

Hon Chris Hipkins
Minister of State Services

Public Service Legislation: Paper 5 - Leadership of the Public Service
Date of issue: 26 June 2019

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Title: Public Service Legislation: Paper 5-Leadership of the Public Service
A3 attachment – Commissioner's Powers, Duties and Function
CPC-19-SUB-0010 Summary
CPC-19-MIN-0010 Minute
Gov-19-SUB-0021 Summary
Gov-19-MIN-0021 Minute
CAB-19-SUB-0252 Summary
CAB-19-MIN-0252 Minute
CAB-19-SUB-0291 Summary
CAB-19-MIN-0291 Minute

Author: State Services Commission

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Office of the Minister of State Services

Chair, Cabinet Government Administration and Expenditure Review Committee

Public Service Legislation: Paper 5 – Leadership of the Public Service

Proposal

1 This is Paper 5 in a suite of seven papers proposing new legislation for the public service. It proposes new provisions for the public service leadership and is arranged in two parts:

1.1 Part 1: By chief executives and the Public Service Commissioner.

1.2 Part 2: By senior leadership.

OBJECTIVES	Affirm the constitutional role of the public service in supporting New Zealand's democratic form of government	Deliver better outcomes and services	Create a modern, agile and adaptive New Zealand public service
1	OVERVIEW OF PROPOSALS		
2	A UNIFIED PUBLIC SERVICE		
3	TE AO TŪMATANUI		
4	PUBLIC SERVICE EMPLOYMENT AND WORKFORCE		
5	LEADERSHIP OF THE PUBLIC SERVICE		
6	ORGANISATIONS OF THE PUBLIC SERVICE		
7	MISCELLANEOUS PROVISIONS, CONSEQUENTIAL AMENDMENTS, TRANSITIONAL PROVISIONS AND SAVINGS		

Executive Summary

- 2 Improving outcomes for New Zealanders requires joined-up services. This demands joined-up leadership by chief executives, requiring a shift from a strong focus on agency leadership to also focus on system leadership.
- 3 I therefore propose to change the State Sector Act 1988 to require chief executives to operate more effectively as an executive team, supporting a unified public service, serving in the best interests of the whole system. A Public Service Leadership Team (PSLT) will be established for this purpose.

- 4 I also propose to strengthen system leadership by establishing functional chief executives to lead system improvement as their core role, not just as something added to agency leadership. The system leadership role would be outlined in legislation, together with the powers the system leaders would require to achieve more effective, efficient and joined-up services for New Zealanders.
- 5 I intend to strengthen the ability of the centre to lead the system by providing an option to free the Public Service Commissioner from the chief executive role to enable stronger system leadership. I am providing options to strengthen the Public Service Commissioner role. My preferred option is to retain the Public Service Commissioner as a single point of accountability for Ministers and single employer of chief executives, but add the ability to appoint up to two Statutory Deputy Commissioners to add additional expertise and focus on specific issues. Alternative options to return to a multi-member Commission, with functions and powers vested in the department (rather than the Commissioner), or to have a larger number of Deputy Commissioners are also provided for consideration.
- 6 My aim is to have a modern, agile and adaptive public service where a unified group of senior leaders work as a team to address system-wide issues; and agree a consistent approach to developing leadership capability and to deployment of talent across the system. This will not be achieved through stronger control by the centre. I will retain a light touch regulatory model for the centre to empower and support chief executives and other senior leaders to improve outcomes for New Zealanders.
- 7 In this model, the Commissioner will work with PSLT chief executives to develop a public service strategy that creates conditions for flexible movement of senior leaders across the system to achieve the best outcomes for agencies and the system. They will also develop a strong cadre of senior leaders who can lead across boundaries and take a broad range of experience and skills into chief executive roles in the future.
- 8 The PSLT, led by the Commissioner, would also monitor and address other issues raised during consultation on proposed changes to the Act. These include the under-valuing of technical skills and knowledge when recruiting senior leaders, and the churn created by frequent restructuring of departments, leading to the loss of productivity and specialised knowledge.

Background

- 9 Paper 1 summarises the previous Cabinet Committee and Cabinet consideration of proposals for preparing new legislation for the public service.
- 10 Each part of this paper sets out the relevant current legislative situation and context for the proposed changes to legislation for the leadership of the public service.

Part 1: Changes to leadership of the public service

- 11 The public management system established by the State Sector Act in 1988 was a highly devolved model with strong vertical accountability. Chief executives became very responsive to Ministers who held them accountable for delivering outputs, resulting in increasingly efficient delivery.
- 12 Devolved leadership of New Zealand's State sector to autonomous chief executives who were strongly focused on the productivity and efficiency of their agencies resulted in a marked improvement from the previous centrally-run system based on input controls. But it weakened the ability of agencies to work together to achieve joint outcomes, and it meant that decisions were made in the best interest of individual agencies, with limited consideration of the impact on the whole system.
- 13 The result is an increasingly siloed system where it is difficult for agencies to work collaboratively. Strong vertical accountability of a chief executive to a single Minister has made cross-agency funding difficult; information doesn't flow easily across agency boundaries, exacerbated by a lack of common standards and non-compatible IT systems; and people with skills and capability in key positions can't be easily deployed to other parts of the system where the capability is needed. The direct line of accountability between chief executive and Minister also tends to have a focus on the immediate, making it harder to fulfil stewardship functions that span administrations.
- 14 While many of the outputs provided by government can be delivered by agencies operating independently, achieving improved outcomes for many New Zealanders requires joined-up services. This demands joined-up leadership by chief executives.
- 15 The system that established autonomous agencies delivering outputs for responsible Ministers meant that central agencies had a relatively weak, hands-off role. The State Services Commission became a light-touch regulator with a defined oversight role, exercised principally through the performance management of chief executives and investigation of integrity issues.
- 16 Reform of the State sector over several years has tried to address the issue of a fragmented system. Much of the effort has been directed at changing executive and senior leadership so that it is more collaborative. Stronger system leadership has begun to emerge. The State Services Commissioner has been asked to take a stronger system leadership role but still within the powers and frameworks of a light-touch regulatory model. Chief executives have been asked to take on system leadership roles while continuing to lead their agencies. Further steps to strengthen public service leadership are proposed in this paper. The changes proposed are to the system leadership by chief executives, the State Services Commissioner and other senior leaders.

Leadership for a unified public service

17 Our public service chief executives, led by the Commissioner, have been shifting from a strong focus on agency leadership to also focus on system leadership over recent years. But a step change in leadership is now needed. The incentives to put agency first are far stronger than incentives to put system first. I intend to change the Act to:

17.1 require chief executives to operate more effectively as an executive team

17.2 strengthen system leadership so that chief executives can lead system improvement as their core role, not as something added to agency leadership.

Chief executives operating as a leadership team, led by the Commissioner

18 What I envisage is an executive team, led by the State Services Commissioner and building on the strong working relationships with other central agencies, supporting a unified public service, that serves the best interests of the whole system rather than advancing the interests of a single agency at the expense of the common interest.

19 Chief executives need to continue to deliver results as agency leaders, but equally need to feel they are part of a system, working as a team to improve the way the system operates. They need to be ready and able to work collectively on system issues.

20 Steps were taken through amendments to the State Sector Act in 2013 that expanded a chief executive's responsibilities to include responsiveness on matters relating to the collective interests of government, as well as stewardship.

21 The State Services Commissioner has begun to meld the chief executives of departments and some key Crown entities into a State Services Leadership Team (SSLT) with the purpose of improving the system and performance of the public service as well as strengthening cohesion. The SSLT convenes regularly to work on way the system operates and to better support the government of the day.

22 I want to extend this way of working so that it is the expected way to operate, with the responsibility for collective work embedded in the roles of both the Public Service Commissioner and all chief executives. The executive team would work together to develop and drive a public service strategy for an agile, adaptive and connected public service system.

23 I propose to have chief executives operating more effectively as a team by:

23.1 articulating in the Act the role of the Commissioner to lead the public service, and adding a responsibility to establish a Public Service Leadership Team charged with developing and driving the public service strategy

- 23.2 adding to the Act a responsibility for chief executives to support the Public Service Commissioner in their role of leading a coordinated, collaborative public service.
- 24 The PSLT will consist of all public service department chief executives and other senior leaders as determined by the Public Service Commissioner.

Chief executives taking responsibility for cross-system issues

- 25 The current Act requires each public service department and each departmental agency to have a chief executive “as its administrative head” [SSA s.31(1)]. The Act also establishes a one-to-one relationship whereby each department has one chief executive, and there are no chief executives whose role is not tied to a particular department.
- 26 Having chief executives focused on their agencies delivering outputs has meant that operational improvements are often bespoke for individual agencies and system benefits (such as improved inter-operability) have not been realised.
- 27 From 2012 functional leaders were established by Cabinet, which specified their role and powers. Functional leaders are existing chief executives appointed by the State Services Commissioner to be responsible for leading a function across the whole State sector system in addition to their agency leadership role.
- 28 Initially, the State Services Commissioner appointed functional leaders for government office accommodation, procurement and information technology. Other system leaders have since been appointed, with heads of profession established in areas such as policy, finance and human resources.
- 29 Functional leadership has led to more integrated service delivery, recognising that people expect to interact with government to have a personal need met, rather than have to interact with multiple agencies delivering related services. For example, the IT functional lead chief executive began to cluster services around key life events for New Zealanders – for example, having a baby. SmartStart enables new parents to update their benefit with the Ministry of Social Development, request an Inland Revenue number for their baby and update their Working for Families application, all from the birth registration process. This enables families to focus on their newest family member, rather than spend time navigating their way through an assortment of government agencies.
- 30 But while these were steps in the right direction, a fundamental issue remained un-addressed, that is, the role of a chief executive is defined in legislation as agency leadership. Several problems arise from this narrow characterisation of the chief executive role:
- 30.1 The State Services Commissioner does not have a secure mandate to appoint new functional leaders or change the functions and powers of existing system leaders. This results in a protracted Cabinet decision-

making process to secure agreement to any changes. Achieving the changes to the IT functional lead roles for example took more than 18 months.

- 30.2 The role of system leaders (functional leaders and heads of profession) is not always clear, and often contested. Bespoke role descriptions are negotiated for each appointment.
- 30.3 System benefits are created primarily through inter-operability. The key to improved inter-operability is to have agreed guidance and standards to which all agencies adhere. The powers of system leaders to set common standards need to be negotiated for each new appointment, and agreed by Cabinet. This can be a long, slow process. It has to be easier to introduce common standards and agreed guidance.
- 30.4 Functional leaders are appointed at chief executive level. The only way this can be done currently is to add the role to an existing department chief executive. One of the problems arising from this is that the chief executive position can become overloaded – they are charged with both leading a large, complex agency and leading a large system function. One of their leadership roles can suffer as a result.
- 30.5 Another problem arising from functional leaders also being agency chief executives is that the technical knowledge and skills required to lead a function across the system are not necessarily the same knowledge and skills required to lead an agency.

Proposals to enable chief executives to take on cross-system roles

- 31 The first step is to remove provisions in the Act that define a chief executive in terms of just leading an agency. I propose that the new legislation remove existing provisions that:
 - 31.1 describe a chief executive as “administrative head” of a department or departmental agency
 - 31.2 envisage a one-to-one relationship that ties a chief executive role to a department or departmental agency.
- 32 This proposal is not intended to affect or alter the designation of several statutory officers as a chief executive (for example, the Chief Review Officer and the Comptroller of Customs).
- 33 I intend to address the overload issue for chief executives who are both agency and system leaders by empowering the Commissioner to appoint a chief executive to lead a function rather than an agency. “Functional chief executives” would be appointed to key system leadership roles. Agency chief executives could continue to be functional leaders where this complements their agency leadership role and does not lead to overload issues.
- 34 The Act would contain provisions for functional chief executives to:

- 34.1 use appropriations under the Public Finance Act 1989, to support a function that requires the ability to incur expenses
- 34.2 be directed by an appropriation Minister to use an appropriation, and be responsible to the appropriation Minister for what is achieved with that appropriation.
- 35 These additional features would be allocated to certain chief executives of system or functions by recording them in the schedule of the Act.
- 36 The functional chief executive administering an appropriation would provide a report on what has been achieved, which can be included in the host department's annual report.
- 37 Changes in the new Act would provide that the public service is led by chief executives appointed in accordance with the relevant section in the Act, with the different roles defined (in generic terms) in the Act:
- 37.1 Chief executives responsible for departments.
- 37.2 Chief executives responsible for departmental agencies.
- 37.3 Chief executives responsible for specific functions.
- 38 The Public Service Commissioner would continue to be able to appoint senior leaders to system leadership positions (including functional leaders) below chief executive level, where this is appropriate (as is currently the case for some heads of profession).
- 39 System leaders will need to improve interoperability in the system through having agencies adhere to common guidance and/or standards in some areas. I propose to add provisions to the Act to give the functional and professional leads the power to publish guidance and standards that may, subject to Ministerial agreement in Cabinet, have mandatory effect in the public service. The guidance and/or standards would be applied in a way that recognises the constitutional role and statutory independence of some chief executive roles, such as the Solicitor-General and the Government Statistician. Any financial implications arising from agency adherence to guidelines and standards, or from system leaders ensuring adherence, would be addressed in the Cabinet paper.
- 40 Together these options would provide greater certainty and transparency to system leadership roles, speed up the appointment process and provide for the best person to be appointed to the job.

