

17. The Chief Ombudsman advises he is comfortable that the current Bill reflects the Cabinet decisions to date. His Office has made a number of suggestions for further tightening up the regime and increasing the protections for disclosers that he would like to be considered in the second tranche. The Chief Ombudsman advises he looks forward to working with the State Services Commission in developing the framework for the second tranche.
18. The Chief Ombudsman notes the Privacy Commissioner's views below that there is no complaints mechanism for breaches of confidentiality under the regime. The Chief Ombudsman considers that he does in fact have jurisdiction to investigate breaches of confidentiality by public sector agencies in both the current Act and the Bill. He intends to engage with the Privacy Commissioner to ensure any such complaints that the Privacy Commissioner considers to be excluded from his jurisdiction are referred to the Ombudsman.
19. The Privacy Commissioner supports modernising and strengthening the protections afforded to individuals' personal information when they make a protected disclosure. The Commissioner notes that the Bill makes it clear that receivers and appropriate authorities must consult individuals on the referral or disclosure of their protected disclosure. Engaging individuals in the process of referral or disclosure is an important step that gives transparency and understanding to the process. However, the Commissioner is concerned that the protections regarding confidentiality (around referral and disclosure) are not supported by a clear complaints mechanism, which risks considerably diluting the intended protection. The Commissioner considers that there is a jurisdictional and legal gap, which has been discussed with officials, but remains unaddressed in the Bill as drafted. The Commissioner recommends that the policy intention is clarified and reflected in the Bill before introduction.
20. The Public Service Association was briefed on the content of the Bill and is supportive of the Bill.

Binding on the Crown

21. The Bill proposes that the new Protected Disclosures (Protection of Whistleblowers) Act will bind the Crown. The Bill reflects the existing Act, binding on the Crown.
22. The Bill does not propose to create a new agency.
23. The Bill does not amend the existing coverage of the Ombudsmen Act 1975, the Official Information Act 1982, or the Local Government Official Information and Meetings Act 1987.

Allocation of decision-making powers

24. The Bill does not affect the allocation of decision-making powers between the executive, the courts, and tribunals.

Associated regulations

25. There are no regulations required to bring the Bill into operation.

Other instruments

26. The only regulation-making power proposed in the Bill is the ability to amend Schedule 2 as required through Order in Council.

Definition of Minister/department

27. The Minister responsible for the administration of this Act is referred to in the Bill. The Bill does not contain a definition of Minister, department (or equivalent government agency), or chief executive of a department (or equivalent position).

Commencement of legislation

28. I propose a commencement date of 1 July 2021.

Parliamentary stages

29. The Bill holds a category 3 priority on the 2020 legislative programme: to be passed, if possible, in the year.
30. I propose to introduce the Bill in the week beginning 22 June 2020.
31. I propose that the Bill be referred to the Education and Workforce Select Committee.

Proactive Release

32. I propose to proactively release this paper following introduction of the Bill to Parliament.

Recommendations

33. I recommend that the Committee:
 1. **note** that the Protected Disclosures (Protection of Whistleblowers) Bill holds a category 3 priority on the 2020 Legislation Programme (to be passed, if possible, in the year);
 2. **note** that the Bill:
 - 2.1. clarifies the definition of 'serious wrongdoing' and extends its application to cover private sector use of public funds and authority;
 - 2.2. enables people to report serious wrongdoing directly to an appropriate authority at any time, provides more clarity relating to appropriate authorities, and clarifies the ability of those authorities to decline or refer the disclosure;
 - 2.3. strengthens protections for disclosers by specifying what a receiver of protected disclosure is required to do;
 - 2.4. clarifies the internal procedure requirements for public sector organisations and requires them to state how they will provide support to disclosers;
 - 2.5. clarifies the potential forms of adverse conduct disclosers may face.

