



Report Title:	Scope of amendments to the Public Service Act 2020		
Report No:	MoSR 2025-0085		
Date:	5 February 2025		
To:	Hon Judith Collins KC, Minister for the Public Service		
Action Sought:	Confirm the proposed scope for draft Cabinet policy papers	Due Date	10 February 2025
Contact Person:	Callum Butler, Manager, Policy		
Contact No:	9(2)(a) privacy		
Encl:	No	Priority:	High
Security Level:	IN CONFIDENCE		

Executive Summary

1. We understand that you would like to amend the Public Service Act 2020 (the Act), and will be requesting a category 3 priority (priority to be passed by the end of the year) on the 2025 legislation programme.
2. To meet this timing, we will need to provide you with draft Cabinet papers by 28 February 2025, which means we will need to clarify the scope of the amendments as soon as possible.
3. We understand that your policy intent is to:
 - Focus the public service on efficiency and government priorities, removing distractions;
 - Ensure the public service is operating in a professional, politically neutral, and competent manner;
 - Ensure support for cross-cutting priorities (e.g. digital);
 - Provide more robust chief executive appointments; and
 - Improve performance management.
4. We understand that you would like to:
 - Clarify the role of the public service;
 - Streamline chief executive responsibilities;
 - Improve tools to reduce silos;
 - Increase rigour of the chief executive appointment process; and
 - Improve chief executive performance management.
5. We consider this consistent with the Coalition Agreement between the National Party and the ACT Party, which signals an intention to:

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“Amend the Public Service Act 2020 to clarify the role of the public service, drive performance, and ensure accountability to deliver on the agenda of the government of the day.”

6. To meet your timing aspirations, we propose to simultaneously provide you with:
 - draft Cabinet papers to progress your desired changes; and
 - advice on the impacts of these changes, if implemented.
7. We would like to seek clarification from you on the scope and content of these changes.

Recommended Action

We recommend that you:

- a **note** that the following recommendations seek to confirm the scope of changes you would like to pursue, as discussed with you at our meeting on 4 February.
- b **note** that the Commission will provide you with draft Cabinet papers and further advice on implications of any of your proposed changes to the Public Service Act 2020 by 28 February.

Clarifying the role of the public service

- c **note** that the Public Service Act 2020 describes a large number of attributes spread over many sections, that are important in explaining to public servants their role, with the primary elements contained in the purpose, principles, and chief executive responsibilities.
- d **confirm** the purpose of the public service should be clarified to focus on:
 - Supporting the Government to develop and implement their policies,
 - Delivering high-quality and efficient public services,
 - Meeting the needs of New Zealanders,
 - Acting in accordance with law.

Yes/No.
- e **note** that the ‘general responsibilities’ of chief executives are of fundamental importance for defining how the Government and public service interact, but that these may have been de-emphasised in the Public Service Act 2020.
- f **confirm** the ‘general responsibilities’ of chief executives should be brought forward in the legislation, renamed as ‘principal responsibilities’ and clarified to focus their effort on:
 - Giving advice to Ministers,
 - Implementing Ministers’ lawful instructions,
 - The efficient and economical delivery of the goods and services provided by the agency,
 - Working to ensure that those goods and services contribute to the intended outcomes,
 - The operation of their agency,
 - Improving ways of working across public service agencies,
 - The agency’s responsiveness on matters relating to the collective interests of government, and

- Supporting Ministers to act as good stewards of public institutions, assets, and liabilities.

Yes/No.

- g **confirm** that the ‘principles’ of the public service (including merit-based appointments and political neutrality) should follow the responsibilities above, and obligations relating to these principles should be streamlined.

Yes/No.

- h **note** that the Code of Conduct, which is issued by the Commissioner, has not been updated since 2007 and would benefit from review, but that this does not require legislative change and will be progressed by the Commission following the Act’s amendment.

Streamlining chief executives’ responsibilities

- i **note** there have been an increase in the number of responsibilities for chief executives, and you have indicated an interest in streamlining or removing these additional responsibilities:

- The role of the Commissioner and chief executives in pay equity claims
- Agencies must have a policy for recognising the principle of equitable pay
- Agencies must have a policy for eliminating bias, including gender bias
- Chief executives must be guided by the principle that the public service reflect the makeup of society
- Chief executives must foster a workplace that is inclusive of all groups
- Chief executives must build the capability to engage with Māori and understand Māori perspectives.
- Chief executives must report to the Commissioner on progress to build the capability to engage with Māori and understand Māori perspectives.
- Chief executives must prepare a Long-Time Insights Briefing at least every three years.