Strengthening the leadership of the centre

- 41 The State Services Commission's role has fundamentally changed over the last decade from one of a human resource lead and regulator for the public service to one centred on leading the system to improve outcomes and services for New Zealanders. This has been driven by the expectations of successive governments for a higher performing system.

- 42 In 2011 the Better Public Services reform considered that “the State Services Commissioner needs to be unambiguously charged with leading the leaders: a clearly mandated Head of State Services”. In response the Commissioner adopted a stronger leadership role, leading the reform of the public service on a range of fronts. More recently, to devote all of his efforts to this role, the Commissioner effectively assigned his chief executive role of running the State Services Commission to the statutory Deputy Commissioner.
- 43 In re-writing the State Sector Act 1988 I now need to reconsider the role of the State Services Commissioner and the composition of the Commission to ensure that it supports an evolving public service. The Commissioner needs the right level of support to deliver the Head of Service leadership role now expected. In doing this I want to retain strong, decisive leadership of the State sector through an independent Commissioner, and a single point of accountability for Ministers and single employer of chief executives. Proposals to achieve this are set out below, and in Annex 1.

Broadening the leadership of the Commission

- 44 To broaden the leadership of the Commission, I propose three options:
- 44.1 Option 1: Return to a multi-member Commission model that operated from 1946 to 1988. In this model functions and powers are vested in the Department known as the Public Service Commission and exercised under a board or committee. The Chief Commissioner becomes the chair of the Commission with a deliberative vote (and a casting vote if necessary). There are up to four other Commissioners, including one deputy chair.
- 44.2 Option 2: Retain a single Commissioner and a statutory Deputy Public Service Commissioner, with the option to add another statutory Deputy Commissioner when required.
- 44.3 Option 3: As for option 2, but also appoint up to two additional Deputy Commissioners, without statutory authority but able to exercise all the Commissioner’s functions and powers under delegation (creating a total of one Commissioner and four Deputy Commissioners).

Option analysis

- 45 Option 1: A multi-member Commission would vest all functions and powers in the Commission as a department. Decision-making would be by Committee based on a consensus approach to decision-making. This approach would mean a return to meetings, quorums, deliberative and casting votes (by the Chair), with a real risk of indecisive, time-consuming decision making. Rather than try to bring all the required expertise into the centre, I consider it would be more effective to harness the wider expertise through all chief executives operating as a system-wide leadership team.

- 46 Option 2 retains and strengthens the existing model. There is a risk that a range of functions and powers of the state, could be concentrated narrowly under a single point of responsibility. But existing checks will remain, including that the Commissioner remains answerable to appropriate Ministers and to Cabinet on a daily basis; they can be removed from office; can be subject to judicial review; are subject to select committee review; and subject to scrutiny and commentary by the media, academics, interest groups and the public. The benefits of this option are:
- 46.1 strong decisive leadership (in this context) emerges more readily from an individual than a committee with a consensus approach to decision making
 - 46.2 the independence of the role is maintained whilst also providing the Commissioner with sufficient 'sounding boards' and internal checks and balances needed to avoid a concentration of power
 - 46.3 Ministers would still have a clear, single reference point of who is responsible to them – a single point of accountability
 - 46.4 chief executives would continue to have a single point employer relationship.
- 47 Option 3 is an expansion of option 2, increasing to five the total number of Deputy Commissioners by four. While this would increase support for the leadership role of the Commissioner and bring a wider set of perspectives to decisions made, it is not clear what the additional non-statutory Deputy Commissioners would be responsible for, and calls into question the benefit derived from the increased cost. The option may undermine proposals in this paper to strengthen system leadership by chief executives.
- 48 On balance, I recommend option 2. A second statutory deputy could be appointed as required to strengthen the leadership of the Commission and designated to meet specific objectives. For example, an additional statutory Deputy Commissioner could be appointed to improve outcomes for Māori by:
- 48.1 Leading change across the system enabling the public service to better meet Māori/Crown responsibilities.
 - 48.2 Increasing the diversity of public service leaders to better reflect the communities they serve, in particular Māori.
 - 48.3 Assisting public service leaders to develop capability in Mātauranga Māori to better lead the public service.
- 49 In light of the statutory authority of the Deputy Public Service Commissioner(s) to have and exercise all the Commissioner's functions, duties, and powers, they would hold the same status and rank as a chief executive. They would be eligible for an eventual transfer into a departmental chief executive position, as currently provided for in the State Sector Act s.37A.

- 50 If option 1 (a multi-member Commission) were preferred, I would bring a further paper to Cabinet to determine the appointment process, how binding decisions are made, and the additional costs. The appointment process and financial implications for options 2 and 3 are addressed in this paper.
- 51 I also propose that the Public Service Commissioner is able to effectively delegate the responsibilities arising from being chief executive of the Public Services Commission to allow more time for focus on the outward, system leadership that is pivotal to the Head of Service role. Details of how this could be achieved are in Annex 1.

Balancing independence and responsiveness in appointing leaders

- 52 Chief executives and the Commissioner are expected to be responsive to the government of the day, but also maintain sufficient independence to serve the long-term interests of the public of New Zealand. This may be realised in different ways by successive governments. Maintaining political neutrality in the appointment of chief executives and the Public Service Commissioner is important for effective system stewardship.

Appointment process for chief executives

- 53 Current provisions for the appointment of chief executives provide a balance of independent decision making for the Commissioner as the employer of chief executives, as well as suitable input from Ministers to whom chief executives owe their statutory responsibilities. No fundamental change is proposed.
- 54 However, new legislation could be more helpful than the current provisions through an amendment that enabled the Commissioner to inform the appropriate Minister or Ministers of a vacancy or impending vacancy (in addition to the Minister of State Services) and to invite them to inform the Commissioner of matters to take into account.

Appointment process for the Public Service Commissioner

- 55 A further option to ensure the independence of the chief executive appointment process is to consider the process for the Commissioner.
- 56 The Commissioner and Deputy Commissioner are appointed by the Governor-General in Council on the recommendation of the Prime Minister. The term is up to five years, with eligibility for reappointment.
- 57 If option 3 is agreed, the appointment and removal of up to two additional (non-statutory) Deputy Commissioners would be the same as for the Commissioner.
- 58 Although these provisions work effectively, I consider it is possible to enhance the appointment process in light of the significance of the roles and the need to act with a level of independence, while also having the confidence of potentially successive administrations.
- 59 No change is proposed to the appointment of the Commissioner and Deputy Commissioner by the Governor-General in Council on the recommendation of

the Prime Minister. However, I propose a new requirement for consultation with the Leader of each party in the House of Representatives before a recommendation is made to the Governor-General. This would apply to the appointment of the Public Service Commissioner and the Deputy Public Service Commissioner(s).

Tenure of chief executives

- 60 Under the provisions of the State Sector Act 1988, chief executives are appointed to a role for a term of up to and not more than five years, which can be extended from time to time. A chief executive will typically lead improvements to the organisation and embed the changes in the first five years of their tenure. If these are successful they are often re-appointed for a further two years to further refine the changes. Transfer provisions in the Act allow the Commissioner to transfer a chief executive to another vacant chief executive position without undertaking a standard recruitment process, thus retaining their skills and experience and deploying them to parts of the system where their expertise is needed.
- 61 Feedback from stakeholders during consultation included a perception that the re-appointment process is open to political influence because, to be re-appointed, a chief executive is incentivised to be responsive to what the Minister wants, rather than providing alternative advice that may be in the best long-term interests of the public that the chief executive serves. I considered options such as appointing chief executives for a longer term and removing the reappointment provisions. But the system of appointment and re-appointment of public service chief executives has worked well, and New Zealand is recognised internationally as having a politically neutral public service executive. I have therefore decided not to change the existing tenure provisions.

Part 2: Senior leadership

Senior leaders need to operate as a unified public service

- 62 There are almost 1000 public service senior leaders, other than chief executives, in large and/or system critical leadership roles. Senior leaders are largely in tier 2 roles, with some tier 3 and tier 4 roles in large organisations (including four Crown entities, New Zealand Police and New Zealand Defence Force).
- 63 The current legislation provides for:
- 63.1 developing the capability of senior leaders. The State Services Commissioner is required to develop and implement a strategy for the development of senior leaders, including for example flexible deployment to developmental roles in the public service;
 - 63.2 the use of secondments as a mechanism to enable the development of senior leaders (with the agreement of the senior leader and the relevant chief executive)

63.3 a responsibility on chief executives to assist the Commissioner to fulfil the Commissioner's responsibilities to develop senior leadership.

64 To improve the ability of the system to provide the best possible outcomes and services to New Zealanders, the public service needs to have senior leaders that operate as part of a system – putting system first rather than agency first. This would mean:

64.1 having senior leaders working as a team, supporting chief executives to set the direction of the public service system and coordinating activities

64.2 developing a unifying culture led from the upper echelons of the public service with shared values, ethos and ways of working

64.3 having a cohort of senior leaders who expect to work flexibly across the public service to best meet the needs and interests of the public service as a whole

64.4 a consistent approach to investment in developing the next generation of senior leaders through on-the-job experience, training and other development mechanisms.

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PROACTIVELY RELEASED BY THE MINISTER OF STATE SERVICES

Issues arising from the way the senior leadership part of the system currently operates

- 66 The need to have a mechanism to enable senior leaders to address the critical needs of the system led to the enactment of a provision in the 2013 amendment of the State Sector Act to designate key positions in the public service. The intent of the key positions was to use it with the other senior leadership provisions to enable senior leaders to move between key positions to meet either their developmental needs or a critical need of the public service. This intent has not been realised. Instead the use of the key positions has placed an additional requirement on the State Services Commission to have some level of involvement in every appointment to a key position.
- 67 While progress has been made towards a more unified approach to senior leadership, more is needed. The following are barriers to progress:
- 67.1 Leaders are being recognised, rewarded and incentivised to deliver results for their agencies rather than outcomes that benefit the system. This can result in siloed delivery of services that need to be joined-up by the individual New Zealanders that use them.
- 67.2 There is no expectation that senior leaders will move around the public service: Soft levers are used to secure the co-operation of chief executives and senior leaders to move them around the system.
- 67.3 There are no common ways of working, and differences in employment conditions between agencies can be a barrier to mobility across the system and can result in pay disparity and an inability to move leave entitlements with the senior leader (see also Paper 4).
- 67.4 Movement across the system tends to be temporary and ad hoc, with no mechanism to permanently transfer senior leaders into roles they have been seconded into, including long-term secondments.

Shifts towards senior leadership that supports a unified public service

- 68 My aim is to have a modern, agile and adaptive public service where a unified group of senior leaders work as a team to address system-wide issues; and agree a consistent approach to developing leadership capability and to deployment of talent across the system. Specific objectives are to:
- 68.1 develop senior leaders
- 68.2 meet the needs of agencies
- 68.3 meet the needs of the public service.
- 69 Achieving these objectives depends on having a stronger centre that standardises and enables rather than directs. I considered an option where the Public Service Commissioner would be responsible for the recruitment, deployment and development of all public servants in designated senior roles. While this may allow the Commissioner to more easily shift talent to parts of the system where it is required, it would effectively dis-empower chief executives in

the engagement of their most senior staff and establish a muddled employer relationship. It would effectively shift the role of the Public Service Commission from setting expectations and providing guidance on senior leadership (a strategic role) to a much more operational role.

