



Report Title:	Repealing the Plain Language Act 2022		
Report No:	2024-0169		
Date:	22 July 2024		
To:	Hon Nicola Willis, Minister for the Public Service		
Action Sought:	Discuss advice with officials	Due Date	At your convenience
Contact Person:	Hannah Cameron, Deputy Commissioner Strategy and Policy		
Contact No:	9(2)(a) privacy		
Encl:	Yes – Draft Cabinet paper	Priority:	Medium
Security Level:	IN CONFIDENCE		

Executive summary

1. You submitted a bid on 19 February 2024 requesting that legislation for repealing the Plain Language Act 2022 (the Act) be included in the Legislation Programme for 2024. This report provides you with a draft Cabinet paper seeking agreement to repeal the legislation. We also outline remaining decisions for you to make in order to finalise that draft Cabinet paper.
2. The Act was passed in October 2022. It resulted from a Member's Bill sponsored by MP Rachel Boyack. It was intended to improve the accountability and effectiveness of the Public Service through the use of plain language in public-facing documents.
3. The Public Service Commission (the Commission) has roles under the Act to issue implementation guidance to agencies and report on compliance. Implementation to date has aimed to place minimal administrative burden and resource demand on agencies, with agencies encouraged to use existing resources and processes wherever possible.
4. A significant majority of submitters in the select committee process supported the underlying intent of the Act to improve the use of plain language. However, there was a notable view (including from the Legislation Design and Advisory Committee and the New Zealand Law Society) that legislation was not the most appropriate mechanism for progressing that intent. A small number of parties with a strong interest in plain language strongly supported the legislative content of the Act as well as its underlying intent.
5. The Commission also supports the underlying intent, noting its consistence with the Public Service principle of open government (s 12, Public Service Act 2020). But, as noted in our advice during the select committee process,¹ the policy intent of the Act could equally be progressed through non-legislative options.
6. The repeal Bill will not need a regulatory impact statement as it involves no or minor impacts for businesses, individuals, and not-for-profit entities. Timeframes for the rest of

¹ See Departmental Report at www.parliament.nz/resource/en-NZ/53SCGA_ADV_115953_GA21359/639a02472023796992afaae7214015da57ab0b70.

this work will depend on the level of ambition for non-legislative options to progress plain language policy aims.

Purpose of report

7. This report provides a draft Cabinet paper on the repeal the Plain Language Act (the Act) and outlines key matters for discussion to progress this work.

Background

8. You submitted a bid on 19 February 2024 for inclusion of a proposed Plain Language Act Repeal Bill in the Legislation Programme. The bid was successful, and the proposed bill has been allocated a category 7 priority (no drafting instructions expected by the end of 2024), which we advised would allow time for policy discussions.
9. The Plain Language Act was passed in October 2022. It resulted from a Member's Bill sponsored by MP Rachel Boyack. The Act aims to improve the effectiveness and accountability of the Public Service through the use of clear, concise, easily understood language in public documents. It requires agencies to take reasonable steps to ensure this, including by appointing a plain language officer and reporting to the Public Service Commissioner on their compliance.
10. The Public Service Commission published guidance for agencies that outlines five key steps to ensure their compliance with the Act. The guidance encourages agencies to use existing resources and processes in meeting these requirements.
11. The Select Committee process surfaced some concerns with the appropriateness of the legislation for progressing the policy aims of plain language, including from the New Zealand Law Society and the Legislation Design and Advisory Committee (LDAC). In particular, LDAC recommended that the legislation not proceed because of the possibility of legal risks (among other reasons).

Advice

Implications of repeal

12. Implementing the repeal of the Act would result in the Commission retracting their procedural guidance on complying with the Act and agencies no longer having any requirement to follow the steps in that guidance. These steps are:
 - a. appointing a plain language officer,
 - b. providing staff training and resources,
 - c. having a process for taking on public feedback,
 - d. considering plain language as part of internal processes, and
 - e. reporting on plain language activity.
13. The Act does not include any legal enforceability and specifically avoids placing a direct requirement on agencies to use plain language, instead assigning a responsibility (owed to the Public Service Commissioner) to "take reasonable steps" to ensure the use of plain language. This was a result of the Select Committee process where, as noted above, the Committee received advice on the risk of legal challenge for public service agencies, including from LDAC. Repealing the Act will therefore only remove administrative and compliance requirements from agencies.

