



# AIDE-MEMOIRE

[IN-CONFIDENCE]

## Protected Disclosures Act 2000 – speaking points for GOV

**Date:** 16 October 2019  
**For:** Hon Chris Hipkins, Minister of State Services  
**Report No:** SSC2019/0359

## Protected Disclosures Act 2000 – speaking points for GOV

**Purpose** Your paper on proposed amendments to the Protected Disclosures Act 2000 is on the agenda for Cabinet Government Administration and Expenditure Committee's meeting on 17 October. This Aide-Memoire provides speaking points to support you for this item.  
 SSC officials will be in attendance.

**Date of meeting** 17 October 2019

**Minister** Hon Chris Hipkins, Minister of State Services

**Regulatory Impact Assessment** After you approved the paper for lodging, we received the final assessment of the Regulatory Impact Assessment (RIA). The Treasury and Ministry of Justice have assessed the RIA as 'meets'.

The Panel assessing the RIA noted it contains limited quantitative analysis about the number of people who may benefit and of the cost to organisations of the proposed reforms.

SSC is considering how to collect more data to support the second tranche of policy work.

We recommend

- that you release this aide-memoire in full once the attached has been considered by Cabinet.

Agree/Disagree.

**Proactive Release**

Hon Chris Hipkins

Minster of State Services

**Author:** Lisita Aloua, Assistant Analyst, System Improvement

**Responsible Manager:** Mereama Chase, Manager, System Improvement

[IN-CONFIDENCE]

## Speaking points

- This paper proposes a first tranche of amendments to the Protected Disclosures Act 2000 (the Act), to strengthen the Act as it relates to the public sector and to clarify and in some respects extend its application to the private sector.
- It also notes the non-legislative work that is already in progress and the possible issues to consider in a second tranche of amendments after this amendment Bill passes.
- I am not proposing to change the scope of the Act. It only applies to situations where the discloser has:
  - has inside knowledge of the organisation because they work there or have worked there
  - reasonable grounds to believe that there is serious wrongdoing and is not acting in bad faith.

### What's the problem?

- There have been very few protected disclosures since the passing of the Act in 2000.
- SSC's review of the Act (triggered by the Ministry of Transport fraud case) identified that:
  - The Act is confusing – the elements of what makes a protected disclosure and how it should be dealt with are scattered through the Act
  - It currently requires people to go through their own organisation first, with limited exceptions
  - As a result, people are not sure whether they can trust the system to protect them
  - Non-legislative measures such as improved guidance and the Speaking Up standards for public sector organisations are not enough to solve the problems.
- The definition of serious wrongdoing also omits things like misuse of public funds or public power when they happen outside public sector organisations.

### The main policy changes I seek agreement to for the Bill are:

- Allowing people to report serious wrongdoing direct to an external authority if they wish
- Some procedural clarifications on handling disclosures for public sector organisations and appropriate authorities
- Extending the definition of serious wrongdoing to cover misuse of public funds or public power by non-public sector organisations.
- These immediate changes should provide more assurance to people wanting to make disclosures.
- One of the issues for future work is what remedies people might have when they suffer for making a disclosure.

### Consultation:

- My paper has been informed by extensive targeted and public consultation during 2018 and by consultation with all departments and major appropriate authorities on the package in this paper.
- Feedback has been very positive. A few consultees consider that this package of changes does not go far enough to promote the intent of the Act and are keen to see faster progress on establishing a one stop shop, monitoring and reporting.
- In response to feedback from Ministerial consultation, I am not proceeding with my initial proposal to amend the threshold from 'believe' to 'suspect' serious wrongdoing.