- 70 I envisage instead that the Public Service Commissioner would exercise their statutory responsibility to develop and deploy senior leaders for the benefit of the public service as a whole, in a way that is a win/win – for the aspirations of individual public servants, as well as for individual agencies and the system. The Commissioner should be able to use the full range of levers available to improve senior leadership, from setting expectations, issuing model standards and providing guidance relating to the employment, development and deployment of senior leaders, through to direct involvement in appointment, secondment and deployment. The Commissioner's level of involvement would depend on the context.
- 71 The mechanism used by the Commissioner would be to work with PSLT chief executives to develop a senior leadership strategy, which would become the basis for employment, development and deployment of senior leaders while upholding the principle of appointment on merit. The strategy would include transparent mechanisms to allow senior leaders, with the agreement of all parties, to move between similar leadership positions where they are judged to have suitable skills and experience.
- 72 A modern, agile and adaptive public service requires a highly flexible and mobile senior leader workforce. This type of workforce can be supported and developed using a variety of transparent talent management and development mechanisms, beyond traditional recruitment and selection. It includes:
- 72.1 the use of Career Boards to broker senior leader moves and opportunities
 - 72.2 a sophisticated talent information system which identifies individual aspirations and preferences, skills and experiences
 - 72.3 assessment and benchmarking of leader capability across the public service
 - 72.4 the ability to facilitate secondments or permanent transfers across the public service, that may be initiated by any party – the Commissioner, a chief executive or an individual senior leader – where it may benefit an individual's development, meet the needs of an agency or the system.
- 73 I expect that the cohort of senior leaders would, under the leadership of the Commissioner, operate as a team. Senior leaders already meet once a year as a group to connect with each other and better understand the broader system context. I expect that this work will continue and be enhanced.
- 74 I also propose to facilitate movement across the senior leadership pool by enabling common expectations and ways of working, and standard conditions of employment, to be put in place for senior leaders (see Paper 4).

- 75 Specific amendments to the Act to achieve an agile and adaptive public service, and also ensure the senior leadership capability that we need for the future, are set out in Annex 1.

Other senior leadership issues raised during consultation

- 76 Feedback during consultation on proposed changes to the State Sector Act to strengthen leadership of the public service highlighted the need to value technical knowledge and expertise. Several respondents voiced a concern that identification of future senior leaders and rotating them around the system may further emphasise the value of generalist skills and devalue the in-depth knowledge and technical skills gained by immersion in technical areas over a long period. Specific comments included:
- 76.1 too much focus on generic managerialism, when we also need deep sector knowledge
 - 76.2 need to balance the needs of specialists and generalists and have pathways for thought leaders, for example by assigning leaders to outcomes or issues rather than owning a particular job
 - 76.3 enable the best expertise to be put in place to deliver a wide range of services for New Zealanders with cross-agency leadership support, and make leaders accountable for cross-agency implementation.
- 77 Another issue raised was the tendency for newly appointed chief executives to restructure their leadership team, resulting in a drop in productivity during restructuring; loss of institutional and specialist knowledge; and churn across the public service.
- 78 Both of these issues are within the current responsibility of chief executives to manage, and I don't propose to change this. Chief executives need to be able to recruit and deploy senior leaders in their agencies as they see fit. The proposals in this paper ensure that the Public Service Commission is more involved in the development and deployment of senior leaders, influencing decisions so that they are in the best interests of the whole system. I expect that the proposed PSLT, led by the Commissioner, to consider these matters raised during consultation and work together to address them.

Consultation

- 79 Paper 1 includes the consultation associated with this paper. Details of feedback on public service leadership are provided in paragraphs 54 and 66.

Financial implications

- 80 If the option is taken to establish any additional Deputy Commissioners, consideration would be given to the additional funding required at the time of appointment.
- 81 The proposal to enable the Commissioner to establish the chief executive of the Commission as a separate position would be subject to available SSC resources at the time this option was considered.

82 Departments already support the development of senior leaders. Improved ways of working across the system with the cohort of senior leaders will lead to better use of existing resources.

83 Consideration will be given to the cost of establishing any new system leadership positions at the time of appointment. Any additional costs would need to be considered in the context of potential savings from improved system leadership: For example, since 2011, the Property Functional Leadership programme has reduced costs of \$420 million in accumulated rental and facilities management costs.

Human rights

84 This paper does not have any implications for human rights.

Legislative implications

85 This paper provides the details of some elements in a new Public Service Act, as proposed in Paper 1.

Regulatory impact analysis

86 Paper 1 covers the impact analysis requirements that are applicable to this paper.

Gender implications

87 The proposals in this paper do not have any gender implications.

Disability perspective

88 The proposals in this paper do not have any implications from a disability perspective.

Publicity

89 Paper 1 includes the publicity associated with this paper.

Proactive release

90 Paper 1 provides the information on proactive release applicable to this paper.

Recommendations

The Minister recommends that the Committee

System leadership by chief executives

- 1 **note** that chief executives should operate as an executive team supporting a unified public service, serving in the best interests of the whole system rather than advancing the interests of a single agency at the expense of the common interest
- 2 **agree** to add a responsibility for the Public Service Commissioner to establish a Public Service Leadership Team (PSLT) charged with developing and driving the public service strategy for an agile, connected public service system
- 3 **agree** to add a responsibility for chief executives to support the Public Service Commissioner's role of leading a coordinated, collaborative public service
- 4 **note** that the PSLT will consist of all public service department chief executives and other senior public service leaders as determined by the Public Service Commissioner
- 5 **note** the ongoing role of the central agencies (SSC, Treasury and DPMC) in ensuring policy coherence and coordination (including for the associated financial resources and people capabilities) on the Prime Minister and Cabinet's behalf
- 6 **note** that the provisions of the existing Act describe a chief executive as "administrative head" of a department or departmental agency
- 7 **note** that the current system leadership positions are agency chief executives appointed by the State Services Commissioner to system leadership roles, based on Cabinet agreement to bespoke roles and mandates
- 8 **note** that there is uncertainty about the role, mandate and accountability of current system leaders, which limits their effectiveness in the roles
- 9 **note** that there is a lack of flexibility in the appointment of system leaders, meaning that the most capable person is not necessarily appointed to the role, professional technical experience and capability is not necessarily recognised, and that system leaders who are also agency leaders can become overloaded
- 10 **agree** to introduce a new category of chief executive, to be known as a functional chief executive, established by Order in Council; hosted by a public service department; and responsible to appropriate Ministers for specific functions either within a department or (more commonly) across the state sector system
- 11 **agree** that a functional chief executive will be appointed and employed by the Public Service Commissioner with the chief executive of a host department as an ex officio on the appointment panel

- 12 **agree** that functional chief executives are enabled to use an appropriation, and can be directed through delegation by the appropriation Minister to shift use (and reporting of that use) from the departmental chief executive to the functional chief executive
- 13 **note** that these provisions will require consequential amendment to the Public Finance Act 1989
- 14 **agree** that the public service be led by chief executives appointed in accordance with the relevant section in the proposed Act, with the generic roles specified in the Act
- 15 **agree** that the Public Service Commissioner has power in legislation to appoint existing chief executives to system leadership roles as defined in the Act, and also use the new functional chief executive provisions to appoint people other than existing chief executives to system leadership roles
- 16 **agree** that the Act gives system leaders the power to publish guidance and standards which may have mandatory effect, subject to Ministerial decisions in Cabinet

Role of the Commissioner

- 17 **agree** that the role of the Public Service Commissioner be defined in terms of Head of Service, providing leadership and oversight of the public service and to the mandates in relation to the wider State services
- 18 **note** that no substantive change is proposed to the Commissioner's existing principal functions (currently in SSA s.6) and powers (SSA ss.7-11) and powers to delegate (SSA ss.23-24) and that these would carry over into the new legislation, subject to potential modifications to the expression and location of certain functions to ensure consistency with specific proposals elsewhere in this suite of papers

Leadership and governance structure of Commission

- 19 **note** that there are three options for the leadership and governance structure of the Public Service Commission:
 - 19.1 option 1: Functions and powers are vested in the Department known as the Public Service Commission and exercised under a board or committee
 - 19.2 option 2 (preferred option): Functions and powers are vested in the Public Service Commissioner, with up to two Deputy Commissioners able to exercise all the Commissioner's functions and powers under statutory authority
 - 19.3 option 3: As for option 2, but also appoint up to two additional Deputy Commissioners, without statutory authority but able to exercise all the Commissioner's functions and powers under delegation

- 20 **note** that option 1 moves away from a single point of accountability for Ministers and single point employment relationship with chief executives and risks indecisive, time-consuming decision making; whilst for option 3 the cost benefit is unclear and it could act against the partnership with chief executives to achieve system improvement
- 21 **agree** (option 2) that the leadership and governance structure for the proposed Public Service Commission include:
- 21.1 one Public Service Commissioner, vested with the full suite of the Commissioner's statutory functions, powers, rights, duties and responsibilities
- 21.2 one or two Deputy Public Service Commissioners who:
- 21.2.1 have and may exercise all the Commissioner's functions, duties, and powers, subject to the control of the Commissioner
- 21.2.2 have and exercise all the Commissioner's functions, duties, and powers if the office of Commissioner becomes vacant for any reason or if the Commissioner is absent from duty for whatever reason
- 21.2.3 have the rank and status of a chief executive in the core public service, and are therefore eligible for transfer into a departmental chief executive position
- 22 **note** that if two statutory Deputy Commissioners are appointed, one of them could have responsibilities to achieve objectives in a designated area
- 23 **agree** that if option 1 were preferred, the Minister of State Services would bring a further paper to Cabinet to determine the appointment process, how binding decisions are made, and the additional costs
- 24 **agree** that the Public Service Commissioner is the chief executive of the department of state known as the Public Service Commission, but may exercise discretion to:
- 24.1 delegate the responsibilities of chief executive to another person
- 24.2 establish the chief executive position separately and fill it in the same way as any other chief executive position in the core public service

Appointment of chief executives and to Public Service Commission leadership roles

- 25 **agree** that the appointment process for chief executives be amended to enable the Commissioner to inform the appropriate Minister or Ministers of a vacancy or impending vacancy and to invite them to inform the Commissioner of matters to take into account
- 26 **agree** that the Public Service Commissioner and the Deputy Public Service Commissioner(s) be appointed by the Governor-General in Council on the

recommendation of the Prime Minister after consultation with the leader of each party in the House of Representatives

Strengthening senior leadership

- 27 **note** a more coordinated and consistent approach to senior leadership is important for the development of senior leaders and the operation of the public service in meeting the needs of the system as well as the needs of agencies
- 28 **note** that the key positions provisions added to the State Sector Act in 2013, which designated key positions for development roles or because the position is critical to the public service, has not worked as expected and has unnecessarily involved the Commissioner in appointments to senior roles
- 29 **agree** to remove the key positions provisions in s50 of the State Sector Act
- 30 **note** that problems with the current system of senior leadership include:
- 30.1 Leaders are being recognised, rewarded and incentivised to deliver results for their agencies rather than outcomes that benefit the system
- 30.2 There is no expectation that senior leaders will move around the public service
- 30.3 There are no common ways of working, and differences in the conditions of employment between agencies can act as a barrier to mobility across the system
- 30.4 Secondment can only be used by the Commissioner under 49(1) of the State Sector Act for the development of the senior leader, rather than to meet a need in an agency or the system as a whole
- 31 **note** that my aim is to have a modern, agile and adaptive public service where a unified group of senior leaders work as a team to address system-wide issues; and agree a consistent approach to developing leadership capability and to deployment of talent across the system.
- 32 **agree** that the Commissioner, working with the Public Service Leadership Team, develops a strategy for senior leadership for the purposes of both development and also to meet the needs of the system as a whole
- 33 **agree** that the Commissioner can issue standards and guidance to operationalise the leadership strategy
- 34 **agree** that chief executives are required to make appointments and deployments in accordance with the leadership strategy
- 35 **note** that part of the strategy will be to set common expectations and ways of working, and standard conditions of employment for senior leaders
- 36 **note** that the strategy will include agreed processes to allow senior leaders, with the agreement of all parties, to move between leadership positions, while ensuring that the principle of appointment on merit is upheld

