



**PSA Submission to the Governance and  
Administration Select Committee**

**Public Service  
Legislation Bill**

**31 January 2020**

## PSA submission to the Governance and Administration Select Committee on the Public Service Legislation Bill

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*“My job is to work for the New Zealand public. That means I am not just accountable to my employer, but to the people of New Zealand.”* PSA member, October 2018

*“As public servants we are united in our desire to help others and make NZ a better place to live and work in.”* PSA member, October 2018

### About the PSA

The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (the PSA) is the largest trade union in New Zealand with over 75,000 members. We are a democratic and bicultural organisation representing people working in the public service, the wider state sector (the district health boards, crown research institutes and other crown entities), state owned enterprises, local government, tertiary education institutions and non-governmental organisations working in the health, social services and community sectors. Te Rūnanga o Ngā Toa Āwhina is the Māori arm of the PSA.

Today’s public service emerged in 1912 with the passing of the Public Service Act<sup>1</sup>. It took less than a year for public servants to organise themselves, through their union the New Zealand Public Service Association (the PSA), to have both a voice within their workplace and an independent public voice on the quality of public and community services and how they’re delivered. The PSA’s independent voice has influenced each of the waves of public service reform over the past century.

The PSA is an affiliate of Te Kauae Kaimahi, the New Zealand Council of Trade Unions, and we support its submission on this bill.

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<sup>1</sup> 100 Years of Public Service: An historical account, Yska, State Services Commission

## Our values

### Solidarity - Kotahitanga

We champion members' interests with a strong effective voice. We stand together, supporting and empowering members, individually and collectively.

### Social justice - Pāpori Ture Tika

We take a stand for decent treatment and justice. We embrace diversity and challenge inequality.

### Integrity and respect - Te Pono me te Whakaute

Our actions are characterised by professionalism, integrity and respect.

### Solution focused - Otinga Arotahi

We are a progressive and constructive union, constantly seeking solutions that improve members' working lives.

### Democratic - Tā te Nuinga e Whakatau ai

We encourage participation from members. We aim to be transparent, accessible and inclusive in the way we work.

## This submission

For the Committee's convenience, this submission has the following structure:

1. Who contributed to this submission and why
2. A summary of the PSA's response to the bill including:
  - What we support
  - The changes we recommend
3. A table detailing our response and recommendations which follows the structure of the Bill.

## 1. Who contributed to this submission and why

*“I believe that it's important that public servants are consulted about legislative changes that affect them. By engaging public servants in the legislative process, they will begin to feel motivated and enthusiastic about creating positive change in their communities and workplaces.”* PSA member, December 2019

This bill is of direct importance to PSA members. It will impact on them every working day. It sets the framework for the way the agencies they work in operate, the powers of their employers and their obligations as State servants. It affects the quality of their working lives, their ability to do a good job and to make a real difference for all people living in New Zealand.

PSA members contributed to this submission through over 600 individual responses to two online feedback forms, face-to-face meetings and workshops held at a conference bringing together PSA members working across the State Services and across the country. The quotations provided throughout this submission were contributed by PSA members as part of this process.

Members of Te Rūnanga o Ngā Toa Āwhina, the Māori structure of the PSA also contributed through an online process, through engagement at regional and sector-level hui and through discussion at its biennial Hui Taumata. Their responses have shaped Te Rūnanga's submission, which should be read as a partner to this submission.

The consultation period for this Bill is short and has coincided with both the Christmas, New Year and school holidays. This means that we have had to limit both the extent to which we have involved PSA members in shaping this submission; and the scope of our submission, which largely focuses on the employment framework provided by the Bill. Where this submission is silent on particular provisions of the Bill, we either support them or have no view.

You will see in the third section of this submission that we have requested the ability to make supplementary submissions to the Committee on matters that we believe require further thought and work.

We would like to present this submission to the Committee.

## 2. Summary of the PSA's response to the Bill

*"This will be a great start, while we continue to breathe life into this living document as our employment and roles change as public servants."* PSA member, December 2019

We support this Bill and make recommendations to improve it. Although this Bill does not go as far as we would like in addressing the many faults of the State Sector Act 1988, it represents a significant shift away from the model of that Act and is likely to lead to a more effective public service, which is why we support it.

Our State sector legislation, including the current State Sector Act 1988, is central to New Zealand's constitutional framework and to the Government's ability to improve the intergenerational wellbeing of all New Zealanders. We agree that the time is right to reshape and reset this important piece of legislation so that it is fit for now and the future. We welcome most aspects of the State Sector Act's proposed replacement, the Public Service Legislation Bill. We have recommendations to improve the Bill and these are detailed in the third section of this submission.

We are heartened at the cross-party support for the reform of this constitutional legislation and are pleased to see long overdue acknowledgement in the Bill of the public service's role in supporting the Crown in its relationships with Māori under te Tiriti o Waitangi: the Treaty of Waitangi; and its recognition of the important role public services play in the quality of life in Aotearoa. Strong and well-funded public and community services are what make our towns, cities and rural areas resilient and great places to live.

Most people in New Zealand will not have heard of the State Sector Act 1988. Its impact on people's everyday lives and the wellbeing and success of the country is not something that is widely discussed or understood. However, governments implement their policy agenda through State services agencies and the public's experience of public services forms their view of the performance of the government of the day. Ensuring the legislation that provides for the operation of public services is fit for purpose into the future is a key function of Parliament.

Since the passing of the State Sector Act in 1988 the PSA has endeavoured to reform it. In 2006, the PSA commissioned the UK-based independent think tank Demos to take a fresh look at New Zealand public services and develop a vision for public services in the future. The result was, Re-imagining

Government – Putting people at the heart of New Zealand’s Public Sector<sup>2</sup>. That year we also commissioned David Coats of the UK’s Work Foundation to explore Harvard Kennedy School Professor Mark Moore’s public value concept within the New Zealand context. The outcome was *Reviving the Public – A new governance and management model for public services*<sup>3</sup>. At the After the Reforms conference in 2008 we presented a paper<sup>4</sup> canvassing the effects of the construct in the Act whereby the departmental chief executive is the employer. In 2009 and 2010 in response to the Global Financial Crisis and austerity agenda of the government we published a discussion paper, *State of the Future – strong public services for tough times*<sup>5</sup>, and we commissioned a paper from David Hall of Greenwich University on *Why We Need Public Spending*<sup>6</sup>. We followed this in 2011 with a series of policy papers on modern public services which outlined our thinking about the challenges facing the public sector and aimed to engender debate about state sector reform. In 2014, following a seminar series run in collaboration with the Fabians’ Society to mark 25 years since the passing of the Act, we published *Rethinking the State Sector Act*<sup>7</sup>, which brought together the perspectives of ten experts, including the architects of the Act. We submitted to the Review of the Centre in 2001 and the Better Public Services Advisory Group in 2011.

The State Sector Act is very much of its time. It imported a managerialist and contractualist framework into public services. In the and 1990’s business always knew best – the deep experience and expertise of public managers was not valued. The public – citizens - became “clients” and later customers. Some, but by no means all, of this was positive. Some would argue that Ministers displaced the public as the ultimate customers of public services with their purchase agreements with chief executives. The impact of this on the relationships between Ministers and agencies is still felt today.