14. Repealing the Act will not stop agencies from undertaking any activity to develop their use of plain language on a voluntary basis, and will not require agencies to undo or remove any actions they have already taken in implementing the Act. Apart from the formal appointment of plain language officers, all the other implementation actions could be undertaken by agencies at their discretion without the regulatory framework of the Act.

Other options for achieving plain language policy aims

15. We noted in our report on the legislation bid for this proposal (no. 2024-0023) that repealing the Act may draw some criticism, as it was supported by a majority of submissions in the select committee process, especially on the basis of its policy intent.
16. The Commission also supports the policy intent of the Act to improve the use of plain language in government communications, noting that it aligns with the Public Service principle of open government (s 12, Public Service Act 2020).
17. The Cabinet paper is currently drafted based on statements made while parties to the Government were in opposition during the select committee process for the original Act that the use of plain language is still a worthy goal, despite the inappropriateness of legislation to progress that goal.
18. In line with that statement, there are some policy options that would progress plain language goals and signal support for the policy intent of the original Act through non-legislative mechanisms.
19. The paper as currently drafted takes a light touch approach to encouraging the policy intent of increasing plain language use, stating broad support for the use of plain language and an expectation that agencies continue to produce plain language communications as appropriate within their specific context. This would have minimal disruption and minimal impact on public resources.
20. A slightly stronger approach that could be reflected in the Cabinet paper would be to signal a further expectation that agencies with exemplary plain language practices take a leadership role in sharing these practices with others through a community of practice model. Maintaining a commitment to using plain language and sharing best practice could become part of the business-as-usual functions of the pre-existing Heads of Communications network.
21. There were also other non-legislative options for progressing the policy intention of the Act raised through the Select Committee process. These would likely be associated with greater cost, especially for the first two. The options include:
 - a. Culture shifts through leadership, supported by training, guidance and auditing;
 - b. Mandatory plain language training for public servants;
 - c. Formal expectations on chief executives and senior managers; and/or
 - d. Accountability mechanisms where Parliament holds the Executive to account for promoting and progressing the use of plain language (e.g. select committees using annual review and estimates processes to seek information on how well agencies set and meet plain language standards).
22. To be effective, a more extensive non-legislative programme would need to be underpinned by clear Government policy on the use of plain language.
23. We can provide you with further advice on implementing a non-legislative approach to the use of plain language if desired.

Process for repeal

24. The repeal bill for the Act will need to go through the regular policy and parliamentary processes to be enacted. The enclosed draft Cabinet paper and the advice included in this report forms the first step of that process.
25. The proposal is exempt from the requirement to include a regulatory impact statement, on the basis that it involves no or minor impacts for businesses, individuals, and not-for-profit entities. Furthermore, we anticipate that the drafting of the Bill itself will be straightforward.
26. The rest of the process is as follows:
 - a. Consultation on the final draft Cabinet paper, agreement by Cabinet, and preparation of drafting instructions;
 - b. Drafting of the repeal bill (by the Parliamentary Counsel Office), including reviews and edits, consultation with other departments, and Bill of Rights Act vetting;
 - c. Ministerial consultation, LEG committee and approval, Cabinet approval to introduce the Bill; and
 - d. Parliamentary process (including three readings, select committee time and committee of the whole house).
27. Placement of this work on the Legislation Programme means that the Bill is expected to be introduced to the House next year. However, it may be possible to repeal the Act in a shorter timeframe if this suited the government's Legislative Programme and House business management plans.
28. We are ready to move on the steps outlined in 23(a) above. We propose a light touch approach to agency consultation using the established Heads of Communications network, who for the most part are the same people who were designated as their agencies' plain language officers.
29. The Parliamentary Counsel Office have advised that the steps in 23(b) above will take approximately one month and they anticipate no issues in balancing that with the rest of their work programme.
30. You may therefore wish to discuss the government's preferred timing and approach to managing the repeal bill through the legislative process with the Leader of the House.

Next steps

31. We suggest you discuss this advice with officials.
32. In particular, we suggest you consider your position on the policy intent of the Act and what, if any, non-legislative mechanisms you would like to explore for progressing that aim.
33. Following from that, we suggest you also consider your preferred timeframes for this work.

Recommended action

We recommend that you:

- a **discuss** this advice with officials, including your position on the policy intent of the Act and whether you would like to explore and non-legislative mechanisms for progressing that aim, as well as your preferred time frames for this work.
- b **agree** that the Public Service Commission release this briefing, subject to any appropriate redactions, once final Cabinet policy decisions have been made on these issues.

Agree/disagree.

Hon Nicola Willis

Minister for the Public Service

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