



[IN-CONFIDENCE]

## Advance drafting for New Zealand Public Service Bill

**Date:** 26 July 2018  
**Report No:** SSC2018/755  
**Contact:** Andrew Royle, Chief Legal Officer  
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	Action Sought	Deadline
Hon Chris Hipkins <b>Minister of State Services</b>	<b>Agree</b> to seek the Attorney-General's approval for the Parliamentary Counsel Office to receive drafting instructions and begin drafting the proposed NZ Public Service Bill prior to final policy decisions	
	<b>Refer</b> this report to the Attorney-General	Earliest convenience
Hon David Parker <b>Attorney-General</b>	<b>Note</b> the timeline to draft the proposed NZ Public Service Bill (PCO advises at least 9 months) is inadequate if drafting instructions are issued to PCO only after final policy decisions	
	<b>Authorise</b> PCO to receive drafting instructions and begin drafting a NZ Public Service Bill prior to final policy decisions by Cabinet	
	<b>Return</b> this report to the Minister of State Services	Earliest convenience

### Minister's Office Comments

<b>Comments:</b>	
<b>Date returned to SSC:</b>	

## Key points

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- 1 It is established practice to seek the approval of the Attorney-General to direct the Parliamentary Counsel Office (PCO) to receive instructions and begin drafting a Bill in instances where the priority of a Bill and established timetables require that instructions be provided before final policy decisions are taken.
- 2 The proposed New Zealand Public Service Bill has a priority 6 categorisation on the legislation programme for 2018 (instructions to PCO in 2018). The current timetable to develop this Bill envisages the Government making final policy decisions by the end of March 2019, for introduction by mid 2019 and passage of the Bill by the first half of 2020.
- 3 The State Services Commission has consulted with PCO who advise that it normally takes at least 9 months to draft a Bill of the size and complexity of the proposed New Zealand Public Service Bill. The timetable envisaged would clearly leave insufficient time for drafting if instructions are not sent to PCO until after the Government has made final policy decisions on all issues.
- 4 A large part of the Bill will carry over (with some modifications) existing provisions of the State Sector Act 1988 (SSA), including provisions about the powers and operations of the Commissioner, the renamed Public Service Commissioner and Deputy Public Service Commissioner, the powers and functions of departments, departmental agencies, and chief executives. The relocation of parts 7 to 7B of the SSA (which deal with the education service) into the Education Act 1989 also seems uncontroversial. There are also a large number of consequential amendments to other Acts that have been identified and for which drafting can begin.
- 5 Other parts of the Bill are new and the policy is not yet settled. These include Part 1 which will contain statements about the purpose, principles and values of the public service, and may contain provisions dealing with the relationship between Crown and Maori and about the significance of the Treaty of Waitangi. There are also proposals for new bodies or arrangements within the public service that need working through, and significant changes to workforce and personnel arrangements.
- 6 While it is not envisaged that there be substantial advance drafting of provisions for which there is no developed policy, it would be useful to involve PCO now in drafting in advance of some possibly contentious provisions such as those dealing with the Crown- Maori relationship, and the purpose, principles and values of the public service. In particular, it would be useful to have PCO draft provisions that are needed for sensitive consultations, so that people do not become committed to particular wordings and expressions, before the formal drafting process has even begun.
- 7 There has been some consultation with the Government's coalition and support partners on the main aspects of the Bill, but no firm commitments of support have yet been received.
- 8 Nevertheless, as the priority of the Bill and the established timeline require that instructions be provided to PCO before final policy decisions are taken, this report asks the Minister of State Services to agree to seek the Attorney-General's

approval for PCO to receive drafting instructions now in order to begin drafting the Bill. The drafter to whom the Bill is assigned would be expected to exercise judgment about which parts of the instructions are sufficiently advanced to justify drafting, having regard to the resources available and other drafting commitments of the PCO.

## Recommended Action

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### We recommend that you:

- a **agree** to seek the Attorney-General's approval for PCO to receive drafting instructions and begin drafting the proposed New Zealand Public Service Bill prior to final policy decisions  
*Agreed/not agreed.*
- b **refer** this report to the Attorney-General  
*Referred/not referred.*
- c **agree** that the SSC release this briefing in full once it has been considered by you and the Attorney-General, if referred, and returned by the Attorney-General to your office  
*Agreed/disagreed.*

Hon Chris Hipkins  
**Minister of State Services**

### We recommend that the Attorney-General:

- d **note** the timeline to draft the proposed New Zealand Public Service Bill (PCO advises at least 9 months) is inadequate if drafting instructions are issued to PCO only after final policy decisions  
*Noted/not noted.*
- e **authorise** PCO to receive drafting instructions and begin drafting a New Zealand Public Service Bill prior to final policy decisions by Cabinet  
*Authorised/not authorised.*
- f **return** this report to the Office of the Minister of State Services  
*Returned/not returned.*

Hon David Parker  
**Attorney-General**