3. **note** that the Bill is presented as a new Act, not an amendment;
4. **note** that I have made the following additional decisions on minor and technical matters to finalise the Bill such as:
 - 4.1. adding the word 'whistleblower' to the title (in parentheses);
 - 4.2. use of the term 'discloser' instead of 'employee' (except in clauses specifically relating to employment law);
 - 4.3. use of 'means' instead of 'includes' when defining who may be a discloser;
 - 4.4. clearly providing what a receiver of a disclosure is required to do, and making explicit that those provisions do not create a legally enforceable right;
 - 4.5. requiring the recipient to consult disclosers where their identity is to be disclosed and/or where their disclosure is being referred to another body;
 - 4.6. where an appropriate authority refers a disclosure back to the organisation it relates to, requiring the organisation to report its findings back to the appropriate authority;
 - 4.7. proposing 1 July 2021 as its commencement date.
5. **authorise** Parliamentary Counsel to make minor and technical amendments required to finalise the Bill following Cabinet Legislation Committee and prior to consideration at Cabinet;
6. **approve** the Protected Disclosures (Protection of Whistleblowers) Bill for introduction;
7. **agree** that the Bill be introduced in the week beginning 22 June 2020;
8. **agree** that the government propose that the Bill be:
 - 8.1. referred to the Education and Workforce committee for consideration; and
 - 8.2. enacted, if possible, by 31 December 2020.

Authorised for lodgement

Hon Chris Hipkins
Minister of State Services



Cabinet Legislation Committee

Minute of Decision

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Protected Disclosures (Protection of Whistleblowers) Bill: Approval for Introduction

Portfolio **State Services**

On 16 June 2020, the Cabinet Legislation Committee:

- 1 **noted** that the Protected Disclosures (Protection of Whistleblowers) Bill (the Bill) holds a category 3 priority on the 2020 Legislation Programme (to be passed, if possible, in the year);
- 2 **noted** that the Bill:
 - 2.1 clarifies the definition of ‘serious wrongdoing’ and extends its application to cover private sector use of public funds and authority;
 - 2.2 enables people to report serious wrongdoing directly to an appropriate authority at any time, provides more clarity relating to appropriate authorities, and clarifies the ability of those authorities to decline or refer the disclosure;
 - 2.3 strengthens protections for disclosers by specifying what a receiver of protected disclosure is required to do;
 - 2.4 clarifies the internal procedure requirements for public sector organisations and requires them to state how they will provide support to disclosers;
 - 2.5 clarifies the potential forms of adverse conduct disclosers may face;
- 3 **noted** that the Bill is presented as a new Act, not an amendment;
- 4 **noted** that the Minister of State Services has made the following additional decisions on minor and technical matters to finalise the Bill, including:
 - 4.1 adding the word ‘whistleblower’ to the title (in parentheses);
 - 4.2 use of the term ‘discloser’ instead of ‘employee’ (except in clauses specifically relating to employment law);
 - 4.3 use of ‘means’ instead of ‘includes’ when defining who may be a discloser;
 - 4.4 clearly providing what a receiver of a disclosure is required to do, and making explicit that those provisions do not create a legally enforceable right;

- 4.5 requiring the recipient to consult disclosers where their identity is to be disclosed and/or where their disclosure is being referred to another body;
- 4.6 an appropriate authority refers a disclosure back to the organisation it relates to, requiring the organisation to report its findings back to the appropriate authority;
- 4.7 proposing 1 July 2021 as its commencement date;
- 5 **authorised** the Minister of State Services to make minor and technical amendments required to finalise the Bill before introduction;
- 6 **approved** for introduction the Protected Disclosures (Protection of Whistleblowers) Bill [PCO 21167/1.40], subject to the final approval of the government caucuses and sufficient support in the House of Representatives;
- 7 **agreed** that the Bill be introduced in the week beginning 22 June 2020;
- 8 **agreed** that the government propose that the Bill be:
- 8.1 referred to the Education and Workforce Committee for consideration;
- 8.2 enacted, if possible, by 31 December 2020.

Gerrard Carter
Committee Secretary

Present:

Hon Chris Hipkins (Chair)
Hon Andrew Little
Hon Nanaia Mahuta
Hon Stuart Nash
Hon Damien O'Connor
Hon Iain Lees-Galloway
Hon Tracey Martin
Hon Aupito William Sio
Hon Eugenie Sage

Officials present from:

Office of the Prime Minister
Officials Committee for LEG



Cabinet Legislation Committee

Summary

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Protected Disclosures (Protection of Whistleblowers) Bill: Approval for Introduction

Portfolio State Services

Purpose This paper seeks approval for the introduction of the Protected Disclosures (Protection of Whistleblowers) Bill (the Bill).

Previous Consideration In October 2019, GOV took a series of decisions to amend the Protected Disclosures Act 2000 to:

- require public sector organisations to state, in internal procedures, how they will support disclosers;
- allow disclosers to report serious wrongdoing directly to an appropriate authority at any time;
- clarify the definition of “serious wrongdoing”;
- name the most likely ‘appropriate authorities’ by subject matter;
- strengthen protections for disclosers;
- clarify internal procedure requirements for the public sector.

