State Sector and Public Finance Reform Bill

Submission of the

New Zealand Public Service Association
Te Pūkenga Here Tikanga Mahi

to the Finance and Expenditure Select Committee

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Executive summary

The New Zealand Public Service Association: Te Pūkenga Here Tikanga Mahi (the PSA) is the union representing over 46, 000 members in the public service, State services and DHBs whose employment is directly governed by the State sector legislation, and whose employment rights we believe are threatened by proposed amendments in this Bill.

The intention of the Bill is to amend the State sector legislation to support recommendations of the Better Public Services review, which called for the removal of barriers to closer alignment between the different parts of the State sector, for improved leadership across the State services, and for the new departmental agency structure. The PSA broadly agrees with this policy intent. But we believe that the Bill represents a missed opportunity for a first-principles review of the 25 year old State Sector Act 1988. A fundamental rethink of the legislation underpinning the State services is needed to make it fit for 21st century purpose.

The Bill also proposes a number of changes in employment matters and it is our strong view that aspects of these will work against the intention to improve the public management system by weakening capability and accountability and undermining the notion of 'stewardship'.

A moratorium on restructurings

Government seeks significant performance improvements from the State services, at a time when it is imposing budget cuts and asking State servants to more with less. The State services are under stress because of constant reorganisation and restructuring and the imposition of the staffing cap in the public service, which has resulted in the loss of over 3000 jobs since 2009 and a current level of 3623 unfilled vacancies. The PSA calls on government to commission an independent review of the benefits of public service restructuring, and, pending this, to place a moratorium on any further restructurings and remove the staffing cap.

We have identified three principal areas where we think the Bill is defective, and we have had extensive discussions with the State Services Commission to share our thinking. We understand that SSC and Treasury in the departmental report to the select committee may make some recommendations for changes, which may address some, but not all, of our concerns.

Principal issues for the PSA

Redundancy rights of public servants

The new clauses place a restriction on redundancy payments where any employee in the State services who has received a redundancy notice is offered, and accepts, a position elsewhere in the State services before ceasing employment. This change removes existing rights in collective agreements. We strongly oppose this provision and have proposed an alternative approach to support redeployment of surplus staff.

Government workforce policy orders

These proposed changes bring in the ability to issue workforce policy orders across the State sector system through Orders in Council. Our concern is that the potential broad and unlimited cope of any workforce policy orders may override or severely limit fundamental rights that State services employees currently have in collective bargaining. We have been advised that this is not the intention of the Bill and SSC may recommend some changes to clarify this matter, which we would support.

Delegation of functions or powers

These proposed changes widen the scope for chief executives to delegate statutory powers to individuals working in the public service as contractors or, with the approval of the Minister, to a person outside the public service. This is a significant change, and has the potential to facilitate the privatisation of services and to a loss of accountability.

The Treaty of Waitangi

There is no mention of the Treaty of Waitangi in the legislation and we believe that the Bill provides an opportunity to redress this deficiency, by giving clear signals about the obligation of chief executives consider how to give effect to Treaty principles in the work of their agency.

Our views and recommendations on these, and other matters, are set out in detail in the body of the submission.

Elements of the Bill that we support

There are, however, a number of elements of the Bill that we do broadly endorse and support. These include the focus on a 'whole of system' view of the State services, on efficient and effective outcomes, on leadership and on introducing protection for State servants from liability for civil proceedings. The Bill also usefully clarifies some matters around the employment of chief executives and gives the State Services Commissioner flexibility in deploying them. A further element that we strongly support is the introduction of the notion of 'stewardship' into the functions of the State Services Commissioner, and this signals that chief executives should have a strong focus on the longer term well-being of their agency and the services it provides.

Introduction

The New Zealand Public Service Association: Te Pūkenga Here Tikanga Mahi (the 'PSA') is the largest trade union in New Zealand, representing over 58,000 workers in the public service, the wider State sector, DHBs, local government and community-based public services. The employment of our members in the public service, State sector and DHBs (about 46,000 in total) is directly affected by this legislation.

The PSA is affiliated to the New Zealand Council of Trade Unions : Te Kauae Kaimahi (the "CTU"), and supports their substantial submission on the Bill. Through the CTU, State sector unions had an early briefing from the State Services Commission and Treasury on the policy intent of the legislation, at the time of the Parliamentary Briefing and prior to the Bill. We support the submissions of the other State sector unions.

PSA's long experience

In 2013, the PSA celebrates its centenary – we were formed one year after the public service was established by the Public Service Act 1912. Over 100 years, governments have come and gone with the election cycle, but the professional and politically neutral public service and its union has endured. This long, broad and deep experience of the public sector (our "DNA") gives us a unique understanding and viewpoint. We want what is best for the public sector so that it can continue to serve New Zealanders through supporting the work of the government of the day, and future governments. While our respective positions may from time to time be adversarial (for example, on industrial matters), we believe that the PSA and State agencies have a strong shared interest in public management structures and practices that will ensure the best outcomes from high performing State services, and that we should continue to work together to support this.

More Reforms, Fewer Rights

The PSA has informed members about our view of the potential impact of the areas of the Bill that concern us most: the provisions for workforce policy Orders in Council, reduced redundancy entitlements and the potential to contract out statutory functions.

We have held many discussions with member groups over the last six months; they fully endorse our approach and confirm that they do see these provisions as significant threats to their employment in the State services. Under the umbrella of the campaign "*More Reforms, Fewer Rights*" we have linked these State Services and Public Finance Reform Bill (SSPFRB) amendments with the proposed Employment Relations Act amendments (which have not been introduced at the time of submission), the Minimum Wage Act changes, and the Local Government

Act changes which allow councils to set staffing and salary caps. Taken as a whole, we believe that these four sets of legislative changes amount to a significant and concerted attack on the employment rights and terms and conditions of our members. We have encouraged members in the three sectors affected by the SSPFRB to make individual submissions and over 1250 have done so – demonstrating the strength of feeling amongst our members. While this submission deals with the Bill at hand, we urge the select committee to consider its impact alongside the other legislative changes noted above.

Delivering better public services?

A view of the State Sector Act 1988 and its impact

For the State service to flourish, it is vital that it has the right legislative underpinning. In our view neither the State Sector Act 1988 nor this Bill fully provides that underpinning. The State Sector Act 1988 is now 25 years old. It allowed successive governments to corporatise, commercialise, and privatise functions and agencies that were previously the domain of the public service, and bequeathed us a model increasingly unable to adapt to the future. By establishing the individual departmental chief executive as the employer, the Act set up one of the main mechanisms by which the old public service was broken up from the mid-1980s onwards.

The devolution of HR and employer responsibilities was a key element in the fragmentation of the State; the creation of many new agencies, portfolios and votes made the development of whole of government objectives and integrated service delivery more difficult. The 2004 reforms which included the Crown Entities Act 2004 (CEA) and amendments to the Public Finance Act (PFA) were essentially tinkering around the edges, and did not significantly change the underlying public management paradigm.

The PSA has long argued that a model so strongly based around individual chief executive autonomy was bound to focus staff on a narrow set of organisational goals and objectives, often short term in nature, paralleling the fixed term employment contracts of chief executives. The fundamental problem cannot be resolved by this Bill's limited attempts to achieve greater alignment and synergies. And furthermore, the constant restructuring of recent years undermines the stability of the public service and takes up energy and resources that should be used to support innovation. This Bill is an attempt to make the State Sector Act 1988 fit for 21st century purpose, and while there are some elements that we think do support modern and innovative ways of delivering public services, essentially the 25 year old basic model remains in place.

The PSA is not resistant to change; we recognise that the 21st century environment is dynamic and fast moving and that state services must be flexible and able to adapt quickly to change if they are to be modern and innovative. However, we are not convinced that this Bill, rooted in the thinking of 1988, provides the necessary platform because it does not represent a real shift in fundamental philosophy. A first-principles approach, rather than a series of 'fixes' on top of the current legislation, might have produced something more fit for purpose. It is worth thinking about the absence of a vision at the heart of the State Sector Act – and then thinking about what that vision might be, and how it might inspire the people who work in the public

sector. The Bill maintains the notion of 'spirit of service to the public' and introduces the notion of 'stewardship', and these are all well and good. However, the responsibility for effecting these excellent principles is given firstly to the State Services Commissioner, who then delegates it to chief executives to implement within their agencies. The focus is on a small group of senior leaders, without recognising the potential for the legislation to provide a guiding principles framework for state servants at all levels of the system.

Better Public Services

The literature on improving collaboration in government generally identifies agency 'silos' as one of the main obstacles to working together and this was one of the principal conclusions of the March 2012 report of the Better Public Services Advisory Group. The Better Public Services (BPS) programme[1] is now underway. It has a number of workstreams aimed at encouraging agencies to collaborate on: 10 result areas; system-wide leadership in several functions; continuous improvement; learning from innovations resulting from the Canterbury earthquake response; and on developing leadership across the system. This Bill is positioned as a central part of the BPS work programme and several of its provisions are aimed at enabling the implementation of the BPS approach, such as the establishment of the departmental agency model and the need to improve alignment between the public service and Crown entities.

The PSA has generally welcomed the Better Public Services report; we do not agree with all its analysis or recommendations, but there are several areas where we are able to support it such as the need for a closer alignment between the public service and Crown entities.

State services under stress

The State services are in a constant state of reorganisation, both major restructurings such as the recent formation of the Ministry of Business, Innovation and Employment, and internal restructurings within agencies under the 'freedom to manage' prerogative of the chief executive[2]. Research findings, the experience and views of our members, and increasingly the views of external commentators, indicate that most restructurings are costly and disruptive and typically do not deliver the projected performance improvements or cost savings.

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[1] See http://www.ssc.govt.nz/better-public-services for details of the Better Public Services programme.

