

Hon Chris Hipkins
Minister for the Public Service

Building a unified Public Service which is a great place to work: establishing common leave provisions

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[IN-CONFIDENCE]

Office of the Minister for the Public Service

Chair, Cabinet Business Committee

**Building a unified Public Service which is a great place to work:
establishing common leave provisions**

Proposal

1. This paper seeks to support the achievement of a unified Public Service through the establishment of common leave conditions. It seeks Cabinet agreement to supersede existing leave maxima in the Public Service and enable implementation of common leave conditions.

Executive summary

2. The Public Service Act 2020 paved the way for a more adaptive, agile and collaborative Public Service which can more effectively meet the needs of New Zealanders and the communities it serves. A strengthened, shared identity will drive the cultural shift to build a unified Public Service that can mobilise quickly to deliver on this Government's priorities.
3. Modern and exemplar terms of employment, which are consistent across agencies, will support the development of a unified Public Service with a shared identity and facilitate greater interoperability. Work is underway to develop a suite of common and consistent conditions for public servants, through a collaborative programme between Te Kawa Mataaho, the Public Service Association (PSA) and agencies.
4. Common leave conditions for annual, sick and long service leave are under consideration as part of this work programme. I am seeking Cabinet's agreement to supersede the existing leave maxima in the Public Service, agreed by Cabinet in 2009 [CAB Min (09) 5/5A], to support implementation of common leave conditions, and continue to build towards a unified Public Service.

A unified Public Service is an effective Public Service

5. A key priority for this Government is to ensure that all New Zealanders have opportunities to participate in and share the benefits of economic growth. We have made commitments to strengthen employment relations and ensure fair, quality employment for all New Zealanders.
6. The Public Service must lead by example for the wider economy by modelling the behaviours and employment relations practices we want to see. While we lead out on our commitments to improve employment for all New Zealanders, we need the Public Service to exemplify modern and fair employment and workforce cultures.

7. Modern, fair, and consistent employment conditions will aid the attraction of a highly capable workforce which reflects the diversity of the society it serves.
8. Greater consistency of employment conditions will support the aims of the Public Service Act 2020 of a unified Public Service with a strengthened, shared identity. Under the Act, public servants are considered to be appointed to the Public Service, encouraging a sense of identity not just as employees of their agency but as part of a much broader, unified, Public Service.
9. Consistent conditions will also help to drive the culture shift necessary to build a Public Service that is more adaptive, responsive and able to be quickly mobilised to tackle specific issues and deliver better outcomes for New Zealanders. This increased interoperability will mean that public servants can be deployed flexibly, supporting more efficient public services and better use of resources through increased collaboration across agency boundaries.
10. Our Government Workforce Policy Statement (GWPS) earlier this year set out our goals for the Public Service workforce, to:
 - establish the Public Service as an exemplar to other employers in the public sector and beyond;
 - make the Public Service an exemplar of modern, progressive employment practice and a great place to work;
 - have a productive, unified Public Service workforce grounded in a spirit of service to the community;
 - ensure these goals are achievable within the Government's fiscal settings.
11. These are important elements of the Public Service that we are building for the future. To support the achievement of these goals, we set an expectation in the GWPS that agencies will work collaboratively with unions and other groups, and use opportunities in bargaining to modernise terms and conditions of employment and enhance consistency and commonality across the Public Service.
12. Te Kawa Mataaho Public Service Commission has already begun joint work with the Public Service Association and agency representatives to develop a range of common and consistent conditions of employment for public servants, including leave provisions, service recognition, union engagement, gender pay principles, flexible working and health and safety.
13. The range of common and consistent provisions, once agreed and ratified, will be implemented across employment agreements through the Public Service Commissioner's existing mechanisms as set out in the Public Service Act 2020.

Common leave conditions for public servants will support wellbeing and fairness

14. Developing common leave conditions in the Public Service, including annual, sick and long service leave, has been a key area of focus for the Commission's work programme with the Public Service Association to date.

