

State Sector Amendment Act (No 2) 2004

Public Act 2004 No 114
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The Parliament of New Zealand enacts as follows:

1 Title

- (1) This Act is the State Sector Amendment Act (No 2) 2004.
- (2) In this Act, the State Sector Act 1988 is called "the principal Act".

2 Commencement

This Act comes into force on 25 January 2005.

3 Title amended

- (1) The Title of the principal Act is amended by inserting in paragraph (b) and paragraph (d), after the word “services”, the words “and other agencies”.
- (2) Paragraph (g) of the Title of the principal Act is amended by adding the words “and assistance to other agencies on conditions of employment”.

4 Interpretation

- (1) Section 2 of the principal Act is amended by inserting, before the definition of **applicable collective agreement**, the following definition:

“**agency** does not include an agency in the private sector”.

- (2) Section 2 of the principal Act is amended by inserting, after the definition of **conditions of employment**, the following definitions:

“**Crown entity**—

“(a) means a Crown entity within the meaning of section 7 of the Crown Entities Act 2004; but

“(b) does not include a tertiary education institution or a Crown Research Institute or any of their subsidiaries

“**Crown Research Institute** means a Crown Research Institute formed under the Crown Research Institutes Act 1992, or a Crown entity subsidiary of a Crown Research Institute (within the meaning of Part 1 of the Crown Entities Act 2004)”.

- (3) Section 2 of the principal Act is amended by inserting, after paragraph (a) in the definition of **State services**, the following paragraphs:

“(ab) includes a Crown entity; and

“(ac) includes a Crown Research Institute; and”.

- (4) Section 2 of the principal Act is amended by repealing paragraph (c)(vi) of the definition of **State services**, and substituting the following paragraph:

“(vi) any tertiary education institution”.

- (5) Section 2 of the principal Act is amended by inserting, after the definition of **strike**, the following definition:

“**tertiary education institution** means an institution within the meaning of section 159(1) of the Education Act 1989”.

5 Functions of Commissioner in relation to Public Service

- (1) Section 6 of the principal Act is amended by omitting from the heading the words “in relation to Public Service”.

- (2) Section 6 of the principal Act is amended by repealing paragraph (a), and substituting the following paragraph:

“(a) to review the machinery of government across all areas of government, including—

“(i) the allocation of functions to and between departments and other agencies; and

“(ii) the desirability of, or need for, the creation of new departments and other agencies and the amalgamation or abolition of existing departments and other agencies; and

“(iii) the co-ordination of the activities of departments and other agencies.”.

- (3) Section 6 of the principal Act is amended by repealing paragraph (d), and substituting the following paragraph:

“(d) to promote and develop senior leadership and management capability for the Public Service.”.

- (4) Section 6 of the principal Act is amended by repealing paragraphs (h) and (i), and substituting the following paragraphs:

“(h) to provide advice on the training and career development of staff in the Public Service:

“(ha) to provide advice and guidance to employees within the State services (except Crown Research Institutes) on matters, or at times, that affect the integrity and conduct of employees within the State services:

“(i) to provide advice on management systems, structures, and organisations in the Public Service and Crown entities.”.

6 New section 8 substituted

The principal Act is amended by repealing section 8, and substituting the following section:

“8 Power of Commissioner to conduct inspections and investigations

- “(1) This section applies when the Commissioner is—
- “(a) carrying out his or her functions in respect of the Public Service:
 - “(b) carrying out his or her functions under section 6(ha) in relation to any other part of the State services.
- “(2) The Commissioner may conduct any inspections and investigations, and make and receive any reports, that the Commissioner considers necessary or the Minister directs.”

7 New section 9 substituted

The principal Act is amended by repealing section 9, and substituting the following section:

“9 Power to obtain information

- “(1) The Commissioner may require, by written notice, a Department, or any agency in respect of which the Commissioner is carrying out his or her functions under section 6(a), (ha), or (i), to supply to the Commissioner information concerning the Department’s or agency’s activities.
- “(2) The Department or agency to which the notice is given must comply with the notice, and must keep all records that are necessary to enable it to comply with the notice.
- “(3) This section does not limit any Act that imposes a prohibition or restriction on the availability of any information.”