GOV authorised the Minister of State Services, in consultation with other Ministers as appropriate, to take decisions on any minor and technical matters required to finalise the Bill.

[GOV-19-MIN-0042]

Summary

The Bill gives effect to the above decisions.

The Minister of State Services has taken a number of decisions on minor and technical issues. These decisions are set out in paragraphs 7-9.

Comments from the Chief Ombudsman and the Privacy Commissioner are set out in paragraphs 17-19.

Regulatory Impact Analysis

A Regulatory Impact Analysis was prepared as part of the policy approval process.

Compliance	A Departmental Disclosure Statement is attached.
Timing Issues	Introduced: in the week of 22 June 2020; Referred: Education and Workforce Committee; Enacted: by December 2020, if possible.
Announcement	None indicated.
Proactive Release	This paper will be proactively released.
Consultation	Paper prepared by SSC. MCH, CLO, DoC, Corrections, Customs, NZDF, ERO, MoE, Treasury, GCSB, DIA, MoJ, LINZ, TPK, Police, SFO, DPMC, IRD, MoT, MPP, NZSIS, MPI, MSD, MBIE, Oranga Tamariki, and Pike River Recovery Agency were consulted. Office of Ombudsman, Controller and Auditor- General, Human Rights Commission, Inspector General of Intelligence and Security, the Parliamentary Commissioner for the Environment and the Privacy Commissioner were also consulted.

The Minister of State Services indicates that the Minister of Finance was consulted, and that New Zealand First and the Green Party were consulted.

The Minister of State Services recommends that the Committee:

- 1 note that the Protected Disclosures (Protection of Whistleblowers) Bill (the Bill) holds a category 3 priority on the 2020 Legislation Programme (to be passed, if possible, in the year);
- 2 note that the Bill:
 - 2.1 clarifies the definition of ‘serious wrongdoing’ and extends its application to cover private sector use of public funds and authority;
 - 2.2 enables people to report serious wrongdoing directly to an appropriate authority at any time, provides more clarity relating to appropriate authorities, and clarifies the ability of those authorities to decline or refer the disclosure;
 - 2.3 strengthens protections for disclosers by specifying what a receiver of protected disclosure is required to do;
 - 2.4 clarifies the internal procedure requirements for public sector organisations and requires them to state how they will provide support to disclosers;
 - 2.5 clarifies the potential forms of adverse conduct disclosers may face;
- 3 note that the Bill is presented as a new Act, not an amendment;

- 4 note that the Minister of State Services has made the following additional decisions on minor and technical matters to finalise the Bill, including:
- 4.1 adding the word ‘whistleblower’ to the title (in parentheses);
 - 4.2 use of the term ‘discloser’ instead of ‘employee’ (except in clauses specifically relating to employment law);
 - 4.3 use of ‘means’ instead of ‘includes’ when defining who may be a discloser;
 - 4.4 clearly providing what a receiver of a disclosure is required to do, and making explicit that those provisions do not create a legally enforceable right;
 - 4.5 requiring the recipient to consult disclosers where their identity is to be disclosed and/or where their disclosure is being referred to another body;
 - 4.6 an appropriate authority refers a disclosure back to the organisation it relates to, requiring the organisation to report its findings back to the appropriate authority;
 - 4.7 proposing 1 July 2021 as its commencement date;
- 5 authorise the Minister of State Services to make minor and technical amendments required to finalise the Bill before introduction;
- 6 approve for introduction the Protected Disclosures (Protection of Whistleblowers) Bill [PCO 21167/1.40], subject to the final approval of the government caucuses and sufficient support in the House of Representatives;
- 7 agree that the Bill be introduced in the week beginning 22 June 2020;
- 8 agree that the government propose that the Bill be:
- 8.1 referred to the Education and Workforce Committee for consideration;
 - 8.2 enacted, if possible, by 31 December 2020.

Gerrard Carter
Committee Secretary

Hard-copy distribution:
Cabinet Legislation Committee
Minister of Finance



Cabinet

Minute of Decision

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Report of the Cabinet Legislation Committee: Period Ended 19 June 2020

On 22 June 2020, Cabinet made the following decisions on the work of the Cabinet Legislation Committee for the period ended 19 June 2020:

LEG-20-MIN-0068

Protected Disclosures (Protection of Whistleblowers)
Bill: Approval for Introduction
Portfolio: State Services

CONFIRMED



Michael Webster
Secretary of the Cabinet

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