

Hon Chris Hipkins

Minister for the Public Service

Government Workforce Policy Statement for the Public Sector

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Cabinet Paper – Government Workforce Policy Statement for the
Public Sector

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Office of the Minister for the Public Service

Chair, Social Wellbeing Committee

Government Workforce Policy Statement for the Public Sector

Proposal

1. This paper attaches a draft Government Workforce Policy Statement (Policy Statement) on employment relations expectations for the public sector for Cabinet's consideration and invites the Minister for the Public Service to finalise and issue the Policy Statement subject to any changes agreed in Cabinet.

Executive Summary

2. From time to time, Government issues expectations directing public sector agencies on employment standards and processes of negotiation for employment agreements. The Public Service Act 2020 (the Act) provides an opportunity to issue Expectations as a Policy Statement that agencies must either give effect to, or have regard to, as a matter of law.
3. Te Kawa Mataaho Public Service Commission (the Commission) has reviewed the existing Expectations and revised them in the light of the Government's wider employment principles and concerns. The draft Policy Statement attached to this paper will replace the existing Cabinet-mandated Expectations [CAB-18-MIN-0067].
4. Affected agencies and unions were consulted on the Policy Statement as required by the Act. Some changes have been made to the Policy Statement in response to their feedback. Other feedback, relating to implementation of the Policy Statement, will be addressed by the Commission as operational matters. Elements of union feedback (on the inclusion of contractors in coverage of the Policy Statement, removal of the pay restraint requirement, and backdating of settlements) have not been incorporated in the revised Policy Statement.
5. The Public Service Commissioner (the Commissioner) will issue operational guidance on the Policy Statement in relation to pay restraint.
6. 9(2)(g)(i) free and frank
[REDACTED]
[REDACTED]
[REDACTED]
7. I intend to finalise and issue the Policy Statement subject to any changes agreed in Cabinet.

Background

8. The Government periodically issues expectations covering how the agencies in the public sector are to operate and behave as employers, and how they are to align their employment relations policies and practice with the Government's objectives. Typically, these expectations have covered such matters as negotiation of collective and individual agreements, the need to settle bargaining within Government's fiscal parameters, and the need to be good and fair employers.
9. The current *Government Expectations on Employment Relations in the State Sector* were agreed by Cabinet and published in March 2018 [CAB-18-MIN-0067]. Given the passage of time, the change in economic conditions and the imminent expiry of the 2020 Commissioner's guidance, it is now timely to put a new set of expectations in place.
10. In 2019, the Commission reviewed these Government Expectations and in December 2019, the Ministerial Oversight Group on State Sector Employment Relations (MOGSSER) agreed to the Commission consulting all affected agencies and key Public Service unions on a revised set of Expectations. This consultation occurred, and then the work was paused at the onset of the COVID-19 pandemic.
11. In the meantime, the Act has passed into law. The new Act increased the number of agencies that can be covered by Government's workforce policies. Consequently, a Policy Statement is now an ideal vehicle for us to use to issue our employment and workforce expectations as almost every State agency will be required to either give effect to or have regard to it. These policy statements have the force of law whereas our employment relations expectations in the past have been issued simply as a Cabinet decision.
12. Revised employment relations expectations have now been drafted as a Government Workforce Policy Statement. This was discussed by the December 2020 MOGSSER which supported it for release as a draft for consultation with interested parties.
13. Following the consultation process, and finalisation of the Policy Statement, it is my responsibility to approve it under s.99 of the Act. However, given the importance of the matters addressed, I want to have Cabinet consideration and agreement before I do so.

Context

14. The attached Policy Statement (Appendix A) sits within the wider context of action we are taking on public sector employment matters. The financial situation of Government, and the need to demonstrate fiscal responsibility to the public, is a major part of this.
15. The fiscal context of public service employment relations has changed significantly due to the cost of responding to COVID-19. As of the Half-Year Economic and Fiscal Update (HYEFU) in December 2020, net debt is expected peak at 52.6% of GDP in

2022/23 (from 26.4% in 2019/20), and the operating balance before gains and losses (OBEGAL) is projected to be in deficit throughout the forecast period to 2024/25.

