



AIDE-MEMOIRE

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

Date: 25 July 2019
For: Hon Chris Hipkins, Minister of State Services
Report No: SSC2019/0240

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

Proposal

Further to our briefing of 8 July (SSC2019/0208), we enclose for your approval a revised draft Cabinet paper setting out a package of proposed amendments to the PDA, before we commence departmental consultation.

If you are comfortable with the revised paper, we plan to provide you with a further version in mid-August, consulted with departments, and agencies if agreed, and with a completed RIA if required.

In response to your feedback on the draft briefing, we have:

- explained the initial legislative package will be followed by further work that considers more complex issues, including changes affecting the private sector
- included discussion in the Cabinet paper on areas we do not recommend pursuing, such as explicit compensation and/or rewards through this Act for disclosers.

Key issues

We have also acknowledged in addition to the legislative proposals, SSC is undertaking considerable work developing model processes, procedures and guidance, building on the 'Speaking Up' standards and positive workplace behaviour standards, and intends to work with the Ombudsman to raise awareness of the Act including in the private sector.

We will confirm with Treasury whether an RIA is required.

If you approve the paper as revised, we will consult departments and the Office of the Ombudsman. We also seek your approval to consult other key agencies on the proposals (see below).

Cabinet Minute (GOV-18-MIN-0051) noted your intention to report back to GOV in April 2019 to seek agreement on final policy proposals. Cabinet Office has been updated of the need for an extension of time (now to the end of September 2019). We attach an updated indicative timeline for the legislation.

Our advice

You have agreed to consult the Ombudsman as well as government departments on the draft Cabinet paper. We would also like to seek the views of other key appropriate authorities and stakeholders on the proposals, namely the Controller and Auditor General, the Inspector-General of Intelligence and Security, the Parliamentary Commissioner for the Environment, Independent Police Conduct Authority, Health and Disability Commissioner, Human Rights

Commission, Financial Markets Authority, Worksafe and the PSA. We may seek their views by providing a summary of the proposals, rather than sharing the draft Cabinet paper in its entirety.

Alongside our departmental consultation with MBIE and DIA, your Office may wish to discuss the proposed extension of serious wrongdoing to public funds used by and public authority exercised by private and voluntary sector agencies with the Offices of the Ministers of Workplace Relations and Safety and for the Community and Voluntary Sector.

We recommend that you:

- a. **note** the indicative timeline for the legislation
- b. **agree** we consult with other agencies as outlined in this briefing

Agree/disagree

- c. **agree** your Office discuss the proposals with the Offices of the Ministers of Workplace Relations and Safety and for the Community and Voluntary Sector on these proposals.

Agree/disagree.

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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Indicative timeline for Protected Disclosures legislation

Step	By	Comment
Consult with The Treasury on whether a Regulatory Impact Assessment is required	End July 2019	Regulatory proposals that have no impacts, or only minor impacts, on businesses, individuals or not-for-profit entities do not require a Regulatory Impact Assessment.
Complete departmental consultation on draft Cabinet Paper	Mid August 2019	
MoSS' Office may discuss proposals with the Offices of the Minister of Workplace Relations and Safety, and Minister for the Community and Voluntary Sector.	Mid August 2019	<p>The Minister of Workplace Relations and Safety as some proposed amendments relate to the private sector; and the Employment Relations Act.</p> <p>Minister for the Community and Voluntary Sector because some of the proposed amendments (e.g. 'serious wrongdoing' including public funds) could impact on the not for profit sector.</p>
Draft regulatory Impact Assessment	Mid August 2019	To be drafted if a RIA is required
Meet with LDAC	Approx. mid August 2019	LDAC has advised it would like to meet
Departmental consultation on RIA, if required	End of August 2019	
Provide Cabinet paper and RIA (if required) for Ministerial consultation and lodging with the Cabinet Committee	Early September 2019	Date by which provided to MoSS
GOV Cabinet Committee	Mid September 2019	GOV on 19 September 2019
Final policy approvals obtained from Cabinet	Early October 2019	
Drafting instructions to PCO	October 2019	
Publish exposure draft	February 2020	Bill available for sharing with stakeholders and publishing on SSC website over a four week period

Finalise draft reflecting feedback	End March 2020	Three weeks analysis following exposure draft consultation
Provide Bill to the Ministry of Justice for BORA vet	End March 2020	Allow two weeks
Minister(s) review draft and consult as required	Early April 2020	
Bill considered by Legislation Committee	May 2020	
Bill considered by Cabinet	May 2020	
Introduction of Bill	June 2020	
First reading	June 2020	Referral to Select Committee
Election	tba	
Report back from Select Committee	tba	
Date of Enactment	tba	

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