief executives must comply with all legislation including the Act, you could choose to make explicit reference to the obligations contained in section 14 (Crown's relationships with Māori) and section 73 (Chief Executive of a department and board of an interdepartmental venture to be a good employer). If you wish to do so, we suggest the following addition:

“Attention is drawn to the responsibility of the Public Service to support the Crown in its relationships with Māori under the Treaty of Waitangi (te Tiriti o Waitangi). The Public Service does so through the Commissioner, public service chief executives, interdepartmental executive boards, and boards of interdepartmental ventures having responsibility for developing and maintaining the capability of the public service to engage with Māori and to understand Māori perspectives and through being a good employer as defined in section 73 of the Public Service Act”.

Prioritisation within remuneration strategies

27. Other than an expectation that the pay of public sector chief executives and deputies is linked to outcomes, the draft Statement did not indicate other areas of priority for remuneration strategies. This represents a different approach to that under the previous Government and received both comments of support and challenge from agencies and unions. Unions sought commitments for lifting low pay (including commitment to the Living Wage scheme), closing ethnic and gender pay gaps, linkages to cost of living indicators and the use of step-based progression systems for remuneration. Agencies sought confirmation about how much flexibility they have in remuneration setting and also reinforced the importance of being able to target increases to attract and retain specific skill sets (for which the draft Statement provides). Some agencies also suggested that the Statement include an expectation of a continued focus on reducing gender and ethnic pay gaps.

28. In general, we consider agencies are best placed to make decisions about what to prioritise within their remuneration strategies. Unions are also free to make claims about this in bargaining.
29. A focus on lifting low pay was a feature of the current Government Workforce Policy Statement under the previous Government. This led to some noticeable lifts for low paid employees in the Public Service. The sectors with the highest remaining concentration of low paid employees are the health and education sectors. While we do not recommend a general expectation in the Statement prioritising low pay across the entire Public Sector, we could provide further advice on a sector-based approach to addressing low pay if sought.
30. We do not recommend the inclusion of an expectation linking remuneration setting to the Living Wage movement. There is occasional pressure to do so in the public sector, either within bargaining or through direct approaches to agencies. Our advice to agencies considering this is to be mindful of the membership costs associated with this movement and the risks of making an enduring commitment that allows an external committee to set remuneration levels for a publicly funded workforce.
31. Through targeted focus by agencies, significant progress has been made in the last few years to close gender and ethnic pay gaps across the Public Service (Further information is contained in the report – *Diversity, Equity and Inclusion in the Public Service [2023-0323]*). We therefore recommend that the Statement clarifies an expectation that this work continues to be prioritised by agencies and suggest the following amendments:
 - a. amend the sixth bullet point under priority 2 to read “have employment settings that are fair, reward practices that are fair, and standards that ensure there continues to be trust and confidence in the public sector”.
 - and
 - b. include an expectation under priority 3 to “Establish equitable employment and remuneration practices and take steps to close unjustified pay gaps”.

Other concerns or suggestions raised that have not been addressed

32. Quite a bit of the feedback from agencies sought clarification on how the expectations might apply in specific circumstances. The Commission can respond directly to agencies on these issues or consider issuing guidance on some areas.
33. There were a number of requests from unions that agencies be required to commit to specific conditions of employment, such as “adequate compensation” if an employee is working away from home. Expectations which may amount to the setting of employment terms and conditions are not appropriate for inclusion in the Statement and issues like this are best left to be determined at the agency level.
34. The Council of Trade Unions and some unions sought the inclusion in the Statement of reference to the public sector being an “exemplar employer” or a commitment to “offer good jobs”. These suggestions have not been progressed, in part because the concepts are sufficiently covered elsewhere in the Statement and there is not shared clarity about the meaning of the phrases to be able to confidently predict their impacts.
35. Commitment was sought from some unions around continued investment in particular services or staffing levels and the ongoing funding of pay equity and pay parity claims. These are funding decisions for Government to make and outside the scope of the Statement.

36. Several union submissions sought the removal of the reference to performance pay in priority two. As this wording aligns with the Government's commitment in the 2023 Speech from the Throne, we have not proposed any change to this wording.
37. Finally, the union movement sought a commitment to collective bargaining including that collective bargaining be deemed the primary method of remuneration setting in the public sector. These suggestions have not been progressed as we believe that the Statement adequately reinforces the legal obligations on agencies and unions and encourages effective and productive employment relationships.

Ministers' engagement with Public Sector Employment Relations

38. The draft Government Workforce Policy Statement includes an expectation that if the Commissioner or monitoring department considers any agency's proposed approach to be inconsistent with the Statement or to have adverse system-wide implications, the agency may be asked to consult with its responsible Minister, the Minister for the Public Service, the Minister of Finance and the Minister for Workplace Relations and Safety.

9(2)(g)(i) free and frank

40. We understand you may previously have indicated a preference for this engagement to be via a Cabinet committee. If that remains your view, we suggest amending the Statement to provide that "if the Commissioner or monitoring department considers an agency's proposed approach could be inconsistent with this Statement or have adverse system-wide implications, then they may recommend that the agency consults with the relevant Cabinet committee".
41. We have also previously advised on options for a forum to facilitate such ministerial engagement and to provide Ministers more generally with oversight of public sector employment relations (see *Delivering Outcomes through Effective Employment Relations* [2023 – 0293]). Through such a forum, Ministers can oversee application of the Statement, reinforce Cabinet's expectations, and consider at an early stage any proposals or approaches by agencies which may be outside these expectations. Central agency organisations can also provide relevant Ministers with information and analysis on key trends and insight on the public sector employment relations ecosystem, including remuneration trends, trends in size or supply pressure on the workforce, fiscal pressures and legal risks.
42. Such a forum would provide Ministers with early, informal engagement with key public sector employment relations issues or bargaining approaches, including where a formal Cabinet decision is not required. Any decisions that are required because they have Budget implications must still go to a Cabinet Committee for formal consideration.
43. Other options for Ministerial engagement include relying on regular written reporting to the relevant Minister(s) with approval sought by 'round-robin' papers, along with regular updates on trends and issues.
44. We have included an option for you to indicate your preference for oversight of the employment relations environment in the recommendations. This preference can also be reflected in the draft Cabinet paper as appropriate.

Cabinet paper and next steps

45. You have the full authority to agree a new Statement but historically most Ministers have sought the support of Cabinet. You have indicated that you wish to take the Statement to Cabinet and so a draft Cabinet paper is attached to support this.
46. There is a possibility that the Cabinet discussion will result in further changes to the document. For that reason, the draft Cabinet paper contains a recommendation that, following Cabinet agreement, you will be able to make changes to the Statement to reflect Cabinet discussion, prior to issuing the finalised document.
47. The Public Service Act requires that as soon as practical after your approval, the Commissioner must make the Statement known to affected agencies and available to the public.
48. Therefore, after Cabinet has considered the Statement, and once we have confirmation from your office that you have approved the Statement (with any changes Cabinet may suggest), we will deliver the Statement to affected agencies within two working days and share with unions within four working days. This will allow the affected parties an opportunity to prepare any communication with staff or members. We will then release it on our website.
49. The delivery of the Statement to affected agencies will be accompanied by an updated letter of delegation for those Public Service chief executives that bargain under delegation from the Public Service Commissioner. Crown entities will also be written to formally by the Commissioner.
50. We can provide your office with a draft press release or other communication collateral if desired to accompany the release of the Statement.