- j **note** that we will provide you with an annotated agenda to support a discussion on 10 February 2025 on your intent with regard to these provisions.

Improve tools to reduce silos

- k **note** there are a number of tools available to improve cross-agency working, and we can provide further advice on how these could be used further to support the Government’s priorities.
- l **confirm** that in order to strengthen system leadership roles (e.g. digital), you would like to allow the Commissioner to designate ‘key positions’ and delegate system leaders the power to agree to key appointments in agencies, and have input into performance reviews.

Yes/No.

Increase the rigour of the chief executive appointment process

- m **confirm** you would like to remove chief executive reappointment provisions from the legislation, to ensure chief executives are subject to a contestable process prior to being reappointed to the same role.

Yes/No.

- n **confirm** you would like to remove the requirement to consider diversity and inclusion in chief executive appointments.
Yes/no.
- o **note** that we would like to discuss provisions relating to the transfer of chief executives with you at our meeting scheduled for 10 February 2025.

Improve chief executive performance management

- p **confirm** you would like the Commissioner to seek input of the appropriate minister in performance reviews (formalising current practice).
Yes/No.
- q **confirm** you would like the Commissioner to develop and publish a framework, in consultation with the Minister for the Public Service, for performance reviews (including criteria and process).
Yes/No.
- r **confirm** you would like to establish performance improvement reviews as a tool for improving agency performance.
Yes/No.

9(2)(f)(iv) confidentiality of advice

Proactive release

- t **agree** that Te Kawa Mataaho Public Service Commission release this briefing in full following Cabinet decisions on amendments to the Public Service Act 2020.
Agree/disagree.

Hon Judith Collins KC
Minister for the Public Service

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Policy intent

8. Based on discussions with you, we understand your policy intent as follows.

Focus the public service on efficiency and government priorities, removing distractions

9. You have indicated that you want the Act to emphasise:
- A focus on working in the best interest of New Zealanders, in a timely and cost-efficient way, and serving the Government of the day
 - Operating in a professional, politically neutral and competent manner, supported by all appointments being made on merit
10. You have also indicated an interest in streamlining or removing responsibilities where they may distract chief executives from achieving/progressing the above focus areas.

Ensure support for cross-cutting priorities

11. You have indicated that while agencies and chief executives need to have greater clarity about their roles, they also need to work less in silos to better achieve cross-cutting priorities (e.g. adoption of and investment in digital technology).

Provide more robust chief executive appointments and performance

12. You have indicated the need for strong contestable process in the appointment of chief executives. You have emphasised the need to ensure merit-based appointment and renewal of talent. In particular, the expectation that 'fixed term' is fixed term.
13. The coalition agreement to amend the Act includes a focus on driving performance. Some options for strengthening performance management of chief executives and agencies have also been considered.

Coalition agreement

14. The Coalition Agreement between the National Party and the ACT Party signals an intention to "amend the Public Service Act 2020 to clarify the role of the public service, drive performance, and ensure accountability to deliver on the agenda of the government of the day."

Summary of proposals

15. We understand that you would like to:
- Clarify the role of the public service.
 - Streamline chief executive responsibilities.
 - Improve tools to reduce silos.
 - Increase rigour of the chief executive appointment process.
 - Improve chief executive performance management.

Clarifying the role of the public service

16. We understand that you are concerned that there has been decreased emphasis on political neutrality, responsiveness, and efficiency, and would like to re-emphasise these in the legislation.

17. While we currently lack systematic evidence of a decline of political neutrality or responsiveness, there have been several concerning events. In particular, we note that there a large number of unauthorised disclosures ('leaks') from public agencies in the months following the 2023 General Election. The Commission has seen these unauthorised disclosures as serious integrity violations, has investigated several disclosures, tightened information security practices, and sought to reinforce behavioural expectations across the public service. We have also heard from ministers about instances where they believe public servants are not implementing government policy with neutral competence.
18. The lack of systematic evidence makes effectively targeting interventions more difficult. This year, we will conduct a census of public servants including questions about public service ethics and integrity, which will improve our evidence-base in future.

