

Hon Judith Collins KC

## **Minister for the Public Service**

Amendments to Public Service Act 2020

Date of issue: 6 May 2025

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**Title:** Amendments to Public Service Act 2020

**Author:** Te Kawa Mataaho Public Service Commission

The Hon Judith Collins KC, Minister for the Public Service is releasing the Cabinet paper and Cabinet Minute

### **Explanatory Note**

Included in this release are the following documents:

- Cabinet Paper - Amendments to the Public Service Act 2020 Paper 2 Driving Improvements in Performance
- SOU Minute SOU-25-MIN-0029
- Cabinet Minute CAB-25-MIN-0085

## **In Confidence**

Office of the Minister for the Public Service

Cabinet Expenditure and Regulatory Review Committee

## **Amendments to the Public Service Act 2020: Paper 2 – Driving improvements in performance**

### **Proposal**

1. These papers propose amendments to the Public Service Act 2020 that will:
  - 1.1 Drive improvements in Public Service performance, efficiently and effectively serving the government to deliver value for money for all New Zealanders; and
  - 1.2 Reinforce the core principles of political neutrality, appointment on merit to all positions and professional competence.

### **Relation to government priorities**

2. The Public Service is vital for driving our agenda as a Government. An efficient, professional, politically neutral and merit-based Public Service assists us to frame and implement our programme. This includes achieving discipline in government spending and enabling us to grow New Zealand's economy to deliver more jobs, higher incomes and money to invest in core services like schools, hospitals and roads.
3. The Coalition Agreement between the New Zealand National Party and ACT New Zealand contains a requirement to: "Amend the Public Service Act 2020 to clarify the role of the Public Service, drive performance, and ensure accountability to deliver on the agenda of the government of the day."

### **Executive Summary**

4. This Government has taken steps to drive performance improvement across the Public Service, including through taking action to control the size and cost of the Public Service. The Public Service Commissioner (the Commissioner) has reinforced this focus through seeking to reorient and strengthen the process for setting expectations and reviewing the performance of Public Service chief executives. However, there is more to do to further improve value for money and to deliver for New Zealanders.
5. The Public Service Act 2020 requires amendments in several areas, and this is the second in a suite of three papers describing these amendments:

|   |  |
|---|--|
| Clarify the role of the Public Service                    | Analysis in Paper 1:<br>Clarifying the role and responsibilities of the Public Service |
| Streamline chief executive responsibilities               |  |
| Reinforce the principle of merit-based appointments       | <b>Analysis in this Paper 2:<br/>Driving improvements in performance</b>               |
| Improve chief executive and agency performance management |  |
| Utilise and improve tools to reduce silos                 | Analysis in paper 3:<br>Breaking down silos  |
| Better risk management                                    |  |

6. Public Service chief executives are critical to the performance of the system as a whole. Governments need to be confident that the best candidates have the opportunity to apply and are selected based on merit. However, I am concerned that this is not always the case. In recent years, it has been common practice for chief executives who were deemed to be meeting the requirements of the role to be reappointed; the Act provides for this to happen without a contestable process. Additionally, the Commissioner is required to consider diversity and inclusion in making chief executive appointments, rather than focusing solely on merit.
7. I am also concerned that there is an insufficient focus on driving performance. The Commissioner manages the performance of chief executives on behalf of Ministers. Performance management needs to be strengthened through greater transparency of the process, and clarity about the involvement of Ministers in providing input into both the process, the performance plan, and assessment of individual chief executives. There also needs to be greater transparency and oversight when public servants do not uphold the high standards of integrity and conduct expected of them.
8. Finally, the Act provides for two Deputy Public Service Commissioners to be appointed as a mandatory requirement. I propose reducing this to one.