The employment framework embedded in the Act also reflects and reinforces this philosophy. This provides for employment relationships that are contractual and vertical which in turn reinforce

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<sup>2</sup> [Parker S and O’Leary D. \*Re-imagining Government, Demos, 2006\*](#)

<sup>3</sup> [Coats D. \*The Work Foundation, 2006\*](#)

<sup>4</sup> [Barclay G and Pilott B. \*The Chief Executive as Employer: Reinforcing the New Public Management Silos, 2008.\*](#)

<sup>5</sup> [NZPSA, \*State of the Future: Strong public services for tough times\*, 2008](#)

<sup>6</sup> Hall D. *Why We Need Public Spending*, PSIRU, University of Greenwich, 2010

<sup>7</sup> [NZ Fabians/NZPSA. \*Rethinking the State Sector Act, 2014\*](#)

organisational silos. It is predicated on an assumption that competition by departments for talent is a good thing.

No doubt, when those of us who are still around in another 30 years look back, we will see that the new Public Service Act that results from this Bill reflects 2020 in the same way that the current act reflects the late '80s. We cannot perhaps avoid this. But we can ensure that the framework for the public service workforce enabled by the new Act is the result of conscious and articulated choices. We would all be proud to be able to look back and see that this framework has: led to the elimination of discrimination and a highly capable workforce through its inclusion of the Gender Pay Principles; enabled better and positive support for the Crown in its relationships with Māori; and that it continues to reflect and support the spirit of service and the enduring public service principles and values that this Bill seeks to embed.

The PSA has a long and proud history of advocating for equal pay. A policy of equal pay was adopted within a year of the PSA being formed, in 1913. The PSA won the case for equal pay for women public servants by progressing the case of Jean Parker in 1956. The Parker case successfully challenged the assumption that men required higher pay because they had financial responsibility for dependents while women wage earners did not. The PSA campaigned for legislative change in support of equal pay and the Government Service Equal Pay Act was passed in 1960.

Equal pay has always been a central goal for the PSA. In the early 2000s the PSA launched the Pay and Employment Equity Agenda which led to the formation of the PAEE Taskforce and subsequent pay and employment equity reviews across the state sector, supported by the establishment of the Pay and Employment Equity Unit located in the Department of Labour.

More recently, the PSA has identified equal pay as one of its four strategic goals. Following the success of Kristine Bartlett's case (*SERVICE AND FOOD WORKERS UNION NGA RINGA TOTA INC v TERRANOVA HOMES AND CARE LIMITED NZEmpC AUCKLAND 2013 NZEmpC 157 [22 August 2013]*), the PSA was one of the joint working group partners which developed the pay equity principles to guide the process and implementation of equal pay for female dominated occupations. The PSA filed legal proceedings against the State Services Commission seeking to remove discriminatory barriers women in public services face which result in the gender pay gap. This litigation was settled by the development of the Gender Pay Principles, designed to implement equal pay throughout the state sector. These Principles were agreed as a result of a tripartite process involving the PSA, the State

Services Commission and the Government and are now Government Policy. We seek the explicit inclusion of these principles in the Act to ensure they are enforceable and result in durable, meaningful change for working women. The text of the principles is attached as appendix 2.

## We welcome

**Recognition of the constitutional role of the public service, the conventions it works within and the principles and values that guide it.** Our democracy and the way the State gives effect to te Tiriti o Waitangi: The Treaty of Waitangi, continues to mature and it is right that this is reflected in our public service legislation.

**The bringing together of departments and agencies under the umbrella of the “public service” and the recognition that those leading public services are also part of a team.** Whatever their organisational type, public services are all part of the same system and this system needs to work better together in order to achieve the outcomes both Government and the public need and expect from their services. We welcome the effort to break down silos and the provision of organisational forms and changes to the Public Finance Act to support this.

*“It sounds like a great idea to have a unified system across all public services nationwide. Will be beneficial for employees who want to transfer to other industries/locations without losing entitlements (leave, long service benefits etc) and it will be beneficial for employers to gain people with transferable, useful skills (knowledge and experience) from alternative industries. Especially for a country the size of NZ it seems sensible to have an over-arching ethos that allows us to 'pool our resources' and ensure better provision for a positive working environment.”* PSA member, December 2019

*“I wish I could be a public servant, and I am perceived to be one by members of the public, but technically I am not as I work for (crown entity). I strongly agree with the proposal to make the Public service cover most Crown Entities.”* PSA member, October 2018

*“Unified and with the ability to work closer together enhancing the client/customer experience as well as workers feeling the benefit of working under one umbrella.”* PSA member, December 2019

*“In principle, if it provides a better actual service to the public, then I agree with creating a more unified public service. That’s in principle. However, from experience, I do not want changes to be used to implement a cost cutting exercise that creates even more restrictive employment and conduct conditions. I also do not want changes that continue to remove person to person interface with public services. People need to be able to speak to other people for assistance.”* PSA member, December 2019



**Recognition that people working in public services are motivated by a spirit of service to their communities.** The employment framework provided by the new act, and the actions of public service leaders and Ministers need to support this.

*“I have spent almost all of my working life in public service organisations, and the common thread has always been about serving the public. My roles and employers have been different, but all of them have been animated by the same spirit of providing quality services to everyone.”* PSA member, October 2018

**Acknowledgement that public service employees have all of the rights and freedoms enjoyed by other citizens.** Public servants are an important reservoir of knowledge and understanding and care about many important issues. This is a great asset to the country for them to feel able to speak up and contribute in the democratic processes of the country.

**The removal of barriers to careers and building capability across the system.** On balance, and with due regard to the principle of subsidiarity, it remains our view that retaining the chief executive as employer in this bill is a compromise that necessitates many complicated workarounds. However, we welcome the continuity of employment provisions and the ability for people to transfer when functions transfer.

*“Having experience across the public service is invaluable. We need people to be able to tell that story. I tell it in my day to day work, having been employed in policy roles in five different agencies as well as having worked in parliament prior to that. Making it easier for staff to transfer between agencies is a win-win, for the individual and for New Zealand. Public servants want to make a positive difference for our country. Everything that we can do to support that outcome is worth doing.”* PSA member December 2019.

*“Reducing administration and cost to taxpayer of staff moving between departments is good. The Public Service as employer of all public servants is good. Maximising flexibility for changing jobs across the full range of agencies also good move. More consistent T & Cs is good, as long as the consistency is with the best available and is sustained, rather than minimum possible!”* PSA member, December 2019

## The changes we recommend

A full and detailed set of our recommendations is contained the third section of this submission. The needed changes we would emphasise include:

**Supporting the achievement of fair and equitable employment through including the Gender Pay Principles.** This includes making the Commissioner and chief executives responsible for ensuring all aspects of employment are arranged so as to eliminate discrimination and enable inclusion.

Detailed recommendations at pp22 - 25.

*“The public service has the opportunity to lead the way with pay parity and gender equality and make govt jobs more attractive for future generations.”* PSA member, December 2019

*“As a woman it makes my contribution feel more valued. In a time where diversity is becoming more and more important it’s frustrating that we still get paid less than men. We need to ensure that this is in law and enforcement is an option so our rights are protected. As a single woman who is still worried about long term financial security, it means a lot.”* PSA member, December 2019

*“The Gender Pay Principles represent fairness and transparency. Every employee has right to be free from bias or discrimination based on their gender, they should be paid FAIRLY for what they do. By having these principles written into the Public Service Act will build a legislative framework to make it enforceable and create tangible changes for our hardworking communities.”* PSA member, December 2019

**Better enabling agencies to give effect to their obligations in support of the Crown’s relationships with Māori** by providing for the appointment of a Deputy Public Service Commissioner with a particular focus on this; and by requiring chief executives to give practical effect to the Crown’s treaty obligations in their employment relationship with Māori working in public services. Detailed recommendations at pp15, 18 and 19.