Clarifying the purpose, responsibilities, and principles in Part 1 of the Public Service Act 2020

19. We note that the Public Service Act 2020 intended to strengthen political neutrality. However, the Act is more complicated than the State Sector Act 1988 that preceded it, with many different provisions describing different aspects of the role of the public service (ss 11, 12, 13, 14, 15, 16 and 52). We also note that there has been a shift in the order of the Act, with the provisions relating to the 'principal responsibilities' of chief executives to provide advice to the Government of the day and to implement their policies shifted much later in the Act (to s 52) and re-labelled as 'general responsibilities.' While ordering within legislation does not impact the legal importance of different sections, it may be inferred that way by some readers including those within the public service.
20. The list of responsibilities for chief executives has lengthened over time, with additional responsibilities added in the State Sector Amendment Act 2013 and the Public Service Act 2020. It is possible that this has been perceived as diluting the focus on supporting the government to develop and implement their policies, delivering high quality public service, and the efficient and economical use of public funds.
21. If the Public Service Act 2020 were to be amended with the intention of improving political neutrality, one option would be to streamline the description of the role of the public service (at Part 1, subpart 2 of the Act) and update this to emphasise your objectives. This could include:
 - a purpose statement (a restatement of s 11 and s 13), focused on serving the Government of the day for the benefit of New Zealanders.
 - renaming 'general responsibilities' of chief executives to 'principal responsibilities', as in the State Sector Act 1988, to clarify that these responsibilities have primacy.
 - shifting these principal responsibilities to follow immediately from the purpose statement.
 - focusing the principal responsibilities on supporting the government to develop and implement their policies, to deliver high-quality public service, and on the efficient operation of government agencies (a restatement of s 52).
 - retaining the 'public service principles' (which include merit-based appointments and political neutrality) but shifting these to be after the principal responsibilities, to convey that these are the principles to follow while delivering on the responsibilities.

Code of Conduct

22. Once the final scope of changes to the Act are known, it would be timely to review the Code of Conduct which was last issued by the Commissioner in 2007. The code is issued by the Commissioner and does not require legislative change.

Streamlining chief executives' responsibilities

23. We understand that you are concerned that chief executive responsibilities have become too diffuse and impede their ability to efficiently manage the agencies they lead. We understand you are concerned that this is distracting from a focus on the delivery of priorities for the Government and services for New Zealanders. We also understand that you are concerned about a duplication of responsibilities (with the Public Service Act 2020 restating obligations found elsewhere) and too much prescription in primary legislation, that could instead be a matter for Government policy and guidance by the Commissioner.
24. The Public Service Act 2020 added several new responsibilities for chief executives, spread throughout the legislation. In addition, the Equal Pay Amendment Act 2020 added additional responsibilities for chief executives into the Public Service Act 2020.
25. These include:
- The role of the Commissioner and chief executives in pay equity claims (s 81-84)
 - Agencies must have a policy for recognising the principle of equitable pay (s 73(3)(i))
 - Agencies must have a policy for eliminating bias, including gender bias (s 73(3)(j))
 - Chief executives must be guided by the principle that the public service reflect the makeup of society (s 73(1)(a))
 - Chief executives must foster a workplace that is inclusive of all groups (s 73(1)(b))
 - Chief executives must build the capability to engage with Māori and understand Māori perspectives (s 14(2)(a))
 - Chief executives must report to the Commissioner on progress to build the capability to engage with Māori and understand Māori perspectives (s 15(3))
 - Chief executives must prepare a Long-Time Insights Briefing at least every three years (sch6, ss 8-9).
26. We would like to engage with you further on the implications of removing, amending, or streamlining these provisions. Together with this briefing we have provided you with an annotated agenda to support our scheduled discussion on 10 February 2025.

Improve tools to reduce silos

27. We also understand that you are concerned that chief executives are operating in silos, particularly regarding costly information and communication technology investments.
28. The Government has strong expectations of improved public service performance. Some of this will be achieved through agencies acting separately to efficiently deliver the goods and services for which they are responsible. Some will be achieved through agencies working together to achieve higher performance than could be achieved on their own.

29. There is a tension between freeing up chief executives from entangling obligations and reducing silos. Since 1988, the New Zealand public service has generally avoided centralised rules in favour of chief executive freedom to manage.