16. Given the devolved nature of public sector employment relations, expectation-setting is a central lever in managing the fiscal implications of employment relations. The Public Service will continue to play an important exemplary role on this front, with strong leadership from Central Agencies. However, beyond the reaches of the core public service, Ministers have an important role in the management of expectations of the wider public sector.
17. The Commissioner has issued pay restraint guidance to public sector agencies reflecting our expectation that pay adjustments will be at nil or minimal levels unless exceptional circumstances apply. The current guidance is for the period to 30 June 2021. The Commissioner proposes to issue operational guidance on pay to replace the current guidance at the same time as the Policy Statement is released. This is attached as Appendix B. I understand the Commissioner will review this guidance in mid-2023.
18. We are also taking steps to ensure that employment within the public sector reflects the principles that we are implementing in employment policy generally to ensure fairness and equity for all workers. These actions include:
 - 18.1. Action Plans for population groups experiencing persistently poorer labour market outcomes, including older workers, job seekers, refugees, recent migrants, and ethnic communities [CAB-19-MIN-0385].
 - 18.2. Strengthening the Employment Relations Act 2000 to better support collective bargaining, recognising security guards as a vulnerable workforce under that legislation.
 - 18.3. Developing a better statutory regime to protect dependent contractors.
 - 18.4. Legislating for and implementing Fair Pay Agreements to make it easier for workers to receive fair wages and conditions.
 - 18.5. Extending the living wage to workers contracted by the Government in priority industries, such as cleaning, catering, and security guards, and then further as the COVID-19 recovery allows.
 - 18.6. Overseeing a consistent approach to bargaining to achieve pay parity for health and early childhood education workforces.
 - 18.7. Completing bargaining to achieve pay equity for nurses and DHB administrative and clerical staff.
19. I aim to ensure that our principles are fully reflected in public sector employment relations so that we ensure equity of access to, and treatment in, employment. This includes, in addition to the present Policy Statement:

- 19.1. Action to implement our commitments in relation to the living wage.
- 19.2. 9(2)(g)(i) free and frank
- 19.3. Action to develop the Public Service as an exemplar employer. 9(2)(g)(i) free and frank

Content of, and rationale for, the attached Policy Statement

20. The provisions of the Act that deal with workforce matters (Part 4 of the Act) are purposely very broadly framed. They encourage us to take a wide view of workforce and employment, rather than the traditionally narrower focus on negotiation of employment agreements. Accordingly, the attached Policy Statement is broader than has been the case in the past.
21. The Policy Statement will apply to the same range of agencies as was covered by the earlier iterations of the expectations. A full list of agencies covered by the Policy Statement is included as Appendix 1 to the Policy Statement.
22. The Policy Statement reflects the change in context since the beginning of 2020 and sets the ambition for the Public Service to be an exemplar in employment practice. It also builds on the feedback received from both agencies and unions in the consultation in 2019/20.
23. The Policy Statement is designed to focus on, and advance, a wider set of concerns than covered by previous Expectations. These are:
 - 23.1. Establishing the Public Service as an exemplar of modern and progressive employment practice and having a productive unified Public Service.
 - 23.2. Working collaboratively with unions through shared vision and shared work programme.
 - 23.3. Promoting inclusion and diversity through proactivity in eliminating all sources of discrimination and bias and achieving a workforce representative of the wider New Zealand society.
24. Accordingly, the features of this Policy Statement are:
 - 24.1. A set of broad goals that reflect 9(2)(g)(i) free and frank and the Government's interest in maintaining its fiscal strategy - establishing the Public Service as an exemplar employer and an exemplar of modern, progressive employment practice; having a productive, unified Public Service workforce; and achieving these goals within the Government's fiscal settings.
 - 24.2. Four priorities for action by public sector agencies – equitable employment; collaborative working; diversity and inclusion; and supporting the Government's fiscal strategy.