[2] Norman and Gill provide an interesting analysis of the role of the Chief Executive, using the freedoms of the State Sector Act, in driving internal restructurings. *'Available data shows restructuring in the New Zealand public sector is high by international standards and a product of the 'freedom to manage' approach adopted in the late 1980s. Compared with other jurisdictions, most restructuring is initiated by chief executives rather than driven by cabinet political considerations. The majority of new chief executives initiate restructuring in their first year in the role and an increasing number of outgoing chief executives initiate changes in their last year. Restructuring is a lever of control, which in the authors view has been overused.'* http://igps.victoria.ac.nz/WP%20PDF/2011/IPS%20WP%201106.pdf p14

The government is seeking significant performance improvement from the State services, at a time when it is imposing budget cuts – Government is asking public servants to do more with less. Attaining this challenging target is made unfeasible by the state of near-constant restructuring that most public servants are experiencing. We believe there must be a complete and fully independent review of public service restructuring to examine its costs and benefits, what it has achieved, what can be learned from the experience, and most importantly, what the public has gained.

The PSA calls on the Government to place a moratorium on restructurings in the public service, pending the outcome of a review of public service restructuring. We note that the CTU makes a similar proposal in its submission.

We also note the stress on the public service through the government's imposition of the staffing cap in 2009. Over 3000 public service jobs have been cut since 2009, and at June 2012 there were 3263 unfilled vacancies[3]. Not filling vacancies is a timeworn way of making budget savings, but there are significant impacts on remaining colleagues who must pick up the workload to meet government objectives and deadlines. The PSA believes the staffing cap is an unnecessary intrusion into the ability of departments to determine how they will meet the objectives set for them by the government, within their allocated budgets.

The PSA calls on the Government to remove the staffing cap and to rely instead on the mechanisms of budget setting and departmental planning to determine staff levels.

In making these calls for a restructurings moratorium and for the removal of the staffing cap, we do not intend that the drive for efficiency and effectiveness should be stymied. We fully support more effective and productive ways of working, but our experience is that that these are rarely delivered through structural change but depend on a positive and constructive workplace culture. Neither the level of restructurings nor the staffing cap supports such a culture.

[3] http://www.ssc.govt.nz/sites/all/files/capping-june12.pdf

The PSA's principal concerns

The explanatory note to the Bill establishes its intention to provide a wider range of public management tools to support and encourage closer working together by government agencies, arrangements to support shared functions and services, greater reporting flexibility, and stronger leadership at system, sector and departmental level. These support many of the recommendations of the Better Public Services review of the public management system.

The Bill also proposes a number of changes in employment matters and it is our strong view that aspects of these will work against the intention to improve the public management system by weakening capability and accountability and undermining the notion of "stewardship".

PSA engagement with State Services Commission, Ministers and opposition parties

Prior to the introduction of the Bill, and more intensively since then, we have had substantial and constructive engagement with the State Services Commission which has enabled us to discuss matters of concern and clarify our common understanding of aspects of the Bill. We raised – and debated at some length – major concerns (which are detailed below), and we have appreciated their willingness to consider our point of view. We asked senior counsel to provide us with a legal opinion on our principal concerns on the Bill and we shared this with the State Services Commission. The SSC sought advice from Crown Law in response to the opinion and shared it with the PSA's leadership.

We met with the Minister of State Services and later spoke with the Minister of Finance about our concerns on aspects of the Bill and, while there are still some areas where we continue to disagree, we appreciated the Ministers' willingness to listen and seek constructive solutions and to invite our engagement with officials.

We have also met the state services spokespeople of the Labour Party and the Green Party to brief them on our view of the Bill, and on the proposals we make in this submission. We have written to the leaders of United Future, Māori Party and Mana Party to let them know about the proposals we make, and our view of the place of the Treaty of Waitangi in the legislation.

Our principal concerns with the Bill as it stands are set out below. We discuss them in detail in the later sections of this submission where we consider specific aspects of the legislation, and we are aware that the SSC may make recommendations for changes in some (but not all) when SSC and Treasury present the departmental report to the select committee. There are also likely to be a number of changes

recommended on other parts of the Bill, some of which we would support.

Redundancy rights of public servants (Cl 49 ss61A and 61B)

These new clauses remove provision for transfer of employees between public service departments, and bring in new provisions that place a restriction on redundancy payments where any employee in the State services who has received a redundancy notice is offered, and accepts, an alternative position elsewhere in the State services before they have ceased employment. The PSA strongly opposes these changes. Enacted as proposed they would remove existing rights contained in collective agreements, ignore the fact that the State Sector Act establishes agencies as separate employers and work against the implementation and management of workforce strategy across the public service. The proposed changes would also hasten the exit from the public service of many more skilled and knowledgeable public servants and lower the capability and experience levels of departments. The public service cannot afford to lose more capability.

We have drafted a set of positive proposals for an alternative approach. We propose a scheme to support redeployment by transfer of staff between public service departments in surplus staffing situations. Redeployment would be voluntary and redundancy payments would not apply where someone has accepted redeployment by transfer. We note that the Bill provides for this kind of approach (which we propose for public service staff) for the chief executives who are their employers. We see no reason for the Bill to take a different approach to the contractual redundancy rights of chief executives and their staff. We would like to see a positive obligation placed on chief executives to contribute to managing capability across agencies through redeploying staff who have been made redundant, and we propose significant alternative wording on these clauses. We believe this is consistent with the new "stewardship" paradigm for the State services as a whole.

We have had substantial discussion with the State Services Commission about Cl 49, and we understand the Commission may advise the select committee to insert wording to clarify that the intention is to confine the application of the clause to employees "of a department or departmental agency". While we support such a change, this would not remove our concern that the provision removes public servants' rights to redundancy if they gain a job elsewhere in the State services. We understand that SSC may also recommend to the committee that proposed s61A(1)(b)(iii) and (iv) – which clarify the circumstances under which an employee may be eligible for redundancy – should be copied and included in revised s61A(1)(a). We recognise that this change mitigates to a small degree the effect of s61A, but it does not to any substantial degree mitigate our concerns about this provision.

The primary basis of our objection is the incorrect assumption that State sector agencies are merely arms of a single employer, the Crown. On the contrary, each

State sector agency is a separate and distinct employer for all purposes relating to terms and conditions of employment. It is unjustifiable to determine that State sector agencies constitute a single employer for the sole purpose of compensation for redundancy.

We recommend that the select committee rejects the proposals in cl. 49, and adopts the alternative approach proposed on pages 26, 27 and 31.

Government Workforce Policy Orders (Cl 42 s55A – 55C)

These proposed changes provide for the development and implementation of government workforce policy at the State sector system level and set the broad parameters in which bargaining occurs rather than determining pay and conditions.

Our concern is that the potentially broad and unlimited scope of any Workforce Policy Order enabled by this provision may override, abridge, or severely limit fundamental rights which state services employees currently have in relation to collective bargaining. The advice from senior counsel, which has been provided to the Commission and to Crown Law, indicates that these include rights under the Employment Relations Act and ILO conventions 87 (the freedom of association and protection of the right to organise) and 98 (the right to organise and collectively bargain).

We have had intensive discussions with the Commission on this point and understand that it is not the intention of the Bill to abrogate or limit these rights. We understand that they may recommend to select committee that s55B2(a) be amended to remove "principles relating to pay and conditions" and replace this with "government's expectations for State services agencies in negotiating collective and/or individual employment agreements, without determining pay or conditions", and that there may also be a recommendation for further changes to insert wording to clarify that existing legal obligations under the Employments Relations Act or the Bill of Rights Act will not be overridden.

If the State Services Commission makes recommendations on these lines, we recommend that the select committee should support and adopt these changes. However, they will not entirely remove our concerns about the breadth and application of the proposals.

Delegation of functions or powers (Cl 35 s41)

This clause allows a departmental chief executive to delegate statutory power to individuals working in the public service as contractors or, with the approval of the Minister, to a person outside the public service '... in relation to a function, *duty* or power of the public service'. If this is correct, this is a very significant constitutional change and we discuss this view in our detailed analysis of the clause. It would appear to enable the chief executive to delegate their role as an employer in its

entirety. We have discussed this provision with the Commission and understand that they may have advised the Committee that "duty" should be omitted from new 1A(c) proposed by cl. 35(2).

Whilst the proviso to section 41(1) stipulates that a delegation to a CE by a Minister or Commissioner cannot be sub-delegated without the written consent of the delegator, the Bill does not provide a similar requirement for any delegation by the CE of his or her functions or powers. Given the enlarged scope for delegation, this is a recipe for potential uncertainty and confusion and for unintended consequences. We understand that the Commission may have advised the Committee that a requirement for written consent should be included. The PSA would support this, and the omission of "duty" from 1A(c) discussed above; however this does not remove our other concerns about the breadth and scope of the proposed changes to the power of delegation.

The PSA is also concerned about the delegation of statutory functions to a "person" outside the State services. The use of the term "person" rather than "individual" would appear to permit delegations to corporate persons, not just natural persons, meaning that statutory functions could be contracted to organisations outside the state services. The only constraint would be the requirement for the Minister's approval. This measure would weaken the power of Parliament to determine which functions shall be delivered by State agencies. Delegation of statutory powers to non-government providers normally requires legislative change e.g. in the case of private prisons. This change reduces the opportunity for parliamentary and public scrutiny and has the potential to facilitate the privatisation of services and we oppose it. However, if it proceeds the committee should ensure that delegations outside the public service should at least be limited to individuals, rather than be extended to corporate entities.

Our preference is that the select committee delete the provisions relating to delegations in the bill. However, if the committee wishes to proceed the PSA recommends that: a chief executive cannot delegate her/his role as employer in its entirety; that a delegation from a CE to an individual working as a contractor in the public cannot be sub-delegated without the written consent of the delegator; and it is clarified that under these provisions delegations outside the public service can only be made to individuals, not corporate entities.

The Treaty of Waitangi

We believe that a major gap in the legislation is the lack of any mention of the Treaty of Waitangi. The Treaty is in none of the three principal Acts, and this Bill represents a real opportunity to bring it into the legislation and rectify the matter. It seems curious given that other legislation (for example, the Local Government Act 2002, Public Records Act 2005, Environmental Protection Act 2011 and the New Zealand Public Health and Disability Act 2000) does include Treaty wording. The BPS work

programme 10 result areas have a strong focus on better outcomes for Māori (for example in Supporting Vulnerable Children, and in Reducing Crime and Reoffending). By including explicit reference to the Treaty, the State sector legislation will underline the obligation of chief executives and their agencies to consider (and report on) how they will give effect to Treaty principles in delivering public services.

