



Report Title:	Final draft Cabinet papers for ministerial consultation		
Report No:	MoSR 2025-0160		
Date:	28 February 2025		
To:	Hon Judith Collins KC, Minister for the Public Service		
Action Sought:	Circulate the attached draft Cabinet papers for ministerial consultation	Due Date	14 March 2025 (Deadline for feedback)
Contact Person:	Callum Butler, Manager, Strategy, Policy and Integrity		
Contact No:	9(2)(a) privacy		
Encl:	Yes – 3 Cabinet papers and a draft Regulatory Impact Statement	Priority:	High
Security Level:	IN CONFIDENCE		

Executive Summary

1. You have requested advice on amending the Public Service Act 2020 during this calendar year.
2. This paper provides advice on further changes discussed with you at our meeting on 20 February and changes indicated on your feedback to our previous advice (MOSR 2025-0135 refers).
3. Attached are three draft Cabinet papers, and a draft Regulatory Impact Statement, for ministerial consultation. To meet your intended timelines, ministerial consultation and departmental consultation will need to be undertaken from 3 - 14 March 2025.

Recommended Action

We recommend that you:

- a **agree** to circulate the attached draft Cabinet papers for ministerial consultation.
Agree/disagree.
- b **agree** that the Public Service Commission will undertake departmental consultation concurrently to ministerial consultation
Agree/disagree.
- c **agree** that Te Kawa Mataaho Public Service Commission release this briefing once decisions have been made by Cabinet.
Agree/disagree.

Hon Judith Collins KC
Minister for the Public Service

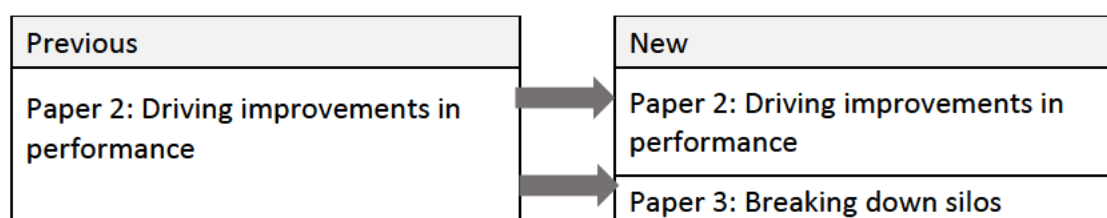
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Purpose of Report

4. To provide you with three updated draft Cabinet papers on proposed amendments to the Public Service Act 2020, and a draft Regulatory Impact Statement, to circulate for ministerial consultation. This report also provides you with further advice on additional proposals discussed with you at the agency meeting on 20 February.

Context

5. You have requested that the Public Service Amendment Bill has a priority 3 categorisation on the legislation programme 2025 – to be passed by the end of the year. To meet this deadline, ministerial consultation and departmental consultation will need to be undertaken from 3 - 14 March 2025.
6. On 20 February, we had a more in-depth discussion with you about feedback received from chief executives about possible changes to the Act, and sought clarification from you on proposals relating to pay equity bargaining, diversity and inclusion and Long-term Insights Briefings. Through this discussion, and subsequent written feedback on our report, you confirmed that you wish to:
- Retain provisions relating to the management of pay equity bargaining.
 - Retain the Public Service Values in the Act.
 - Remove the requirement for agencies to produce Long-term Insights Briefings.
 - Retain the flexible organisational forms (departmental agencies, interdepartmental executive boards, interdepartmental ventures) in the Act.
 - Make no further changes regarding system leaders except adding key position provisions.
 - Add a special provision to allow Policy Advisory Group advisors at the Department of the Prime Minister and Cabinet to be appointed on a fixed-term basis.
 - Make no change to the immunity from prosecution clause in relation to third-party providers.
 - Provide the Government with the flexibility to appoint either one or two Deputy Commissioners.
 - Add a new power for the Commissioner to restrict the use of specific vendors and products on the grounds of national security or national interest.
7. This change to the Commissioner's powers will require relatively complex drafting provisions, and so we have split the previous Cabinet paper 2 into two separate papers:



8. As indicated in our previous report, we have also provided you with a draft Regulatory Impact Statement (RIS). This is in alignment with the new Cabinet Office Circular requirement that a draft RIS be provided alongside Cabinet policy papers for ministerial consultation [CO (24) 7]. This RIS reflects the direction you have provided

on your preferred and proposed amendments to the Public Service Act 2020. Analysis will be further developed and refined before publication when the Bill is lodged.