*“It’s one of our country’s founding principles that should be intertwined into the fabric of our society. It makes sense to have this as part of the core public service.”* PSA member, October 2018

*“Government and CEs need to be accountable for treaty obligations in regards to Māori public servants. Referring to a 30 year-old obligation is not enough.”* PSA member, December 2019

*“We are not delivering for Māori enough. If we were there would not be such a big gap between Māori and non-Māori in many variables.”* PSA member, October 2018

*“It’s important that Māori are able to enjoy and be successful as Māori in their work space and not made to feel we are only good enough for Māori kaupapa. We are able to walk and work in both worlds (Māori and non-Māori) however, this is not the case for many non-Māori. Māori shouldn’t be made to feel guilty attending kaupapa that are traditionally*

*important to them, ie. Poukai, Koroneihana, iwi kaupapa, tangihanga etc. etc.” PSA member, December 2019*

**Including “Engagement” as a public service principle.** So the public service can “proactively engage with and actively facilitate the participation of citizens and civil society and policy and service design” This would reflect New Zealander’s increasing expectation of having a voice in and shaping the public services they receive. It would contribute to tailored and high-quality services that genuinely address needs and create better outcomes, and so greater efficiency. In the structure of the Bill this principle would cascade logically from the public service’s purpose of facilitating active citizenship. Detailed recommendations at p.14.

**Further emphasising the status of the public service principles** by recognising in the description of responsibilities and accountabilities for the principles, the important role of Ministers. Detailed recommendations at p.14.

**Ensuring New Zealanders can expect the same standards of integrity and conduct from everyone they receive public services from.** The Commissioner should be enabled to require agencies to include minimum standards of integrity and conduct as a condition of contracts of service for the delivery of public services. Detailed recommendations at p.16.

**Supporting expertise and professional standards.** Guidance on rights and responsibilities and speaking out should support and uphold the professional obligations, codes and standards of those working in professional roles and/or with recognised areas of expertise. Detailed recommendations at p.17.

**Providing a framework within which people working in public service have an independent voice in developing and sustaining a highly capable public service workforce, and in the development of Government Workforce Policy.** Developing and sustaining a highly capable public service workforce requires strong and constructive relationships, not just between the Commissioner and public service leaders but also with people working in public services, including the unions providing an independent voice for those people. Proving a sustained framework for this will have positive impacts including: improved communication; creative solutions; positive and diverse work environments and culture, all of which contribute to higher quality services. Detailed recommendations at pp.19 and 20.

**Provisions relating to people in the public service workforce should include all of those people in that workforce.** Public services are increasingly delivered not just by public service employees but by those who are self-employed and engaged through contracts for service or as employees of contracted employment agencies. The workforce provisions of the new legislation will not be fit for the future unless they apply to all of these people. Detailed recommendations at p913, 18, 19, 21.

**Updating the good employer requirements and ensuring they support the spirit of service and fair and equitable employment.** These provisions affect the day to day working lives, careers and quality of life of over 400, 000 people. The Bill leaves these provisions the same as in the 1988 Act and yet they have not had the impact intended. They should: be integrated with the proposed diversity and inclusion obligations; include the Gender Pay Principles; include obligations to work with employees and their unions to improve practice; and foster workplace cultures of respect, dignity and active participation. The obligations and accountabilities of chief executives and the Commission for the good employer requirements should be strengthened to ensure they have meaningful effect. Detailed recommendations at pp21 - 26.

**Supporting improved and efficient capability development and careers, and fair and equitable employment,** through the Commissioner having a responsibility to foster consistent terms and conditions of employment across public service agencies, including through provisions giving effect to the requirements in the good employer and diversity provisions. Detailed recommendations at p.26.

*“It is just common sense to have a joined up public service. The differences in pay and conditions that have grown historically because the different departments are working in isolation seem ridiculous.”* PSA member, December 2019

**Further supporting mobility of people across the system by providing for continuity of employment for the purposes of contractual leave entitlements.** The continuity provisions only applying to statutory entitlements will leave barriers to movement in place and will not encourage people to work in the wider public service. Detailed recommendations at pp.29 and 30.

*“Bringing negotiated leave balances between agencies will give staff the confidence to apply for more opportunities with the knowledge that they won't be disadvantaged”* PSA member, December 2019

**Review key parts of the new Act after three years to ensure it is operating as intended.** The reforms proposed are substantial but the consultation process has been short and limited in scope. We recommend providing for a review after three years of the operation of the new organisational

forms available to agencies, and the employment continuity provisions, to ensure that they are operating effectively and as intended.

### 3. Detailed response and recommendations

Location in the Bill and topic	Comment	Recommendations for changes to the Bill
<p>Sub part 1 – Provisions for operation of the Act</p> <p>Cl 3 Purposes of this Act</p> <p>Cl 5 Interpretation</p>	<p>We agree with the listed purposes of the Act as capturing a useful description of what it achieves but note that, more than cl 3(a) “recognising and enhancing the non-legislative conventions that (the public service) operates under”, the Act recognises the constitutional role of the public service and its relationships with Ministers and the public, including the public service’s role in supporting the Crown in its relationship with Māori under the Treaty of Waitangi (te Tiriti o Waitangi).</p> <p>The interpretation section contains a definition of employee but not of “public service workforce”, a phrase also used in the Bill. A definition of public service workforce should be inserted and include all forms of work. We have made further recommendations relating to this for changes to clauses 15(2), 42 and 63.</p> <p>Ministerial staff is defined as meaning “employees who are employed on events-based employment agreements or any other fixed-term employment agreement- (a) by the department or interdepartmental venture that is responsible for the employment of ministerial staff across all Ministers’ offices; and (b) to work directly for a Minister in a Minister’s office rather than in a public service agency.</p> <p>We raise the question of whether it is necessary to include in this definition the structure of employment of people in these roles. The structure of the employment of these roles is a matter of discussion following the Francis</p>	<p>That cl 3 be amended to include a purpose for the Act of recognising the constitutional role of the public service and its relationships with Ministers and the public, including the public service’s role in supporting the Crown in its relationship with Maori under the Treaty of Waitangi (te Tiriti o Waitangi).</p> <p>That cl 5 be amended to insert a definition of “public service workforce” that includes all forms of work.</p> <p>That cl 5 be amended to omit “...on events-based employment agreements or any other fixed-term employment agreement”.</p>

	<p>review<sup>8</sup> and it is possible this may change at some point. To avoid this clause being overtaken by this, it's worth considering whether the roles intended would be adequately captured by the clause as drafted but with the reference to employment structure is deleted.</p>	
<p>Sub part 2</p> <p>Cl 8 Public service defined,</p> <p>Cl 9 Purpose</p> <p>Cl 10 Public service principles</p>	<p>We support the definition of the public service however we can see only positive reasons to extend this to include the Crown Research Institutes. We have had feedback from our members at Crown Research Institutes that this might be supported.</p> <p>We support the purpose of the public service as defined in cl 9.</p> <p>Increasingly, New Zealanders expect to be able to have a voice in and shape the public services they receive. This is an expression of the continuing maturation of our democracy. To reflect this, and to logically cascade from and give effect to the “facilitates active citizenship” purpose listed in cl 9, we propose an additional principle of “Engagement” – by which we mean “to proactively engage with and facilitate the participation of citizens and civil society in policy and service design.”</p> <p>Cl 10 (2) through to (5) describes the responsibilities and accountabilities for the principles of chief executives, boards and the Commissioner. In our view this clause should also include a description the role of Ministers in relation to the principles. This would cascade from the amendments we propose to clause 3 of the Bill (recognising the constitutional role of the public service and its relationships with Ministers and the public).</p> <p>There has been some commentary that over the last decades that the tenor of the relationship between parliamentarians and the public service has changed. Providing clarity in the new act on the role and obligations of</p>	<p>Amend cl 8 to add (c) includes Crown Research Institutes for the purposes of this sub-part and sub-part 4 of this part.</p> <p>Amend cl 10 to add (f) “Engagement” – by which we mean “to proactively engage with and actively facilitate the participation of citizens and civil society in policy and service design.”</p> <p>Amend Cl 10 by inserting cl 10 (6) describing the responsibility of Ministers to preserve public trust and confidence in the public service by supporting the public service to uphold its principles.</p>

