



IN CONFIDENCE

## Review of the Protected Disclosures Act 2000 (PDA) – draft Cabinet paper

**Date:** 8 July 2019  
**For:** Hon Chris Hipkins, Minister of State Services  
**Report No:** SSC2019/0208

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**Proposal**

Further to our briefing of 24 May, we enclose for your feedback a draft Cabinet paper setting out a package of proposed amendments to the PDA, still subject to departmental consultation and Regulatory Impact Assessment (RIA) completion.

If you are comfortable with the package of proposals presented, we plan to provide you with a further version in mid August, consulted with departments and with a completed RIA.

**Key issues**

In your response to the previous briefing, you expressed interest in taking forward a Bill that progressed as many changes as practicable, while also having a second stage of work to continue to consider any further change.

We have now undertaken a more detailed assessment of the legislative change required to effect the proposed changes, resulting in some modifications as explained in the attached table.

The attached paper is based on further analysis of the material we already hold. To ensure that our analysis is robust, we need to undertake another round of departmental and key agency consultation before any package of changes is presented to Cabinet. Given the key role of the Ombudsman in advising on, investigating and reporting on protected disclosures, we are particularly keen to consult with the Ombudsman.

This further consultation and analysis will also assist us to provide a robust RIA to accompany the Cabinet paper.

**Our advice**

To achieve the greatest gains while minimising the risk of delay, we recommend that the Cabinet paper sets out proposals based on:

- Legislative change in two parts:
  - Policy changes such as the threshold for disclosure and the ability to go direct to an appropriate authority
  - Straightforward legislative changes that are unlikely to be contentious – these mainly relate to clarifications and/or requirements on the public sector and would form much of the basis for the Bill
- A non-legislative work programme to support and review the need for further enhancements, building on current work such as SSC's Speaking

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Up and Positive Workplace Behaviour guidance and on existing relationships such as the SSC/Ombudsman work on improving OIA compliance. This work programme would include investigating the value to be gained from systematic reporting and monitoring of disclosures in the core public service and raising awareness of the Act in both the public and private sectors.

Subject to issues that may be identified in consultation or RIS preparation, we do not believe that we are recommending any proposals where the compliance burden may outweigh the benefit.

We would appreciate your initial feedback on how to proceed on:

- Whether to attach the summary of submissions to the Cabinet paper – this would provide access to submitters' views on the issues without needing to provide detail in the paper itself
- Whether to include discussion in the paper of areas we do not recommend pursuing, such as explicit compensation and/or rewards through this Act for disclosers.

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We recommend

- that you release this aide-memoire in full once the proposals it refers to have been considered by Cabinet

Agree/disagree.

#### **Proactive Release**

Chris Hipkins  
Minister of State Services

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**Author:** Margaret Mabbett, Principal Analyst

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

## How the legislative proposals have changed since our previous briefing (24 May)

Proposal was...	Now...	Why
Remove the "head of every public sector organisation" as appropriate authority	Have a schedule to clarify the more likely appropriate authorities but also keep reference to heads of organisation (subject to clarifying how this may apply to State-owned media organisations)	Avoid the risk that a PD might fail solely because it was made to an organisation not on the schedule
Remove bullying and harassment from the definition of serious wrongdoing	Allow authorities to decline to investigate where better channel would be Employment Relations Act, Health & Safety at Work (HSW) Act etc	Bullying and harassment, especially if there are multiple complaints, may be symptom of broader serious wrongdoing so don't want to exclude altogether
List forms of prohibited retaliatory action in Act	Cross-reference to HSW Act s88 "adverse conduct" definition	Avoids risk that lists of adverse or retaliatory action in different Acts get out of step with each other
Clarify the path to compensation in the Act	Keep the references to Employment Relations Act and Human Rights Act pathways (and improve through cross-reference to s88 HSW Act)	No separate pathway available in the Act – it hooks into other existing mechanisms
[consulted on removal of the subclause on 'serious wrongdoing' relating to conduct of a 'public official']	Expand definition of 'public official' from employee of a public organisation to anyone carrying out a public function	Many functions of public sector now carried out by private sector/NGO staff including some with coercive powers eg SPCA re animal cruelty, AA re driver licensing – serious wrongdoing by these people may not be financial