Area for clarification: Restricting use of specific vendors, services and products

9. Based on your direction at our meeting on 20 February, we have included in Cabinet paper 2 a proposal to allow the Public Service Commissioner to direct public service agencies to restrict the use of specific vendors, services and products.
10. The Public Service has access to information that has national security implications. Certain technologies, particularly computer or mobile phone applications and internet connected devices, may present a security threat by allowing foreign governments to access government data. Of note, this includes both products that would be purchased for use, and free-to-use web-based or downloadable applications that do not require purchasing.
11. The current practice for restricting the use of vendors, services or products provides few options:
 - The Government Chief Information Security Officer (GCISO) can issue guidance on the use of specific vendors or products, but this guidance is non-binding. We understand that GCISO has done so regarding several products.
 - The GCISO mandate is focused on cybersecurity, and it has fewer levers to take action in response to broader national security concerns (e.g. jurisdictional risks).
 - Cabinet could direct agencies not to use a vendor, service or product. We understand that you would prefer for Cabinet and Ministers to not make the determination of which vendors, services or products be restricted, to reduce perceived politicisation of the decision.
12. The option that we discussed with you would involve the Commissioner issuing such a direction, following consultation with the Director(s)-General of NZSIS and/or GCSB and other agencies as appropriate (e.g. MFAT). We have also proposed that the Commissioner consult with the Minister for the Public Service. Given that Ministers and Cabinet are responsible for maintaining international relationships and obligations we think it is appropriate for the Minister to be involved in any decision that may affect these.
13. Consistent with other similar legislation, we propose that the Commissioner would need to have regard to a range of considerations that will ensure the different elements of national interest are accounted for, including the nature and extent of the risk to national security or the national interest, the anticipated benefits of setting a direction in this context, New Zealand's international obligations, and the principle that the direction should be proportionate to the nature of the risk.
14. We propose that the scope of this power, if held by the Commissioner, extend to all public service agencies. This is consistent with the Commissioner's general mandate, and also the Cabinet mandate for issuing Protective Security Requirements.
15. We note that security agencies have raised with us that there may be situations where they may need to use such products, and therefore may require an exemption from the direction. We expect that similar exemptions may be needed by, for example, law

enforcement agencies. We propose that this be managed on a case-by-case basis, and have drafted the Cabinet paper to the effect that the Commissioner may issue a binding direction to one or more agencies, allowing for exemptions.

Advice

16. We believe that your proposal will meet your policy objective of providing a mechanism for restricting the use of specific vendors and products within the Public Service, and have drafted the relevant section of the attached Cabinet paper 3 to give effect to this option. However, there are other options that may meet this objective.
17. We understand that the GCISO has recently issued guidance with respect to the use of a specific product. You may wish to wait to observe whether this mechanism has been sufficient for managing the risk before making further change.
18. The issuing of such a direction requires the assessment of options against the national interest. The national interest is a broad concept, and is best understood as a trade-off between competing values rather than being a purely technical exercise. Generally, we would recommend that Ministers, Cabinet, or Parliament, are best-placed to make determinations of the national interest. It is arguable that such a directive power would more appropriately sit with a relevant Minister (e.g. the Minister for National Security) in this context.
19. However, while a Minister may be better placed to make determinations of the national interest, we understand that you see benefit in the decision sitting with a statutory officer to prevent the perception that such directions are politically motivated.
20. If you would like to provide a statutory officer with the power to direct public agencies, you may wish to consider which officer is best placed to determine which vendors or products to restrict. The Commissioner does not carry out assessments of national security or national interest risks as part of their general functions, and would need to rely on advice from others to do so. The Director(s)-General of GCSB and NZSIS, or the Director of National Assessments, are well-placed to assess national security risks, but are arguably no better placed than the Commissioner to assess the broader national interest.
21. Providing a statutory power to the Director(s)-General of GCSB or NZSIS, or the Director of National Assessments, would most appropriately be done through amendments to national security legislation. We understand that this may not meet your policy objective because amendments to such legislation are not currently underway and therefore such a change could not be pursued as quickly as changes to the powers of the Commissioner under the proposed amendments to the Public Service Act 2020.

Next Steps

22. To meet timeframes you have indicated, we recommend ministerial consultation start on Monday 3 March. The Public Service Commission will undertake departmental consultation simultaneously.