



<b>Report Title:</b>	<b>Public Service Act amendments - updated draft Cabinet papers</b>		
<b>Report No:</b>	<b>MoSR 2025-0228</b>		
<b>Date:</b>	<b>14 March 2025</b>		
<b>To:</b>	<b>Hon Judith Collins KC, Minister for the Public Service</b>		
<b>Action Sought:</b>	<b>Note and agree</b>	<b>Due Date</b>	<b>17 March 2025</b>
<b>Contact Person:</b>	<b>Callum Butler, Manager, Strategy, Policy and Integrity</b>		
<b>Contact No:</b>	9(2)(a) privacy		
<b>Encl:</b>	Paper 1 – Clarifying the role and responsibilities of the Public Service Paper 2 – Driving improvements in performance Paper 3 – Breaking down silos Appendix 1: Summary of agency feedback	<b>Priority:</b>	High
<b>Security Level:</b>	<b>IN CONFIDENCE</b>		

## Executive Summary

1. This briefing provides you with updated versions of the three draft Cabinet papers proposing amendments to the Public Service Act 2020 (attached), following initial Ministerial and departmental consultation.
2. We have summarised the changes made in response to feedback received from your office from Ministerial consultation, and in response to feedback from chief executives (see Appendix 1).
3. To meet your intended timelines, the Cabinet papers, and Regulatory Impact Statement (not included with these papers), will need to be lodged on Thursday 20 March for the Expenditure and Regulatory Review Committee (EXP) meeting on Tuesday 25 March.
4. We will provide further advice in response to consultation feedback on section 73 of the Act (in relation to good employer requirements) next week, as we are awaiting Crown Law advice on these matters.
5. We can discuss any further changes you require at a meeting scheduled with you at 2.00pm on Monday 17 March.

## Recommended Action

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We recommend that you:

- a. **note** the changes made to the draft Cabinet papers in response to feedback from consultation.
- b. **discuss** the changes and advice with officials at the meeting on Monday 17 March.
- b. **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**

## Purpose of Report

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- 1 This briefing provides you with updated versions of three draft Cabinet papers (enclosed) proposing amendments to the Public Service Act 2020.
- 2 It summarises the changes made in response to feedback from your office through Ministerial consultation, and describes feedback received from chief executives and our response to that (see Appendix 1).

## Analysis

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- 3 These versions of the Cabinet papers incorporate the track changes and other comments your office has provided to us, with your direction and/or from Ministerial consultation. This includes:
  - a. Changes to language/framing of proposals as provided (across all papers)
  - b. Adding financial stewardship to the principal responsibilities of chief executives (Paper 1)
  - c. Removing Interdepartmental Executive Boards, Functional Chief Executives and Departmental Agencies from the Act (Paper 1)
  - d. Adding provisions to increase oversight and transparency in relation to public servants who do not uphold standards of integrity and conduct (Paper 1)
  - e. Reducing the number of Deputy Public Service Commissioners from two to one (Paper 2)
  - f. Additional text about the ongoing engagement regarding the design and implementation of chief executive performance pay (Paper 2)
  - g. Requiring the Commissioner to engage with Ministers when setting performance expectations for chief executives (Paper 2).
- 4 We also received feedback on the draft Cabinet papers from chief executives.

- 5 We have made changes where the suggestions aligned to your policy direction and in our view would provide greater clarity for Cabinet.
- 6 This includes technical changes proposed by DPMC and NZSIS in the 'Better risk management' section of Paper 3 (relating to the proposed power to restrict the use of products, services and/or vendors) and includes a new recommendation that the Commissioner be given the power to issue corresponding guidance to wider State services about any direction. The changes also clarify those whom the Commissioner must consult prior to issuing such a direction.
- 7 We received mixed feedback from chief executives on your proposals in relation to Long-term Insights Briefings, diversity and inclusion, contestability of chief executive appointments, key positions and flexible organisational forms. Some chief executives do not favour changes in these areas (see Appendix 1 for a summary).
- 8 We have not made changes where the suggestions did not align with your direction after previous policy advice.