15. Ensuring employee wellbeing is a priority for this Government. We are committed to employing people fairly, and in a way that allows them to live good lives and participate in the economy.
16. As an exemplar employer, the Public Service must role model the flexible work environment and supportive culture we expect to see in the wider economy. Modern, flexible leave provisions for public servants that reflect the contemporary work environment will support staff wellbeing, retention and recruitment; continuing to reaffirm the Public Service as a great place to work.
17. Commonality on leave conditions in the Public Service will facilitate an improved sense of fairness across agencies – public servants can be confident that they have the same entitlements regardless of the size of their agency or type of role. Greater commonality of leave conditions will also support our ambition for leave portability between agencies, as the Public Service Act intended.
18. At present, annual, sick and long service leave provisions are covered by maxima agreed by Cabinet in 2009 [CAB Min (09) 5/5A]:
 - an annual leave entitlement of 25 days per annum, inclusive of the statutory minimum of four weeks annual leave plus five days other leave (departmental, community, wellness, other annual) after completing five years' service;
 - ten days' sick leave and care for dependants in each of the first two years of employment, and 15 days per annum thereafter, with a maximum accrual of 260 days;
 - long service leave of two weeks after ten years' continuous service and one whole week after every five years' continuous service thereafter.
19. The maxima were introduced at that time as part of the government's response to the deteriorating economic and fiscal environment. Leave is the only area where agreed maxima exist.
20. Over the last 12 years, the maxima have allowed public service agencies to reach a reasonable degree of consistency of leave entitlements, with agencies bargaining up to the maximum levels set. It is now timely for the maxima to be reviewed, given the length of time they have been in place, and the passage of the Public Service Act 2020 which provides the foundation for public service reform and a unified Public Service.
21. The Commission and the Public Service Association have worked with agency representatives to develop common leave entitlements for the Public Service¹. The following common provisions are being considered:
 - five weeks' annual leave per annum (incorporating departmental days, community, wellness or similar leave) from the start of employment;

¹Coverage to include all organisations as listed in Schedule 2 of the Public Service Act 2020 - departments, departmental agencies, interdepartmental executive boards, and interdepartmental ventures.

- 20 days' sick leave per annum (including for care of dependants) from the start of employment, with a maximum accrual of 260 days; and
- one week of long service leave after five years' service and one week every five years of continuous service thereafter.

22. Further detail on the common leave provisions under consideration can be found at Annex A.

Leave maxima are no longer required to deliver commonality

23. The common leave provisions under consideration go further than the existing leave maxima previously agreed by Cabinet, which must therefore be superseded to enable implementation.
24. New revised maxima are not required to achieve the commonality that we are seeking in the Public Service. Instead, the Commissioner can use existing mechanisms, including directions or conditions on the delegation for the negotiation of collective agreements under s80 of the Public Service Act, to implement common leave conditions in employment agreements. Using this approach will mitigate any risks of agency bargaining beyond the agreed common conditions.
25. I am therefore proposing that Cabinet agree that the existing leave maxima in the Public Service be superseded by the implementation of common leave conditions, which will be established by the Public Service Commissioner.
26. It should be noted that the existing leave maxima will remain in place until the point at which each agency implements employment agreements in line with the common leave conditions.

Consultation

27. This paper was consulted on with Crown Law Office, Department of Conservation, Department of Corrections, Department of Internal Affairs, Department of the Prime Minister and Cabinet, Education Review Office, Government Communications Security Bureau, Inland Revenue Department, Land Information New Zealand, Ministry for Culture and Heritage, Ministry for Pacific Peoples, Ministry for Primary Industries, Ministry for the Environment, Ministry for Women, Ministry of Business, Innovation, and Employment, Ministry of Defence, Ministry of Education, Ministry of Foreign Affairs and Trade, Ministry of Health, Ministry of Housing and Urban Development, Ministry of Justice, Ministry of Māori Development—Te Puni Kōkiri, Ministry of Social Development, Ministry of Transport, New Zealand Customs Service, New Zealand Security Intelligence Service, Oranga Tamariki—Ministry for Children, Public Service Commission, Serious Fraud Office, Statistics New Zealand, Te Kāhui Whakamana Rua Tekau mā Iwa—Pike River Recovery Agency and The Treasury.
28. Agency feedback suggested that they are supportive of the principle of common leave conditions and superseding the existing leave maxima to achieve this objective.