The Human Rights Commission looked at the Treaty, as New Zealand's founding document, from a human rights perspective and made a number of recommendations for strengthening the place of the Treaty. One recommendation was:

> ***Examine constitutional arrangements:*** *Review laws that make up our constitutional framework, to ensure the Treaty, indigenous rights and human rights are recognised and provided for, and consider entrenching them as constitutional norms*[4].

This Bill presents an opportunity to bring the Treaty to the forefront of the State services. We make a number of recommendations about how to do this in the detailed analysis of each part of the Bill.

[4] Human Rights Commission's discussion document*: Te Mana I Waitangi, Human Rights and the Treaty of Waitangi*, 2010, p18. http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/27-Jan-2010_13-00-02_HRC_Treaty_Report_web_FINAL.pdf

Elements of the Bill that we support

Although we have said that we think that the Bill represents a missed opportunity to put forward a modernised and refreshed suite of legislation to guide 21st century State services, we recognise that the Bill is a complex and wide-ranging review. In this section we note that there are a number of elements of the Bill that we do broadly endorse and support, and we set these out below, with brief comments.

"Whole of system" view

We support the general policy intent to remove barriers to closer alignment of agencies in the state services to enable agencies to work together to support improved outcomes. We have long argued that the fragmented nature of the State services leads to inefficiencies which are frustrating for our members, as well as for the public.

Efficient and effective outcomes

We support having a sharp focus on the need to deliver public value for the public dollar. However in our view, efficiency and effectiveness is not achieved by blunt-instrument approaches such as the staffing cap, which in effect means requiring fewer staff to do more with less resource. The PSA has long championed improving public sector productivity through engaging the ideas of the people who carry out the work, in a process of continuous improvement. They are the ones who know how best to do the job and how to do it better.

Stewardship

The introduction of the notion of "stewardship" into the functions of the State Services Commissioner is an important step, and one that we support. It signals that chief executives will be obliged have a strong focus on the future well-being of their agency and the services it delivers, looking beyond the life of the government of the day, and that they should bring this notion into their advice to Ministers. Stewardship will be an important part of the practice of providing free and frank, politically neutral advice to government.

Leadership

The Bill contains a number of provisions to develop and coordinate leadership across the State services, such as the functional leadership roles and the ability of the Commissioner to transfer chief executives, and in principle we support them – but with some reservations. On one level they are welcome and should support better whole-of-system outcomes and address a current capability deficit. However, we believe that the Bill misses an important point. Leadership is not just a function of higher pay grades or seniority; it should be diffused throughout an organisation. Staff at all levels should be encouraged to take on appropriate leadership roles.

We would point out that the State Sector Act 1988 established the Senior Executive Service (SES), an experiment that eventually failed and which was repealed in the 2004 amendments. We fear that by focussing on the 'top 200', as the BPS work programme is doing, history may be repeated. We recognise the importance of supporting and growing leadership capability, but we would have liked to see some fresh thinking rather than a retread of the SES approach.

Employment of chief executives

Two amendments clarify that the State Services Commissioner is the employer of chief executives and that the Commissioner is no longer obliged to obtain the agreement of the Minister before making a chief executive appointment, but must consult. The PSA strongly supports these amendments. It has always been understood that the Commissioner was the employer of chief executives but the legislation should be unequivocal. We particularly welcome the amendment to s38(3) which supports this clarification of employment relationship and removes the opportunity for, in our view inappropriate, interference in employment matters by ministers.

Ability to transfer chief executives

This seems to us to be sensible, and should enhance the Commissioner's ability to develop chief executive careers, and to deploy chief executive expertise where it is needed. However, it will be important that the principle of appointment on merit, a cornerstone of the politically neutral public service, is not undermined.

Indemnity

The introduction of protection for State servants from liability for civil proceedings is timely and welcome, and is supported by our members. It is important that public servants have this immunity from liability in civil proceedings. Most errors by public service departments that lead to personal loss or injury, or the death of citizens, are as a result of systemic problems, rather than purely as a consequence of the decisions or actions of individual public servants. Such cases can destroy individual public servants' lives, even when they may not bear personal responsibility and have acted in good faith. Legal proceedings can take years and the ongoing pressure can lead to family break up and the loss of careers. Exoneration through the courts can arrive too late.

We are glad to see this important protection included in the Bill and would oppose any attempt to water this down by, for example, merely relying on the indemnification provided by the employer. This could see individual public servants face the trauma of legal action, with their only protection being that their legal and related costs are being met by the employer.

Multi-category appropriations

The PSA supports this amendment to the Public Finance Act which is intended to reduce the technical barriers to whole-of-government initiatives, as long as steps to ensure the appropriate accountability for funds are introduced.

Detailed analysis and recommendations

In the following tables we set out a series of detailed issues where we are making recommendations for amendments. This section amplifies the matters we have noted as the principal issues of concern to our members, as well as other important matters. We have grouped the issues under each of the principal Acts as follows:

State Sector Act

- The employment relationship
- Location of provisions relating to the employment of public servants
- Workforce Policy Orders
- Removal of power to transfer employees and restriction of redundancy rights
- Ministerial staff
- Chief executives – principal responsibilities, acting independently, transfer, employment
- Delegation of functions and powers
- Departmental agencies
- Immunity for public service chief executives and employees

Public Finance Act

- Section 4A Companies and Schedule 4 organisations
- Departmental agencies
- Authority to lend money
- Multi-category appropriations
- Exemptions from end-of-year performance information
- Audit of end-of-year performance information
- Information on strategic intentions

Crown Entities Act

- Monitoring Crown entities
- Function of Crown entities
- Whole of government directions
- Statement of intent and accountability documents
- Obligation to report on Treaty of Waitangi and EEO objectives

State Sector Act

Proposed Provision	Discussion
The employment relationship	
The purpose of the Act **cl. 5, s1A** Clause 5 repeals the long title of the Act and recasts this content as a purpose statement in a new s1A. "The purpose of this Act is to promote and uphold a State sector system that –"	**Purposes of the Act: general framework** The Bill reorganises the Act into a scheme whereby the purposes of the Act cascade and can be tracked through the role and then the functions, responsibilities, duties and powers of the Commissioner and chief executives. The PSA has no strong view on this scheme, which seems on the face of it a sensible one. Our concern is that nothing important is lost in this translation. **Term "State sector system"** Recasting the purpose of the Act as to "promote and uphold a State sector system" with particular characteristics has resulted in some unnecessary obscuring of meaning. For example, "The purpose of this Act is to promote and uphold a State sector system that – (e) provides for workforce and personnel matters." It is the Act rather than the "State sector system" that provides for such matters. We also note that the term "State sector system" is undefined in the Bill and we believe this will create confusion. We suggest therefore that it is more appropriate for the purpose of the Act to be to "promote and uphold State services that … "rather than using the term "State sector system". We have included a suggested reframing of this statement below in our recommendation.
cl. 5, s1A (e) "provides for workforce and personnel matters"	**Employment matters in purpose statement** The present purpose statement includes a significant focus on employment matters. These include, in present long title (d), (e), (f) and (g): (d) to maintain appropriate standards of integrity and conduct among employees in the State services and other agencies; and (e) to ensure that every employer in the State services is a good employer; and (f) to promote equal employment opportunities in the State services; and (g) to provide for the negotiation of conditions of employment in the State services and assistance to other agencies

Proposed Provision	Discussion
	on conditions of employment. We understand that s1A(e) is intended to subsume (f) and (g) of the current long title. We believe that these two matters are key to the purpose of the Act and should be retained in the long title. This is included in our recommendation. **EEO** It is the PSA's strong view that removing any reference to EEO from the purpose statement (and also from the Commissioner's functions, cl 9) signals a significant intended reduction in focus on EEO at the system level and by the Commission. The State, as an employer, has significant power. It can legislate, as it proposes to do in this Bill, to alter the employment arrangements and terms and conditions of state servants. No other employer can do this. The good employer and EEO obligations are an important moderation of the power imbalance between the State and its employees. In addition, through other legislation, including the Bill of Rights Act 1990, the Human Rights Act 1993 and the Equal Pay Act 1972, Parliament has clearly signalled the unacceptability of discrimination and inequality of opportunity. The current focus on EEO obligations in the long title and in the Commissioner's functions signal how this legislation is to be given effect in relation to state services employees. We recommend that reference to EEO is retained in the purpose statement. Wording is included in the proposed recasting of the purpose statement in our recommendation below. This would also support the general recasting of the Act referred to in our comment below on the location in the Act of provisions relating to the employment of public servants as this purpose would cascade through the Commissioner's function to "promote strategies and practices concerning government workforce policy" (cl. 11, s6(f)) and be given effect through cl 47, s58. **Conditions of employment of state servants** The present long title (g) – negotiation of terms and conditions of employment – indicates clearly that it is still the Act that establishes the employment regime that distinguishes the employment of state servants from that of all other employees. A reference to this key purpose should be maintained in the purpose statement. Wording is included in

Proposed Provision	Discussion
cl.5, s1A (f) "meets good employer obligations"	the proposed recasting of the Purpose statement in our recommendation below. **Good employer obligations** Cl. 5, s1A(f) proposes a purpose of "…a State sector system that: (f) meets good employer obligations". The equivalent purpose statement in the current Act is "ensure that every employer in the State services is a good employer". In the PSA's view, recasting this as having a state sector system that "meets good employer obligations" effectively legislates for a minimum code approach to the good employer obligation - the implication is that state services employers need to merely meet (rather than exceed) such obligations. The proposed amendment also weakens the obligation of each state sector employer to fulfil their good employer obligations. Wording is included in the proposed recasting of the purpose statement in our recommendation below. **Inclusion of Treaty clause in the Purpose statement** We note that the Act and the Bill are silent on the role of the State services regarding the Treaty of Waitangi. Given the state services', and in particular the public service's, constitutional role, this silence is significant. We note that the Local Government Act 2002, Public Records Act 2005, Environmental Protection Act 2011 and the New Zealand Public Health and Disability Act 2000 include Treaty wording. The BPS work programme 10 result areas have a strong focus on better outcomes for Māori (for example in Supporting Vulnerable Children, and in Reducing Crime and Reoffending). By including explicit reference to the Treaty, the state sector legislation will underline the obligation of chief executives and their agencies to consider (and report on) how they will give effect to Treaty principles in delivering public services. The Human Rights Commission looked at the Treaty, as New Zealand's founding document, from a human rights perspective and made a number of recommendations for strengthening the place of the Treaty. One recommendation was: ***Examine constitutional arrangements:*** *Review laws that make up our constitutional framework, to ensure the Treaty, indigenous rights and human rights are recognised and provided for, and consider entrenching them as constitutional norms*[5].