8 Exercise of functions and powers in respect of other State services

- (1) Section 11 of the principal Act is amended by repealing subsection (4), and substituting the following subsection:
- “(4) The Commissioner may, if requested by the head of any part of the State services, and must, if requested by the Minister in charge of, or responsible for, any part of the State services, exercise in respect of that part of the State services any of the functions and powers that the Commissioner may exercise in respect of Departments under any provision of sections 6 to 8.”

- (2) Section 11(5)(a) of the principal Act is amended by inserting, before the words “any other Act”, the words “this or”.
- (3) Section 11 of the principal Act is amended by adding the following subsection:
- “(6) The Commissioner may, if requested by the head of any part of the State services that does not form part of the Public Service, or of any corporation listed in the First Schedule of the State-Owned Enterprises Act 1986, provide assistance in respect of the conditions of employment of its employees.”

9 New Part 4 substituted

The principal Act is amended by repealing Part 4, and substituting the following Part:

“Part 4

**“Senior leadership and management
capability in Public Service**

“46 Object

The object of this Part is to establish the shared responsibility of the Commissioner and the chief executives of Departments of the Public Service for the development of senior leadership and management capability in the Public Service, so that there will be sufficient senior employees who are able to fill chief executive and other leadership and senior management positions in the Public Service.

“47 Responsibilities of Commissioner

- “(1) The Commissioner is responsible for—
- “(a) developing and promoting a strategy for the development of senior leaders and managers in the Public Service; and
- “(b) at the Commissioner’s discretion, issuing guidance to chief executives of Departments of the Public Service to assist them in developing senior leaders and managers in their Departments; and
- “(c) establishing an executive leadership programme for selected employees in the Public Service that will provide training and development for those employees, so that those employees gain the ability to fill chief executive

and other leadership and senior management positions in the Public Service.

- “(2) In relation to the executive leadership programme, the Commissioner is responsible, in consultation with chief executives of Departments of the Public Service, for—
- “(a) setting standards for the selection of employees in the Public Service to participate in the executive leadership programme; and
 - “(b) approving the entry of employees in the Public Service to the executive leadership programme; and
 - “(c) approving the development programme for each employee participating in the executive leadership programme, in consultation with the employee concerned.
- “(3) Despite section 33, the Commissioner may request the chief executive of a Department of the Public Service who is the employer of an employee selected for the executive leadership programme to make that employee available for the training and development necessary to give effect to the employee’s development programme.

“48 Responsibilities of Public Service chief executives

- “(1) Each chief executive of a Department of the Public Service is responsible for developing senior leadership and management capability in his or her Department and in doing so must have regard to any guidance by the Commissioner under section 47(1)(b).
- “(2) Each chief executive of a Department of the Public Service must, in relation to the executive leadership programme,—
- “(a) co-operate with the Commissioner in making employees available for selection for the executive leadership programme; and
 - “(b) comply with any reasonable request by the Commissioner under section 47(3); and
 - “(c) co-operate with the Commissioner, to the extent reasonable, to give effect to any secondment that the Commissioner proposes under section 49.

“49 Secondments

- “(1) The Commissioner may arrange for the secondment of any employee selected for the executive leadership programme to a Department of the Public Service or another organisation in the State services, subject to the agreement of the employee and the chief executives concerned, for the purpose of giving effect to any part of the development programme for that employee referred to in section 47(2)(c).
- “(2) Sections 60, 61, and 65 do not apply to the secondment.

“50 Other organisations in State services

- “(1) The Commissioner may promote the strategy for the development of senior leaders and managers developed for the Public Service under section 47(1)(a) to organisations in the State services that are not part of the Public Service.
- “(2) The Commissioner may issue to organisations in the State services that are not part of the Public Service any guidance he or she has issued to chief executives of Departments of the Public Service under section 47(1)(b).
- “(3) The Commissioner may, in consultation with the employee’s chief executive, invite any employee in an organisation in the State services that is not part of the Public Service to participate in training and development activities provided for employees of Public Service Departments.”