*Flexible organisational forms*

- 9 Your office requested further advice on a proposal to remove Interdepartmental Executive Boards (IEBs), Functional Chief Executives and Departmental Agencies from the Act in response to feedback received through Ministerial consultation.
- 10 We have previously advised against removal of these tools (2025-0135 refers) which provide the Government flexibility to structure the public service in different ways.
- 11 Some chief executives have commented that they are able to work together effectively without legislative constraints, but experience and evidence does not support this. Incentivising public service collaboration has been a challenge consistently identified by reviews and reports since the 1980s. This included the Better Public Services programme in 2012, which introduced the departmental agency and recommended a statutory board model on which IEBs are based.
- 12 IEBs are a tool that the Government can use to require departments to collaborate on an issue that they are struggling to get prioritised across agencies. They are currently the only available workaround to Public Finance Act limitations on funding cross-agency activities. Departmental Agencies and Functional Chief Executives allow the Government to appoint dedicated chief executives accountable directly to a Minister for specified activity. They aim to mitigate some of the downsides of creating an entirely separate agency by requiring strategic connection to and shared services from a host department.
- 13 Some comments have suggested that the models confuse accountabilities. Our experience is that some chief executives have resisted collective models because these make it clearer the chief executives have accountability for contributing to a cross-cutting issue. 'Lead' chief executives (such as the GCDO, in its feedback to your office on the proposals) have expressed support for the Interdepartmental Executive Board model, noting that it requires contribution from agencies that hold important levers but might not otherwise prioritise the work.
- 14 We do agree that there is some confusion and inefficiency in the financial accountabilities and the accountability reporting requirements under the Public

Finance Act. This can be addressed with the Treasury through the subsequent tranche of Public Finance Act reforms you have been discussing with the Minister of Finance.

- 15 At this stage we have incorporated the changes proposed through Ministerial consultation, which would see these models removed. We consider there is a risk that removing the models entirely, along with stronger emphasis on chief executive autonomy and accountability in Cabinet paper 1, may result in an overcorrection. This could revert us back to the siloed agency behaviour that has been problematic in the public service since the 1980s.
- 16 The alternative would be to retain the models and note the opportunity to further assess and address accountability issues through reforms to the Public Finance Act. In the interim, if Ministers have concerns with the effectiveness of individual boards or agencies these can be easily disestablished by Order in Council, without limiting the Government's ability to use the models in the future if a need arises.

#### *Good employer requirement*

- 17 We received some consultation feedback suggesting a potential need to consider changes to section 73. 9(2)(h) legal privilege

#### *Deputy Public Service Commissioner*

- 18 The previous draft Cabinet paper proposed a default of one Deputy Public Service Commissioner, but allowing for two. In response to feedback from Ministerial consultation we have amended Paper 2 to propose that there should only be one. The proposal for two Deputy Public Service Commissioners emerged through the Select Committee process and was not proposed by the Commission in the course of the Public Service Act 2020. We think there are benefits in both approaches; retaining some flexibility may be desirable. If we reduce to one Deputy Public Service Commissioner, we will need to consider transitional arrangements.

#### *Fixed-term appointments (PAG)*

- 19 The draft Cabinet papers contained a proposal for fixed-term appointment of Policy Advisory Group (PAG) advisors. Through Ministerial consultation, updated wording has potentially broadened the scope of the DPMC's discretion, which is likely to make it more difficult to define in legislation.
- 20 Because such a provision is highly unusual and deviates from general employment law (and as your paper notes, such deviations are generally not desirable), it is important that we have a mechanism by which we designate these positions. This is to ensure that they are used appropriately and not beyond the intent. This can be finalised through drafting, and we have added wording to the Cabinet paper to that effect.

#### **Next Steps**

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- 21 To meet your intended timelines, the Cabinet papers and Regulatory Impact Statement (not included with these papers) will need to be lodged on Thursday 20 March for consideration by the Cabinet Expenditure and Regulatory Review Committee on Tuesday 25 March.
- 22 We can discuss any further changes at the agency meeting on Monday 17 March.

## Appendix 1: Summary of agency feedback and responses

We can provide further detail on any of this feedback if required.