- 37 **agree** to continue the existing provisions in section 46 that relates to the object of Part 4 of the Act relating to developing senior leadership and management capability in the public service with the addition that the Commissioner is responsible for ensuring the needs of the public service are met
- 38 **agree** to continue the existing provision in section 47 that relates to the responsibilities of the Commissioner with the addition that the strategy that the Commissioner is responsible for developing, implementing and promoting includes for the flexible deployment of senior leaders to meet the needs of agencies and the public service as a whole
- 39 **agree** to continue the existing provision in section 48 that relates to the responsibilities of chief executives with the addition that chief executives are responsible for flexibly deploying senior leaders to ensure the needs of agencies and the public service as a whole are met
- 40 **agree** to continue the existing provision in section 49 that relates to secondments with the additions that:
- 40.1 secondment can also be used for one or more of these purposes: developing the senior leader's capability, meeting a need of an agency, meeting a need of the public service as a whole
 - 40.2 the Commissioner shall have regard to the merit principle and the need for transparency in making secondments
 - 40.3 deployment of senior leaders may only occur with the agreement of the senior leader and relevant chief executives
- 41 **note** that feedback during consultation on proposed changes to the State Sector Act 1988 to strengthen leadership of the public service:
- 41.1 highlighted the need to value technical knowledge and expertise in appointing leaders
 - 41.2 raised the tendency for newly appointed chief executives to restructure their leadership team, resulting in a drop in productivity during restructuring; loss of institutional and specialist knowledge; and churn across the public service
- 42 **agree** that the proposed Public Service Leadership Team, led by the Commissioner, considers these matters raised during consultation and works collaboratively to address them

Authorised for lodgement

Hon Chris Hipkins

Minister of State Services

Annex 1 – Specific changes to legislation required to achieve policy shifts

Functional chief executives

- 1 The proposal for functional chief executives is intended to provide new defined roles for chief executives:
 - 90.1 *System leadership functions*: system leadership functions are currently delivered by chief executives of departments, who often have other significant operational responsibilities. The proposed functional chief executive model provides a way to establish separate functional lead positions within departments with the same status as a chief executive, giving these functions sufficient focus, visibility and mandate without overloading existing departmental chief executives.
 - 90.2 *Functions within departments*: the model could also be used to increase the visibility, focus and accountability of specific functions within departments. This would reduce the need for structural change if such a shift is required.
- 2 A functional chief executive would have the following key features given effect through legislation:
 - 90.3 Named positions that are established by addition to a schedule in the legislation (*through* Order-in-Council).
 - 90.4 Hosted *by* a public service department (which is identified in the schedule).
 - 90.5 Appointed *and* employed by the Public Services Commissioner (with the host department chief executive an ex officio member of the appointment panel).
- 3 Responsible to appropriate Ministers for specific functions either within a department or (more commonly) across the State sector system. Functions will be determined through the same process as with departments and departmental agencies.

Chief executive of the Public Service Commission

- 4 We will use two ways to formalise existing arrangements for the chief executive of the Commission, with the legislation enabling choice between the two mechanisms:
 - 90.6 The first is to decouple the role of chief executive of the Commission from the *Commissioner's* role and establish it as a separate position. The Commissioner could then use the existing levers to fill the position of chief executive, either by transfer or new appointment using the standard appointment process for chief executives.
 - 90.7 Alternatively, the Commissioner could delegate the chief executive responsibilities to another person. The Commissioner would retain

ultimate responsibility for the actions of the delegate and could revoke the delegation at will.

5 If established as a separate position, the chief executive of the Commission would have full statutory authority to exercise all the responsibilities, functions, powers, and duties that go with that position. Effectively, the Commissioner and chief executive would have the same relationship that exists between the Commissioner and any other departmental chief executive.

6 To provide for maximum flexibility, the Commissioner would be empowered either to:

90.8 explicitly *delegate* the role and responsibilities of the chief executive of the Commission to another person or

90.9 establish the chief executive as a separate position and fill it by transfer or *appointment*.

Public Service Commissioner

7 Consistent with the overarching objectives of the broad agenda for change outlined in Paper 2, the titles “State Services Commissioner” and “Deputy State Services Commissioner” should change to “Public Service Commissioner” and “Deputy Public Service Commissioner”, as proposed in Paper 2.

8 The legislation should articulate the role of the Commissioner in terms of Head of Service, providing leadership and oversight of the public service and to the mandates in relation to the wider State services.

9 No substantive change is proposed to the Commissioner’s existing principal functions (currently in SSA s.6) and powers (SSA ss.7-11) and powers to delegate (SSA ss.23-24). These would carry over into the new legislation, with potential modifications to the expression and location of certain functions to ensure consistency with specific proposals elsewhere in this suite of papers.

10 In the situation that the Commissioner is not also the chief executive of the Public Service Commission (as set out in para 92.2 above), then the Commissioner’s responsibilities (separate from the chief executive’s responsibilities) would be owed to the appropriate Minister (except for any explicitly independent responsibilities or duties).

11 To mesh with the proposals in this paper, technical amendments are required to the detail in the provisions relating to the Deputy State Services Commissioner, term of office of Commissioner and Deputy, provisions for an Acting Commissioner/Deputy, their remuneration and expenses, removal from office, vacation of office, and superannuation rights (State Sector Act s.12-18).

Senior leaders operating as a unified public service

- 12 Proposed amendments to the current legislation:
- 90.10 Revoke the key position provisions in s50 of the State Sector Act because they are no longer fit for purpose.
 - 90.11 Enable the Commissioner to develop and implement a strategy for senior *leadership* for the purpose of development (as is currently in place), and also to meet the needs of the system as a whole.
 - 90.12 Enable the Commissioner to determine the nature and extent of their involvement in senior leadership positions and ensure appointments and *deployments* are made in accordance with the leadership strategy set by the Commissioner.
 - 90.13 Set the *expectation* that chief executives are responsible for assisting the Commissioner with meeting the needs of the system as a whole, which includes supporting the flexible deployment of senior leaders into roles throughout the system, aligned with their development needs.
 - 90.14 Enable the *Commissioner* to set common expectations and ways of working, and standard conditions of employment for senior leaders. The ability for leave entitlements and other entitlements to transfer with the senior leader as he or she moves between departments is dealt with in the employment paper (Paper 4)
 - 90.15 Enable the use of secondments or permanent transfer to be used not only for the *development* of that senior leader, but also to meet a need in an agency or the system as a whole.

COMMISSIONER'S POWERS, DUTIES AND FUNCTIONS UNDER THE STATE SECTOR ACT REFORM

	EXISTING POWERS CARRIED OVER INTO THE NEW ACT	EXISTING POWERS THAT WOULD BE MODIFIED	NEW POWERS IN LAW CODIFYING CURRENT PRACTICE	NEW POWERS
Organisational forms			<ul style="list-style-type: none"> Appoints departmental Chief Executives to Inter-departmental Executive Boards from remit agreed by Cabinet Able to appoint independent advisors (non-voting) to Inter-departmental Executive Boards 	<ul style="list-style-type: none"> Authorises Joint Operational Agreements Designates Board Chair of Interdepartmental Ventures
Leadership – System	<ul style="list-style-type: none"> Provides leadership and oversight as Leader of the Public Service (s4A SSA) 	<ul style="list-style-type: none"> Commissioner has options of delegating or having a separate role of the Chief Executive of the Commission, or remaining as Chief Executive 	<ul style="list-style-type: none"> Duty to establish the Public Service Leadership Team charged with developing and driving the public service strategy for an agile, connected public service system 	
Leadership – Commissioner	<ul style="list-style-type: none"> No substantive changes proposed to functions in s6, powers in ss7-11, and powers to delegate in ss23-24 SSA; or appointment of advisory committees in ss21-22 SSA 			
Leadership – Chief Executives	<ul style="list-style-type: none"> No substantive changes to appointment and reappointment of Chief Executives in ss35-40 SSA 	<ul style="list-style-type: none"> If a CE does not have a statutory title, Commissioner rather than Prime Minister may designate a title (in practice, Ministers consulted on PD). Is consistent with 2013 changes to consult rather than obtain agreement to CE conditions of employment If a CE is absent from duty and did not appoint an acting CE, the Commissioner may do so For CE performance reviews, Commissioner to determine what to review, and when and how to report to appropriate Ministers 	<ul style="list-style-type: none"> Appoints functional chief executives (as well as existing chief executives) to system leadership roles, following Cabinet agreement 	<ul style="list-style-type: none"> Able to inform appropriate Minister of a vacancy and invite them to inform the Commissioner of matters to take into account
Leadership – Senior Leaders		<ul style="list-style-type: none"> Continuing the responsibilities of the Commissioner relating to developing senior leadership and management capability (ss46-49 SSA), and amending the object to include the Commissioner is responsible for ensuring the needs of the public service are met (s46); and the needs of agencies and the Public Service as a whole are met (ss47-49 SSA) 		<ul style="list-style-type: none"> Working with the Public Service Leadership Team, develops strategy for senior leadership for the purposes of development and to meet the needs of the system as a whole Can issue standards and guidance to operationalise the leadership strategy
Employment – diversity		<ul style="list-style-type: none"> Continuing personnel and equal employment provisions in the public service (ss.56 and 58 SSA) and adding the Commissioner to lead on inclusiveness, provide guidelines and standards, and to report on diversity and inclusiveness in a regular briefing on the public service 		
Employment – unified service		<ul style="list-style-type: none"> Workforce Policy Statements carried into new Act (ss.55B-D SSA), with widened application across public entities Broader power of delegation to enable fostering of consistent terms and conditions of employment across departments 		<ul style="list-style-type: none"> Power of delegation in employment matters explicitly broadened to include pay equity negotiations To lead on diversity and inclusion, provide guidelines and standards, and report in briefing on state of public service
A unified public service – stewardship		<ul style="list-style-type: none"> Provides Minister with a briefing on state of the public service, at least every 3 years (amends s19 SSA) 	<ul style="list-style-type: none"> Manages involvement by officials in government formation process Issues to departments standards on providing information and analysis to negotiating parties 	<ul style="list-style-type: none"> Responsibilities on Commissioner and Chief Executives relating to Crown/Maori relationship
A unified public service – spirit of service	<ul style="list-style-type: none"> Sets minimum standards of integrity and conduct in SSA s57(1) Apply these standards to a wide variety of agencies (SSA s57(1)), with variation between agencies as necessary(SSA s57(3)), 	<ul style="list-style-type: none"> Broad mandate to issue standards and guidance on integrity and conduct (amends SSA s57(2) and s57(3) which refer to Code of Conduct as the specific mechanism) – this can include guidance on rights and responsibilities of public servants and on principles 	<ul style="list-style-type: none"> Leads Public Service in accomplishing the spirit of service, purpose, principles and values, and issues instructions on integrity and conduct matters 	



Cabinet Priorities Committee

Summary

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Public Service Legislation: Paper 5 - Leadership of the Public Service

Portfolio **State Services**

On 9 May 2019, the Cabinet Government Administration and Expenditure Review Committee referred the attached submission to the Cabinet Priorities Committee on 21 May 2019 for further consideration [GOV-19-MIN-0021]. This is the fifth in a suite of seven papers.

Since GOV considered the paper, an A3 attachment has been added outlining the changes in the Commissioner's powers, duties and functions as a result of the proposals in this paper.