<sup>8</sup> [The Independent External Review into Bullying and Harassment in the Parliamentary Workplace.](#)

<p>Cl 11 Spirit of service to the community</p>	<p>Ministers in relation to the Public Service and public servants could help to positively reset this relationship.</p> <p>While there is guidance available to Ministers in the Cabinet Manual, its absence from the current Act and legislation means this has not been subject to public or Parliamentary debate, and the conversation created in the Act about public servants’ responsibilities is in effect one-sided. We refer the Committee to the Canadian Code of Ethics and Values for the Public Sector<sup>9</sup> which provides that <i>“Ministers are also responsible for preserving public trust and confidence in the integrity of public sector organizations and for upholding the tradition and practice of a professional non-partisan federal public sector. Furthermore, ministers play a critical role in supporting public servants’ responsibility to provide professional and frank advice”</i>.</p> <p>We strongly support the inclusion of this clause.</p>	
<p>Subpart 3 – Crown’s relationships with Māori</p>	<p>In our view, cl 12 does not adequately provide for the responsibility of chief executives as agents of the Crown to give practical effect to the Crown’s treaty obligations in their employment relationship with Māori working in their agencies. Merely referring to the good employer requirements in s71 (2) (d), which is 30 years old and has achieved little for Māori staff, is entirely inadequate.</p> <p>Treaty obligations require a commitment to ongoing relationships and engagement. A standing advisory committee enabled by cl 48, with representation from Māori leaders within the public service and the Māori structures of the unions of Māori working in public services, could provide a suitable framework for this engagement.</p>	<p>Amend clause 12(2)(b)(ii) to provide that “in the case of chief executives and public service boards that employ staff, to apply employment policies and practices that reflect the Crown’s treaty relationship with Māori working in their agencies including operating an employment policy that meets the requirements of section 71(2)(d).</p> <p>In addition, please see our recommendations relating to clauses 45 and 48.</p>

<sup>9</sup> Government of Canada, 2011, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>



<p>Subpart 4</p> <p>Cl 14 Public service values</p>	<p>We are largely supportive of the list of public service values provided at cl 14. Feedback from PSA members during the public consultation<sup>10</sup> was that the proposed list of values at that point spoke more strongly to public servants' Crown facing role, rather than to their role in serving the public. Some commented that public servants should behave not only with respect towards New Zealanders but also with compassion, fairness and kindness. This indicates a desire from some public servants to see more "heart", or more explicit provision for manaaki and wairuatanga in the values expressed in the new act. We welcome the inclusion of "(d) to treat all people with dignity and compassion and act with humility." We would welcome an articulation of the values that incorporates and reflects the deep resonance with public servants of Tikanga Māori concepts such as manaakitangi, kaitiakitanga, whanaungatanga and wairuatanga.</p>	<p>We would welcome an articulation of the values that incorporates and reflects the deep resonance with public servants of Tikanga Māori concepts such as manaakitangi, kaitiakitanga, whanaungatanga and wairuatanga.</p>
<p>Cl 15(2) Commissioner may set standards of integrity and conduct</p>	<p>There is extensive delivery of public services by contracted providers. Many of the people engaged by providers to perform public services work side-by-side with public servants or even on agency premises under day-to-day agency management. New Zealanders should have the right to expect the same standards of conduct from anyone they receive public services from. It is arbitrary to limit this only to employees or those contracted on an individual basis by agencies. Contractors paying people out of the public purse should have the same level of accountability as agencies to meet good employment standards.</p> <p>The Commissioner should have the discretion to require an agency to include as a condition of any contract for services that agency enters into that the people engaged in the work of that contract must comply with minimum standards set by the Commissioner.</p>	<p>Amend 15(3) to enable the Commissioner to require an agency to include as a condition of any contract for services entered into by that agency the application of minimum standards to the people engaged in the work of that contract for services.</p>

<sup>10</sup> P.10, NZPSA. [PSA submission on Reform of the State Sector Act 1988: Directions and options for change](#)

<p>Cl 18 Required content of guidance on rights and responsibilities</p>	<p>It is not clear to us whether this clause will safeguard or undermine expert and professional standards in the public service. Many people working in public services have recognised fields of expertise or carry out professions that have their own codes of ethics and practice. This includes for example scientists, nurses, medical and dental specialists, allied health professionals, lawyers, accountants, planners, scientists and social workers.</p> <p>Experts and professional are employed by agencies <i>because</i> of their expertise or profession and their professions require them to meet particular standards in order to continue in that profession. It is vital that any code of integrity and conduct does not seek to extinguish required professional standards. Such a code should enable, rather than prevent experts and professionals from raising concerns, including in some circumstances speaking out within their area of expertise, if they are asked to act in a way that is contrary to their expert opinion or advice, or that breaches or is inconsistent with the professional codes they are bound by. It is not clear that cl 18 will achieve this end or whether it can be used to but we feel strongly that it should.</p> <p>We refer the Committee to sections 14 to 18 of the Code of Good Faith for the Public Health Sector at Schedule 1B of the Employment Relation Act as an example of wording that could be adapted for this purpose. The Code is in current use and works well.</p>	<p>Amend cl 18 to clarify that its intent is to ensure that codes of integrity and conduct, and guidance issued by the Commission, support and uphold the professional obligations, codes and standards of those working in public services in professional roles and/or with recognised areas of expertise.</p> <p>We recommend that the wording of the Code of Good Faith for the Public Health Sector at Schedule 1B of the Employment Relations Act 2000 is used as a model for this.</p>
<p>Cl 20 Rights and freedoms of employees</p>	<p>We warmly welcome the inclusion of clause 20. Over the last two decades, the PSA has become increasingly concerned that the interpretation and application of the political neutrality obligation by public service employers has led many public servants to feel over-constrained and vulnerable about being politically active in a personal capacity. These incidents have a chilling effect on public servants exercising their fundamental rights and freedoms outlined in the New Zealand Bill of Rights Act 1990.</p>	<p>That cl 20 be changed to include a provision enabling the Commissioner to agree with unions a Charter of Rights for people working in Public Services.</p>

	<p>There is an increasing sense for many that being involved in politics conflicts with having a public service job and can endanger their employment. There have been many incidents where some managers make it clear that speaking up on issues or even merely joining in a demonstration in public servants' own time is inappropriate and should be avoided. Public servants are an important reservoir of knowledge and understanding and care about many important issues. It is a great loss to the country if they feel unable to speak up and contribute in the democratic processes of the country.</p> <p>To help reset expectations around this, we recommend that the new Act enable the Commissioner to agree with the PSA a "charter of rights" for people working in public services. We have attached a draft of what this could look like as appendix 1.</p>	
<p>Part 2 Public Service Agencies and joint operational arrangements</p>	<p>The PSA sees benefit in the new Act enabling a more flexible set of organisational arrangements to achieve better outcomes for New Zealanders. The particular forms proposed appear designed to overcome some of the current barriers to collaboration.</p> <p>We are broadly supportive of improving the proposed new organisational arrangements available to agencies. However, because the particular arrangements proposed are largely untested, and because the process around the development of the Bill has been short, we recommend that the Bill include a requirement that after three years this part of the new Act is reviewed with the aim of improving the operation of the organisational arrangements provided for.</p>	<p>That Part 2 include a requirement that after three years this part of the new Act is reviewed with the aim of improving the operation of the organisational arrangements provided for.</p>
<p>Part 3 – People working in the public service</p> <p>Subpart one – Public Service Commissioner</p>	<p>Cl 40 Public Service Commissioner. On balance we support the continuation of a single Commissioner but with the addition of up to two Deputy Public</p>	<p>Amend cl 45 to require the appointment of a Deputy Public Service Commissioner with a</p>