[5] Human Rights Commission's discussion document*: Te Mana I Waitangi, Human Rights and the Treaty of Waitangi*, 2010, p18. http://www.hrc.co.nz/hrc_new/hrc/cms/files/documents/27-Jan-2010_13-00-02_HRC_Treaty_Report_web_FINAL.pdf

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	We propose that the purpose statement include recognising, providing for and giving effect to the principles of the Treaty of Waitangi. Wording is included in the proposed recasting of the purpose statement in our recommendation below. **Recommendations** In view of these significant reservations and objections to cl 5, we propose new wording. The PSA proposes amending cl 5 to delete from "1A Purpose" to "culture of stewardship" and replace this with: *The purpose of this Act is to promote and uphold State services that operate as a system in the collective interests of government; and* - *Are imbued with the spirit of service to the community; and* - *Maintain appropriate standards of integrity and conduct; and* - *Maintain political neutrality; and* - *Are good employers; and* - *Are supported by effective workforce and personnel arrangements; and* - *provide equal employment opportunities; and* - *Are driven by a culture of excellence, efficiency and stewardship; and* - *Recognise, provide for and give effect to the principles of the Treaty of Waitangi.* The recommendations in the next section also support the cascading of the Commissioner's responsibilities relating to EEO.
Location of provisions relating to the employment of public servants	
Cl. 41 to cl. 57 Provisions relating directly to the employment of public servants are bought together in a revised Part 5 of the Act: "Government workforce policy and personnel provisions".	It is sensible to bring together in one part of the Act the provisions relating directly to the employment of public servants. However some aspects of the way this part is framed are inconsistent with the "purposes", "roles", "functions" and then "responsibilities" scheme proposed for of the rest of the Act. This may cause confusion. We note, for example, that cl. 38 proposes to insert an "Object" statement at the start of Part 4 and that this is then followed by clauses detailing the Commissioner's "responsibilities" in relation to this part of the Act. We suggest that

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	the same approach is taken in Part 5. Thus, the tasks referred to in cl.42 (s55A, government workforce policy), cl.44 (s57(4), minimum standards of integrity and conduct) and cl. 47 (s58, EEO) would instead be referred to as "responsibilities". This would also clarify that these "responsibilities" cascade from the Commissioner's "functions" in cl. 11 (s6 (f), (g) and (h)) of promoting strategies and practices concerning government workforce capacity and capability; and promoting good-employer obligations in the public service; and promote and reinforce standards of integrity and conduct in the State services." **Recommendations** - In the title of s55A (cl 42) delete both references to "functions" and replace with "responsibilities". - In cl. 44 (s57 (4)) following "Commissioner's" delete "functions" and replace with "responsibilities". - In cl. 47 (s58 (1)) following "Commissioner's" delete "functions" and replace with "responsibilities".
Workforce policy orders	
cl. 42 s55A, B and C. The proposed changes to clause 42 are intended to clarify that government workforce policy will be at the State sector system level and set the broad parameters in which bargaining occurs rather than determining pay and conditions.	**Potential scope of Government Workforce Policy Orders** S.55 requires the Commissioner in developing government workforce policy to consult with "affected agencies" "on workforce matters which *may include, without limitation*, principles relating to pay or conditions and the development of workforce strategy". The Minister may then cause an Order in Council to be promulgated on the basis of that limited process. The potentially broad and unlimited scope of any Workforce Policy Order enabled by this provision may override, abridge, or severely limit fundamental rights which State services employees currently have in relation to collective bargaining. Advice from senior counsel, which has been provided to the Commission and to Crown Law, indicate that, these include rights under the Employment Relations Act and ILO conventions 87 (the freedom of association and protection of the right to organise) and 98 (the right to organise and collectively bargain). We also support the submission of the Council of Trade Unions on this point. Whether or not a particular Government Workforce Policy Order prevented meaningful bargaining and so adversely affected freedom of association would of course be for the

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	Court to determine in relation to a specific situation. We have had intensive discussions with the Commission on this point and understand that it is not the intention of the Bill to abrogate or limit these rights. We understand that the Commission may have recommended to the Committee that references in s55 to "Government Workforce Policy Orders" be changed to "Government Workforce Policy Statements" and that s55B 2(a) be amended to remove "principles relating to pay and conditions" and to replace this with (government's expectations for State services agencies in negotiating collective and/or individual employment agreements, without determining pay or conditions." We understand that they may have further recommended changes to s55C (4) to delete after "override" "existing…obligations" and insert "existing legal or statutory obligations under the Employment Relations Act or other statutory rights and freedoms under the Bill of Rights Act". If so, the PSA would support these changes. This does not, however, remove our concerns outlined below about other aspects of cl. 42. If the committee accepts these changes we would recommend the inclusion of the Trade Unions Act 1908 in s55C (4). **Inputs into development of government workforce policy** If the committee accepts the Commission's advice on the changes referred to above, we strongly recommend the extension in cl. 42, s55B of the Commissioners' obligation to consult with "affected agencies" on draft government workforce policy to include an obligation also to consult with any employees likely to be affected by the policy and their representatives. While consultation is a limited concept and does not require agreement, it could contribute significantly to the robustness and success of any such policy. The requirement for consultation with those likely to be substantially affected would also parallel the consultation requirements proposed for whole of government directions by cl 165, s115A of the Crown Entities Act. **Use of Orders in Council for Government Workforce Policy Orders** cl. 42, S55C provides for promulgation of Government Workforce Policy Orders as orders in Council. It is the PSA's strong view that this is unnecessary. We understand that the Commission may have advised the Committee that all references to Government Workforce Policy Orders in s55A, B and C be changed to "Government Workforce Policy Statements". We would support this. S55C already requires departments and Crown agents to give effect to Government Workforce Policy Orders. Further,

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	s55B (5) states that the Government Workforce Policy Order is not a regulation for certain purposes. Unlike other regulations[6], the Order cannot be "disallowed" by resolution of the House of Representatives and is not subject to the ordinary rules about publications of Acts and Regulations[7]. Even the normal right to have regulations reviewed by the Regulations Review Committee is not available because it is overridden by this clause. Given these qualifications, it is difficult to see what this status adds, other than an additional administrative burden following sign-off by the Minister. Ss55B (4)and 55B (5) (cl 42) conferring the status of Orders in Council on Government Workforce Policy Statements are unnecessary and should be deleted. **Recommendations** - All references in s55A, B and C to "Government Workforce Policy Orders" be changed to "Government Workforce Policy Statements" - In s55B (1) insert after "agencies", "any employees likely to be affected by the policy and their representatives". - s55B 2(a) be amended to remove "principles relating to pay and conditions" and replace this with "government's expectations for State services agencies in negotiating collective and/or individual employment agreements, without determining pay or conditions." - Delete s55B (4) and s55B (5). - In s55C (4) delete after "override" "existing…obligations" and insert "existing legal or statutory obligations under the Employment Relations Act 2000 or other statutory rights and freedoms under the Bill of Rights Act 1990 and Trade Unions Act 1908".

[6] S5 Regulations (Disallowance) Act 1989

[7] Acts and Regulations Act 1989

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Removal of power to transfer employees	
cl. 49 ss61A and 61B The clauses proposed to replace ss61A and 61B remove any provision for transfer of employees between public service departments.	**Removal of the power to transfer** Removing chief executives' power to transfer employees (existing s61A) makes little sense in the context of other changes to the Act designed to foster greater collaboration and management of capability across the system. The absence of any such power and a positive obligation on the part of chief executives to encourage and manage capability across the system by actively facilitating transfers of employees between departments is a significant gap and a barrier to implementation of effective public service workforce strategy. The PSA is strongly opposed to this provision and has drafted a set of positive proposals to support redeployment by transfer of staff between public service departments in surplus staffing situations. Redeployment would be voluntary and redundancy payments would not apply where someone has accepted redeployment by transfer. We note that the Bill provides for this kind of approach (which we propose for public service staff) for the chief executives who are their employers (cl. 31, s37A). We see no reason for the Bill to take a different approach to the contractual redundancy rights of chief executives and their staff. We would like to see a positive obligation placed on chief executives to contribute to managing capability across agencies through redeploying staff who have been made redundant, and we propose significant alternative wording on these clauses. **Recommendations** *Clause 25* - *In clause 25, after line 37 (page 23), insert "(i) the department's contribution to Public Service workforce capability development and management."* *Clause 49* - *In clause 49 amend title to read " Sections 61A and 61B amended" and replace "Replace sections 61A and 61B" (line 20 on page 35) with "Sections s61A and s61B amended" and insert after line 20:* *In section 61A(d) before "be appointed" insert " by agreement with the employee and the chief executive of any other department". In section 61B(3) after "under" insert "subsection (1)(c)".* *In section 61B amend the heading by after "transfer" deleting "of duties". In section 61B(1) after*

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	"Where" delete "as a result of the transfer of all or any other duties of one department to another department". After "any" delete employees of the department that we performing those duties before the transfer are" and insert "employee is". - *In clause 49 in line 21(page 35) omit "61A" and insert "61AA". After "employee" (line 22, page 35) omit "who has received a notice of redundancy" and insert "who has been transferred under s61A". After "if" (line 23, page 35) delete from "before …" to "…2000" (line 6, page 36) and insert "the position they have been transferred to is:* *(a) In substantially the same position; and* *(b) In the same general locality; and* *(c) On terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the transfer (including any service-related , redundancy and superannuation conditions; and* *(d) On terms that treat the period of service with the transferring department (and any other period of service recognised by the transferring department as continuous serviced) as if it were continuous service with the department they have been transferred to.[8]"* **How the Act would look** ***33 Principal responsibilities*** *33(1)(i) The department's contribution to Public Service workforce capability development and management.* ***61A Power to transfer employees*** *(1) Where the chief executive of a department at any time finds in respect of any duties being carried out by the department—* *(a) that those duties are no longer to be carried out by the department; or* *(b) that a greater number of persons is employed on those duties than is considered by the chief*