The Minister of State Services recommends that the Committee:

System leadership by chief executives

- 1 note that chief executives should operate as an executive team supporting a unified public service, serving in the best interests of the whole system rather than advancing the interests of a single agency at the expense of the common interest;
- 2 agree to add a responsibility for the Public Service Commissioner (the Commissioner) to establish a Public Service Leadership Team (PSLT) charged with developing and driving the public service strategy for an agile, connected public service system;
- 3 agree to add a responsibility for chief executives to support the Commissioner's role of leading a coordinated, collaborative public service;
- 4 note that the PSLT will consist of all public service department chief executives and other senior public service leaders as determined by the Commissioner;
- 5 note that the provisions of the existing State Sector Act 1988 (SSA) describe a chief executive as "administrative head" of a department or departmental agency;
- 6 note that the current system leadership positions are agency chief executives appointed by the State Services Commissioner to system leadership roles, based on Cabinet agreement to bespoke roles and mandates;
- 7 note that there is uncertainty about the role, mandate and accountability of current system leaders, which limits their effectiveness in the roles;

- 8 note that there is a lack of flexibility in the appointment of system leaders, meaning that the most capable person is not necessarily appointed to the role, professional technical experience and capability is not necessarily recognised, and that system leaders who are also agency leaders can become overloaded;
- 9 agree to introduce a new category of chief executive, to be known as a functional chief executive, established by Order in Council; hosted by a public service department; and responsible to appropriate Ministers for specific functions either within a department or (more commonly) across the state sector system;
- 10 agree that a functional chief executive will be appointed and employed by the Commissioner with the chief executive of a host department as an ex officio on the appointment panel;
- 11 agree that functional chief executives are enabled to use an appropriation, and can be directed through delegation by the appropriation Minister to shift use (and reporting of that use) from the departmental chief executive to the functional chief executive;
- 12 note that the changes in paragraphs 9 to 11 above will require consequential amendment to the Public Finance Act 1989;
- 13 agree that the Public Service be led by chief executives appointed in accordance with the relevant section in the new Public Service Act (the new Act), with the generic roles specified in the Act;
- 14 agree that the Commissioner has power in legislation to appoint existing chief executives to system leadership roles as defined in the new Act, and also use the new functional chief executive provisions to appoint people other than existing chief executives to system leadership roles;
- 15 agree that the new Act gives system leaders the power to publish guidance and standards which may have mandatory effect, subject to Cabinet decisions;

Role of the Commissioner

- 16 agree that the role of the Commissioner be defined in terms of Head of Service, providing leadership and oversight of the public service and to the mandates in relation to the wider State services;
- 17 note that no substantive change is proposed to the Commissioner's existing principal functions (SSA s.6) and powers (SSA s7 to 11) and powers to delegate (SSA s.23 to 24) and that these would carry over into the new Act, subject to potential modifications to the expression and location of certain functions to ensure consistency with specific proposals elsewhere in the papers under CPC-19-SUB-0006 to CPC-19-SUB-0012;

Leadership and governance structure of Commission

- 18 note that there are three options for the leadership and governance structure of the Public Service Commission:
- 18.1 option 1: Functions and powers are vested in the Department known as the Public Service Commission and exercised under a board or committee;
- 18.2 option 2: Functions and powers are vested in the Commissioner, with up to two Deputy Commissioners able to exercise all the Commissioner's functions and powers under statutory authority (preferred option);

- 18.3 option 3: As for option 2, but also appoint up to two additional Deputy Commissioners, without statutory authority but able to exercise all the Commissioner's functions and powers under delegation;
- 19 note that:
- 19.1 option 1 above moves away from a single point of accountability for Ministers and single point employment relationship with chief executives and risks indecisive, time-consuming decision making;
- 19.2 for option 3 above, the cost benefit is unclear and it could act against the partnership with chief executives to achieve system improvement;
- 20 agree to option 2 in paragraph 18.2 above - that the leadership and governance structure for the proposed Public Service Commission include:
- 20.1 one Commissioner, vested with the full suite of the Commissioner's statutory functions, powers, rights, duties and responsibilities
- 20.2 one or two Deputy Public Service Commissioners who:
- 20.2.1 have and may exercise all the Commissioner's functions, duties, and powers, subject to the control of the Commissioner;
- 20.2.2 have and exercise all the Commissioner's functions, duties, and powers if the office of Commissioner becomes vacant for any reason or if the Commissioner is absent from duty for whatever reason;
- 20.2.3 have the rank and status of a chief executive in the core public service, and are therefore eligible for transfer into a departmental chief executive position;
- 21 note that if two statutory Deputy Commissioners are appointed, one of them could have responsibilities to achieve objectives in a designated area;
- 22 note that if option 1 is preferred, the Minister of State Services will bring a further paper to the Cabinet Government Administration and Expenditure Review Committee to determine the appointment process, how binding decisions are made, and the additional costs;
- 23 agree that the Commissioner is the chief executive of the department of state known as the Public Service Commission, but may exercise discretion to:
- 23.1 delegate the responsibilities of chief executive to another person
- 23.2 establish the chief executive position separately and fill it in the same way as any other chief executive position in the core public service

Appointment of chief executives and to Public Service Commission leadership roles

- 24 agree that the appointment process for chief executives be amended to enable the Commissioner to inform the appropriate Minister or Ministers of a vacancy or impending vacancy and to invite them to inform the Commissioner of matters to take into account;
- 25 agree that the Commissioner and the Deputy Public Service Commissioner(s) be appointed by the Governor-General in Council on the recommendation of the Prime Minister after consultation with the leader of each party in the House of Representatives;

Strengthening senior leadership

- 26 note that a more coordinated and consistent approach to senior leadership is important for the development of senior leaders and the operation of the public service in meeting the needs of the system as well as the needs of agencies;
- 27 note that the key positions provisions added to the State Sector Act in 2013, which designated key positions for development roles or because the position is critical to the public service, has not worked as expected and has un-necessarily involved the Commissioner in appointments to senior roles;
- 28 agree to remove the key positions provisions in s50 of the SSA;
- 29 note that problems with the current system of senior leadership include:
- 29.1 leaders are being recognised, rewarded and incentivised to deliver results for their agencies rather than outcomes that benefit the system;
 - 29.2 there is no expectation that senior leaders will move around the public service;
 - 29.3 there are no common ways of working, and differences in the conditions of employment between agencies can act as a barrier to mobility across the system;
 - 29.4 secondment can only be used by the Commissioner under 49(1) of the SSA for the development of the senior leader, rather than to meet a need in an agency or the system as a whole;
- 30 note that the Minister of State Services' aim is to have a modern, agile and adaptive public service where a unified group of senior leaders work as a team to address system-wide issues; and agree a consistent approach to developing leadership capability and to deployment of talent across the system;
- 31 agree that the Commissioner, working with the Public Service Leadership Team, develops a strategy for senior leadership for the purposes of both development and also to meet the needs of the system as a whole;
- 32 agree that the Commissioner can issue standards and guidance to operationalise the leadership strategy;
- 33 agree that chief executives are required to make appointments and deployments in accordance with the leadership strategy;
- 34 note that part of the strategy will be to set common expectations and ways of working, and standard conditions of employment for senior leaders;
- 35 note that the strategy will include agreed processes to allow senior leaders, with the agreement of all parties, to move between leadership positions, while ensuring that the principle of appointment on merit is upheld;
- 36 agree to retain s46 of the SSA, setting out that the object of Part 4 of the SSA is to specify the Commissioner's responsibilities for developing senior leadership and management capability in the public service, with the addition that the Commissioner is responsible for ensuring the needs of the public service are met;

- 37 agree to retain the provisions in s47 of the SSA, relating to the responsibilities of the Commissioner, with the addition that the strategy that the Commissioner is responsible for developing, implementing and promoting includes for the flexible deployment of senior leaders to meet the needs of agencies and the public service as a whole;
- 38 agree to retain the provisions in s48 of the SSA, relating to the responsibilities of chief executives, with the addition that chief executives are responsible for flexibly deploying senior leaders to ensure the needs of agencies and the public service as a whole are met;
- 39 agree to retain the provisions in s49 of the SSA, relating to secondments, with the additions that:
- 39.1 secondment can also be used for one or more of these purposes: developing the senior leader's capability, meeting a need of an agency, meeting a need of the public service as a whole;
- 39.2 deployment of senior leaders may only occur with agreement of the senior leader and relevant chief executives;
- 40 note that feedback during consultation on proposed changes to the SSA to strengthen leadership of the public service:
- 40.1 highlighted the need to value technical knowledge and expertise in appointing leaders;
- 40.2 raised the tendency for newly appointed chief executives to restructure their leadership team, resulting in a drop in productivity during restructuring; loss of institutional and specialist knowledge; and churn across the public service;
- 41 agree that the proposed Public Service Leadership Team, led by the Commissioner, considers the above matters raised during consultation and works collaboratively to address them.

Rachel Clarke
Committee Secretary

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Cabinet Priorities Committee
Office of the Prime Minister
Minister for Workplace Relations and Safety



Cabinet Priorities Committee

Minute of Decision

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Public Service Legislation: Paper 5 - Leadership of the Public Service

Portfolio **State Services**

On 21 May 2019, the Cabinet Priorities Committee **referred** the submission under CPC-19-SUB-0010 to Cabinet for further consideration at its meeting on 4 June 2019.

Rachel Clarke
Committee Secretary

Present:

Rt Hon Jacinda Ardern (Chair)
Rt Hon Winston Peters
Hon Kelvin Davis
Hon Phil Twyford
Hon Chris Hipkins
Hon Carmel Sepuloni
Hon Nanaia Mahuta
Hon Tracey Martin

Officials present from:

Office of the Prime Minister

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Cabinet Government Administration and Expenditure Review Committee

Summary

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Public Service Legislation: Paper 5 - Leadership of the Public Service

Portfolio State Services

Purpose This paper seeks agreement to provisions in the new Public Service Act relating to public service leadership.

Previous Consideration In May 2018, GOV agreed to reform the State Sector Act 1988 (the reforms), with a view to its repeal and replacement with a new Public Service Act; [GOV-18-MIN-0013.01]

In August 2018, Cabinet agreed the release of the State Sector Act Review discussion documents attached under CAB-18-SUB-0386, subject to the amendments requested by Cabinet [CAB-18-MIN-0386];

In November 2018, GOV noted the update on consultation feedback on the reforms, agreed with the proposed direction of travel and invited the Minister of State Services (the Minister) to report back to GOV in due course. [GOV-18-SUB-0081].

Summary This is paper 5 of 7 associated papers outlining legislative public service reforms. Leadership changes are required to build on the shift to a unified public service. The Minister intends to make legislative changes to require chief executives to operate more effectively as an executive team and to strengthen system leadership.

Agreement is sought to establish a Public Service Leadership Team, led by the Public Service Commissioner (the Commissioner), and consisting of consist of all public service department chief executives and other senior public service leaders as determined by the Commissioner. A new functional chief executive category, responsible to appropriate Ministers for specific functions either within a department or across the state sector system is also proposed.

Three Public Service leadership options are considered (discussed at **paragraphs 45 to 48**) with a preference for option 2, functions and powers are vested in the Commissioner, with up to two Deputy Commissioners able to exercise all the Commissioner's functions and powers under statutory authority.

Existing provisions in the State Sector Act 1988 relating to the Commissioner's responsibilities will be retained, but with amendments to better ensure the needs of the Public Service are met.

Regulatory Impact Analysis	An impact statement is attached to the overview paper under GOV-19-SUB-0016.
Baseline Implications	None from this paper.
Legislative Implications	Decisions in this paper will be included in a new Public Service Act. Drafting instructions for the new Act, including decisions in this paper is sought in GOV-19-SUB-0016 (paper 1).
Timing Issues	The Minister intends to submit a draft Bill to LEG in August 2019.
Announcement	The Office of the Minister of State Services will manage any communications, in consultation with other Ministers, as appropriate.
Proactive Release	The Minister intends to proactively release the paper under GOV-19-SUB-0021 at an appropriate time, subject to any redactions in line with the Official Information Act 1982.
Consultation	<p>Paper prepared by SSC. All public service departments and selected Crown agents were consulted.</p> <p>The Minister indicates that the Minister for Māori Crown Relations Te Arawhiti, Minister of Finance, Minister for Māori Development, and Minister for Workplace Relations and Safety were consulted.</p> <p>The Minister also indicates that New Zealand First and the Green Party were consulted.</p>

The Minister of State Services recommends that the Committee:

System leadership by chief executives

- 1 note that chief executives should operate as an executive team supporting a unified public service, serving in the best interests of the whole system rather than advancing the interests of a single agency at the expense of the common interest;
- 2 agree to add a responsibility for the Public Service Commissioner (the Commissioner) to establish a Public Service Leadership Team (PSLT) charged with developing and driving the public service strategy for an agile, connected public service system;
- 3 agree to add a responsibility for chief executives to support the Commissioner's role of leading a coordinated, collaborative public service;
- 4 note that the PSLT will consist of all public service department chief executives and other senior public service leaders as determined by the Commissioner;
- 5 note that the provisions of the existing State Sector Act 1988 (SSA) describe a chief executive as "administrative head" of a department or departmental agency;

- 6 note that the current system leadership positions are agency chief executives appointed by the State Services Commissioner to system leadership roles, based on Cabinet agreement to bespoke roles and mandates;
- 7 note that there is uncertainty about the role, mandate and accountability of current system leaders, which limits their effectiveness in the roles;
- 8 note that there is a lack of flexibility in the appointment of system leaders, meaning that the most capable person is not necessarily appointed to the role, professional technical experience and capability is not necessarily recognised, and that system leaders who are also agency leaders can become overloaded;
- 9 agree to introduce a new category of chief executive, to be known as a functional chief executive, established by Order in Council; hosted by a public service department; and responsible to appropriate Ministers for specific functions either within a department or (more commonly) across the state sector system;
- 10 agree that a functional chief executive will be appointed and employed by the Commissioner with the chief executive of a host department as an ex officio on the appointment panel;
- 11 agree that functional chief executives are enabled to use an appropriation, and can be directed through delegation by the appropriation Minister to shift use (and reporting of that use) from the departmental chief executive to the functional chief executive;
- 12 note that the changes in paragraphs 9 to 11 above will require consequential amendment to the Public Finance Act 1989;
- 13 agree that the Public Service be led by chief executives appointed in accordance with the relevant section in the new Public Service Act (the Act), with the generic roles specified in the Act;
- 14 agree that the Commissioner has power in legislation to appoint existing chief executives to system leadership roles as defined in the Act, and also use the new functional chief executive provisions to appoint people other than existing chief executives to system leadership roles;
- 15 agree that the Act gives system leaders the power to publish guidance and standards which may have mandatory effect, subject to Cabinet decisions;