## Background

9. The importance of the Public Service and its statutory framework, the Public Service Act 2020, are described in Paper 1 of this suite of papers. That paper describes how the Public Service Act 2020 (the Act) is too prescriptive, and how chief executive responsibilities are too diffuse, which has de-emphasised the focus on implementing the policies of the Government of the day, delivering for New Zealanders, and making prudent use of taxpayer money. Agencies need to, in other words, stick to the basics and deliver them well.
10. However, the problems with the Act go beyond how it describes the role, purpose, and responsibilities of the Public Service. There are some

longstanding issues in how the Public Service works where changes are needed to drive performance improvements.

11. There also needs to be greater focus on the performance management of agencies and of Public Service chief executives. As Ministers, we rely on departments and their chief executives performing well to implement our Government's programme. Where this is not happening, we need this to be recognised and remedied. We rely on the central agencies of the Public Service to maintain oversight of agency and chief executive performance and to be in a position to intervene if and when this becomes necessary.
12. Consequently, I want the Act amended to better drive agency and chief executive performance. This needs to start from the beginning with greater contestability and reinforcing the principle of merit appointment in the appointment process for chief executive positions. We also need to provide greater transparency and clarity about the appropriate involvement of Ministers in the performance management of chief executives. This includes mandated opportunities to provide input into the process, the performance plan, and the performance assessment of individual chief executives.
13. The Commissioner is responsible for ensuring that the Public Service upholds the standards of integrity and conduct necessary to fulfil its role. I propose to strengthen the requirements on the Commissioner so that they must issue minimum standards of integrity and conduct, and require agency reporting to strengthen oversight and transparency when public servants do not uphold these standards.

### **Reinforcing the principle of merit-based appointments**

14. I am concerned the Act does not always require the consideration of a wide pool of candidates for chief executive roles to be assessed solely on merit. The focus should be on an unbiased, merit-based process.

### ***Contestability of re-appointment***

15. It has become an expectation of chief executives that they are reappointed for a second term, and this means that we cannot be assured of getting the best candidates for each role.
16. The Commissioner may currently recommend to the Minister for the Public Service that an existing chief executive be reappointed for a further term, subject to agreement by the Governor-General in Council. This process has meant that many existing chief executives are simply reappointed to a further term without needing to demonstrate that they remain the best candidate.
17. I propose that the exception that allows a chief executive to be reappointed without contest be removed. This would still allow the incumbent chief executive to apply for the role, but they would be assessed against other candidates.
18. This could increase the cost and time taken for chief executive appointments overall, but provides the opportunity to identify potentially better candidates.

Roles being advertised more often allows for more frequent testing of the market which includes private sector leaders and rising talent from within the Public Service.

### *Making appointments solely on merit*

19. The Act added a new requirement that the Commissioner take into consideration diversity and inclusion when making chief executive appointments (sch 7, s 3(7)), which could create tension with the requirement for the Commissioner to select the best candidate for a specific role. I recommend that this requirement be removed, restoring the previous position that appointments should be based on merit.
20. Note that some chief executive roles will have responsibilities relating to one or more groups in society, where knowledge, capability, and relationships relevant to those groups will be necessary to perform the role effectively. In these cases, such requirements would form part of the position description and be included within the merit principle.

### *Government Statistician*

21. The Act describes a general process for the appointment of chief executives. There are several specific roles (Commissioner of Police, Chief of Defence, Solicitor-General, and the Government Statistician) with different requirements, but of these, only the requirements relating to the Government Statistician are described in the Act.
22. For the other specific roles, it was recognised that it would be more logical to locate relevant appointment provisions in the same legislation which deals with the agency the chief executive leads (for example, for the Commissioner of Police, spelling out relevant appointment provisions in the Policing Act 2008). A similar logic may be used to transfer the provisions relating to the appointment of the Government Statistician to the Data and Statistics Act 2022, which also describes the role and functions of the Government Statistician.

### *Deputy Public Service Commissioners*

23. The Act increased the number of Deputy Public Service Commissioners ('Deputy Commissioners') from one to two, reflecting a view that the scope of the Commissioner's role had expanded. Deputy Commissioners have all the powers of the Commissioner.
24. Historically, there has only been the need for one Deputy Commissioner. Given the size of the Commission and its leadership team compared to other agencies and its remit, I propose that there be only one Deputy Commissioner. This is proportionate and will also send a clear signal to chief executives about spans of control and the expectation that there is fiscal responsibility at all levels of organisations.