System Leaders

30. Since 2011, several chief executives have been given additional responsibilities for leading a common back-office function, and these were formalised in the Public Service Act 2020 as 'System Leaders.' The roles are designated by the Public Service Commissioner (s 56).
31. Three further mechanisms were added to provide stronger tools for enforceability to System Leaders, and/or to promote consistent approaches to cross-cutting priorities generally:
- The **Joint Operational Agreement** (s 38) was intended to allow agencies to enter into agreements with each other, and reduce the behavioural uncertainty that agencies would fulfil their commitments. Agencies that are part of the Crown are not legally allowed to enter into contracts with each other, and the Joint Operational Agreement was intended as an alternative. Among the possible uses, this would allow one agency to deliver a back-office function on behalf of another, or invest in an asset where ongoing costs would be shared. This has never been used.
 - The **Interdepartmental Venture** (ss 32-37) was intended to allow agencies to jointly invest in assets, for example informational and communication technology assets, and then jointly govern the efficient utilisation of those assets to realise cost savings. This has never been used.
 - The **System Leaders Standards** mechanism (s 57) allows Ministers to agree that a System Lead sets a standard to which other agencies are legally required to comply. This risks all the downsides of a rules-based bureaucracy, but was considered potentially necessary in some situations where there is a compelling case to override agency autonomy. The first use of this will be by the Government Chief Digital Officer, who intends to issue a *standard for providing third parties with access to government-held personal information*.
32. We consider the Joint Operational Agreement, Interdepartmental Ventures, and System Leaders Standards to be strong but largely untested mechanisms for compelling agency behaviour. We are able to discuss with you opportunities to make targeted use of these mechanisms.
33. Joint Operational Agreements and Interdepartmental Ventures retain chief executive accountability for their decisions. Requiring agencies to comply with a standard limits the ability of individual ministers to direct their agencies, and similarly limits the ability to hold chief executives accountable for the performance of their agencies when they cannot control how their agency is operated.

Key Positions

34. A key lever for System Leaders in improving the performance of back-office functions is through ensuring that there are competent people in the relevant roles. In some jurisdictions (for example, Singapore), there is a 'dual-key' appointment system where the agency chief executive and the system leader must jointly agree to relevant appointments.
35. The State Sector Amendment Act 2013 allowed the Commissioner to designate 'key positions' and delegate another public servant the power to veto appointments to these positions. This was used to allow, for example, a representative of the Treasury to sit on the

selection panel for all agency Chief Financial Officers, to ensure that candidates were suitably competent.

36. This was removed in the Public Service Act 2020 because it placed an administrative burden on the Commission, and because agency chief executives resisted the interference.
37. We consider that reinstating Key Positions, together with a provision to allow system leaders to have input into performance reviews, has potential to strengthen cross-agency work and support your objectives of developing and moving senior talent from within and outside the public service. This could be used to allow, for example, the Government Chief Digital Officer to have a say in the appointment and performance reviews of agency Chief Information Officers.

Increase the rigour of the chief executive appointment process

38. We understand that you would like to increase the rigour of the chief executive appointment process, to encourage more contestability of processes and open the process to a wider pool of candidates, and to ensure that appointments are based on merit.

Contestability of re-appointment

39. We understand that you are concerned that chief executives are staying for too long in one role, and that a culture has developed where chief executives expect to be reappointed at the end of their initial fixed-term contract. Put another way, 'fixed-term' should be fixed-term.
40. The process for re-appointment for chief executives is largely unchanged from the State Sector Act 1988. The Commissioner may recommend to the Minister for the Public Service that an existing chief executive be reappointed for a further term, subject to agreement by the Governor-General in Council.
41. We understand that you have requested advice on removing the re-appointment provisions, and instead requiring a contestable process as for other chief executive appointments. The incumbent chief executive could apply through a contestable process but would be assessed against other candidates.
42. This could increase the cost and time taken for chief executive appointments overall, but provides the opportunity to identify potentially better candidates. This would also allow for the consideration of candidates from outside of the public service including those from the private sector.

Transfer of existing chief executives into another vacant chief executive role

43. A similar provision exists that allows the Commissioner to recommend to the Minister for the Public Service that existing chief executives be transferred to another vacant chief executive role (sch 7, s 3(6)). This was introduced in the State Sector Amendment Act 2013 and unchanged in the Public Service Act 2020. We have not yet discussed this with you and would like to seek your views at our meeting on 10 February 2025.