Role of the Commissioner

- 16 agree that the role of the Commissioner be defined in terms of Head of Service, providing leadership and oversight of the public service and to the mandates in relation to the wider State services;
- 17 note that no substantive change is proposed to the Commissioner's existing principal functions (SSA s.6) and powers (SSA s7 to 11) and powers to delegate (SSA s.23 to 24) and that these would carry over into the new Public Service Act, subject to potential modifications to the expression and location of certain functions to ensure consistency with specific proposals elsewhere in this suite of papers;

Leadership and governance structure of Commission

- 18 note that there are three options for the leadership and governance structure of the Public Service Commission:

- 18.1 option 1: Functions and powers are vested in the Department known as the Public Service Commission and exercised under a board or committee;
- 18.2 option 2: Functions and powers are vested in the Commissioner, with up to two Deputy Commissioners able to exercise all the Commissioner's functions and powers under statutory authority (preferred option);
- 18.3 option 3: As for option 2, but also appoint up to two additional Deputy Commissioners, without statutory authority but able to exercise all the Commissioner's functions and powers under delegation.
- 19 note that:
- 19.1 option 1 above moves away from a single point of accountability for Ministers and single point employment relationship with chief executives and risks indecisive, time-consuming decision making;
- 19.2 for option 3 above the cost benefit is unclear and it could act against the partnership with chief executives to achieve system improvement;
- 20 agree to option 2 in paragraph 18.2 above, that the leadership and governance structure for the proposed Public Service Commission include:
- 20.1 one Commissioner, vested with the full suite of the Commissioner's statutory functions, powers, rights, duties and responsibilities
- 20.2 one or two Deputy Public Service Commissioners who:
- 20.2.1 have and may exercise all the Commissioner's functions, duties, and powers, subject to the control of the Commissioner;
- 20.2.2 have and exercise all the Commissioner's functions, duties, and powers if the office of Commissioner becomes vacant for any reason or if the Commissioner is absent from duty for whatever reason;
- 20.2.3 have the rank and status of a chief executive in the core public service, and are therefore eligible for transfer into a departmental chief executive position;
- 21 note that if two statutory Deputy Commissioners are appointed, one of them could have responsibilities to achieve objectives in a designated area;
- 22 note that if option 1 is preferred, the Minister of State Services will bring a further paper to GOV to determine the appointment process, how binding decisions are made, and the additional costs;
- 23 agree that the Commissioner is the chief executive of the department of state known as the Public Service Commission, but may exercise discretion to:
- 23.1 delegate the responsibilities of chief executive to another person
- 23.2 establish the chief executive position separately and fill it in the same way as any other chief executive position in the core public service

Appointment of chief executives and to Public Service Commission leadership roles

- 24 agree that the appointment process for chief executives be amended to enable the Commissioner to inform the appropriate Minister or Ministers of a vacancy or impending vacancy and to invite them to inform the Commissioner of matters to take into account;
- 25 agree that the Commissioner and the Deputy Public Service Commissioner(s) be appointed by the Governor-General in Council on the recommendation of the Prime Minister after consultation with the leader of each party in the House of Representatives;

Strengthening senior leadership

- 26 note that a more coordinated and consistent approach to senior leadership is important for the development of senior leaders and the operation of the public service in meeting the needs of the system as well as the needs of agencies;
- 27 note that the key positions provisions added to the State Sector Act in 2013, which designated key positions for development roles or because the position is critical to the public service, has not worked as expected and has un-necessarily involved the Commissioner in appointments to senior roles;
- 28 agree to remove the key positions provisions in s50 of the SSA;
- 29 note that problems with the current system of senior leadership include:
- 29.1 leaders are being recognised, rewarded and incentivised to deliver results for their agencies rather than outcomes that benefit the system;
 - 29.2 there is no expectation that senior leaders will move around the public service;
 - 29.3 there are no common ways of working, and differences in the conditions of employment between agencies can act as a barrier to mobility across the system;
 - 29.4 secondment can only be used by the Commissioner under 49(1) of the SSA for the development of the senior leader, rather than to meet a need in an agency or the system as a whole;
- 30 note that the Minister of State Services' aim is to have a modern, agile and adaptive public service where a unified group of senior leaders work as a team to address system-wide issues; and agree a consistent approach to developing leadership capability and to deployment of talent across the system;
- 31 agree that the Commissioner, working with the Public Service Leadership Team, develops a strategy for senior leadership for the purposes of both development and also to meet the needs of the system as a whole;
- 32 agree that the Commissioner can issue standards and guidance to operationalise the leadership strategy;
- 33 agree that chief executives are required to make appointments and deployments in accordance with the leadership strategy;
- 34 note that part of the strategy will be to set common expectations and ways of working, and standard conditions of employment for senior leaders;

- 35 note that the strategy will include agreed processes to allow senior leaders, with the agreement of all parties, to move between leadership positions, while ensuring that the principle of appointment on merit is upheld;
- 36 agree to retain section 46 of the SSA, setting out that the object of Part 4 of the SSA is to specify the Commissioner's responsibilities for developing senior leadership and management capability in the public service, with the addition that the Commissioner is responsible for ensuring the needs of the public service are met;
- 37 agree to retain the provisions in section 47 of the SSA, relating to the responsibilities of the Commissioner, with the addition that the strategy that the Commissioner is responsible for developing, implementing and promoting includes for the flexible deployment of senior leaders to meet the needs of agencies and the public service as a whole;
- 38 agree to retain the provisions in section 48 of the SSA, relating to the responsibilities of chief executives, with the addition that chief executives are responsible for flexibly deploying senior leaders to ensure the needs of agencies and the public service as a whole are met;
- 39 agree to retain the provisions in section 49 of the SSA, relating to secondments, with the additions that:
- 39.1 secondment can also be used for one or more of these purposes: developing the senior leader's capability, meeting a need of an agency, meeting a need of the public service as a whole;
- 39.2 deployment of senior leaders may only occur with agreement of the senior leader and relevant chief executives;
- 40 note that feedback during consultation on proposed changes to the State Sector Act 1988 to strengthen leadership of the public service:
- 40.1 highlighted the need to value technical knowledge and expertise in appointing leaders;
- 40.2 raised the tendency for newly appointed chief executives to restructure their leadership team, resulting in a drop in productivity during restructuring; loss of institutional and specialist knowledge; and churn across the public service;
- 41 agree that the proposed Public Service Leadership Team, led by the Commissioner, considers the above matters raised during consultation and works collaboratively to address them.

Rachel Clarke
Committee Secretary

Hard-copy distribution:

Cabinet Government Administration and Expenditure Review Committee
Office of the Prime Minister
Minister for Workplace Relations and Safety



Cabinet Government Administration and Expenditure Review Committee

Minute of Decision

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Public Service Legislation: Paper 5 - Leadership of the Public Service

Portfolio **State Services**

On 9 May 2019, the Cabinet Government Administration and Expenditure Review Committee:

- 1 **referred** the paper under GOV-19-SUB-0021 to the next appropriate Cabinet Committee meeting;
- 2 **invited** the Minister of State Services to provide the Committee with further advice on:
 - 2.1 the proposed public service leadership and governance structures;
 - 2.2 the building and retention of subject matter expertise and institutional knowledge in Public Service agencies.

Rachel Clarke
Committee Secretary

Present:

Rt Hon Winston Peters
Hon Chris Hipkins (Chair)
Hon Carmel Sepuloni
Hon David Parker
Hon Stuart Nash
Hon Shane Jones
Hon Julie Anne Genter

Officials present from:

Office of the Prime Minister
Officials Committee for GOV

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Minister of State Services



Cabinet

Summary

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Public Service Legislation: Paper 5 - Leadership of the Public Service

Portfolio

State Services

On 21 May 2019, following referral from the Cabinet Government Administration and Expenditure Review Committee, the Cabinet Priorities Committee (CPC) referred an earlier version of the paper under this coversheet to Cabinet for further consideration at its meeting on 4 June 2019 [CPC-19-MIN-0010]. This is the fifth in a suite of seven related paper.

Following CPC, recommendation 39.2 has been amended **from** “deployment of senior leaders may only occur with agreement of the senior leader and relevant chief executives” **to** “the Commissioner shall have regard to the merit principle and the need for transparency in making secondments.”

The Minister of State Services recommends that Cabinet:

- 1 note that chief executives should operate as an executive team supporting a unified public service, serving in the best interests of the whole system rather than advancing the interests of a single agency at the expense of the common interest;
- 2 agree to add a responsibility for the Public Service Commissioner (the Commissioner) to establish a Public Service Leadership Team (PSLT) charged with developing and driving the public service strategy for an agile, connected public service system;
- 3 agree to add a responsibility for chief executives to support the Commissioner’s role of leading a coordinated, collaborative public service;
- 4 note that the PSLT will consist of all public service department chief executives and other senior public service leaders as determined by the Commissioner;
- 5 note that the provisions of the State Sector Act 1988 (the Act) describe a chief executive as “administrative head” of a department or departmental agency;
- 6 note that the current system leadership positions are agency chief executives appointed by the State Services Commissioner to system leadership roles, based on Cabinet agreement to bespoke roles and mandates;
- 7 note that there is uncertainty about the role, mandate and accountability of current system leaders, which limits their effectiveness in the roles;

- 8 note that there is a lack of flexibility in the appointment of system leaders, meaning that the most capable person is not necessarily appointed to the role, professional technical experience and capability is not necessarily recognised, and that system leaders who are also agency leaders can become overloaded;
- 9 agree to introduce a new category of chief executive, to be known as a functional chief executive, established by Order in Council; hosted by a public service department; and responsible to appropriate Ministers for specific functions either within a department or (more commonly) across the state sector system;
- 10 agree that a functional chief executive will be appointed and employed by the Commissioner with the chief executive of a host department as an ex officio on the appointment panel;
- 11 agree that functional chief executives are enabled to use an appropriation, and can be directed through delegation by the appropriation Minister to shift use (and reporting of that use) from the departmental chief executive to the functional chief executive;
- 12 note that the changes in paragraphs 9 to 11 above will require consequential amendment to the Public Finance Act 1989;
- 13 agree that the Public Service be led by chief executives appointed in accordance with the relevant section in the new Public Service Act (the new Act), with the generic roles specified in that Act;
- 14 agree that the Commissioner has power in legislation to appoint existing chief executives to system leadership roles as defined in the new Act, and also use the new functional chief executive provisions to appoint people other than existing chief executives to system leadership roles;
- 15 agree that the new Act gives system leaders the power to publish guidance and standards which may have mandatory effect, subject to Cabinet decisions;

Role of the Commissioner

- 16 agree that the role of the Commissioner be defined in terms of Head of Service, providing leadership and oversight of the public service and to the mandates in relation to the wider State services;
- 17 note that the Commissioner's existing principal functions in section 6, powers in sections 7 to 11, and powers to delegate in sections 23 to 24 of the Act will carry over into the new Act, subject to potential modifications to the expression and location of certain functions to ensure consistency with specific proposals elsewhere in the papers under CAB-19-SUB-0248 to CAB-19-SUB-0254;

Leadership and governance structure of Commission

- 18 note that there are three options for the leadership and governance structure of the Public Service Commission:
- 18.1 option 1: Functions and powers are vested in the Department known as the Public Service Commission and exercised under a board or committee;
- 18.2 option 2: Functions and powers are vested in the Commissioner, with up to two Deputy Commissioners able to exercise all the Commissioner's functions and powers under statutory authority (preferred option);