<p>and Deputy Public Service Commissioners</p>	<p>Service Commissioners appointed by the Governor General, and the facility for advisory committees to the Commissioner. We strongly recommend that one Deputy Commissioner must have focus including support for the Crown’s relationships with Māori.</p> <p>Cl 41 Commissioner’s role and cl 42 Commissioner’s general functions. We welcome the inclusion in the description of the Commissioner’s role of leadership in relation to the public service workforce and in particular the function of “working with public service leaders to develop a highly capable workforce that reflects the diversity of the society it services, and to ensure fair and equitable employment.” Strategy, planning and co-ordination around workforce has been a clear gap in the current Act and a barrier to effectiveness for the system. Technology, citizen expectations, the world of work and the nature and content of the delivery of services continually evolve. The ability to coordinate and chart a path through this, with effective workforce and skills planning and training, is essential to the public service’s ability to achieve its purposes. Workforce is wider than “employees” and it is important that all forms of work are included in this focus. Please see our recommendations for clauses 5, 15(2) and 63 relating to this.</p>	<p>focus including on support for the Crown’s relationship with Māori.</p>
<p>Cl 48 advisory committees</p>	<p>Developing and sustaining a highly capable public service workforce requires strong and constructive relationships and collaborative working not just between the Commissioner and public service leaders, but also with the unions that represent the employment interests and provide an independent voice for the people who make up that workforce.</p> <p>Cl 48 enables the Commissioner to establish advisory committees to assist with carrying out any of the Commissioner’s functions. We strongly recommend that the Commissioner be required to establish a standing advisory committee to assist with the functions of cl 42(c). Such a committee should establish sub-committees for the agencies included in cl 8(a) (the departments and departmental agencies) and for DHBs. This</p>	<p>Amend cl 48 to require the establishment of a standing advisory committee, including union representation, to assist the commissioner with the functions in cl 42 (c). Such a committee should have the ability to establish appropriate system-level sub-committees and include members who are representatives of the relevant public service leadership team and the unions of those working in the agencies within the coverage of those committees. Given the nature of such a committee, it should operate on consensus.</p>

	<p>advisory committee would include relevant representatives from the public service leadership team as well as the unions of those working in those agencies. Where there are workforce issues that extend across community sector and contracted providers and local government, it could draw on expertise from those sectors.</p> <p>This committee would be invaluable to the Commissioner in efficiently structuring and co-ordinating engagement at the system-level on matters affecting public service employees including: the development and implementation of workforce strategy and planning; good employer requirements; workforce policy orders; pay equity claims; training and education needs (especially in the age of digitalisation and use of new technology); sharing of experiences with consistent terms and conditions and where required to benefit from the lessons learned from other agencies; and management of the movement of the workforce around the system, including through overview of reorganisations and transfers. This would formalise and provide a clear status for current engagement arrangements which work very well, including the Health Sector Relationship Agreement Forum and the PSA State Services Leadership Team Strategic Engagement Forum.</p> <p>Discussion of our recommendation for a standing advisory committee on Māori workforce is included in our discussion on cl 12.</p>	<p>Amend cl 48 to require the establishment of a standing advisory committee, Māori to assist the Commissioner with the responsibilities in cl 12, with representation from Māori leaders within the public service and the Māori structures of the unions of Māori working in public services.</p>
<p>Subpart 2 Public service chief executives and public service leadership team</p>	<p>The PSA supports the management of public service senior leaders as a system leadership group. It makes sense to build leadership capability across the system and this can support the conditions needed to deepen collaboration and stewardship. We also support the formalisation and continued development of functional lead roles.</p> <p>We are aware of commentary that legislation should not be needed to achieve this, although the benefit of doing this through legislation is that it</p>	

	will remain a focus throughout the life of the new Act and the changes in Commissioner and chief executive role holders over that time.	
Subpart 4 Public service workforce		
Cl 63 interpretation	<p>While this subpart is titled “public service workforce” it contains provisions that apply only to the narrow category of “public service employees”, as defined in cl 63 as employees of departments. Public service chief executives should not be able to contract out of their responsibilities to their workforce. There are significant numbers of people in the public service workforce who are not employees of departments or crown agents but are either self-employed and engaged through contracts for service or employees of contracted service providers, including temporary employment agencies. We refer the Committee to our submissions on clauses 5, 42 and 15(2). Our recommendation is that the provisions in subpart 4 should not just apply to public service employees but that agencies using workforces to provide public services through either individual contracts for service or via contracted providers should be required to include in the terms of those contracts for services the good employer and diversity and inclusion requirements. Can’t contract out of these requirements.</p>	<p>Change the Bill so that the provisions in subpart 4 apply not just to public service employees but to all of those working in public services, including those who are self-employed and engaged through contracts for service or employees of contracted service providers, including temporary employment agencies.</p>
Clauses 64 – 68 chief executives as employers of people working in public services	<p>The Bill retains chief executives as the employers of people working for departments. With the benefit of the extensive hindsight that 31 years give us, it is obvious that this employment framework has worked against both system-level workforce management; mobility; and the spirit of service and public service identity at the heart of the kind of workplace cultures necessary for high integrity, responsive, innovative and citizen-focused public services that are needed now and into the future.</p> <p>On balance, and with due regard to the principle of subsidiarity, it remains our view that retaining the chief executive as employer in this bill is a missed opportunity. We recommend that the Bill makes provision for a review of</p>	<p>That the Bill make provision for a review of the new Act within three years and whether chief executives remain the employers of those working for departments is reconsidered as part of that review.</p>

	<p>the new Act within three years and that this matter is particular is reconsidered as part of that review.</p> <p>There are attempts to overcome the downsides of this, including “work arounds” such as: the dance around the Commissioner’s collective bargaining delegations in cl 79 and pay equity claims in cl 80; the provisions around the transfer of employees in cl 85 and restrictions on redundancy payments in cl 86; the continuity of employment provisions in clauses 87 to 93; and the Government workforce policy provisions in Part 4.</p> <p>The test for us is whether the proposed arrangement whereby people are employed by chief executives but described as being appointed to the system, and the workarounds detailed above, truly support decision making at a level at which workers (and citizens) are more likely to be engaged and whether it enables or precludes a unified and strategic approach to workforce at the system level.</p> <p>The new workforce and employment arrangements set out in the Bill will be implemented not just by agencies, but also by the people working in public services that they apply to. This is why it is so important for the success of what’s proposed that measures are put in place to enable the engagement of the social partners at an industry level – as we propose in our submission on cl 48 above.</p>	
Cl 70 appointments on merit	In our view, an appointment is not made on merit if it is influenced by bias on the prohibited grounds of discrimination. As such, we see the proposed duty to promote diversity and inclusion, and the good employer obligations, as entirely consistent with this.	
Cl 71 Good employer requirements	This provision directly affects the daily lives of over 400, 000 people. While cl 71 applies only to the chief executives of departments and interdepartmental ventures, the requirement to be a good employer is extended to all other public sector employers through the legislation relevant to their organisations.	We request that the Committee provide us with an opportunity to make a supplementary submission on clauses 71 to 74 to elaborate on the recommendations set out here. This will include recommended improvements to the