Making appointments solely on the basis of merit

44. We also understand that you are concerned that there is not sufficient focus on merit in the appointment of chief executives, and would like advice on removing the requirement to take into consideration diversity and inclusion when making chief executive appointments.

45. The Public Service Act 2020 added a new requirement that the Commissioner take into consideration diversity and inclusion when making chief executive appointments (sch 7, s 3(7)).
46. Diversity policies are most suited to large cohorts, like the public service, where the many groups in society can be reflected at a statistical level, and are less suited to being a consideration in individual employment decisions.
47. For some chief executive roles, the department/departmental agency/function they are responsible for relates directly to one or more groups in society (known as 'population agencies'). In these cases, knowledge of that community, relationships within that community, and respect and trust of that community may be critical to the successful performance of the role. These attributes would be included in the position description for the role, and therefore assessed as part of 'merit' or being most suited to the role. It may be that individuals from within that community are more likely to have these attributes, but the selection process would be based on functional attributes and not identity.
48. It would be possible to remove requirements relating to diversity and inclusion from the process for chief executive appointments, while still considering knowledge and relationships with specified communities in appointments for 'population agencies.'

Government Statistician

49. We understand that you are interested in moving the special provisions relating to the appointment of the Government Statistician from the Public Service Act 2020 to the Data and Statistics Act 2022.
50. The State Sector Act 1988 described a general process for the appointment of chief executives, but included exceptions for several roles including the Commissioner of Police and the Government Statistician. In 2008, the exceptions relating to the Commissioner of Police were transferred to the Policing Act 2008. This was done because the functions of the Commissioner of Police are primarily described in the Policing Act, and so it would be logical to locate the appointment provisions in the same legislation.
51. A similar logic may be used to transfer the provisions relating to the appointment of the Government Statistician to the Data and Statistics Act, which also describes the role and functions of the Government Statistician.

Improve chief executive performance management

52. We understand that you are concerned that the Commissioner's process for reviewing the performance of chief executives has not always been robust or transparent.
53. The process for reviewing the performance of chief executives (sch 7, s10) is largely unchanged from the State Sector Act 1988.
54. The process, practice, and expectations for reviewing the performance of chief executives has changed over time, reflecting different Government priorities. Specifying the process or expectations in primary legislation would reduce the flexibility of the Commissioner to adapt to different Governments. However, there is currently no specification on how performance reviews should proceed, which does not contribute to confidence or transparency by Ministers or the public.
55. One option would be to require the Commissioner to publish a framework for the process and content of performance reviews.

56. The Commissioner is responsible for managing the performance of chief executives because they are the employer of chief executives, and to separate the performance of chief executives from relationships with individual ministers.
57. It has been practice for the Commissioner to seek input from the appropriate Minister/s while conducting a performance review, but this has not been required in the Public Service Act 2020. Legislating this practice could provide greater confidence that Ministerial views were sought, and greater transparency about the process overall.
58. Additionally, the Government has a legitimate interest in how the Commissioner is driving performance across the public service. The requirement for the Commissioner to publish a framework for performance reviews could also require that the Commissioner consult with the Minister for the Public Service.
59. Sometimes it is desirable for the Commissioner to do a deeper dive into the performance of agencies in order to support the Government's priorities. Performance improvement reviews represent one such tool, that are currently completed by the Commissioner by agreement of the agency. The Public Service Act 2020 could be amended to allow the Commissioner to conduct a performance improvement review of any agency in the public service.

Next Steps

60. We will provide you with annotated agenda ahead of our scheduled meeting on 10 February 2025 to discuss:
- Options to remove, retain, or change new responsibilities for chief executives added in the Public Service Act 2020.
 - The provision allowing the transfer of chief executives from one role to another without a contestable process.
- 9(2)(f)(iv) confidentiality of advice
61. To meet the timeframes you have indicated, by 28 February 2025 we intend to provide you with:
- Draft Cabinet papers to progress your desired changes.
 - Advice on the impacts of these changes, if implemented, including any risks.
62. An indicative timelines follows:
- 10 February** - Clarify your approach to reducing responsibilities of chief executives
- Begin engagement with other departments
- 20 February** - Initial engagement with you on draft Cabinet papers
- 28 February** - Provide you with advice and seek final decisions
- Provide you with draft Cabinet papers
- Provide you with draft Regulatory Impact Statement.