- 18.3 option 3: As for option 2, but also appoint up to two additional Deputy Commissioners, without statutory authority but able to exercise all the Commissioner's functions and powers under delegation;
- 19 note that:
- 19.1 option 1 above moves away from a single point of accountability for Ministers and single point employment relationship with chief executives and risks indecisive, time-consuming decision making;
- 19.2 for option 3 above, the cost benefit is unclear and it could act against the partnership with chief executives to achieve system improvement;
- 20 agree to option 2 in paragraph 18.2 above - that the leadership and governance structure for the proposed Public Service Commission include:
- 20.1 one Commissioner, vested with the full suite of the Commissioner's statutory functions, powers, rights, duties and responsibilities
- 20.2 one or two Deputy Public Service Commissioners who:
- 20.2.1 have and may exercise all the Commissioner's functions, duties, and powers, subject to the control of the Commissioner;
- 20.2.2 have and exercise all the Commissioner's functions, duties, and powers if the office of Commissioner becomes vacant for any reason or if the Commissioner is absent from duty for whatever reason;
- 20.2.3 have the rank and status of a chief executive in the core public service, and are therefore eligible for transfer into a departmental chief executive position;
- 21 note that if two statutory Deputy Commissioners are appointed, one of them could have responsibilities to achieve objectives in a designated area;
- 22 note that if option 1 is preferred, a further paper will be submitted to the appropriate Cabinet committee to determine the appointment process, how binding decisions are made, and the additional costs;
- 23 agree that the Commissioner is the chief executive of the department of state known as the Public Service Commission, but may exercise discretion to:
- 23.1 delegate the responsibilities of chief executive to another person
- 23.2 establish the chief executive position separately and fill it in the same way as any other chief executive position in the core public service

Appointment of chief executives and to Public Service Commission leadership roles

- 24 agree that the appointment process for chief executives be amended to enable the Commissioner to inform the appropriate Minister or Ministers of a vacancy or impending vacancy and to invite them to inform the Commissioner of matters to take into account;
- 25 agree that the Commissioner and the Deputy Public Service Commissioner(s) be appointed by the Governor-General in Council on the recommendation of the Prime Minister after consultation with the leader of each party in the House of Representatives;

Strengthening senior leadership

- 26 note that a more coordinated and consistent approach to senior leadership is important for the development of senior leaders and the operation of the public service in meeting the needs of the system as well as the needs of agencies;
- 27 note that the key positions provisions added to the Act in 2013, which designated key positions for development roles or because the position is critical to the public service, has not worked as expected and has unnecessarily involved the Commissioner in appointments to senior roles;
- 28 agree to remove the key positions provisions in section 50 of the Act;
- 29 note that problems with the current system of senior leadership include:
- 29.1 leaders are being recognised, rewarded and incentivised to deliver results for their agencies rather than outcomes that benefit the system;
 - 29.2 there is no expectation that senior leaders will move around the public service;
 - 29.3 there are no common ways of working, and differences in the conditions of employment between agencies can act as a barrier to mobility across the system;
 - 29.4 secondment can only be used by the Commissioner under section 49(1) of the Act, for the development of the senior leader, rather than to meet a need in an agency or the system as a whole;
- 30 note that the Minister of State Services' aim is to have a modern, agile and adaptive public service where a unified group of senior leaders work as a team to address system-wide issues, and agree a consistent approach to developing leadership capability and to deployment of talent across the system;
- 31 agree that the Commissioner, working with the PSLT, develops a leadership strategy for senior leadership for the purposes of both development and also to meet the needs of the system as a whole (the Strategy);
- 32 agree that the Commissioner can issue standards and guidance to operationalise the Strategy;
- 33 agree that chief executives are required to make appointments and deployments in accordance with the Strategy;
- 34 note that part of the Strategy will be to set common expectations and ways of working, and standard conditions of employment for senior leaders;
- 35 note that the Strategy will include agreed processes to allow senior leaders, with the agreement of all parties, to move between leadership positions, while ensuring that the principle of appointment on merit is upheld;
- 36 agree to retain the provisions in section 46 of the Act that relate to the object of Part 4 of the Act relating to developing senior leadership and management capability in the public service, with the addition that the Commissioner is responsible for ensuring the needs of the public service are met;

- 37 agree to retain the provisions in section 47 of the Act that relate to the responsibilities of the Commissioner, with the addition that the Strategy that the Commissioner is responsible for developing, implementing and promoting allows for the flexible deployment of senior leaders to ensure the needs of agencies and the public service as a whole are met;
- 38 agree to retain the provisions in section 48 of the Act that relate to the responsibilities of chief executives, with the addition that chief executives are responsible for flexibly deploying senior leaders to ensure the needs of agencies and the public service as a whole are met;
- 39 agree to retain the provisions in section 49 of the Act that relate to secondments, with the additions that:
- 39.1 secondment can also be used for one or more of these purposes:
- 39.1.1 developing the senior leader's capability;
- 39.1.2 meeting a need of an agency;
- 39.1.3 meeting a need of the public service as a whole;
- 39.2 the Commissioner shall have regard to the merit principle and the need for transparency in making secondments;
- 40 note that feedback during consultation on proposed changes to the Act to strengthen leadership of the public service:
- 40.1 highlighted the need to value technical knowledge and expertise in appointing leaders;
- 40.2 raised the tendency for newly appointed chief executives to restructure their leadership team, resulting in a drop in productivity during restructuring; loss of institutional and specialist knowledge; and churn across the public service;
- 41 agree that the PSLT, led by the Commissioner, considers the matters raised in paragraph 40 above, and works collaboratively to address them.

Rachel Clarke
for Secretary of the Cabinet

Hard-copy distribution:
The Cabinet



Cabinet

Minute of Decision

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Public Service Legislation: Paper 5 - Leadership of the Public Service

Portfolio **State Services**

On 4 June 2019, following reference from the Cabinet Priorities Committee [CPC-19-MIN-0010], Cabinet **deferred** consideration of the submission under CAB-19-SUB-0252.

Michael Webster
Secretary of the Cabinet

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Prime Minister
Deputy Prime Minister
Minister of State Services



Cabinet

Summary

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Public Service Legislation: Paper 5 - Leadership of the Public Service

Portfolio

State Services

On 4 June 2019, following reference from the Cabinet Priorities Committee [CPC-19-MIN-0010], Cabinet deferred consideration of paper 5 [CAB-19-MIN-0252].

Related papers 1 to 4, 6 and 7 were agreed by Cabinet [CAB-19-MIN-0248 to CAB-19-MIN-0251, CAB-19-MIN-0253 and CAB-19-MIN-0254].

Since the meeting, the paper has been updated with two new recommendations:

- recommendation 5 notes the ongoing role of the central agencies in ensuring policy coherence and coordination on the Prime Minister and Cabinet's behalf.
- recommendation 40.3 adds that deployment of senior leaders may only occur with the agreement of the senior leader and relevant chief executives.

The Minister of State Services recommends that Cabinet:

System leadership by chief executives

- 1 note that chief executives should operate as an executive team supporting a unified public service, serving in the best interests of the whole system rather than advancing the interests of a single agency at the expense of the common interest;
- 2 agree to add a responsibility for the Public Service Commissioner to establish a Public Service Leadership Team (PSLT) charged with developing and driving the public service strategy for an agile, connected public service system;
- 3 agree to add a responsibility for chief executives to support the Public Service Commissioner's role of leading a coordinated, collaborative public service;
- 4 note that the PSLT will consist of all public service department chief executives and other senior public service leaders as determined by the Public Service Commissioner;
- 5 note the ongoing role of the central agencies (State Services Commission, the Treasury and Department of the Prime Minister and Cabinet) in ensuring policy coherence and coordination (including for the associated financial resources and people capabilities) on the Prime Minister and Cabinet's behalf;
- 6 note that the provisions of the existing State Sector Act 1988 (SSA) describe a chief executive as "administrative head" of a department or departmental agency;

- 7 note that the current system leadership positions are agency chief executives appointed by the State Services Commissioner (the Commissioner) to system leadership roles, based on Cabinet agreement to bespoke roles and mandates;
- 8 note that there is uncertainty about the role, mandate and accountability of current system leaders, which limits their effectiveness in the roles;
- 9 note that there is a lack of flexibility in the appointment of system leaders, meaning that the most capable person is not necessarily appointed to the role, professional technical experience and capability is not necessarily recognised, and that system leaders who are also agency leaders can become overloaded;
- 10 agree to introduce a new category of chief executive, to be known as a functional chief executive, established by Order in Council; hosted by a public service department; and responsible to appropriate Ministers for specific functions either within a department or (more commonly) across the state sector system;
- 11 agree that a functional chief executive will be appointed and employed by the Public Service Commissioner with the chief executive of a host department as an ex officio on the appointment panel;
- 12 agree that functional chief executives are enabled to use an appropriation, and can be directed through delegation by the appropriation Minister to shift use (and reporting of that use) from the departmental chief executive to the functional chief executive;
- 13 note that the changes in paragraphs 10 to 12 above will require consequential amendment to the Public Finance Act 1989;
- 14 agree that the public service be led by chief executives appointed in accordance with the relevant section in the new Public Service Act (the new Act), with the generic roles specified in the new Act;
- 15 agree that the Public Service Commissioner has power in legislation to appoint existing chief executives to system leadership roles as defined in the new Act, and also use the new functional chief executive provisions to appoint people other than existing chief executives to system leadership roles;
- 16 agree that the new Act gives system leaders the power to publish guidance and standards which may have mandatory effect, subject to Cabinet decisions;

Role of the Commissioner

- 17 agree that the role of the Public Service Commissioner be defined in terms of Head of Service, providing leadership and oversight of the public service and to the mandates in relation to the wider State services;
- 18 note that no substantive change is proposed to the Commissioner's existing principal functions (currently in SSA section 6) and powers (SSA sections 7 to 11) and powers to delegate (SSA sections 23 to 24), and that these would carry over into the new Act, subject to potential modifications to the expression and location of certain functions to ensure consistency with the decisions in CAB-19-MIN-0248 to CAB-19-MIN-0251, CAB-19-MIN-0253 and CAB-19-MIN-0254;

Leadership and governance structure of Commission

- 19 note that there are three options for the leadership and governance structure of the Public Service Commission:
- 19.1 option 1: Functions and powers are vested in the Department known as the Public Service Commission and exercised under a board or committee;
 - 19.2 option 2 (preferred option): Functions and powers are vested in the Public Service Commissioner, with up to two Deputy Commissioners able to exercise all the Commissioner's functions and powers under statutory authority;
 - 19.3 option 3: As for option 2, but also appoint up to two additional Deputy Commissioners, without statutory authority but able to exercise all the Commissioner's functions and powers under delegation;
- 20 note that:
- 20.1 option 1 above moves away from a single point of accountability for Ministers and single point employment relationship with chief executives and risks indecisive, time-consuming decision making;
 - 20.2 for option 3 above, the cost benefit is unclear and it could act against the partnership with chief executives to achieve system improvement;
- 21 agree to option 2 in paragraph 19.2 above - that the leadership and governance structure for the proposed Public Service Commission include:
- 21.1 one Public Service Commissioner, vested with the full suite of the Commissioner's statutory functions, powers, rights, duties and responsibilities;
 - 21.2 one or two Deputy Public Service Commissioners who:
 - 21.2.1 have and may exercise all the Commissioner's functions, duties, and powers, subject to the control of the Commissioner;
 - 21.2.2 have and exercise all the Commissioner's functions, duties, and powers if the office of Commissioner becomes vacant for any reason or if the Commissioner is absent from duty for whatever reason;
 - 21.2.3 have the rank and status of a chief executive in the core public service, and are therefore eligible for transfer into a departmental chief executive position;
- 22 note that if two statutory Deputy Commissioners are appointed, one of them could have responsibilities to achieve objectives in a designated area;
- 23 agree that the Public Service Commissioner is the chief executive of the department of state known as the Public Service Commission, but may exercise discretion to:
- 23.1 delegate the responsibilities of chief executive to another person;
 - 23.2 establish the chief executive position separately and fill it in the same way as any other chief executive position in the core public service;

Appointment of chief executives and to Public Service Commission leadership roles

- 24 agree that the appointment process for chief executives be amended to enable the Commissioner to inform the appropriate Minister or Ministers of a vacancy or impending vacancy and to invite them to inform the Commissioner of matters to take into account;
- 25 agree that the Public Service Commissioner and the Deputy Public Service Commissioner(s) be appointed by the Governor-General in Council on the recommendation of the Prime Minister after consultation with the leader of each party in the House of Representatives;