	<p>Within the scheme proposed by the Bill, public service leaders and boards of Crown agents must (cl 11(2) “preserve, protect, and nurture the spirit of service to the community that public service employees bring to their work.” Further, the Commissioner has a function of (cl 42(c) “work(ing) with public service leaders to develop a highly capable workforce that reflects the diversity of the society it services, and to ensure fair and equitable employment”. Then, sub-part 4 of the Bill lists a number of requirements of chief executives and the Commissioner in relation to public service employees that presumably are intended to describe how these obligations are given practical effect.</p> <p>These provisions include for chief executives and boards of interdepartmental ventures: cl 71 the chief executive’s “good employer” requirement and cl 73 an obligation to “have regard to the principle” that having diverse and inclusive workplaces is desirable in order to achieve fairness in employment and have a more effective public service. For the Commissioner, cl 7 2, provides a function of promoting, developing and monitoring equal employment opportunities programmes and policies, and cl 74, developing and maintaining guidance, and reporting on diversity and inclusion every three years.</p> <p>The Bill leaves the good employer provisions essentially unchanged from those put in place in 1988(s56 State Sector Act). In our view this is entirely inadequate and a significant missed opportunity. This sub-part of the bill should be re-drafted to give better effect to clauses 11(2) and 42(c).</p> <p>The good employer requirement’s existence over 31 years has not realised the aspirations it expresses and in particular:</p> <ul style="list-style-type: none"> <li>- The aims and aspirations and employment requirements of Māori and the need for greater involvement of Māori in the public service.</li> <li>- The aims and aspirations, employment requirements, and the cultural differences of ethnic and minority groups</li> </ul>	<p>good employer requirements by including in cl 71:</p> <ul style="list-style-type: none"> <li>- An obligation to give effect to the Gender Pay Principles that includes the text of the Gender Pay Principles (which is provided in appendix 2). We strongly support CEVEP’s submissions on the Gender Pay Principles.</li> <li>- An obligation to work with employees and unions to improve their practice in relation to the good employer obligation</li> <li>- An obligation to foster workplace cultures of respect, dignity, inclusiveness and active participation.</li> <li>- That the Commissioner’s function in clause 72 be changed to promoting, developing and monitoring the chief executive’s good employer obligations, not just equal employment opportunities.</li> <li>- That the proposed obligations relating to diversity and inclusion be integrated into the good employer clause; and</li> <li>- that the Commissioner be required to include a report on this in the three-yearly briefings on the State of the service provided for in Schedule 3 cl15.</li> </ul>
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	<ul style="list-style-type: none"> <li>- Recognition of the employment requirements of women and people with disabilities.</li> </ul> <p>Significant gender and ethnic pay and leadership-level representation gaps remain. For Māori, the negotiation by the PSA of tangihanga leave remains the only change to the employment terms of Māori that recognises their employment requirements. Organisational and system-level focus on this could at best be described as patchy, with short-lived bursts of activity in the late 1980's and early 2000's. Our attempts to improve employment terms and conditions for Māori (such as leave for hura kōhatu, recognition of Te Reo, waka and tikanga expertise, recognition of whāngai as tamariki etc) have for the most part of the last 31 years been met with active resistance.</p> <p>Similarly, focus on the employment requirements of women has been sporadic. Initial focus on equal employment opportunities in the 1990's fell away as EEO fell out of the fashion of HR practice, and yet the statutory requirement to recognise the aims, aspirations and working requirements of different EEO groups continued.</p> <p>Work on pay equity in the early 2000's only occurred because of the focus of the government of the day and was ended before any recommendations were implemented that would have better provided for the employment requirements of women. The current wave of activity around equal pay follows the first successful use of the Equal Pay Act in its over 40 years of existence, and the agreement of the Gender Pay Principles with us by the government and public service chief executives follows a claim raised by us against the State Services Commission.</p> <p>In terms of the employment requirements of people with disabilities, it is only within the last 2 years that the Commission has issued meaningful guidance to agencies and last year was the first year agencies have even reported on the presence of people with disabilities within their workforces – and we note most were unable to do this. Similarly, last year was the first</p>	
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	<p>year that there has been any attempt to understand the presence and employment experience, let along the requirements, of LGBTIQ+ people working in public services.</p> <p>Even the basic administrative requirement of reporting on the extent to which chief executives are complying with their policies to meet the good employer requirement has not been met. We are not aware of this being the subject of chief executive performance assessments by successive Commissioners or of Performance Improvement Framework assessments. The only reporting on overall crown entity performance on this has been by the Human Rights Commission.</p> <p>In short, without wanting to denigrate the current very welcome focus and leadership of the current Commissioner and public service chief executives on equal pay and diversity; whether or not chief executives take the good employer provisions seriously appears to be purely voluntary and dependent on whether a particular chief executive or the Commissioner and government of the day have any sustained focus on this. And this is despite this being an ongoing and statutory requirement of all chief executives, independent of the priorities of their particular preferences or those of particular Commissioners or governments.</p> <p>We recommend improvements to the good employer requirements by including in cl 71:</p> <ul style="list-style-type: none"> <li>- An obligation to give effect to the Gender Pay Principles that includes the text of the Gender Pay Principles. We strongly support CVEP's submission on this point.</li> <li>- An obligation to work with employees and unions to improve practice in relation to the good employer obligation</li> <li>- An obligation to foster workplace cultures of respect, dignity, inclusiveness and active participation.</li> </ul>	
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	<p>We recommend that the Commissioner’s function in clause 72 be changed to promoting and developing chief executives good employer obligations and monitoring the chief executive’s performance of these obligations, not just equal employment opportunities. And we also recommend that the proposed obligations relating to diversity and inclusion are integrated into the good employer obligation clause.</p>	
<p>Negotiation of collective agreements Clauses 77, 78 and 79</p>	<p>We are largely supportive of the clauses relating to collective bargaining, however to support the purposes of the Act, we recommend that cl 77 is amended to include a responsibility for the Commissioner to foster in collective bargaining consistent terms and conditions of employment across public service agencies, including through provisions giving effect to the requirements in the good employer, diversity and pay equity provisions (clauses 71 to 74 and 80 to 83).</p> <p>Chief executives of interagency ventures have the same powers and functions of agency chief executives (cl 65) and cl 79 enables the Commissioner to delegate his power of collective bargaining to the boards of interdepartmental ventures. Interdepartmental ventures may be established for a particular purpose and this may be time limited. We would want to avoid a proliferation of collective agreements, the negotiation of which takes time and resource. The people transferring into these ventures will bring with them individual terms and conditions based on the collective agreements from the agency they are coming from. An interdepartmental venture may therefore find itself working with a range of inconsistent terms within its workforce. Also, when it is first established it will not have a collective agreement to offer new appointees. To simplify this situation and foster consistent terms and conditions of employment across agencies, the Bill should provide that the board of the interdepartmental venture becomes a subsequent party to the collective agreement of the agency from which the largest proportion of its staff are transferred on point of establishment.</p>	<p>That cl 77 is amended to include a responsibility for the Commissioner in collective bargaining of fostering consistent terms and conditions of employment across public service agencies, including through provisions giving effect to the requirements in the good employer and diversity provisions (clauses 71 to 74).</p> <p>That the Bill provide that on the point of establishment, the board of the interdepartmental venture becomes a subsequent party to the collective agreement of the agency from which the largest proportion of its staff are transferred.</p> <p>Right to recognise the union representatives and their collective bargaining in GWPOs.</p>

