



# AIDE-MEMOIRE

## Protected Disclosures (Protection of Whistleblowers) Bill: finalised package for lodging for LEG

**Date:** 10 June 2020 **Security Level:** IN CONFIDENCE

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

**Report No:** SSC2020/0104

**Purpose** Further to our briefing of 20 May (SSC 2020/0077), we provide an updated package for lodging for the Cabinet Legislation Committee (LEG), and speaking points.

**Date of meeting** 16 June 2020

**Proposal** Following completion of Ministerial consultation, we attach a final draft of the Cabinet paper and disclosure statement for lodging by 10am Thursday 11 June for the LEG meeting 9.15am Tuesday 16 June. We also attach a final draft of the Bill.

SSC officials will be in attendance at LEG.

**Key issues** No comments were received in Ministerial consultation requiring amendment to the package.

The Parliamentary Counsel Office has made some minor technical changes to the Bill following proof reading in accordance with its normal processes, and will provide the Bill direct to Cabinet Office on Thursday 11 June.

We attach speaking points for this item at LEG.

Subject to LEG and Cabinet agreement, the Bill may be introduced in the week commencing 22 June. We will provide a draft speech to your Office by Friday 19 June.

<b>Next steps</b>	11 June	Lodge for LEG
	16 June	Bill considered by LEG
	22 June	Cabinet approval sought for introduction
	From 22 June	Bill introduced
	From 22 June	First Reading

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## Speaking points

1. This Bill repeals the Protected Disclosures Act 2000 (the Act), replacing it with a new Protected Disclosures (Protection of Whistleblowers) Act (the Bill).
2. The Bill continues the purpose of the existing Act. It is presented as a new Act, not an amendment, to make the Bill clearer and more accessible.
3. The Bill incorporates policy changes agreed to by Cabinet on 17 October 2019 [GOV-19-MIN-0042 refers]. The biggest change is that people can report serious wrongdoing directly to an appropriate authority at any time. Cabinet also agreed to defer some more complex issues to a second tranche of policy work.
4. The LEG paper outlines further changes that I and my officials have made during the drafting process. Some of the agreed policy changes had unexpected implications – for example we decided when setting out what a receiver of a disclosure should do (clauses 12 and 15), we found we needed to be explicit that those provisions do not create a legally enforceable right (clause 12(3)).
5. Consultation on the Bill has extended beyond departments to several key appropriate authorities - Chief Ombudsman, Human Rights Commission, Privacy Commissioner, Inspector-General of Intelligence and Security, Parliamentary Commissioner for the Environment, and Office of the Auditor-General.
6. The Chief Ombudsman and the Privacy Commissioner asked for comments to be included in the paper:
  - 6.1. The Chief Ombudsman advises he is comfortable that the current Bill reflects the Cabinet decisions to date.
  - 6.2. The Privacy Commissioner has a concern that the Bill's protections regarding confidentiality are not supported by a clear complaints mechanism.
  - 6.3. However, the Chief Ombudsman considers that he has jurisdiction to investigate breaches of confidentiality by public sector agencies in both the current Act and the Bill, and he intends to engage with the Privacy Commissioner to determine where privacy complaints might need to be referred to the Ombudsman.

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