29. Detailed feedback on the proposed provisions, and implementation considerations, will be considered by the Commission as part of designing the implementation approach.

Financial Implications

30. The financial impacts of the proposed changes will vary across agencies depending on how far existing entitlements are from the proposed common conditions, and the size and nature of their workforce.
31. Accrued sick leave is not paid out on termination of employment, so there is no increased leave liability cost for agencies of the proposed changes. As sick leave is a needs-based entitlement, it is difficult to estimate the impacts of an increased entitlement to 20 days. However it should be noted that average sickness absence levels in the public service are currently 7.8 days per annum².
32. For long service leave, proposed changes will have the effect of bringing forward a week of the long service entitlement to the five-year point for most agencies. This will incur an increased cost for those agencies who do not currently recognise long service until the ten-year point, or later.
33. For annual leave, the most common impact of the proposed change will be an increase of two days for those in the first five years' of their public service career. Additional annual leave entitlement may result in costs for agencies through some lost productivity, an increased liability to pay out unused leave on exit, and any additional FTE required to cover staff on leave, particularly in operational settings.
34. Feedback from agency consultation suggests that small agencies expect to be able to meet any additional costs from within existing baselines. For larger operational agencies where there may be a greater impact, the Commission will seek to mitigate cost impacts to enable agencies to meet costs within baseline, through the design and timing of the implementation approach.

Legislative Implications

35. This paper has no legislative implications.

Human Rights

36. The enhancement and modernisation of the common leave provisions in the Public Service is consistent with Article 7 of the International Covenant on Economic Social and Cultural Rights recognises the right of everyone to the enjoyment of "just and favourable conditions of work", which specific includes a "decent living for themselves and their families" and to "rest, leisure and reasonable limitation of working hours and periodic holidays with pay".

² Human Resource Capability survey, 2020

Gender Implications

37. Women continue to shoulder a disproportionate share of unpaid work and caring responsibilities in families and households. Modernised and enhanced leave conditions, particularly for sick and dependant leave, will give families and households more choice to enable them to more fairly share caring responsibilities.

Disability Perspective

38. Research shows that annual leave and sick leave help disabled employees and their employers to accommodate disabilities at work.³ Modernised and enhanced common leave provisions will better support employers and disabled employees to accommodate disabilities at work.

Proactive Release

39. A decision on proactive release will be made once a timeframe for implementation has been confirmed.

³ Ministry of Social Development (2012) *Employer attitudes towards employing disabled people*, Point Research Limited, <https://www.odi.govt.nz/assets/Guidance-and-Resources-files/Employers-Research.pdf>

Recommendations

The Minister for the Public Service recommends that the Committee:

1. **agree** to support the principle of common leave provisions in the Public Service
2. **note** the Commissioner's intentions to establish common leave provisions in the Public Service
3. **agree** that the leave maxima in the Public Service, previously agreed by Cabinet, should be superseded by the Commissioner establishing common leave provisions using existing powers under the Public Service Act
4. **note** that for each agency, the leave maxima will be superseded when that agency implements the common leave provisions
5. **note** that the common leave provisions being considered for the Public Service are as follows:
 - i. five weeks' annual leave per annum (incorporating departmental days, community, wellness or similar leave) from the start of employment;
 - ii. 20 days' sick leave per annum (including care for dependants) from the start of employment, with a maximum accrual of 260 days; and
 - iii. one week of long service leave after five years' service and one week for every five years of continuous service thereafter.

Authorised for lodgement
Hon Chris Hipkins
Minister for the Public Service

Annex A – Common leave provisions being considered for the Public Service

Annual leave

40. The current maximum entitlement is for 25 days per year after five years' service, inclusive of the statutory minimum of four weeks' annual leave, plus five days other leave (departmental, community, wellness, other annual). At present, staff in their first five years' service can have anything from 20 to 25 days annual leave.
41. The proposal would bring forward the entitlement of 25 days (incorporating departmental days, community, wellness or similar leave) per annum to *the start* of employment, making the common entitlement from year one equivalent to the current maximum after five years.