- 24.3. Expectations of what these priorities mean for negotiating employment agreements and employment relations generally – a set of expectations and procedural requirements that relate to the negotiation of employment agreements and collective bargaining to support fair and equitable employment and achieving priorities within the Government’s fiscal strategy; expectations about union relationships and employee relations to support collaborative working; and expectations to support diverse and inclusive work environments.
25. The Commissioner also proposes to add an overall expectation that achievement of the goals of the Policy Statement requires innovative ways to put into practice the partnership of Te Tiriti o Waitangi and to have employment processes and practices that take account of tikanga and different cultures. More specifically in relation to the priority of creating a diverse and inclusive environment, emphasising the need for workplace policies and practices to recognise Te Ao Māori and support retention of Māori in the Public Service.
26. This makes it clear that we expect the Public Service to incorporate recognition of the Treaty partnership into its employment practices. This is in keeping with the aspiration of being an exemplar in employment practice.
27. The goals and priorities are important elements of the Public Service that we are building for the future. They are about enabling the Public Service to respond to the increasingly complex issues that Aotearoa faces, including the ongoing impacts of COVID-19 and the significant fiscal uncertainty that these are expected to create. It will also help to make sure the Public Service is admired as a great place to work and can attract the wide range of capable New Zealanders that we need to deliver the best services and outcomes for our nation.

Consultation on draft Policy Statement and changes made as a result of input

28. The Commissioner is required to consult all affected agencies when drafting a Policy Statement and may consult any other parties the Commissioner thinks fit. The Commission invited feedback from the 143 agencies to which the Policy Statement applies, the CTU and six key public sector unions.¹
29. Thirty-eight agencies responded by the deadline, 26 of which included substantive comment. Two unions provided written responses and the Commission met with the CTU and Public Service Association (PSA).

Agency feedback

30. Comments were largely supportive of the overall direction and setting the Public Service as an exemplar in employment practice. The key issues raised were:

30.1. The impact of an ongoing approach to pay restraint.

¹ Public Service Association (PSA), NZ Police Association, Corrections Association of New Zealand (CANZ), Association of Professional and Executive Employees (APEX), National Union of Public Employees (NUPE), Taxpro

- 30.2. The challenge of meeting an expectation to complete bargaining before the expiry date of the previous agreement.
- 30.3. The challenge of achieving all the goals within current baselines.
- 30.4. The absence of references to Te Tiriti and Te Ao Māori.
31. The Policy Statement has been revised to include references to Te Tiriti o Waitangi and Te Ao Māori as outlined above.
32. The other issues relate more to working with the Policy Statement rather than the policy itself. I am advised that the Commission will address these during consultations over bargaining strategies. In addition, several editorial changes have been made for increased clarity to address other issues raised.

Union feedback

33. The CTU and PSA were supportive of setting the Public Service as an exemplar in employment practice and the general direction of the Policy Statement. The Commissioner made editorial changes to accommodate a range of comments from them.
34. A small number of substantive issues raised by unions have not been able to be addressed:
- 34.1. A request to extend the scope of the Policy Statement to include contractors, employees of companies contracted to Public Service agencies, and employees of labour hire companies.
- 34.2. A request to remove references to pay restraint as it is addressed by other guidance.
- 34.3. Allowing backdating of bargaining settlements where delays in bargaining are beyond the control of the union.
35. I have accepted the Commissioner's advice that the Policy Statement remain focussed on the employment relationship of public servants. The Policy Statement has been amended to be clear that agencies' workforce strategies should uphold the integrity of collective agreements and the collective bargaining process.
36. We have committed to extend the living wage to workers contracted by the Government in priority industries and reference to this commitment is made in the draft Policy Statement. Advice on implementing this commitment will address the question of what levers are most appropriate to use to make this happen. In addition, the Government's Procurement Rules exist to support agencies in their procurement practices (including the supplier code of conduct that covers labour rights).
37. The current Government Expectations on Employment Relations in the State Sector include an expectation that agencies will avoid backdating of settlements. This has

been helpful in encouraging efficient and effective bargaining. The Policy Statement strengthens this by placing a clear expectation on agencies that they are ready to bargain at the earliest opportunity and will aim to complete bargaining promptly. Meeting this expectation is a key means to avoiding the use of backdating.

38. It is important that the Policy Statement deals with this issue proactively rather than enabling backdating should the expectation of efficient and productive bargaining not be met.
39. On the issue of pay restraint, which both agencies and unions raised issues about, I have retained the references to pay restraint.

