

Request for early stage policy advice relating to paid parental leave

Legislation	Official Information Act 1982, ss 9(2)(f)(ii), 9(2)(f)(iv), 9(2)(g)(i)
Agency	Minister of Women's Affairs
Ombudsman	Anand Satyanand
Case number(s)	W45418
Date	February 2002

Request for information relating to paid parental leave policy—information withheld to maintain collective ministerial responsibility, protect confidentiality of advice and free and frank exchange—in the circumstances no good reason to withhold

A Member of Parliament asked the Minister of Women's Affairs for information relating to paid parental leave. The Minister refused this request in reliance upon sections 9(2)(f)(ii), 9(2)(f)(iv) and 9(2)(g)(i) of the OIA. The Minister explained that release of the information would undermine the Government's decision making processes, adversely affect free and frank exchange of views within the Coalition government and between officials and undermine the convention of collective ministerial responsibility.

An important issue was the extent to which both Alliance and Labour Ministers had publicly debated paid parental leave policy. The issue of whether it was '*necessary*' to withhold the information in order to protect the stated interests had to be considered in light of extensive public debate.

With regard to section 9(2)(f)(ii), the Minister argued that the advent of MMP had altered the convention of collective ministerial responsibility. It was asserted that collective ministerial responsibility extended to protect the expression of diverging opinions prior to the making of a Cabinet decision.

In considering the Minister's view, it was observed that the convention of collective ministerial responsibility applies only when the release of information will undermine confidence that a Cabinet decision is collectively supported by Ministers. This approach is supported by a

number of academic commentators, and the most recent revision of the Cabinet Office Manual, which states that:

Acceptance of ministerial office requires acceptance of collective responsibility. Issues are often debated vigorously within the confidential setting of Cabinet meetings, although consensus is usually reached and votes are rarely taken. Once Cabinet makes a decision, then (except as provided in paragraph 3.23) Ministers must support it, regardless of their personal views and whether or not they were at the meeting concerned.

In this case, the following factors were relevant:

- no Cabinet decision had been made regarding paid parental leave policy;
- the Labour and Alliance parties had publicly discussed their respective policy positions regarding the provision of paid parental leave; and
- the information at issue did not purport to present the views of individual Ministers regarding paid parental leave.

On this basis the view was formed that section 9(2)(f)(ii) did not apply to the information at issue.

The issue of whether section 9(2)(f)(iv) applied to this information was considered from two different perspectives. The following questions were considered:

- was it necessary to withhold the information in order to protect the ability of the Coalition partners to negotiate a paid parental leave policy? and
- was it necessary to withhold the information in order to allow government to make decisions regarding paid parental leave?

If either of these questions could be answered in the affirmative, section 9(2)(f)(iv) would likely have applied.

With regard to first point, it was noted that both the Labour and Alliance parties had been willing to publicly express their differing perspectives without concern that this would prejudice their ability to negotiate a Government policy position. There was nothing to indicate that release of the information in this instance would undermine the ability of the Coalition to negotiate a policy of paid parental leave successfully. With regard to the second point, it was observed that it will sometimes be necessary for information to be withheld in order to allow Ministers undisturbed consideration of advice. Whether such withholding is ‘*necessary*’ will depend upon the content of the advice, the context in which it was generated and the stage reached in the policy-making process to which it relates.

The information at issue represented the early stages of the policy-making process. It comprised advice as to the objectives and scope of paid parental leave, options for funding paid parental leave and an analysis of the costings and employment effects of various policy options. The papers did not contain opinions or recommendations. As such, it was difficult to

see how disclosure of the information would prejudice the ability of Ministers to make policy decisions.

To the extent that there had been a significant amount of public debate between the Labour and Alliance parties as to the appropriate rationale and funding mechanisms for paid parental leave, the context in which the information was being considered was also relevant. It was difficult to see why withholding was necessary in light of that public debate.

It was therefore concluded that section 9(2)(f)(iv) did not apply.

Finally, the Minister argued that release of the information at issue could adversely affect the free and frank exchange of views within the Coalition and between officials. However, it was not clear why it was considered that releasing the information at issue would have this result—the information itself was not characteristic of *‘free and frank expressions of opinion’* and there was nothing to suggest that disclosure of this information was so likely to inhibit the free and frank expression of opinions in the future that it was necessary to withhold. The view was therefore formed that section 9(2)(g)(i) did not apply.

The Minister accepted the view that sections 9(2)(f)(iv) and 9(2)(g)(i) did not apply to the information at issue, but disagreed with the views expressed regarding the application of section 9(2)(f)(ii). At that point, however, the Minister decided that given the age of the information (at that point it was almost one year old) it could be released, but without prejudice to the position she had taken regarding section 9(2)(f)(ii).

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