<p>Pay equity claims</p>	<p>We are largely supportive of clauses 80 to 83. We have three recommendations for changes:</p> <p>Cl 80 (2) enables the Commissioner to choose to be “responsible for negotiations” for pay equity claims. It is not clear to us what “responsible” includes. We recommend that it includes both responsibility for negotiating and settling negotiations.</p> <p>Cl 80 (2) - We recommend that the Commissioner be required to be responsible for negotiations in relation to a pay equity claim if that claim is for an occupational group which is present in more than one agency. This would make the coordination of the process of negotiation of such claims much more efficient.</p> <p>Cl 80(3) provides that the Commissioner’s responsibility for a pay equity claim arises on the date the Commissioner receives notice of that claim from the chief executive or board. To ensure such notice is not delayed, this should also take effect when the union or employee raising the claim provides notice to the Commissioner.</p> <p>Cl 80 (4)(a) - We are concerned that cl 80(4)(a) would have the effect of removing mediation under the Employment Relations Act 2000 as one of the means of reaching agreement on a pay equity claim. Mediation is very effective and the ability to access this support should be retained.</p> <p>Cl 80(6) refers to the Equal Pay Act 1972, the review of which is currently under consideration by another select committee. We note that the wording used in cl 80(6) is consistent with the Equal Pay Amendment Bill with the exception of one word:</p> <p>At clause 80(6)(a) it should read:</p> <p>(a) Have the same, or substantially similar, skills, responsibility, and <b>experience</b>; and</p>	<p>That cl 80(2) is amended to clarify that “responsible” means responsibility for both negotiating and settling a claim.</p> <p>That cl 80 is amended to include an obligation for the Commissioner to be responsible for negotiations in relation to a pay equity claim if that claim is for an occupational group which is present in more than one agency.</p> <p>That cl 80 (3) is amended to provide for notice being received by the Commissioner from the employee or union raising a pay equity claim.</p> <p>That cl 80(4)(a) is deleted in order to retain the ability to access mediation as part of the pay equity claim negotiation process.</p> <p>That cl 80(6) be amended to ensure consistency with the Equal Pay Amendment Bill).</p>
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	<p>(b) ...”</p> <p>When reported back from the select committee it was recommended that the word “service” be replaced with “experience”.</p> <p>We support CEVEP’s submission on these clauses.</p>	
<p>Cl 85 Power to transfer employees between public service agencies</p>	<p>We welcome the inclusion of a specific power of transfer in the Bill in the case of a transfer of functions between agencies.</p> <p>The PSA has extensive experience in dealing with situations where members move from one department to another due to a transfer of functions. Up until recently, this was dealt with easily and without incident by Order in Council and the relevant collective agreement was preserved and the members continued to be covered by it until agreed otherwise in the usual way. A recent transfer of functions into the Housing and Urban Development Agency presented more problems when the new employer attempted to require state servants to break their employment when transferred. This was eventually resolved but the approach had the potential of member’s losing employment conditions and certainty.</p> <p>Given this, we suggest that the provisions in clause 85 of the bill are made more precise and prescriptive. We suggest that clause 85(2) includes reference to the collective agreement where one applies. This is important and consistent with the current provision which refers to the terms and conditions which are no less favourable. A collective agreement is a condition that should survive the transfer, albeit with a different employer party.</p> <p>The inclusion of reference to a collective agreement in this section is particularly important as in some cases, collective agreement contain recognition of service outside state services and without the explicit reference to this, this contractual condition may be inadvertently lost. The</p>	<p>That cl 85(2) includes reference to the collective agreement where one applies.</p>

	<p>inclusion of the collective agreement in this clause would be consistent with the underlying policy position that applies here where an employee should be no worse off as a result of a transfer imposed on them.</p> <p>We note the delay on providing the details of how these transfers will work in terms of leave and appreciate the complexity that this task presents. A useful approach taken by the Government when implementing Part 6A of the Employment Relations Act 2000 was to include examples in the legislation about how it would work based on different scenarios presented to it. Given that these provisions will be implemented in practice by a range of Human Resource and other staff and understood quickly by workers facing a transfer through the state services, we suggest that some simplified examples within the legislation would be helpful.</p> <p>Because the Bill does not create a single employer of public service employees, the increased mobility of employees around the public service enabled by the Bill will over time create increasingly significant compliance issues for the PSA. When an employee is transferred under this section their union membership is terminated as the fee deductions they have authorised their old employer to make cease. This means that at the point they transfer to their new employer they are not a member of the PSA, do not have access to our support and the collective agreement of their new agency does not apply to them. They will need to go through the process again of joining their union and authorising their new employer to make fee deductions on their behalf. To avoid this compliance burden, we propose that cl 85 provide that on the point of transfer, the union membership and fee deductions continue uninterrupted.</p>	<p>That cl 85 provide that on the point of transfer, the union membership and fee deductions continue uninterrupted.</p>
<p>Cl 90 Employment continuity</p>	<p>We support the provision for continuity of employment to remove barriers to movement between agencies through providing for the portability of statutory leave entitlement balances. However, in our view the Bill leaves in place barriers for people who have contractual leave balances and eligibility beyond those statutory minima. This should be addressed by cl 90.</p>	<p>That cl 90 be amended to ensure that people have continuity of employment also for the purposes of any contractual leave entitlements in addition to the statutory minima and that they have the choice to opt out of service continuity.</p>

	There may also be people who would prefer, for example their annual leave entitlements to be paid out when they move to a new employer. This could be for financial reasons – they need the money. We recommend that people have a choice to opt out of service continuity.	
Part 4 Government Workforce Policy	We largely support Part 4 – Government workforce policy however we strongly recommend that the Commissioner’s process for drafting a Government workforce policy include a requirement to consult with the unions of the employees to which it applies.	That cl 96 is amended to include a requirement of the Commissioner to consult with the unions of the employees to which it applies.
Schedule 3 Other functions and powers of Commissioner	<p>Cl 15 Three yearly briefings on the state of public service. We support this and recommend that this clause is amended to ensure that the Commissioner includes in these briefings both reporting on diversity and inclusion as provided in cl 74(b) and also reporting on chief executives achievement of their good employer obligations under cl71 – please see our submission on cl 72, which supports this.</p> <p>This briefing should also include reporting on the extent to which public service functions are delegated or contracted out.</p> <p>We also recommend that the process for developing this briefing include a requirement to consult the unions representing people working in public services. In our view this would strengthen the credibility of the briefing and we note that chief executives’ long-term insight briefings provided for by Schedule 6, cl 8 includes a requirement for consultation. A workforce advisory committee to the Commissioner (as recommended by us for inclusion in cl xx) would be well placed to contribute to these reports.</p>	<p>That Schedule 3, cl 15 is amended to ensure that the Commissioner includes in these briefings both reporting on diversity and inclusion as provided in cl 74(b) and also reporting on chief executives achievement of their good employer obligations under cl71 – please see our submission on cl 72, which supports this.</p> <p>That cl 15 be amended to provide that reporting on the extent to which public service functions are delegated or contracted out should also be included in these briefings.</p> <p>That cl 15 be amended to include a requirement for the Commissioner in developing these briefings to consult with the unions of people working in public services.</p>
Schedule 6 Other Powers and Functions of public service chief executives		
Cl 2(6) delegation of functions	This clause continues the wording of s41(2A) of the State Sector Act. We remain concerned about the delegation of statutory functions to a “person”	We recommend that cl 2(6) is amended to provide that a chief executive cannot delegate

<p>Cl 8 and 9 long term insights briefings</p>	<p>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.</p> <p>We welcome the requirement for chief executives to produce long term insights briefings. In the interests of active citizenship and open government, and to strengthen the quality of the briefings produced, cl 9 should provide for the consultation of both contracted providers that have functions contracted or delegates to them and the unions representing the workforce performing those functions.</p>	<p>her/his role as employer in its entirety; that a delegation from a chief executive 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.</p> <p>That cl 9 be amended to include a requirement that chief executives consult with any contracted providers that have functions contracted or delegated to them and the unions representing the workforce performing those functions.</p>
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# Appendix 1

## Draft PSA Charter of rights for public servants

Public servants have a responsibility to work within the constitutional framework provided by legislation and convention.