[8] Adapted from s30E State Sector Act 1988

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	executive to be necessary for the efficient carrying out of those duties,— *all or any of the persons who are carrying out those duties may, subject to the relevant employment agreement, either—* *(c) be appointed by the chief executive to other positions in the same department; or* *(d) by agreement with the employee and the chief executive of any other department, be appointed by the chief executive of any other department to positions in that other department.* *(2) Nothing in sections 60, 61, and 65 shall apply in relation to any appointment made under this section.* *(3) Before making an appointment under subsection (1) (c) of this section, the chief executive responsible for the appointment shall consult with the employee about the proposed appointment.* *(4) Any appointment under subsection (1)(d) of this section shall be with the agreement of the chief executive of the department, the chief executive of the other department .*
Limitation on redundancy rights	
cl. 49 ss61A and 61B	The clauses proposed to replace ss61A and 61B also legislate for substantially reduced compensation for State servants losing their jobs through genuine redundancy. This is both unfair and inconsistent with the aspects of the public management system established and supported by the Act. These changes remove existing rights contained in collective agreements that have been bargained for in good faith, and in the context of a total package of conditions, and ignore the fact that the State Sector Act establishes agencies as separate employers. Cl. 49 proposes new provisions that place a restriction on redundancy payments where any employee in the State services who has received a redundancy notice and before their employment has ended is either: • offered and accepts elsewhere in the State services *another position* (which we understand is intended to be a position of exactly the same nature but may have different and lesser terms and conditions of employment); or

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	• is offered (but does not need to have accepted), an alternative position which has comparable duties and responsibilities and; is in the same general locality within reasonable commuting distance; and is on terms and conditions (including redundancy and superannuation conditions) that are no less favourable overall. The PSA **strongly opposes these changes** and has received advice from senior counsel that redundancy provisions in existing employment agreements may still be enforceable. We note the submission of the Council of Trade Unions relating to implications for the government's international obligations regarding freedom of association. We understand that the justification for employees not having an entitlement to redundancy payment is because it is said that the employee is simply moving from one limb of the same employer (i.e. the Crown) to another limb of that employer. This is not correct. Under s59(2)[9] the position is that unless expressly provided to the contrary in the Act, the chief executive has all the rights, duties and powers of an employer in respect of the persons employed in their department. The one aspect which is provided to the contrary in the Act is the negotiation of conditions of employment under s68. If the individual has found new employment with a different department/employer, there can be no justification for denying his or her contractual redundancy rights under an existing employment agreement (whether those rights are compensation, reassignment or redeployment), especially where there is no corresponding benefit. For the nearly 25 years of the Act's operation, public servants have been without the benefits of being part of a single public service employer. When they have been made redundant, they have found new work entirely through their own efforts. There is no redeployment mechanism in the public service. Thus, they have been the same position as any other worker made redundant and have had the same rights as other workers to negotiate for redundancy payments as part of the package of terms and conditions of employment in their employment agreements. It is grossly unfair to these employees, who are under a regular threat of reorganisation in the workplace, to argue that for the sole purpose of compensation for redundancy, their status as an employee of their chief executive is merely an inconvenient legal fiction. This also seems inconsistent with the support of successive governments of employment relations frameworks based around freedom of contract.

[9] Current s59(2) will become s59(1)(c)

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	Scope of application of limitation on rights to redundancy payments We are concerned that ss61A and 61B could be interpreted as applying to all of those working in the wider State services rather than only to Public Service employees. S2 of the Act provides that: "Employee, in relation to the State services – (a) means an employee in any part of the State services, whether paid by salary, wages or otherwise; but (b) does not include – (i) any chief executive" The Act does not provide any other definition of employee. We have had substantial discussion with the Commission about cl. 49. We understand that the Commission may have advised the Committee to insert in s61A(1) after "employee" "of a department or departmental agency". While the PSA would support such a change, as it provides greater clarification of scope, this would not remove our concern that the provision attempts to remove public servants' right to redundancy if they gain a job anywhere else in the State services. As cl 49 stands, it would capture public servants made redundant who then, entirely on their own efforts, find a job not just in the Public Service but also in schools and hospitals, crown owned companies and independent crown agencies. This is clearly unfair, may be unworkable and is, as the CTU has notes a "massive expansion of the public service redundancy framework". It is a significant clawback of existing terms and conditions of employment with no corresponding compensation. We understand that the Commission may have advised the Committee to copy and include s61A(1)(b) (iii) and (iv) in s61A(1)(a). While the PSA recognises that this change mitigates to a small degree the effect of s61A, it does not to any substantial degree mitigate our concerns about this provision. The PSA supports responsibility to the taxpayer in relation to redundancies and supports changes to the Act that encourage and manage capability across the system. We have drafted a set of positive proposals to support redeployment of staff between public service departments in surplus staffing situations. Redeployment would be voluntary and redundancy payments would not apply where someone has accepted redeployment. This mechanism would assist chief executives to give effect to the obligation we have proposed above.

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	Recommendation *Clause 49* - In *clause 49* in line 21(page 35) omit "61A" and insert "61AA". After "employee" (line 22, page 35) omit "who has received a notice of redundancy" and insert "who has been transferred under s61A". After "if" (line 23, page 35) delete from "before …" to "…2000" (line 6, page 36) and insert "the position they have been transferred to is: (e) In substantially the same position; and (f) In the same general locality; and (g) On terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the transfer (including any service-related , redundancy and superannuation conditions; and (h) On terms that treat the period of service with the transferring department (and any other period of service recognised by the transferring department as continuous serviced) as if it were continuous service with the department they have been transferred to.[10]" **s61AA Restriction of redundancy payments in certain situations** (1) An employee who has been transferred under s61A is not entitled to a redundancy payment if the position they have been transferred to is: (a) In substantially the same position; and (b) In the same general locality; and (c) On terms and conditions of employment that are no less favourable than those that apply to the employee immediately before the transfer (including any service-related , redundancy and superannuation conditions; and (d) On terms that treat the period of service with the transferring department (and any other period of service recognised by the transferring department as continuous serviced) as if it were continuous service with the department they have been transferred to.[11]"

[10] Adapted from s30E State Sector Act 1988

[11] Adapted from s30E State Sector Act 1988

Proposed Provision	Discussion
Commissioner's ability to apply codes of integrity and conduct for particular persons or groups of persons	
Cl. 44 s57 "The Commissioner may apply a code to any agency or agencies referred to in subsection (1) or to any particular persons or groups of persons undertaking particular functions …"	Current s57 enables the Commissioner to set codes of conduct that are to apply in the Public Service, all or any Crown entities, the Parliamentary Council Office and the Parliamentary Service. Cl. 44 s57(3) enables the Commissioner to apply those codes to particular persons or groups of persons within or across agencies. The intention, as set out in the Cabinet paper, Better Public Services Paper 6, is to provide for a situation when it might not be appropriate for a code of conduct in its entirety to apply individuals or groups undertaking particular functions. In our view, this proposed amendment is unnecessary as this flexibility is already provided for. Existing s57 (3) is already broadly enabling. The Commissioner is able to set codes for agencies that are flexible enough to take into account "any variations that the Commissioner things appropriate, taking into consideration the legal or commercial context of the agency." The Commissioner can and does issue guidance about the application of codes. As the CTU has said in their submission, "a legislative sledgehammer should not be used to crack a regulatory nut"; The existing Code and associated guidance can be amended to provide further clarification regarding application. We recommend deleting proposed s57(3) and retaining the provision as it currently stands. We further recommend the inclusion in s53(1) of a requirement that in the development of any code, the Commissioner consult with the agencies, individuals and groups and their representatives, likely to be affected by that code. As we have noted in relation to Workforce Policy Orders, while consultation is a limited concept and does not require agreement, it could contribute significantly to the robustness and success of any such code. **Recommendations** - Delete proposed s57 (3) and retain the provision as it currently stands. - In s51 (1) insert after "may", "after consultation with agencies, individuals and groups and their representatives, likely to be affected".

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Ministerial staff	
cl.6, s2 Interpretation "employees (including acting, temporary or casual employees) of a department who are employed on events-based employment agreements to work directly for a Minister rather than in that department".	**The definition of "ministerial staff"** There are two flaws with the definition proposed. The first is that it does not distinguish between political staff working in Ministers' offices who are employed on events-based agreements by the Department of Internal Affairs (Ministerial Services), and those who are employed by other departments and seconded to Ministers' offices to work as private secretaries or advisors on particular portfolios relating to the work of those departments. No Minister is the employer of staff working in their office. The current wording is open to an interpretation that seconded portfolio private secretaries or advisors could be "Ministerial staff" and somehow able to be employed on events-based agreements for the duration of their time working in a Minister's office. We understand that this is not the intent of the clause and we recommend that it be amended to clarify this. The second flaw is that the definition is ultimately circular – it does not define which employees are able to be employed on an events-basis by Ministerial Services. We assume that it is intended that, as is currently the case, it would be the Minister who decides whether or not a particular role in their office is a political one and then advises Ministerial Services that it should be offered on an events-basis. **Recommendation** We propose that "a department" is omitted and "the Department of Internal Affairs, Ministerial Services" is inserted and that "directly for a Minister" is omitted and "to a Minister in his or her ministerial office" is inserted.
cl. 26 (s33(2)(b)) This limits the chief executive's duty to act independently in matters concerning appointment of employees who are "ministerial staff", and cl. 48	**Employment arrangements for political staff in Ministers' offices** Cl. 51 of the Bill inserts a new section in the Act providing that sections 60, 61, 64 and 65 of the Act do not apply to ministerial staff. These exemptions are unnecessary and this clause should be deleted. S60 requires appointments to be of "the person who is best suited to the position". S61 is the obligation to notify of any vacancies, s64 is the obligation on public service employers to notify their other staff of any appointments and s 65