Strengthening senior leadership

- 26 note that a more coordinated and consistent approach to senior leadership is important for the development of senior leaders and the operation of the public service in meeting the needs of the system as well as the needs of agencies;
- 27 note that the key positions provisions added to the SSA in 2013, which designated key positions for development roles or because the position is critical to the public service, have not worked as expected and have un-necessarily involved the Commissioner in appointments to senior roles;
- 28 agree to remove the key positions provisions in section 50 of the SSA;
- 29 note that problems with the current system of senior leadership include:
- 29.1 leaders are being recognised, rewarded and incentivised to deliver results for their agencies rather than outcomes that benefit the system;
 - 29.2 there is no expectation that senior leaders will move around the public service;
 - 29.3 there are no common ways of working, and differences in the conditions of employment between agencies can act as a barrier to mobility across the system;
 - 29.4 secondment can only be used by the Commissioner under section 49(1) of the SSA for the development of the senior leader, rather than to meet a need in an agency or the system as a whole;
- 30 note that the Minister of State Services' aim is to have a modern, agile and adaptive public service where a unified group of senior leaders work as a team to address system-wide issues; and agree a consistent approach to developing leadership capability and to deployment of talent across the system;
- 31 agree that the Commissioner, working with the Public Service Leadership Team, develops a strategy for senior leadership for the purposes of both development and also to meet the needs of the system as a whole;
- 32 agree that the Commissioner can issue standards and guidance to operationalise the leadership strategy;
- 33 agree that chief executives are required to make appointments and deployments in accordance with the leadership strategy;
- 34 note that part of the strategy will be to set common expectations and ways of working, and standard conditions of employment for senior leaders;

- 35 note that the leadership strategy will include agreed processes to allow senior leaders, with the agreement of all parties, to move between leadership positions, while ensuring that the principle of appointment on merit is upheld;
- 36 agree to retain the provisions in section 46 of the SSA that relates to the object of Part 4 of the Act relating to developing senior leadership and management capability in the public service with the addition that the Commissioner is responsible for ensuring the needs of the public service are met;
- 37 agree to retain the provision in section 47 of the SSA that relates to the responsibilities of the Commissioner with the addition that the strategy that the Commissioner is responsible for developing, implementing and promoting includes for the flexible deployment of senior leaders to meet the needs of agencies and the public service as a whole;
- 38 agree to retain the provision in section 48 of the SSA that relates to the responsibilities of chief executives with the addition that chief executives are responsible for flexibly deploying senior leaders to ensure the needs of agencies and the public service as a whole are met;
- 39 agree to retain the provision in section 49 of the SSA that relates to secondments with the additions that:
- 39.1 secondment can also be used for one or more of these purposes: developing the senior leader's capability, meeting a need of an agency, meeting a need of the public service as a whole;
- 39.2 the Commissioner shall have regard to the merit principle and the need for transparency in making secondments;
- 40 note that feedback during consultation on proposed changes to the SSA to strengthen leadership of the public service:
- 40.1 highlighted the need to value technical knowledge and expertise in appointing leaders;
- 40.2 raised the tendency for newly appointed chief executives to restructure their leadership team, resulting in a drop in productivity during restructuring; loss of institutional and specialist knowledge; and churn across the public service;
- 40.3 deployment of senior leaders may only occur with the agreement of the senior leader and relevant chief executives
- 41 agree that the proposed Public Service Leadership Team, led by the Commissioner, considers these matters raised during consultation and works collaboratively to address them.

Rachel Clarke
for Secretary of the Cabinet

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Cabinet

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Public Service Legislation: Paper 5 - Leadership of the Public Service

Portfolio State Services

On 17 June 2019, following reference from the Cabinet Priorities Committee, Cabinet:

System leadership by chief executives

- 1 **noted** that chief executives should operate as an executive team supporting a unified public service, serving in the best interests of the whole system rather than advancing the interests of a single agency at the expense of the common interest;
- 2 **agreed** to add a responsibility for the Public Service Commissioner to establish a Public Service Leadership Team (PSLT) charged with developing and driving the public service strategy for an agile, connected public service system;
- 3 **agreed** to add a responsibility for chief executives to support the Public Service Commissioner's role of leading a coordinated, collaborative public service;
- 4 **noted** that the PSLT will consist of all public service department chief executives and other senior public service leaders as determined by the Public Service Commissioner;
- 5 **noted** the ongoing role of the central agencies (State Services Commission, the Treasury and Department of the Prime Minister and Cabinet) in ensuring policy coherence and coordination (including for the associated financial resources and people capabilities) on the Prime Minister's and Cabinet's behalf;
- 6 **noted** that the provisions of the existing State Sector Act 1988 (SSA) describe a chief executive as "administrative head" of a department or departmental agency;
- 7 **noted** that the current system leadership positions are agency chief executives appointed by the State Services Commissioner (the Commissioner) to system leadership roles, based on Cabinet agreement to bespoke roles and mandates;
- 8 **noted** that there is uncertainty about the role, mandate and accountability of current system leaders, which limits their effectiveness in the roles;
- 9 **noted** that there is a lack of flexibility in the appointment of system leaders, meaning that the most capable person is not necessarily appointed to the role, professional technical experience and capability is not necessarily recognised, and that system leaders who are also agency leaders can become overloaded;

- 10 **agreed** to introduce a new category of chief executive, to be known as a functional chief executive, established by Order in Council; hosted by a public service department; and responsible to appropriate Ministers for specific functions either within a department or (more commonly) across the state sector system;
- 11 **agreed** that a functional chief executive will be appointed and employed by the Public Service Commissioner with the chief executive of a host department as an ex officio on the appointment panel;
- 12 **agreed** that functional chief executives are enabled to use an appropriation, and can be directed through delegation by the appropriation Minister to shift use (and reporting of that use) from the departmental chief executive to the functional chief executive;
- 13 **noted** that the changes in paragraphs 10 to 12 above will require consequential amendment to the Public Finance Act 1989;
- 14 **agreed** that the public service be led by chief executives appointed in accordance with the relevant section in the new Public Service Act (the new Act), with the generic roles specified in the new Act;
- 15 **agreed** that the Public Service Commissioner have the power in legislation to appoint existing chief executives to system leadership roles as defined in the new Act, and also use the new functional chief executive provisions to appoint people other than existing chief executives to system leadership roles;
- 16 **agreed** that the new Act give system leaders the power to publish guidance and standards which may have mandatory effect, subject to Cabinet decisions;

Role of the Commissioner

- 17 **agreed** that the role of the Public Service Commissioner be defined in terms of Head of Service, providing leadership and oversight of the public service and to the mandates in relation to the wider State services;
- 18 **noted** that no substantive change is proposed to the Commissioner's existing principal functions (currently in SSA section 6) and powers (SSA sections 7 to 11) and powers to delegate (SSA sections 23 to 24), and that these would carry over into the new Act, subject to potential modifications to the expression and location of certain functions to ensure consistency with the decisions in CAB-19-MIN-0248 to CAB-19-MIN-0251, CAB-19-MIN-0253 and CAB-19-MIN-0254;

Leadership and governance structure of Commission

- 19 **noted** that there are three options for the leadership and governance structure of the Public Service Commission:
- 19.1 option 1: Functions and powers are vested in the department known as the Public Service Commission and exercised under a board or committee;
- 19.2 option 2 (preferred option): Functions and powers are vested in the Public Service Commissioner, with up to two Deputy Commissioners able to exercise all the Commissioner's functions and powers under statutory authority;
- 19.3 option 3: As for option 2, but also appoint up to two additional Deputy Commissioners, without statutory authority but able to exercise all the Commissioner's functions and powers under delegation;

- 20 **noted** that:
- 20.1 option 1 above moves away from a single point of accountability for Ministers and single point employment relationship with chief executives and risks indecisive, time-consuming decision making;
 - 20.2 for option 3 above, the cost benefit is unclear and it could act against the partnership with chief executives to achieve system improvement;
- 21 **agreed** to option 2 in paragraph 19.2 above - that the leadership and governance structure for the proposed Public Service Commission include:
- 21.1 one Public Service Commissioner, vested with the full suite of the Commissioner's statutory functions, powers, rights, duties and responsibilities;
 - 21.2 one or two Deputy Public Service Commissioners who:
 - 21.2.1 have and may exercise all the Commissioner's functions, duties, and powers, subject to the control of the Commissioner;
 - 21.2.2 have and exercise all the Commissioner's functions, duties, and powers if the office of Commissioner becomes vacant for any reason or if the Commissioner is absent from duty for whatever reason;
 - 21.2.3 have the rank and status of a chief executive in the core public service, and are therefore eligible for transfer into a departmental chief executive position;
- 22 **noted** that if two statutory Deputy Commissioners are appointed, one of them could have responsibilities to achieve objectives in a designated area;
- 23 **agreed** that the Public Service Commissioner is the chief executive of the department of state known as the Public Service Commission, but may exercise discretion to:
- 23.1 delegate the responsibilities of chief executive to another person;
 - 23.2 establish the chief executive position separately and fill it in the same way as any other chief executive position in the core public service;

Appointment of chief executives and to Public Service Commission leadership roles

- 24 **agreed** that the appointment process for chief executives be amended to enable the Commissioner to inform the appropriate Minister or Ministers of a vacancy or impending vacancy and to invite them to inform the Commissioner of matters to take into account;
- 25 **agreed** that the Public Service Commissioner and the Deputy Public Service Commissioner(s) be appointed by the Governor-General in Council on the recommendation of the Prime Minister after consultation with the leader of each party in the House of Representatives;

Strengthening senior leadership

- 26 **noted** that a more coordinated and consistent approach to senior leadership is important for the development of senior leaders and the operation of the public service in meeting the needs of the system as well as the needs of agencies;

- 27 **noted** that the key positions provisions added to the SSA in 2013, which designated key positions for development roles or because the position is critical to the public service, have not worked as expected and have un-necessarily involved the Commissioner in appointments to senior roles;
- 28 **agreed** to remove the key positions provisions in section 50 of the SSA;
- 29 **noted** that problems with the current system of senior leadership include:
- 29.1 leaders are being recognised, rewarded and incentivised to deliver results for their agencies rather than outcomes that benefit the system;
- 29.2 there is no expectation that senior leaders will move around the public service;
- 29.3 there are no common ways of working, and differences in the conditions of employment between agencies can act as a barrier to mobility across the system;
- 29.4 secondment can only be used by the Commissioner under section 49(1) of the SSA for the development of the senior leader, rather than to meet a need in an agency or the system as a whole;
- 30 **noted** that the Minister of State Services' aim is to have a modern, agile and adaptive public service where a unified group of senior leaders work as a team to address system-wide issues; and agree a consistent approach to developing leadership capability and to deployment of talent across the system;
- 31 **agreed** that the Commissioner, working with the PSLT, develop a strategy for senior leadership for the purposes of both development and also to meet the needs of the system as a whole;
- 32 **agreed** that the Commissioner can issue standards and guidance to operationalise the leadership strategy;
- 33 **agreed** that chief executives are required to make appointments and deployments in accordance with the leadership strategy;
- 34 **noted** that part of the strategy will be to set common expectations and ways of working, and standard conditions of employment for senior leaders;
- 35 **noted** that the leadership strategy will include agreed processes to allow senior leaders, with the agreement of all parties, to move between leadership positions, while ensuring that the principle of appointment on merit is upheld;
- 36 **agreed** to retain the provisions in section 46 of the SSA that relates to the object of Part 4 of the Act relating to developing senior leadership and management capability in the public service with the addition that the Commissioner is responsible for ensuring the needs of the public service are met;
- 37 **agreed** to retain the provision in section 47 of the SSA that relates to the responsibilities of the Commissioner with the addition that the strategy that the Commissioner is responsible for developing, implementing and promoting includes for the flexible deployment of senior leaders to meet the needs of agencies and the public service as a whole;

- 38 **agreed** to retain the provision in section 48 of the SSA that relates to the responsibilities of chief executives with the addition that chief executives are responsible for flexibly deploying senior leaders to ensure the needs of agencies and the public service as a whole are met;
- 39 **agreed** to retain the provision in section 49 of the SSA that relates to secondments with the additions that:
- 39.1 secondment can also be used for one or more of these purposes: developing the senior leader's capability, meeting a need of an agency, or meeting a need of the public service as a whole;
 - 39.2 the Commissioner shall have regard to the merit principle and the need for transparency in making secondments;
 - 39.3 deployment of senior leaders may only occur with the agreement of the senior leader and relevant chief executives
- 40 **noted** that feedback during consultation on proposed changes to the SSA to strengthen leadership of the public service:
- 40.1 highlighted the need to value technical knowledge and expertise in appointing leaders;
 - 40.2 raised the tendency for newly appointed chief executives to restructure their leadership team, resulting in a drop in productivity during restructuring; loss of institutional and specialist knowledge; and churn across the public service;
- 41 **agreed** that the proposed Public Service Leadership Team, led by the Commissioner, considers these matters raised during consultation and works collaboratively to address them.

Michael Webster
Secretary of the Cabinet

Hard-copy distribution:
Prime Minister
Deputy Prime Minister
Minister of State Services