

Request for options and analysis in review of NZ Superannuation Portability

Legislation	Official Information Act 1982, s 9(2)(f)(iv)
Agency	Minister for Social Development and Employment
Ombudsman	Beverley Wakem
Case number(s)	172541
Date	May 2008

Cabinet had agreed to package of proposals but agreement was subject to funding in Budget—Budget secrecy only applies if decision has been made to include proposals in Budget—analysis protected by s 9(2)(f)(iv) but not bare options—advice two years old and no advice issued about which options were under consideration—strong public interest in release of bare options

In response to a request for official information in late 2007, the Minister for Social Development and Employment decided to withhold parts of two reports from 2004 and 2005 relating to the review of New Zealand Superannuation Portability. The Minister relied on section 9(2)(f)(iv) because the information was ‘*still under active consideration through the Budget process*’.

The Minister released the background and issues information, but withheld information about the options and their analysis. She explained that, although Cabinet had agreed to a package of proposals in October 2007, that agreement was subject to funding in Budget 2008. She argued that release before the budget announcements in May 2008 would undermine the convention of budget secrecy and the effective functioning of government.

In relation to budget secrecy, the Chief Ombudsman said this convention would only apply if a decision had been made to include the proposals in the budget. At the time of the decision on the request, no such decision had been made.

The Chief Ombudsman went on to consider whether it was necessary to withhold the options and analysis under section 9(2)(f)(iv), in order to maintain the constitutional convention

protecting the confidentiality of advice. She drew a distinction between the analysis and bare options.

She accepted that analysis of options that had been agreed by Cabinet but which were still subject to funding decisions needed to be withheld. Disclosure would pre-empt the ability of Cabinet to deliberate on the advice and decide how to proceed. She agreed with the Minister that these options remained ‘*under consideration*’ until the funding issues had been resolved.

The Chief Ombudsman did not accept that it was necessary to withhold the bare options:

In my view the release of the bare options tendered in 2005 is not likely to have the effect predicted. The advice is two years old and no advice has been issued as to which of the options are currently under consideration. In these circumstances it is difficult to see how release of this advice would be likely to interfere with the funding decision making process.

She also considered that there was a strong public interest in release of the bare options. The review had been ongoing since 2001, and in 2006 the Social Services Committee urged that it be accorded urgency. Disclosure of the bare options would promote the accountability of Ministers and officials to the people of New Zealand in relation to a long-running review. It would also enable the New Zealand public to participate in the making of laws and policy in relation to a matter of national interest.

The Chief Ombudsman acknowledged that this was a complex and controversial area of policy, but this in itself did not amount to a good reason to withhold information from the New Zealand public. In contrast, it was a factor that favoured release of information, because:

...disclosure of the options tendered can fuel public debate and therefore ensure that decision makers have a contestable avenue of advice to that put forward by officials before decisions are taken.

The Chief Ombudsman formed the final opinion that section 9(2)(f)(iv) did not provide good reason to withhold the bare options at the time that decision was taken. She recommended release of that information, except to the extent that a decision had been made to include any of the options in Budget 2008. The Minister complied with the Chief Ombudsman’s recommendation, releasing all options except for one which was then the subject of a current budget bid.

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