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(s59(5))requires chief executives of "the relevant department" to have regard to the wishes of the relevant Minister in relation to such ministerial staff. **Cl. 51 provides that ss60, 61, 64 and 65 do not apply to ministerial staff.**	requires those employers to have in place a procedure by which staff can request a review of any appointment. We assume that these exemptions are to allow for political appointments without the transparency requirements of other public service appointments. Our view is that these changes are unnecessary and do not add substantively to the current situation. S60 already says that the person best suited to the position has to be given preference – and you could only be that person if you had the politics the Minister wanted. In any case, the proposed amendment to s33(2)(b) would acheive this (see comment above). Removing the obligation to notify vacancies achieves nothing other than removing transparency for other ministerial staff who might wish to build a parliamentary career and put themselves forward for available roles – it does not oblige the employer to appoint them or interview them. Removing the obligation to notify appointments is somewhat perplexing given that who works in Ministers' offices is not confidential internally or externally. Other employees of Ministerial Services will in any case become aware of appointments when the new appointee is listed in the Parliament telephone directory. PSA members who work as MPs' staff and in Ministers' offices have said that they strongly oppose the changes proposed by cl 51 as they reduce transparency of opportunities and appointments in Ministers' offices and undermine the legitimate career of parliamentary administration. The PSA is concerned that this lack of transparency is likely to decrease diversity in Ministers' offices and decrease equal employment opportunities. There is a strong business case for diversity increasing the quality of decision making in teams and organisations. The PSA supports there being robust and transparent arrangements around the appointment of political staff to Ministers' offices. While some of the standards applying to public servants should not apply to these staff, it is important that robust guidance is developed for political appointees, including a customised code of conduct developed in consultation with events-based ministerial office staff and their unions. We are aware that, in the past, the Commissioner has endeavoured to develop such a code. We are also aware that no such code has eventuated as agreement on the concept has not been reached with Ministers. We recommend below requiring the Commissioner to set such a code.

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	Recommendations - Delete cl. 51. - Amend s57 of the Act to provide that the Commissioner must set minimum standards of integrity and conduct for political staff in Ministers' offices.
Chief executives – principal responsibilities, acting independently, transfer, employment	
Cl.25 s32 Cl.25 amends s32 to include responsibilities for chief executives around stewardship for their department, for Crown assets used by or relating to their department and legislation administered by their department. Chief executives are also made responsible for their agency's "responsiveness to the collective interests of government"	**Stewardship across the system** The PSA welcomes this extension of chief executives' responsibilities, but there appears to be a gap in that chief executives are not required to collaborate with other public entities or to have regard to stewardship across the system. We note that cl. 153 the Bill amends s50 of the Crown Entities Act to require boards of statutory entities to ensure that those entities perform their functions "(c) in collaboration with other public entities (within the meaning of that term in the Public Audit Act 2001) where practicable." Including responsibility for collaboration with other public entities and a requirement to have regard to the need for stewardship across the system would promote cross agency working on, for example, result areas and taking into account the medium and long-term impacts of agencies' decisions and operation on the other agencies with which they are collaborating. **Recommendation** We recommend that the select committee look further at how to further amend s32 to include responsibilities for collaboration with other public entities and have regard to the need for stewardship across the system.
Cl. 26 s33(2)(a) Cl 40 s50 Cl. 26 (s33(2)(a)) limits the CE's duty to act independently in matters concerning appointment of employees by giving the Commissioner the power of veto over appointment to "key	**Key positions** We do not support the creation of a category of "key positions". It appears this provision is intended to support the Commissioner's role of identifying and developing high-calibre leaders to designate functional leads as recommended in the Better Public Services Advisory Group report. However, it is not clear how this list of "potential…senior leaders" will be identified and the process proposed lacks the transparency necessary for all public service appointments and in particular for senior appointments.

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positions". Key positions are defined in cl. 40 (replacing s50) as those designated as such by the Commissioner (after consultation with the CE) because of their potential to develop senior leaders or because they are critical to the Public Service.	We recommend the deletion in cl. 26 of s33 (2)(a) and the deletion of cl. 40. If the select committee proceeds with these provisions then strong guidance will be necessary to maximise transparency around such appointments and around management of the "list". The list should be subject to regular review and chief executives should be able to initiate review of the "key position" status of a particular role. **Recommendation** - Delete cl. 26 s33(2)(a) and cl.40.
Cl. 31 s37A Cl. 31 inserts new s37A providing for the transfer of chief executives to chief executive roles within their department or departmental agency or to other departments or departmental agencies.	**Transfer of chief executives** The PSA is supportive of this provision as it should help foster a whole of system approach by chief executives, increasing their awareness of how other agencies work. However, we note that cl. 49 proposes removing such a provision for employees. We also note that there is no provision limiting the eligibility of a chief executive for redundancy compensation either in the case of a transfer or in the case of a genuine redundancy. We presume that redundancy compensation will therefore still be a matter for negotiation in chief executives' employment agreements. This is clearly a significantly different treatment of redundancy compensation that that proposed for employees in cl. 49, despite the obvious legal fact (stated clearly in cl.32) that chief executives are all directly employed by the same employer and employees are not.
Cl. 32 s38 Cl. 32 amends s38 to clarify that the State Services Commissioner is the employer of chief executives and amends s38(3) so that the Commissioner is no longer obliged to obtain the agreement of the Minister before making a chief executive appointment, but must consult.	**Employment of chief executives** The PSA strongly supports these amendments. It has always been understood that the Commissioner was the employer of chief executives but the legislation should be unequivocal. We particularly welcome the amendment to s38 (3) which supports this clarification of employment relationship and removes the opportunity for, in our view inappropriate, interference in employment matters by Ministers.

Proposed Provision	Discussion
Delegation of functions and powers	
Cl. 35 s41 Cl. 35 amends section 41 to cater for departmental agencies, and also clarify that an individual working as a contractor in relation to a Public Service function, duty, or power may be given a delegation in the same way as public service chief executives and employees may be given delegations. A delegation may also be given to a person outside the State services. The person must be approved by the Minister. The person may not subdelegate the delegation.	From the title, and internal references within this provision (s41 (1), (2), (3) and (7) it is clear that s41 is intended to deal with the delegation of functions or powers. The proposed subsection (1A), however refers to an individual as working in the public service as a contractor "... in relation to a function, *duty* or power of the public service". As a chief executive, exercises "functions, responsibilities, duties and powers" (e.g. sections 34, 35, 38 and 40), this would appear to enable the chief executive to delegate their role as an employer in its entirety. New section 2A appears to contemplate delegation of such a role to an individual contractor outside of the public service. If this is correct, this is a very significant constitutional change. We have discussed this provision with the Commission and understand that they may have advised the Committee that "duty" should be omitted from new 1A(c) proposed by cl. 35(2). Whilst the proviso to section 41(1) stipulates that a delegation to a chief executive by a Minister or Commissioner cannot be sub-delegated without the written consent of the delegator, the Bill does not provide a similar requirement for any delegation by the CE of their functions or powers. Given the enlarged scope for delegation, this is a recipe for potential uncertainty and confusion. We understand that the Commission may have advised the Committee that a requirement for written consent should be included. The PSA would support this, and the omission of "duty" from 1A(c) discussed above. This does not, however, remove our other concerns about the breadth and scope of the proposed changes to the power of delegation. The PSA is also concerned about the delegation of statutory functions to a "person" outside the state services. The use of the term "person" rather than "individual" would appear to permit delegations to corporate persons, not just natural persons, meaning that statutory functions could be contracted to organisations outside the state services. The only constraint would be the requirement for the Minister's approval. This measure would weaken the power of Parliament to determine which functions shall be delivered by state agencies. Delegation of statutory powers to non-government providers normally requires legislative change; e.g. in the case of private prisons. This change reduces the opportunity for parliamentary and public scrutiny, has the potential to facilitate the privatisation of services and we oppose it. However, if it proceeds the committee should ensure that delegations outside the public service should at least be limited to individuals, rather than be extended to corporate entities.

Proposed Provision	Discussion
	Recommendation Our preference is that the select committee delete the provisions relating to delegations in the bill, but failing that the PSA recommends: - That the word "duty" be omitted from new 1A(c) proposed by cl. 35(2). - That 41(1A)(1)(c) stipulate that a delegation from a CE to an individual working as a contractor in the public cannot be sub-delegated without the written consent of the delegator. - That in 41(2A) the word "person" be changed to "individual".
Departmental agencies	
cl. 17 Clause 17, new ss27, 27A and 27B which provide for departmental agencies and their relationships to departments and Ministers. This clause also proposes amendments to other sections of the act to make clear which apply to departmental agencies. cl. 48, s59(2)	**Appropriateness of this agency form for the New Zealand system** The PSA does not have a strong view about the appropriateness of the model proposed for departmental agencies. We understand that the government intends departmental agencies to deliver performance improvements through greater managerial autonomy and clarity of organisational purpose where functions or policy settings are easily distinguishable from that of their host department. They may form a useful function in separating out regulatory and enforcement roles. However, there are other organisational forms in use in other jurisdictions that may be as or more useful and we are not convinced that the case has yet been made for introducing yet another agency model to the New Zealand system. **Confusion arising from reporting requirements** There is potential for confusion arising from the reporting requirements on host departments and departmental agencies. We discuss this in our analysis of changes proposed by cl. 85 to the Public Finance Act on p42. **Employment arrangements** In our view, the employment arrangements proposed for those working in departmental agencies are unnecessarily complicated and may result in at best confusion and at worst, dispute.