10 General principles

- (1) Section 56 of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
- “(1) The chief executive of a Department must—
- “(a) operate a personnel policy that complies with the principle of being a good employer; and
 - “(b) make that policy (including the equal employment opportunities programme) available to its employees; and
 - “(c) ensure its compliance with that policy (including its equal employment opportunities programme) and report in its annual report on the extent of its compliance.”
- (2) Section 56(2) of the principal Act is amended by repealing paragraph (f), and substituting the following paragraph:

“(f) recognition of the aims and aspirations and employment requirements, and the cultural differences, of ethnic or minority groups; and”.

11 New sections 57 to 57C substituted

The principal Act is amended by repealing section 57, and substituting the following sections:

“57 Commissioner may set minimum standards of integrity and conduct

“(1) The Commissioner may set minimum standards of integrity and conduct that are to apply in—

“(a) the Public Service:

“(b) all or any Crown entities:

“(c) the Parliamentary Counsel Office:

“(d) the Parliamentary Service.

“(2) The Commissioner may set those minimum standards by issuing a code of conduct and applying it to any agency referred to in subsection (1), by written notice to the agency.

“(3) A code may be applied to an agency referred to in subsection (1)(b) to (d) with any variations that the Commissioner thinks appropriate, taking into consideration the legal or commercial context of the agency.

“57A Agencies must comply with minimum standards except in particular circumstances

“(1) An agency (including its employees) must comply with any standards that apply to it under section 57.

“(2) However, an agency referred to in section 57(1)(b) to (d) may derogate from a particular standard if the agency has—

“(a) obtained the prior written approval of its responsible Minister to the derogation; and

“(b) sent a copy of the approval to the Commissioner.

“(3) This section does not prevent an agency from applying additional or detailed standards that are consistent with the standards applied to the agency.

“57B Breaches of minimum standards

The Commissioner may advise the responsible Minister if, in the opinion of the Commissioner, a serious breach of any minimum standard applied to an agency under section 57 has occurred, or is likely to occur.

“57C Commissioner’s powers when setting and enforcing minimum standards

- “(1) The Commissioner may, when acting under sections 57 to 57B in respect of any agency referred to in section 57(1)(b) to (d), exercise the powers in sections 7 to 9 that the Commissioner may exercise in respect of Departments, including the powers in section 25.
- “(2) The Commissioner’s powers include providing advice and guidance on matters like the interpretation of the standards and the application of a code of conduct in specific cases.”

12 Equal employment opportunities

- (1) Section 58 of the principal Act is amended by repealing subsections (1) and (2).
- (2) Section 58(3) of the principal Act is amended by omitting the words “this section and”.

13 General principles

- (1) Section 77A of the principal Act is amended by repealing subsection (1), and substituting the following subsection:
- “(1) Every employer in the Education service must—
- “(a) operate a personnel policy that complies with the principle of being a good employer; and
 - “(b) make that policy (including the equal employment opportunities programme) available to its employees; and
 - “(c) ensure its compliance with that policy (including its equal employment opportunities programme) and report in its annual report (if any) on the extent of its compliance.”
- (2) Section 77A(2) of the principal Act is amended by repealing paragraph (f), and substituting the following paragraph:

“(f) recognition of the aims and aspirations and employment requirements, and the cultural differences, of ethnic or minority groups; and”.

14 Code of conduct in relation to Education service

Section 77B(3) of the principal Act is amended by repealing paragraph (c), and substituting the following paragraph:

“(c) the Commissioner, and must have regard to any code of conduct issued by the Commissioner under section 57.”

15 Equal employment opportunities

Section 77D of the principal Act is amended by repealing subsections (2) to (4).

16 New sections 84 to 84B substituted

(1) The principal Act is amended by repealing sections 84 to 84D, and substituting the following sections:

“84 Interpretation

For the purposes of sections 84A and 84B,—

“**contribute**, in relation to a superannuation scheme, means to make superannuation contributions to the scheme to provide to a significant extent the benefits payable by the scheme, not being merely nominal contributions or contributions only to meet the costs of administration and management of investments of the scheme

“**employee** includes a chief executive

“**employer**—

“(a) means a person who pays, or is liable to pay, to any person (being an employee) any earnings as an employer; but

“(b) means the chief executive of the Ministry within the meaning of section 91A(1) of the Education Act 1989, for the duration of the application period in that section, in relation to—

“(i) an institution that is subject to Part 9 of that Act; or

“(ii) a free kindergarten within the meaning of section 120 of that Act; and

“(c) includes any person or organisation whose officers or employees were, immediately before 1 July 1992, entitled to elect or required to become contributors to the Government Superannuation Fund established under the Government Superannuation Fund Act 1956

“**State services** includes—

“(a) any tertiary education institution:

“(b) any employer within the meaning of this section

“**superannuation scheme** or **scheme** has the same meaning as in the Superannuation Schemes Act 1989.