*Fixed-term appointments*

25. Members of the Policy Advisory Group (PAG) within the Department of the Prime Minister and Cabinet (DPMC) deliver free and frank advice to the Prime Minister to support the coordination and delivery of the Government's priorities including across transitions of government. It is important that PAG advisors rotate regularly, bringing current context from roles outside DPMC.
26. These are unique roles within the Public Service as recognised by successive Ombudsmen's rulings that their advice to the Prime Minister is treated as confidential under the Official Information Act 1982. To ensure that the Prime Minister gets the level of independent second opinion advice that they need, these roles must be filled by people who have recent and relevant experience leading and delivering policy priorities either in the public or private sector.
27. To enable this, I propose that the Act includes a special provision to allow for PAG advisors to be appointed on a fixed-term basis. This will ensure that PAG is regularly refreshed and that the DPMC is able to bring in and develop talented policy professionals from across the Public Service, bringing current context from their roles outside of the DPMC as well as private and other sectors. Rotating talent out of the PAG and into other Public Service leadership roles is an opportunity to strengthen the Public Service's talent development and succession planning.
28. It is generally preferable that we avoid creating parallel employment systems where the Public Service is treated differently to the private sector, which is why I am proposing removing several special provisions from elsewhere in the Act. For this reason, I propose that this provision be limited to PAG advisors only at the discretion of the Secretary of the Department of the Prime Minister and Cabinet. The detailed design of the provisions will be worked through in drafting.

**Improving chief executive and agency performance management**

29. I believe that there needs to be a much stronger focus on improving the performance of the Public Service to implement Government policies, to deliver for New Zealanders and to make prudent use of taxpayer money.
30. The Commissioner needs to take a much stronger role in driving this performance, for which the performance management process is a key lever. The Commissioner is responsible to the appropriate Minister for reviewing the performance of each chief executive.

*Involving the appropriate Minister*

31. The Commissioner has routinely sought input from the appropriate Minister(s) when setting performance expectations (including Key Performance Indicators (KPIs)) and conducting a performance review of a chief executive, but this has not been required in the Act. It is a ridiculous situation when a Minister (essentially in a governance position) is not able to be required to be consulted in such expectation setting and performance review.

32. I propose that the Commissioner be required to do so, to provide greater confidence and transparency about the process.
33. The Commission is engaging with the Minister for the Public Service, Public Service chief executives, and the Department of the Prime Minister and Cabinet to design an approach to implement performance pay for Public Service chief executives, and recommendations were made in late 2024. Final decisions are still pending on this approach, which we can implement alongside the changes we are making to legislation.

*Developing a plan in consultation with the Minister for the Public Service*

34. The process, practice, and expectations for reviewing the performance of chief executives has changed over time, reflecting different Government priorities. Specifying the process or expectations in primary legislation would reduce the flexibility of the Commissioner to adapt to different Governments. However, there is currently no specification on how performance reviews should proceed, which does not contribute to confidence or transparency by Ministers or the public.
35. Additionally, the Government, on behalf of New Zealanders, has a legitimate interest in how the Commissioner is driving performance across the Public Service, and the Government's views should be sought.
36. I propose that the Act be amended to strengthen the robustness of the performance management process while maintaining flexibility to achieve Government priorities. The Commissioner should be required to:
  - develop a plan for the process for chief executive performance reviews (including criteria for assessment and process);
  - consult with the Minister for the Public Service in developing this plan; and
  - publish this plan.

*Performance improvement reviews*

37. Sometimes it is important for the Commissioner to do a deeper dive into the performance of agencies to support the Government's priorities. Performance improvement reviews represent one such tool, that are currently completed by the Commissioner by agreement of the agency.
38. The Act should be amended to allow the Commissioner to conduct a performance improvement review of Public Service agencies or Crown entities, by agreement with the appropriate Minister.
39. The agency that is subject to the review will be required to respond to the findings and recommendations of the review. Reasonable and actual costs should be recovered from the agency.