Proposed Provision	Discussion
	Clause 48, s59 (2) establishes the employment relationship for employees working in departmental agencies. We have looked to the Cabinet paper, "Better Public Services Paper 3: Departmental Agencies (specifically referred to in the Explanatory Note at pp7 -8) for clarification. It appears that the chief executive of the departmental agency will be the employer for most purposes, but the chief executive of the host department will legally be the employer for other purposes, since that chief executive remains legally responsible for the employee. Questions that require clarification include: - Where an individual employment contract is entered into by the chief executive of a departmental agency (pursuant to the rights, powers and duties delegated to that chief executive under s59(1)(a)(i)), who would the employer be? - With whom would bargaining occur in respect of any variation of the collective which might affect employees of the departmental agency – the chief executive of the departmental agency, the chief executive of the department or the Commissioner? We support the recommendation of the CTU (para 1.8 of their submission) which we believe goes some way towards clarifying these matters. **Recommendation** - Amend s69(b) of the State Sector Act as follows (recommended insertion in italics): "(b) in relation to a dispute about the interpretation, application, or operation of any collective agreement, the employer is the chief executive of the department acting, if the Commissioner so requires, together with or in consultation with the Commissioner *or the chief executives of relevant departmental agencies*; and".
Immunity for public service chief executives and employees	
Cl. 54 s86 Cl. 54 replaces section 86 to make clear that public service chief executives and employees have immunity from civil	The policy behind section 86 has always been to provide public service chief executives and employees with immunity from civil proceedings for good-faith actions or omissions arising from them carrying out their role as employees of the state. *Couch v Attorney-General* [2010] NZSC 27 was about the current s86's relationship with the Crown Proceedings Act 1950 and applied that section differently. These clauses are a response.

Proposed Provision	Discussion
proceedings for good-faith actions or omissions in pursuance or intended pursuance of their duties, functions, or powers. Cl 57 amends the Crown Proceedings Act to provide that a court may find the Crown itself liable in tort in respect of the actions or omissions of public service chief executives.	It is important that public servants have this immunity from liability in civil proceedings. Most errors by public service departments that lead to personal loss or injury, or the death of citizens are as a result of systemic problems, rather than purely as a consequence of the decisions or actions of individual public servants. There are many inquiries into such incidents that confirm this. Public servants, such as mines inspectors, very often have difficult and challenging roles which require them to make decisions affecting the lives of citizens. Accountability exists already both to their employer and, for registered professionals, to their registering authority. There is also the added accountability arising from publicity surrounding the incident. Additional accountability for individuals is inappropriate and unnecessary. It can lead to scapegoating and to individuals being reluctant to engage with system improvement measures for fear of exposing themselves to future liability. On a personal level such cases can destroy individual public servants' lives, even when they may not bear personal responsibility and have acted in good faith. Legal proceedings can take years and the ongoing pressure can lead to family break up and the loss of careers. Exoneration through the courts can arrive too late. We are glad to see this important protection included in the Bill and would oppose any attempt to water this down by, for example, merely relying on the indemnification provided by the employer. This could see individual public servants face the trauma of legal action, with their only protection being that their legal and related costs are being met by the employer. On the other hand it is entirely appropriate that the Crown itself may be held liable in tort in respect of the actions or omissions of public servants. Citizens who have been injured or suffered loss should be able to seek redress through the courts if a settlements cannot be agreed. They are more likely to achieve proper recompense from a corporate entity and the responsibility of the system for any incident is more likely to be addressed. **Recommendation** That the select committee return the Bill to the House of Representatives with the provisions of clauses 54 and 57 unchanged.

Public Finance Act

Proposed Provision	Discussion
Section 4A Companies and Schedule 4 Organisations	
Cl. 79 s3AB and cl. 92 Part5AA Clause 79 adds a new s3AB which enables the Governor-General (by Order-in-Council) to add companies that are at least 50% owned by the Crown, and not listed, to a new Schedule 4A of the Act. Clause 92 insets a new Part 5AA setting out the application of the Crown Entities Act to these non-listed companies.	Treasury promotes this change as a purely technical closing of a loophole, with the advantage of creating a "clear line between Crown entity companies, under the CEA, where the Crown expects to remain a long term 100% owner of the parent and those listed on the PFA where majority ownership is possible."[12] It also has the advantage of having a separate approach for company and non-company entities. The Schedule 4A companies will be subject to most of the Crown Entities Act companies' governance provisions, which will not apply to Schedule 4 organisations. New s3AB(2) provides that the Minister must make a recommendation to remove a company from the Schedule if Crown ownership falls below 50% or shares in the company are listed on a registered market. The PSA is concerned that as currently drafted this provision appears to allow for responsible Ministers and the companies themselves to dispose of shares, thus facilitating privatisation without appropriate scrutiny. While existing Schedule 4 companies would not be major targets for privatisation (although some like Health Benefits Ltd occupy a strategic position where having private ownership would raise conflict of interest concerns), there is potential for Crown entity companies to be moved into Schedule 4A thus facilitating their privatisation. **Recommendation** The PSA supports the recommendation of the CTU for a new section 3AB(3) is added as follows: - "(3) The Minister must not make a recommendation for the purpose of **subsection (1)(a)** if— (a) the company is a Crown entity; or (b) the company is a State enterprise named in Schedule 1 of the State-Owned Enterprises Act 1986."

[12] Treasury Report: Governance Regime Applying to PFA Companies, 19 March 2012 para 12

Schedule 4 Organisations and "good employer" provisions	We also note that a wider range of provisions from the Crown Entities Act applies to Schedule 4A companies than to Schedule 4 organisations. Mostly this is because the provisions for Crown entity companies are applicable to Schedule 4A companies. However, s118 of the Crown Entities Act, which is requires Crown entities to be good employers, will apply to Schedule 4A companies but not Schedule 4 organisations. We are aware that it does not currently apply but this is an opportunity to remedy the situation. **Recommendation** That s118 of the CEA apply to Schedule 4 organisations as well as Schedule 4A companies.
Departmental agencies	
Cl. 85, 87 s33-36, cl. 87, 88 s43A and 44, and cl. 90 s45AA Part 4, *Reporting by departments* is amended to include departmental agencies. Revised ss33 to 36 establish that the departmental chief executive is responsible for departmental and non-department expenditure under an appropriation, including expenditure by the departmental agency, and reporting on that. The chief executive of the departmental agency is responsible for the performance of the agency and reports separately on that. Clauses 87 and 88 introduce new s43A and 44 which, among other things, require separate annual reports. The	While departmental agencies are to be established under the proposed changes to the State Sector Act, there are a number of provisions in the Public Finance Act which need to be amended to accommodate the new type of organisation. There is potential for confusion arising from the reporting requirements on host departments and departmental agencies. It is not clear what the nature of the audit on the performance information will be, given that it covers non-financial matters. There is also a question about whether a department's annual report will be required to draw attention to the existence of any departmental agency that it hosts. The departmental agency chief executive is responsible directly to the responsible Minister, but does not have control over their budget, which presumably will be negotiated directly with the chief executive of the department. There is some potential for tension here between the expectations of the Minister and those of the chief executive of the department, and for the departmental agency to miss out on funds that have been soaked up by other parts of the department. **Recommendations** That s45 *Contents of annual reports of department,* subsection (2), be amended to ensure that the relationship between the host department and any departmental agencies is acknowledged in the annual report.

department must have an audit report on its annual financial statements and the departmental agency must have an audit report on its performance information. Clause 90, new s45AA sets out the requirements for the contents of departmental agency's annual report.	That proposed s34(1) be amended so that the chief executive of a departmental agency be responsible for the financial management, financial performance and financial sustainability of the departmental agency , on the same basis as the chief executive of a department.
Authority to lend money	
Cl. 100 s65N Clause 100 amends 65N by the addition of two new subsections (iv) and (v) that grant Ministers the authority to enter into hire purchase and similar agreements, and finance lease and similar arrangements.	Because the authority is delegated to the Minister it is not clear whether this would authorise the Minister to sell existing public assets on hire purchase terms. We are not sure of the answer but we would request the Committee to explore this issue and close off the possibility if it is shown to be real. **Recommendation** That the select committee consider whether the amendment to s65N authorises the Minister to sell existing public assets on hire purchase terms and, if so, makes changes to ensure that this is not a possibility.

Multi-category appropriations

Cl.114 s2 and cl. 115 s7-7B Clause 114 replaces the definition of a "multi-class output expense appropriation" (MCOA) with the "multi-category appropriation" (MCA) which is defined in new s7A(1)(g), in clause 115, as an appropriation for "1 or more categories of 1 or more of the following: (i) output expenses (ii) other expenses (iii) non-departmental capital expenses" Clause 115 also inserts a new s7B(1)(b) which stipulates that the expenses and capital expenditure under an MCA must "contribute to a single overarching purpose".	The PSA understands and supports the principle behind the introduction of MCAs. The current appropriations structure can act as a barrier to the type of whole-of-government initiatives that the legislation overall is attempting to achieve and that we have supported. However, the new approach comes at a cost to accountability as it will be easier for inappropriate expenditure or expenditure on unpopular programmes and harder for parliament to maintain a proper level of scrutiny. We are also not clear about how the phrase "contribute to a single overarching purpose" will be applied in practice. We understand the intent and that this has been developed because of the difficulty of allowing output expense appropriations to be based solely on results[13], but the phrase seems quite vague and there is nothing about how that overarching purpose might be developed and mandated. As part of this move to MCAs (although outside the legislative process) the administrative restrictions put in place by a previous Cabinet decision (EXG Min(07)1/1) on the use of multi-class output appropriations will be removed. This reinforces the concerns about lack of transparency and accountability by potentially enabling significant in-year transfers of output spending – another means of hiding politically awkward spending. **Recommendation** The PSA supports the recommendation of the CTU that the requirement for joint Ministerial approval (between the responsible Minister and the Minister of Finance) for transfers above a certain percentage of output class between MCOA and MCAs be enshrined in legislation along with a requirement to note these transfers in the end-of-year performance information. We support their recommendation for a 25% trigger for approval.