“**84A Power to establish superannuation schemes for officers and employees**

An employer in the State services may—

“(a) arrange for any superannuation scheme or schemes to be established for its officers or employees (or both):

“(b) join with another employer (whether or not in the State services) in arranging for any superannuation scheme, or any trust arrangement that is part of a superannuation scheme, to be established for the purpose of providing, or facilitating the provision of, superannuation for its officers or employees (or both):

“(c) arrange for its officers or employees to become members of any established superannuation scheme:

“(d) provide arrangements in respect of the superannuation of any individual officer or employee.

“**84B Contributions to superannuation schemes**

An employer in the State services may contribute to a superannuation scheme for the purpose of providing retirement benefits to its officers or employees (or both) only if—

“(a) the scheme is registered under the Superannuation Schemes Act 1989; and

“(b) the scheme provides that the sum of all benefits (including any lump sum payments, annuities, and other benefits) payable from the scheme in respect of any member of the scheme will not exceed the sum of—

- “(i) contributions paid by or on behalf of a member and investment earnings on the contributions; and
 - “(ii) any allocations to the member from surplus funds held within the scheme; and
 - “(iii) the amount paid in respect of that member from any insurance policy effected for the benefit of members of the scheme; and
- “(c) the trust deed of the scheme defines the rates or amounts (if any) of contributions of the employer or officers or employees; and
- “(d) the trust deed of the scheme entitles the employer to cease contributing to the scheme on behalf of a person if that person ceases to be an officer or employee of the employer; and
- “(e) the benefits provided by the scheme are fully funded as they accrue; and
- “(f) the scheme, if it enables members to withdraw from the scheme, enables withdrawing members to transfer to other superannuation schemes the value (as determined in accordance with the terms of the scheme) of the benefits attributable to that person’s membership of the scheme up to the date of withdrawal; and
- “(g) the scheme enables any person who becomes an officer or employee of that employer, if the employer agrees to contribute to the scheme on that person’s behalf, to become a member of the scheme and to transfer to the scheme the value of the benefits attributable to that person’s membership of other superannuation schemes; and
- “(h) the trust deed of the scheme does not permit amendments to be made to the scheme that would result in any provision of paragraphs (a) to (g) ceasing to apply to the scheme.”
- (2) The entitlement of an officer or employee in the State services under any superannuation arrangement that applies to that officer or employee at the commencement of this section is not affected by—

- (a) the repeal of sections 84 to 84D of the principal Act by this section; or
- (b) the amendments to Acts that are contained in Schedule 6 of the Crown Entities Act 2004.

17 Amendments to align all tertiary education institutions with universities, polytechnics, and colleges of education

The principal Act is amended by—

- (a) repealing the definitions of **college of education**, **polytechnic**, and **university** in section 2; and
- (b) omitting the words “university, polytechnic, or college of education” from every place where they appear, and substituting in each case the words “tertiary education institution” ; and
- (c) omitting from section 77C(4) the words “university, polytechnic, college of education”, and substituting the words “tertiary education institution”.

18 Amendments to other Acts relating to Commissioner’s mandate

The enactments in Part 1 of Schedule 1 are consequentially amended as indicated in that Part.

19 Amendments to other Acts consequential on disestablishment of senior executive service

- (1) The enactments in Part 2 of Schedule 1 are consequentially amended as indicated in that Part.
 - (2) The principal Act is consequentially amended in the manner shown in Schedule 2.
-

Schedule 1

ss 18, 19(1)

**Amendments to other enactments relating
to amendments to State Sector Act 1988****1****Amendments to other Acts relating to
Commissioner's mandate****Clerk of the House of Representatives Act 1988 (1988 No 126)**

Add to section 17:

- “(3) The Clerk of the House of Representatives must consult the State Services Commissioner before issuing any code of conduct in the exercise of his or her functions under section 3(d).
- “(4) The State Services Commissioner may advise the Speaker of the House of Representatives on any matter concerning ethics, values, and standards in relation to the Office of the Clerk.”