Operational Guidance on the Policy Statement (Pay Restraint)

40. The Commissioner is preparing guidance on the operation of the Policy Statement in relation to pay restraint to be released along with this Policy Statement (a draft is attached as Appendix B). This guidance is prepared and approved by the Commissioner and supports agencies that are in bargaining under his delegation to meet his expectations.
41. It is an important lever to set expectations in the public sector. The guidance will be in place until reviewed in mid-2023. This is anticipated to drive a more sustained restraint approach in agencies (rather than short-term reactions) and provide for an even coverage of affected workforces as collective agreements come up for renegotiation.
42. The draft guidance requires Public Service agencies, and encourages the wider public sector (excluding local government), to ensure pay increases meet the following principles:
 - 42.1. Apply increases that are contractually required by existing settled agreements (including progression steps that are in many collective agreements), but to seek change in future bargaining where current obligations are not consistent with pay restraint.
 - 42.2. Any other adjustments should be made according to the priorities of lifting pay for low paid staff; addressing gender and ethnic pay inequities; and addressing acute recruitment and retention issues demonstrably impacting on frontline service delivery.
 - 42.3. For lower to middle earners (approximately \$60,000 to \$100,000) pay adjustments may be considered in restricted circumstances against criteria set in the guidance and require the approval of the Commission.
 - 42.4. Hold pay for higher earners and senior leaders (including departmental secretaries and chief executives) – the default position is no increases for those paid over \$100,000. In exceptional circumstances agencies may seek agreement of the Commission to proposals that are outside the default position.

Human Rights, Gender, and Disability implications.

52. Establishing the Public Service as a fair, equitable employer will help to ensure it meets its human rights obligations towards all workers. In particular, I expect these proposals to help to address rights inequities for Māori and Pacific women employed in the Public Service.

Publicity

53. The Minister for the Public Service envisages publicity via a normal ministerial press release. This will be accompanied by issuance of the Policy Statement to all affected parties and agencies.
54. In addition, the Commissioner and the 9(2)(g)(i) free and frank [REDACTED]

Proactive Release

55. This paper may be proactively released once Cabinet decisions are made.

Recommendations

56. I recommend that the Committee:
 - 56.1. **note** that Government periodically issues expectations directing State sector agencies on employment standards and processes of negotiation for employment agreements.
 - 56.2. **note** that the Public Service Act 2020 provides an opportunity to issue Expectations as a Government Workforce Policy Statement that agencies must either give effect to, or have regard to, as a matter of law.
 - 56.3. **note** that the Public Service Commission has reviewed the existing Expectations and revised them in the light of the Government's wider employment principles and concerns.
 - 56.4. **agree** that the draft Government Workforce Policy Statement attached to this paper will replace the existing Cabinet-mandated Expectations [CAB-18-MIN-0067].
 - 56.5. **note** that the attached Government Workforce Policy Statement has been the subject of consultation with affected agencies and with unions, as required by the Public Service Act 2020, and that some changes have been made to the Government Workforce Policy Statement in response to feedback.
 - 56.6. **note** that amendments have been made to address certain elements of the agency feedback.

- 56.7. **note** that other feedback, relating to implementation of the Government Workforce Policy Statement, will be addressed by the Public Service Commission as operational matters.
- 56.8. **note** that elements of union feedback (relating to inclusion of contractors in coverage of the Government Workforce Policy Statement, removal of the pay restraint requirement, and backdating of settlements) have not been incorporated in the revised Government Workforce Policy Statement.
- 56.9. **authorise** the Minister for the Public Service to make any minor amendments which are consistent with the Government Workforce Policy Statement.
- 56.10. **note** the Minister for the Public Service intends to approve the Policy Statement as a Government Workforce Policy Statement in accordance with s99 of the Public Service Act 2020.
- 56.11. **note** that the Public Service Commissioner will issue operational guidance on the Government Workforce Policy Statement in relation to pay restraint that will require Public Service agencies, and encourage the wider public sector (excluding local government), to:
- Apply increases that are contractually required by existing agreements.
 - Lift pay for low paid staff; address gender and ethnic pay inequities; and address acute recruitment and retention issues demonstrably impacting on frontline service delivery.
 - Consider pay adjustments for middle earners (approximately \$60,000 to \$100,000) in restricted circumstances subject to approval by Te Kawa Mataaho.
 - Hold pay for higher earners and senior leaders (including departmental secretaries and chief executives).
 - Ensure in bargaining strategies that salary increases are low averaged across all staff, including the cost of any built-in increases.
- 56.12. **note** that the Public Service Commissioner will review the operational guidance in mid-2023.

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

Authorised for lodgement

Hon Chris Hipkins

Minister for the Public Service