They also have the same full employment and civil rights as others living and working in New Zealand. This includes:

### Employment

Including rights to:

- Good faith in all aspects of their employment environment and their employment relationship
- Equality of power in the employment relationship, including:
  - The right to freedom of association
  - Freedom from undue influence in relation to their union membership
  - The right to independent collective voice
  - The right to collective bargaining
  - The right to take legal strike action
- Voice at work. This includes:
  - The right to express their views to their employer and have those views duly considered in good faith
  - The right to participate in the making of decisions that have significant implications for themselves or their workplace
  - The right to inclusion – to contribute and have that contribution valued
- Fair process, including:
  - Natural justice in employment relationship problems
  - Protection from unfair dismissal
  - Protection from retaliation when making a genuine disclosure of serious wrongdoing
- Dignity at work. This includes:
  - Being treated with respect
  - Recognised and valued for the work they perform
  - Provided with opportunities for skill enhancement and career progression
  - Protection from bullying, harassment and unwarranted surveillance
  - Privacy of personal information held by their employer
- A workplace free from discrimination or harassment based on:
  - Race, colour, descent, national, social or ethnic origin
  - Sex, gender identity or sexual orientation
  - Age
  - Physical or mental disability
  - Marital status
  - Family or carer responsibilities
  - Pregnancy, potential pregnancy or breastfeeding
  - Religion or religious belief
  - Political opinion
  - Irrelevant criminal record
  - Union membership or participation in union activities

- A safe and healthy working environment.
- Enjoyment and protection of minimum employment standards as set by legislation and their employment agreement

### **Civil**

In their personal lives, the rights to:

- Vote and stand in general and local body elections
- Adopt and hold opinions
- Freedom of expression of those opinions
- Freedom to join or otherwise support political parties and other interest groups

## Appendix 2

### Gender pay principles

#### Aim

Working environments in the state sector are free from gender based inequalities. All employees are able to achieve their full potential regardless of their gender, and gender pay gaps are eliminated.

#### 1. Freedom from Bias and Discrimination Principle

Employment and pay practices are free from the effects of conscious and unconscious bias and assumptions based on gender.

#### Issue statement

Bias and discrimination occurs at every point throughout the employment cycle. Conscious and unconscious bias impacts negatively on women's employment, pay and progression opportunities. These negative impacts are compounded when gender is combined with other factors.

This means

- Decision makers recognise and act to remove the impacts of conscious and unconscious bias
- Employees, unions and agencies actively raise awareness amongst all staff of gender stereotyping and conscious and unconscious bias
- Employees, unions and agencies jointly evaluate policies and practices to identify where and when gender bias and discrimination can occur
- Agencies take action to prevent gender bias and discrimination before it occurs
- Employees, unions and agencies pay particular attention to the compounding impacts of gender combined with other factors
- Agencies value gender diversity and prioritise active protection from discrimination
- Leaders and decision makers develop strong relationships with Maori women to reduce opportunities for bias and discrimination to occur.

#### 2. Transparency and Accessibility Principle

Employment and pay practices, pay rates and systems are transparent. Information is readily accessible and understandable.

#### Issue statement

Transparency and accessibility is essential to the sustainable elimination of gender pay gaps. Maintaining transparent employment and pay practices is likely to prevent gender pay gaps from occurring and attract and retain a diverse and committed workforce.

This means

- Pay rates and systems are transparent and easily accessible
- Gender pay gap information is audited and published annually
- Gender pay gap information is disaggregated to understand the compounding impacts when gender is combined with other factors
- Agencies publish plans for addressing gender pay gaps, ensuring that they are readily available to all employees and their unions
- Where collective agreements are negotiated, they include pay rates and pay systems that are transparent and accessible to all.
- Agencies identify where insecure work arrangements contribute to workplace gender inequalities.

### **3. Relationship between Paid and Unpaid Work Principle**

Employment and pay practices recognise and account for different patterns of labour force participation by workers who are undertaking unpaid and/or caring work.

#### **Issue statement**

Women and men have different patterns of participation in the paid workforce, primarily because women spend a greater proportion of their time on unpaid and/or caring work. As a result women are disadvantaged in areas such as pay, progression, security of employment and retirement income. When women's skills and experience are not recognised, they are underutilised and undervalued in the workforce.

This means

- Employees, unions and agencies recognise that women currently undertake a greater share of unpaid and/or caring work in society which has negative impacts in the workplace
- Agencies take active steps to ensure that time out of the workforce for unpaid and/or caring work does not result in disadvantage in pay or barriers to progression
- Decision makers scope jobs and allocate work in a way that positively recognises different patterns of participation
- Skills and experience gained through unpaid and/or caring work are utilised and rewarded
- Agencies normalise flexible and part time working arrangements for all positions and employees without adversely affecting security of employment
- Employees, unions and agencies create workplace environments that support and encourage men's participation in unpaid and/or caring work.

### **4. Sustainability Principle**

Interventions and solutions are collectively developed and agreed, sustainable and enduring.

#### **Issue statement**

Remedying gender inequalities and closing gender pay gaps requires continuous organisational commitment and collective engagement to achieve sustainable systemic change. Integration of the principles of the Te Tiriti o Waitangi and addressing the needs and perspectives of Maori women is essential.

This means

- Senior leaders make an ongoing commitment to eliminate gender inequalities and allocate budget and resources accordingly
- Employees, unions and agencies jointly set explicit goals and timeframes to eliminate gender pay gaps
- Agencies collect, analyse and monitor data to identify all the factors that contribute to their gender pay gaps
- Interventions and solutions are informed by data and best practice
- Employees, unions and agencies jointly monitor, evaluate and adapt plans to ensure equitable outcomes are sustained
- The application of the Te Tiriti o Waitangi and its principles is adapted to new and changing circumstances
- Agencies undertake specific planning and resourcing to achieve equitable outcomes for Maori women
- Collective and/or individual agreements are key mechanisms for ensuring that changes are sustained
- Agencies consider how these Principles apply to all employment arrangements, including contractors.

## **5. Participation and Engagement Principle**

Employees, their unions and agencies work collaboratively to achieve mutually agreed outcomes.

### **Issue statement**

Employees, their unions and agencies have a shared interest in achieving sustainable outcomes and cultural change. Effective participation and engagement in a high trust environment promotes organisational performance. Inclusive processes support social, cultural, environmental and spiritual wellbeing. Collective ownership of solutions is achieved through effective communications and genuine input.

This means

- Genuine input is sought from the design phase and throughout the process
- Employees, unions and agencies jointly develop, implement, monitor and evaluate plans to address gender pay gaps
- Employees, unions and agencies use collaborative processes, including collective bargaining, to agree and implement plans
- Employees can see their experiences and voices reflected in decision-making
- Agencies actively engage with women in a way that is inclusive and recognises their diversity and different perspectives
- Leaders and decision makers develop strong relationships with Maori women to ensure their needs and perspectives are addressed
- Where collective agreements are negotiated they include agreed mechanisms to implement these Principles.

### **For further information about this submission, please contact:**

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