### *Integrity and conduct*

40. The Commissioner is responsible for ensuring that the Public Service upholds the standards of integrity and conduct necessary to fulfil its role. Currently under s 17(1), the Commissioner may set standards (for example, a code of conduct), but without such standards there would be no consistent mechanism for holding public servants to account. This provision should be strengthened so that the Commissioner 'must' issue such standards.
41. I also consider it important that there is more oversight and transparency in relation to public servants who do not uphold these high standards.
42. To enable greater central oversight, I propose that agencies be required to notify the Public Service Commissioner when they commence a misconduct or serious misconduct investigation in relation to senior Public Service leaders.
43. To improve transparency, I also propose that agencies be required to report annually to the Public Service Commissioner on the outcomes of misconduct and serious misconduct investigations ceased or concluded in the past year and that the Commissioner publish a report on this information.

### **Financial, Cost-of-living and Legislative Implications**

44. Financial, cost-of-living and legislative implications of this suite of papers is addressed in paper three, *Amendments to the Public Service Act 2020: Paper 3 - Breaking down silos*.

### **Impact Analysis – Regulatory Impact Statement, Population and Human Rights Implications**

45. Impact analysis of this suite of papers is addressed in paper three, *Amendments to the Public Service Act 2020: Paper 3 - Breaking down silos*.

### **Consultation and communications**

46. Consultation and the approach to communications for this suite of papers are addressed in paper three, *Amendments to the Public Service Act 2020: Paper 3 - Breaking down silos*.

### **Proactive Release**

47. This paper will be proactively released following the commencement of the Act.

### **Recommendations**

I recommend that the Committee:

1. **note** that this paper forms part of a package of reforms also described in *Paper 1: Clarifying the Role and Responsibilities of the Public Service*, and *Paper 3: Breaking Down Silos*



2. **note** that the proposed amendments to the Public Service Act 2020 (the Act) in this paper aim to drive Public Service agency and chief executive performance

***Reinforcing the principle of merit-based appointments***

3. **agree** to remove chief executive reappointment provisions from the Act, to ensure chief executives are subject to a contestable process prior to being reappointed to the same role
4. **agree** to remove the requirement to consider diversity and inclusion in chief executive appointments and make appoints solely on the basis of merit
5. **agree** to transfer the provisions relating to the appointment of the Government Statistician from the Public Service Act 2020 to the Data and Statistics Act 2022
6. **agree** that the Government shall appoint one Deputy Public Service Commissioner
7. **agree** that the Secretary for the Department of the Prime Minister and Cabinet may appoint Policy Advisory Group advisors on a fixed-term basis

***Improve Public Service chief executive and agency performance management***

8. **note** that the performance management of chief executives is a key lever for improving the performance of the Public Service
9. **agree** to require the Public Service Commissioner (the Commissioner) to seek the input and reflect the views and feedback of the appropriate Minister in setting performance expectations and conducting performance reviews of chief executives including in the setting of key performance indicators
10. **agree** to require the Commissioner to develop and publish, in consultation with the Minister for the Public Service, a plan for how the Public Service Commission will conduct performance reviews for Public Service chief executives (including criteria and process)
11. **agree** to establish performance improvement reviews as a tool for improving agency performance, to be completed with agreement of the appropriate Minister for agencies in the Public Service and Crown agencies, and to allow the Public Service Commission to recover reasonable and actual costs associated with completing such a review
12. **agree** that the Commissioner must set minimum standards of integrity and conduct for the Public Service
13. **agree** that agencies be required to notify the Commissioner when they commence a misconduct or serious misconduct investigation in relation to senior Public Service leaders
14. **agree** that agencies be required to report annually to the Commissioner on the outcomes of misconduct and serious misconduct investigations ceased or

concluded in the past year and that the Commissioner publish a report on this information.