[13] Better Public Services Paper 5: Amendments to the Public Finance Act 1989 para 21

Exemptions from end-of-year performance information	
Cl.120 s14 and s 15-s15B s15B provides for the Minister to grant an exemption from the end-of-year performance information requirements. For departmental output expenses **if the Minister is satisfied that the appropriation or category relates to outputs provided by a department to another department**, or for non-departmental expenses or capital expenditure where the appropriation or category is one from which **resources will be provided to a person or entity other than a Crown entity** and: either the information is otherwise readily available, it is unlikely to be informative or the amount of the appropriation is minimal.	These exemptions represent wide-ranging discretion for the Minister and will undermine the ability of parliament to scrutinise the effectiveness of expenditure. With MCAs the likelihood of one department providing an output to another department will increase significantly and this process should be subject to scrutiny. In the case of non-departmental expenses where resources are provided to a person or entity other than a Crown entity, it will be easier to hide awkward information about private and non-government providers or even where conflicts of interest might exist. Any small gains from lowering reporting requirements do not warrant this loss of transparency and accountability. **Recommendation** That proposed s15B be deleted.
Audit of end-of-year performance information	
Cl. 125 s19A -19C Clause 125 inserts provisions covering the reporting on end-of-year performance information. S19A extends the requirements of s45D to performance information provided by	S45D of the Public Finance Act currently requires departments to have an audit report done by the Auditor-General, including performance information. The explanatory note on p. 28 of the Bill states that the information is not audited if it is in respect of non-departmental expenses, or non-departmental capital expenditure from which resources will be provided to a person or entity other than a department, an Office of Parliament, or a Crown entity. This exclusion is hard to understand. It means that non-governmental providers of public services will be subject to less scrutiny than their public counterparts.

departmental agencies, Offices of Parliament or Crown entities	**Recommendation** That performance information for non-state organisations or individuals in receipt of public resources should be audited on the same basis as state agencies, in the interests of transparency and accountability.
Information on strategic intentions	
Cl. 136 s38-41 and cl. 147 s87 Clause 136 proposes a new s38-41, which would require a department to provide the responsible Minister with information on the strategic intentions relating to the current year and subsequent 3 years. The information must be provided at least every 3 years. Clause 147 inserts a new s87 which would commence this process from the year ending 30 June 2015.	Currently Statements of Intent (SOI) are annual publications. We note that clause 179 of the bill inserts a new s139 (Obligation to prepare a statement of intent), which places a parallel obligation on Crown entities. We address the general points here and the detail of the Crown entity provisions in that part of this submission. The PSA agrees that preparing the SOI is resource-intensive and that it is a good idea to reduce the administrative burden involved. However, we are concerned about the potential for reducing both the accountability and transparency of the agency. Agencies are likely to default to having an SOI every three years. A balance must be struck between (a) ensuring that up-to-date information is properly and regularly provided to the Minister and then put in the public arena, and (b) that agencies are not over-burdened by compliance, and default to the easy option of just repeating what was said last time. Ministers will need to be clear about what they expect, and the guidance from central agencies (and the oversight of the State Services Commissioner) will be needed to ensure the public can be confident that information is accessible and up to date. A further issue arising from the three year period is the relationship with the election cycle. These amendments will come into force on 1 July 2014, and a general election is due in November 2014. If an entity issues its SOI on or shortly after 1 July, it will presumably need to be reissued very soon after the election to reflect the priorities of the incoming government in the event of a change of government. And if an entity holds off preparing its SOI until after the election, it deprives the public of important information about the entity's performance and intentions. In addition it seems to us that, with the capacity and capability of available technology, there could well be some way of making SOIs (and annual reports) "living documents" that disclose information about entities regularly and to a standard that supports public confidence in their accountability, while reducing the burden on agencies. There is also a question of scale; large agencies with wide mandates and functions attract considerable public interest and scrutiny and this should not be undermined by lack of current information.

	Recommendations That the select committee consider the impact of these amendments on the transparency and accountability of the entity, and make recommendations to ministers on how this can be maintained while reducing the burden of compliance. That a new subsection be included in s38 requiring departments to issue a new statement of strategic intentions following a change of government, regardless of the number of years the current statement applies to.

Crown Entities Act

Proposed Provision	Discussion
Monitoring Crown entities	
S149 – amendment to s10 (Interpretation). This clause states that: **'monitor'** means, in relation to a monitored Crown entity, 1 or more of the following that performs the role described in section 27A or 88A: (a) a department (within the meaning of the term in the Public Finance Act 1989): (b) another Crown entity	Subsection (b) is new and our strong view is that it is inappropriate to give a Crown entity a monitoring role over another Crown entity. S27 of the principal Act sets out the responsible Minister's role to "oversee and manage the Crown's interests in, and relationship with, a statutory entity" and the clause then goes on to list the functions and powers that are included in the role of the responsible Minister. This clause assigns the responsibility for the entity to the Minister, where it properly lies. The Minister's department, by delegation, will of course carry out the oversight and management of the Crown's interests and relationship with the entity, and report directly to the Minister on any issues that must be brought to their attention, and will also receive direction from the Minister. Crown entities are intended to be at a degree of arms-length from the centre, and each has its own board. By enabling a Crown entity to monitor another, the distance from the centre and the Minister becomes greater and we do not see how this supports the government's purpose of bringing the Crown entity sector into closer alignment with the centre. **Recommendation** We recommend that S149 (b) be deleted and the status quo remain.

Functions of Crown entities	
S153 of the Bill which establishes a new s50 in the principal Act, requiring the board of a Crown entity to ensure that the statutory entity performs its functions: (a) efficiently and effectively; and (b) in a manner consistent with the spirit of service to the public; and (c) in collaboration with other public entities (within the meaning of that term in the Public Audit Act 2001) where practicable	The notion of "spirit of service to the public" is in the current CEA, and we support its continuance as a guiding principle for Crown entity boards to follow. The Bill introduces a new role for the State Services Commissioner to "promote a culture of stewardship in the State services" (s9, new State Sector Act s4A (i)), an amendment that we strongly support. However, notion of "stewardship" is relatively remote from Crown entities if it is included in the SSA, but not in the CEA. We believe that this CEA clause should be amended to add the obligation to *promote a culture of stewardship* to the functions of a Crown entity. This should then strengthen the ability of the Commissioner to ensure consistency of "stewardship" across the State services, a lever that they will need given the autonomy of Crown entities. S160 amends S98 (which applies to Crown entity subsidiaries) with the same wording. Again we support this, and make the same point about the need to include the notion of 'stewardship' here. **Recommendation** - both S153 and S160 should be amended to add the words: *(d) by promoting a culture of stewardship in the State services.*
Whole of government directions	
S162 amends s107 (Whole of government directions), and proposes a new section to replace S107(1) The Minister of State Services and the Minister of Finance may jointly direct Crown entities to support a whole of government approach by complying with specified requirements for any of the	It is helpful to have more detail on the purposes of a whole of government direction, and our assumption is that it is likely that they could include workforce policy orders as set out in cl. 42 s55A, B and C, which we discuss at length on pages 23 to 25, and register our major concerns with the proposals. We note that the clause is silent on the obligation of the entity to support better outcomes for Māori and Pacific peoples, and this could well be part of a whole of government direction. The current laissez-faire approach is unlikely to support real change for Māori and Pacific peoples and this clause provides a lever for government to signal its expectations to Crown entities.

following purposes: (a) To improve (directly or indirectly) public services (b) To secure economies or efficiencies (c) To develop expertise and capability (d) To ensure business continuity (e) To manage risks to the government's financial position	**Recommendation** - new s107(c) should be amended to state: (c) to develop expertise and capability, *including capability to deliver better services and results for Māori and Pacific peoples and to improve outcomes across ethnic groups.* We note that s108 of the principal Act, which will remain unchanged, requires Ministers to the extent that they consider necessary, before giving a direction under s107, to: *(b) consult with persons that the Ministers consider are representative of the interests of persons likely to be substantially affected by the proposed direction.* The PSA represents the interests of its members on workforce and other matters, and will expect to be meaningfully consulted at an early stage of the development of any workforce policy orders issued by Ministers under new s107. S165 establishes a new s115A on the review and expiry of all directions, and includes the same requirement for the Minister reviewing the direction to consult representatives of people substantially affected. Again, the PSA will expect to be meaningfully consulted on reviews and expiry of whole of government directions.
Statements of intent and accountability documents	
S179 proposes a new s139 (Obligation to prepare a statement of intent) which would require a Crown entity to provide the responsible Minister with information on the strategic intentions relating to the current year and subsequent 3 years. The information must be provided at least every 3 years.	These proposals mirror those in the Public Finance Act amendments, and we refer the select committee to our comments on page 46 for our views. **Recommendations** That the select committee consider the impact of these amendments on the transparency and accountability of the entity, and make recommendations to ministers on how this can be maintained while reducing the burden of compliance. That a new subsection be included in s139 requiring departments to issue a new statement of strategic intentions following a change of government, regardless of the number of years the current statement applies to.

Clause 181 which sets out a new s141 (Content of the statement of intent) does not have the requirement in the current s141(1)(a) that each SOI must contain ...*key background information about the Crown entity and its operating environment.*	We note that clause 181 which sets out a new s141 (Content of the statement of intent) does not have the requirement in the current s141(1)(a) that each SOI must contain ...*key background information about the Crown entity and its operating environment.* This is important information which we fear may be lost in the new approach. A major intent of the Bill is to enable closer alignment between the core public service and Crown entities, so information about the operating environment should be part of seeing this alignment in practice. **Recommendation** We recommend that current s141 (1)(a) should be retained.
Obligation to report on Treaty of Waitangi and EEO objectives	
New s141 is not specific about the Treaty of Waitangi and the Crown's obligations, nor is it explicit about EEO	New s141 lacks two further major public policy (and legislated) platforms that should be included to strengthen it in line with government policy and practice, and to further support public confidence in the entity. It is not specific about the Treaty of Waitangi and the Crown's obligations, nor is it explicit about EEO. Including both of these in new s141 will require entities to be very clear about how they give effect to the Treaty and how they will deliver on EEO. We acknowledge that a number of agencies do in fact report meaningfully in these areas, but it is by no means a general rule. Placing a clear obligation to do so would focus entities on what they need to do and would improve public confidence in them. **Recommendation** New s141 should be amended as follows (proposed new wording in italics): - explain how the entity intends to manage its functions and operations to meet its strategic intentions, *including Treaty of Waitangi strategic objectives;* and - explain how the entity proposes to manage its organisational health and capability, *including EEO capability* - explain how the entity proposes to assess is performance, *including for relevant entities how they propose to assess performance from delivering better services and results for Māori and Pacific people, and improve outcomes across ethnic groups.*