Sick leave

42. The current maximum in the Public Service is ten days sick leave and care for dependants in each of the first two years of employment, and 15 days per annum thereafter, with a maximum accrual of 260 days. The statutory minimum is 10 days' sick leave.
43. The proposed sick leave entitlement of 20 days per annum would be five days higher than the current sick leave maxima allows after two years' service and would also commence from the start of the employment.

Long service leave

44. The current maximum for long service leave is two weeks after ten years' continuous service and one whole week after every five years' continuous service thereafter. Most agencies will count service across the public service when considering eligibility for long service leave (so a public servant who has worked for agency 'A' for seven years, may be eligible after three further years at agency 'B').
45. The proposed long service leave change is to reduce by one week the maximum entitlement at ten years' continuous service, and add one week at five years' continuous service, effectively bringing forward one of the two weeks of entitlement. An entitlement of one week every five years at fifteen years' service and beyond is consistent with the existing maximum. A common approach to the recognition of service for long service leave is currently being developed.

Impacts of proposed changes

46. The proposed common entitlements will form a simplified approach to leave provisions which will be easier to understand and reduce administrative complexity. Overall, the proposed changes would represent a small improvement on some aspects of most agencies' current entitlements.
47. It should be noted, however, that some collective agreements and individual agreements introduced before 2009 already exceed the maxima. Implementation will not serve to reduce the entitlements for those already above the proposed common terms upon implementation.



Cabinet Government Administration and Expenditure Review Committee

Minute of Decision

This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.

Building a Unified Public Service: Establishing Common Leave Provisions

Portfolio Public Service

On 16 December 2021, the Cabinet Government Administration and Expenditure Review Committee:

- 1 **noted** the Public Service Commissioner's (the Commissioner) intention to establish common leave provisions in the Public Service;
- 2 **agreed** to support the principle of common leave provisions in the Public Service;
- 3 **noted** that in 2009, Cabinet agreed that the following leave entitlements be regarded as maxima in the Public Service:
 - 3.1 an annual leave entitlement of 25 days per annum, inclusive of the statutory minimum of four weeks' annual leave plus five days other leave (departmental, community, wellness, other annual), after completing five years' service;
 - 3.2 ten days sick leave and care for dependants in each of the first two years of employment, and fifteen days per annum thereafter, with a maximum accrual of 260 days;
 - 3.3 long service leave of two whole weeks after ten years' continuous service, and one whole week after every five years' continuous service thereafter

[CAB Min (09) 5/5A]
- 4 **agreed** to recommend that Cabinet:
 - 4.1 rescind the decision in paragraph 3 above; and instead
 - 4.2 agree that the Commissioner establish common leave provisions using existing powers under the Public Service Act 2020;
- 5 **noted** that for each agency, the leave maxima will be superseded when that agency implements the common leave provisions established by the Commissioner;

- 6 **noted** that the common leave provisions being considered for the Public Service are as follows:
- 6.1 five weeks' annual leave per annum (incorporating departmental days, community, wellness or similar leave) from the start of employment;
 - 6.2 20 days' sick leave per annum (including care for dependants) from the start of employment, with a maximum accrual of 260 days;
 - 6.3 one week of long service leave after five years' service and one week for every five years of continuous service thereafter.

Rebecca Davies
Committee Secretary

Present:

Hon Grant Robertson (Chair)
Hon Dr Megan Woods
Hon Chris Hipkins (Deputy Chair)
Hon Carmel Sepuloni
Hon Nanaia Mahuta
Hon Damien O'Connor
Hon Stuart Nash
Hon Peeni Henare
Hon Michael Wood
Hon Kiri Allan
Hon Dr David Clark
Deborah Russell, MP

Officials present from:

Office of the Prime Minister
Officials Committee for GOV



Cabinet

Minute of Decision

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Report of the Cabinet Government Administration and Expenditure Review Committee: Period Ended 17 December 2021

On 20 December 2021, Cabinet made the following decisions on the work of the Cabinet Government Administration and Expenditure Review Committee for the period ended 17 December 2021

GOV-21-MIN-0063

**Building a Unified Public Service: Establishing
Common Leave Provisions**
Portfolio: Public Service

CONFIRMED



Michael Webster
Secretary of the Cabinet