Authorised for lodgement

Hon Judith Collins KC

Minister for the Public Service



# Cabinet Social Outcomes Committee

## Minute of Decision

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*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

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### Amendments to the Public Service Act 2020: Paper 2: Driving Improvements in Performance

Portfolio                      Public Service

On 26 March 2025, the Cabinet Social Outcomes Committee:

#### Background

- 1        **noted** that the paper under SOU-25-SUB-0029 forms part of a package of reforms also described in *Paper 1: Clarifying the Role and Responsibilities of the Public Service* [SOU-25-SUB-0028], and *Paper 3: Breaking Down Silos* [SOU-25-SUB-0030];
- 2        **noted** that the amendments to the Public Service Act 2020 (the Act) in the paper under SOU-25-SUB-0029 aim to drive improvements to Public Service agency and chief executive performance;

#### Reinforcing the principle of merit-based appointments

- 3        **agreed** to remove chief executive reappointment provisions from the Act, to ensure chief executives are subject to a contestable process prior to being reappointed to the same role;
- 4        **agreed** to remove the requirement to consider diversity and inclusion in chief executive appointments and make appointments solely on the basis of merit;
- 5        **agreed** to transfer the provisions relating to the appointment of the Government Statistician from the Act to the Data and Statistics Act 2022;
- 6        **agreed** that the government shall appoint one Deputy Public Service Commissioner;
- 7        **agreed** that the Secretary for the Department of the Prime Minister and Cabinet may appoint Policy Advisory Group advisors on a fixed-term basis;

#### Improve Public Service chief executive and agency performance management

- 8        **noted** that the performance management of chief executives is a key lever for improving the performance of the Public Service;
- 9        **agreed** to require the Public Service Commissioner (the Commissioner) to seek the input and reflect the views and feedback of the appropriate Minister in setting performance expectations and conducting performance reviews of chief executives, including in the setting of key performance indicators;

- 10 **agreed** to require the Commissioner to develop and publish, in consultation with the Minister for the Public Service, a plan for how the Public Service Commission will conduct performance reviews for Public Service chief executives (including criteria and process);
- 11 **agreed** to establish performance improvement reviews as a tool for improving agency performance, to be completed with the agreement of the appropriate Minister, for agencies in the Public Service and Crown agencies, and to allow the Public Service Commission to recover reasonable and actual costs associated with completing such a review;
- 12 **agreed** that the Commissioner must set minimum standards of integrity and conduct for the Public Service;
- 13 **agreed** that agencies be required to notify the Commissioner when they commence a misconduct or serious misconduct investigation in relation to senior Public Service leaders;
- 14 **agreed** that agencies be required to report annually to the Commissioner on the outcomes of misconduct and serious misconduct investigations ceased or concluded in the past year, and that the Commissioner publish a report on this information.

Jenny Vickers  
Committee Secretary

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**Present:**

Hon David Seymour  
Hon Nicola Willis  
Hon Louise Upston (Chair)  
Hon Judith Collins KC  
Hon Dr Shane Reti  
Hon Tama Potaka  
Hon Nicole McKee  
Hon Casey Costello  
Hon Chris Penk  
Hon Penny Simmonds  
Hon Karen Chhour  
Hon Scott Simpson

**Officials present from:**

Office of the Prime Minister  
Officials Committee for SOU  
Office of the Minister for the Public Service  
Office of the Minister for Vocational Education



# Cabinet

## Minute of Decision

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### Report of the Cabinet Social Outcomes Committee: Period Ended 28 March 2025

On 31 March 2025, Cabinet made the following decisions on the work of the Cabinet Social Outcomes Committee for the period ended 28 March 2025:

out of scope

out of scope

SOU-25-MIN-0029


**Amendments to the Public Service Act 2020:**  
**Paper 2: Driving Improvements in**  
**Performance**  
Portfolio: Public Service

CONFIRMED

out of scope

out of scope

out of scope



Rachel Hayward  
Secretary of the Cabinet