Education Act 1989 (1989 No 80)

Repeal section 139AE(g) and substitute:

- “(g) to develop a code of ethics for teachers, after consultation with the State Services Commissioner and after having regard to any code of conduct issued by him or her under section 57 of the State Sector Act 1988.”.

New Zealand Security Intelligence Service Act 1969 (1969 No 24)

Repeal section 6(2).

Repeal section 7.

Repeal section 8(2) and substitute:

- “(2) Subject to the provisions of this Act, the Director must determine—
- “(a) the terms and conditions on which the Director employs persons as officers of the Security Intelligence Service; and
- “(b) the terms and conditions applicable to employees of that Service.”

1—*continued*

Parliamentary Service Act 2000 (2000 No 17)

Add to clause 7 of Schedule 1:

“(4) Despite section 68 of the State Sector Act 1988, the General Manager is responsible for negotiating a collective agreement under the Employment Relations Act 2000 and the General Manager must consult with the State Services Commissioner about the conditions of employment to be included in the collective agreement.”

Statutes Drafting and Compilation Act 1920 (1920 No 46)

Repeal section 6A(2) and (3) and substitute:

“(2) The other principal officers of the Parliamentary Counsel Office must be paid remuneration (including travelling allowances and other incidental allowances) that the Chief Parliamentary Counsel determines.

“(3) The staff of the Parliamentary Counsel Office (other than the principal officers) must be employed on terms and conditions of employment and be paid salaries and allowances that the Chief Parliamentary Counsel determines.

“(3A) Before entering into a collective agreement under the Employment Relations Act 2000, the Chief Parliamentary Counsel must consult with the State Services Commissioner about the conditions of employment to be included in the collective agreement.”

2

Amendments to other Acts consequential on
disestablishment of senior executive service

Building Act 1991 (1991 No 150)

Omit from paragraph (a) of the definition of **employee** in section 2 the words “and any member of the senior executive service who works for that organisation”.

2—*continued*

Building Act 2004 (2004 No 72)

Omit from paragraph (a) of the definition of **employee** in section 7 the words “and any member of the senior executive service who works for that organisation”.

Citizenship Act 1977 (1977 No 61)

Repeal paragraph (b) of the definition of **employee** in section 2.

Electoral Act 1993 (1993 No 87)

Omit from section 33(5) the words “(who shall be a member of the senior executive service employed in the Department of which the chief executive is the administrative head)” and substitute the words “nominated by the chief executive”.

Foreign Affairs Act 1988 (1988 No 159)

Repeal section 6(1)(a).

Omit from section 6(1)(b) the word “other”.

Parental Leave and Employment Protection Act 1987 (1987 No 129)

Omit from section 71ZA(3) the words “or to a member of the senior executive service”.

Reserve Bank of New Zealand Act 1989 (1989 No 157)

Omit from section 46(1)(d) the words “, or a member of the senior executive service,”.

Schedule 2

s 19(2)

**Amendments to State Sector Act
1988 consequential on disestablishment of
senior executive service**

Section 2

Repeal paragraph (b)(ii) of the definition of **employee**.

Repeal the definition of **senior executive service**.

Section 17(2)

Omit the words “or a position in the senior executive service of a Department”.

Section 23(3)(d) and (e)

Repeal.

Section 40(1)(d)

Repeal.

Section 41(1)

Omit the words “or a member of the senior executive service”.

Section 41(2)

Omit the words “a member of the senior executive service or”.

Section 56(4)

Repeal.

Section 65(3)

Omit the words “or to an appointment to a position in the senior executive service”.

Section 84

Omit from the definition of **employee** the words “and a member of the senior executive service”.

Section 86

Omit the words “member of the senior executive service or other”.

Omit the words “member of the senior executive service or any other”.

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State Sector Amendment Act (No 2) 2004

Section 92

Repeal.

14 December 2004

Legislative history

Divided from Public Finance (State Sector Management) Bill, third reading
