

BILLS DIGEST

**PUBLIC FINANCE (STATE SECTOR MANAGEMENT) BILL 2003
(2004 No 99-2)**

As reported from the Finance and Expenditure Committee: 06 September 2004

Bills Digest No. 1149



NEW ZEALAND PARLIAMENTARY LIBRARY

Bills Digest No. 1149

Published by the Parliamentary Library
Parliament Buildings, Wellington
New Zealand.

09 September 2004

Prepared by John McSoriley B.A.L.L.B., Barrister
Legislative Analyst
Ph. (04) 471-9626 (Ext. 9626)
Fax (04) 471-1250

Caution

This Digest was prepared to assist consideration of the Bill by members of Parliament. It has no official status.

Although every effort has been made to ensure accuracy, it should not be taken as a complete or authoritative guide to the Bill. Other sources should be consulted to determine the subsequent official status of the Bill.

Copyright

© NZ Parliamentary Library, 2004

Except for educational purposes permitted under the Copyright Act 1994, no part of this document may be reproduced or transmitted in any form or by any means, including information storage and retrieval systems, other than by Members of Parliament in the course of their official duties, without the consent of the Parliamentary Librarian, Parliament Buildings, Wellington, New Zealand.

This document may also be available through commercial online services and may be viewed and reproduced in accordance with the conditions applicable to those services.

**PUBLIC FINANCE (STATE SECTOR MANAGEMENT) BILL 2003
(2004 No 99-2)**

Date of introduction:	03 December 2003
Portfolio:	Finance
Select Committee:	Finance and Expenditure
Date report presented:	06 September 2004

PURPOSE

The aim of the Bill is to clarify the law relating to the public service including amending the Public Finance Act 1989 (the Act) and the State Sector Act 1988, repealing the Fiscal Responsibility Act 1994, and enacting a new Crown Entities Act.

The Bill as introduced is described in [Bills Digest No 1055](#).

MAIN CHANGES TO THE BILL

The Select Committee has recommended a large number of clarificatory and technical amendments to this Bill which are described exhaustively in its Commentary on the Bill. The more important recommendations are described below.

Public Finance Act 1989

Rearrangement of Parts

The Bill as introduced substitutes two new Parts into the Act. New Part 1 relates to fiscal responsibility and New Part 2 relates to appropriations.

The Select Committee has recommended that New Part 1 (in the Bill as introduced) should become New Part 2 and that New Part 2 (in the Bill as introduced) should become New Part 1 (*Part 1, Clause 8 (New Part 1 (New Sections 4 – 25) becomes New Part 2 (New Sections 26F – 26Z) and New Part 2 (New Sections 26 – 26V) becomes New Part 1 (New Sections 4 – 26E)*).

Comment

The Select Committee recommends this substantial physical change to the Bill to make the “fundamental importance of the appropriation process” “clear”.

Estimates

The Select Committee has recommended the reintroduction of the terms “Estimates” and “Supplementary Estimates”. The term “Estimates” is defined as a statement in any form that describes and supports the appropriations being sought in the first Appropriation Bill that relates to a financial year and contains certain information

specified in the Bill. The Select Committee has also recommended that the Minister of Finance be required to consult the House where he or she proposes to “significantly” change the format or content of the Estimates, supporting information referred to in New Clause 15 or the Supplementary Estimates¹ (*Part 1, Clause 6 (definitions of “estimates and Supplementary Estimates”) and Clause 8, New Sections 13-17 (previously New Sections 26I and 26J); insertion of New Section 18*).

The Official Information Act 1982 and the supply of information to Parliament

The Bill as introduced provides that departments may withhold information from reports or statements being presented to the House on the grounds contained in the Official Information Act 1982.

The Select Committee has recommended that this provision be deleted. It is also recommended that a similar provision for Crown entities be likewise deleted from the Bill (*Part 1, Clause 17, New Section 45E deleted; Part 6, Clause 198 deleted*).

State Sector Act 1988

Codes of conduct and personnel policies

Currently, the State Services Commissioner may issue a code of conduct covering the minimum standards of integrity and conduct that are to apply in the Public Service. The Bill proposes that the Commissioner may set minimum standards of integrity and conduct that are to apply also to Crown entities, the Parliamentary Counsel Office, and the Parliamentary Service. The Select Committee has recommended more detail be placed in the provisions of the State Sector Act 1988 requiring chief executives to be good employers (*Part 2, Clause 41 (New Sections 57 – 57C), and inserting New Clause 40A (amending Section 56 of the State Sector Act 1988), New Clause 41AA (amending Section 58 of the State Sector Act 1988) and New Clause 41A (amending*

¹ See: *Standing Orders of the House of Representatives*: Amended on 16 December 2003, 2004:

Standing Orders 322 and 323 provides that following delivery of the Budget, the Estimates stand referred to the Finance and Expenditure Committee. The Finance and Expenditure Committee may examine a Vote itself or refer it to any subject select committee for examination. Each select committee to which a Vote is referred examines the Vote and determines whether to recommend that the appropriations in respect of the Vote be accepted. It may recommend a change to the Vote. All committees must report to the House on their examinations of the Estimates within two months of the delivery of the Budget.

Standing Order 324 deals with the Estimates debate. The consideration in committee of the main Appropriation Bill is the Estimates debate. It is a consideration of the appropriations being sought by the Government in each Vote in the main Appropriation Bill.

Standing Order 325 provides that the debate on the question for the third reading of the main Appropriation Bill must be completed within three months of the delivery of the Budget. This debate may include reference to the content of the fiscal strategy report and the economic and fiscal update laid before the House on the day when the Budget was delivered and the report of the Finance and Expenditure Committee on those documents.

Standing Order 326 deals with the Supplementary Estimates. Following the introduction of an Appropriation (Supplementary Estimates) Bill, the Supplementary Estimates stand referred to the Finance and Expenditure Committee. As with the Estimates (described above) the committee may examine a Vote itself or refer it to any subject select committee for examination.

Section 77A of the State Sector Act 1988 relating to employers in the Education Service)).

Comment

The inclusion of the Parliamentary Service in the provision relating to codes of conduct is, perhaps, an unwarranted extension of the State Service Commissioner's powers. The provision does not apply to the Office of the Clerk of the House of Representatives. This may be because Section 3 of the Clerk of the House of Representatives Act 1988 (the Clerk of the House Act) provides such a function for the Clerk of the House of Representatives (the Clerk) himself or herself. Under that section, the Clerk has a duty:

“to ensure that the members of the staff of the Office of the Clerk of the House of Representatives carry out their duties (including duties imposed on them by law or by the Standing Orders or practice of the House of Representatives) and maintain ... proper standards of integrity and conduct ... and ... concern for the public interest”.

The Clerk of the House Act therefore has provision a code of ethics which is to be prescribed by the Clerk (quite independently of the Commissioner).

The Bill amends the Office of the Clerk Act to provide that:

“ ... 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).

“ ... 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” (*Part 3, Clause 44, Schedule 3, additions to Section 17 of the Clerk of the House of Representatives Act 1988*)

There is no similar function of prescribing “ethics, values and standards” or codes of conduct given to the General Manager of the Parliamentary Service (the equivalent of the Clerk in relation to the Parliamentary Service, which with the office of the Clerk are the two “Parliamentary departments” responsible to the Speaker of the House) under the Parliamentary Service Act 2000.

It is suggested that the Parliamentary Service, as a Parliamentary department, should have the same status, in this context, as the Office of the Clerk of the House of Representatives, the other Parliamentary department.

If that is so, the General Manager of the Parliamentary Service could be given the same responsibility as the Clerk through an amendment to the Parliamentary Service Act 2000 (in this Bill). The same obligation to consult the State Services Commissioner and for the Commissioner to give advice to the General Manager could also be incorporated.

It may be argued also that a code of ethics suitable for public servants (who are first and foremost the servants of the Crown) may not be suitable for Parliamentary

employees who are the servants of Parliament and must observe very strict constraints of political neutrality and independence, particularly in relation to the Crown, to carry out their proper functions. In this respect there should be similar legislative provisions relating to the prescribing of codes of conduct for both Parliamentary departments.