Theme	Feedback	Response
Framing and broad comments	Clarify whether purpose will have reference to current and successive govts (CharterSchl)	Change – text updated after discussion with MO
	Supports emphasis on political neutrality and merit-based appointment (MPP)	No change
	Clarify Paper 1 is referring to the agenda, process, programme and priorities of “the Government” (not just current one) (MPP)	No change
	Supports retention of the political neutrality principle and reference to free and frank advice. Supports the emphasis on recruiting on merit. (DoC)	No change
	Don’t use term “ways of working” (jargon) in CE responsibilities (DIA)	Change – amended “ways of working” to “interoperability, coordination and collaboration”
	Create better links between CE responsibilities in Paper 1 and reducing silos in Paper 3 (DIA)	Change – added one sentence to Cab Papers 1 and 3
	Agree the Act contains unnecessary complexity/duplication impacting effectiveness as an accountability mechanism, support for clarifying responsibilities (TSY)	No change – comment
	Broad support for direction of changes, note an opportunity to extend workstreams to accelerate the reform agenda for Government in relation to operating model, funding and investment, procurement and implementation, and mixes of capability (GCDO)	No change – comment
	Strong support for the intent, focus and recommendations of paper 3, noting success of countries with a ‘digital first’ mindset.	No change – Comment
	Support overall intentions around integrity. Note pay equity and diversity remain a focus through collective bargaining (Police)	No change – Comment
Purpose statement, role (Paper 1)	Agrees that reducing duplication around roles & responsibilities helpful (DIA)	No change
	Put proposed wording for new purpose statement in the Cabinet paper for clarity (DIA)	No change – address through drafting
	Make references to services being provided based on need, or qualifying that services should meet the needs of all New Zealanders (TPK)	No change (adds more prescription)
	Support clarification of purpose statement and suggest it cross-reference efficiency and effectivity to be gained by departments working together (GCDO)	Change – reflected in edits to CE responsibilities to avoid clutter in purpose statement
	Enhance stewardship with “evidence based” (DoC)	No change – too prescriptive (matter of practice)
	Retain emphasis on stewardship in its broadest definition (IR)	Change – reverted to 2020 Act wording in list of CE responsibilities (e.g. includes stewardship of legislation)

Theme	Feedback	Response
	Keep stewardship of legislation, don't streamline stewardship in CE responsibilities (MinReg and PCO) - Alternative is s.32 of the State Sector Act.	Change – reverted to 2020 Act wording in list of CE responsibilities (e.g. includes stewardship of legislation)
Chief executive responsibilities (Paper 1)	Regulatory functions should be added to CE principal responsibilities (MinReg, PCO)	Change – amended CE responsibilities to “efficient and economical delivery of goods, services <i>and regulatory functions</i> ”
	Amend responsibilities to include giving free and frank advice, or have as other duty (DPMC)	No change – included as a Principle
	Support clarification of responsibilities, would like to see coordination/interoperability referenced (GCDO)	Change – “ways of working” amended to “interoperability, coordination and collaboration” in list of CE responsibilities
Accountability structures	Keep IEBs but reduce formality and reporting (MfE)	Advice provided in briefing
	Reconsider effectiveness of organisational arrangements introduced by 2020 reforms (TSY)	Advice provided in briefing
	Keep IEBs, including ability to hold appropriations (GCDO)	Advice provided in briefing
	Support for joint/flexible organisational forms (Police)	Advice provided in briefing
Diversity & Inclusion (Paper 1)	Negative perception risk of removing D&I provisions (MfE)	No change
	Queried if D&I is reflected in GWPS, does it need to be removed from s.44(c)? (MCH)	No change
	Note D&I removal, recognise utility of GWPS for reflecting govt priorities (MFAT)	No change
	Removing D&I provisions won't have much direct impact, risks outweigh benefits (MfE)	No change
	Moving D&I to GWPS risks legal challenge under Human Rights Act 1993 and Employment Relations Act 2000, which require equal employment opportunities (MPP)	No change – Agencies are separate entities for purposes of employment and are responsible for maintaining their compliance with law.
	Provided research evidence toward benefits of diverse workforces (MPP)	No change – PSC to consider for RIS
	Decentralised approach to diversity will result in fragmentation and inefficiency; retain a general legislative commitment to diversity and inclusion but more flex in how (MPP)	No change – Minister direction clear after policy advice
	Alternative – if using GWPS, introduce mandatory D&I reporting (MPP)	No change
	Pacific people bring insight to the Public Service and D&I has levelled entry point (MPP)	No change
	Removal of D&I provisions may cause agencies not to ‘cast the net’ as wide for merit appointment (Defence)	No change – Minister direction clear after policy advice
	Disagrees with removing D&I, important for living standards, inclusion, trust. Keep reporting and making progress (DoC)	No change – Minister direction clear after policy advice
	Wants more information on impact of D&I changes (MCH)	No change



Theme	Feedback	Response
	EEO provisions are important, should be kept (as per current proposal) (Whaikaha)	No change
	Believes s73(c) requires CE ensure compliance with policy and annual reporting on compliance (Whaikaha)	No change – mandatory reporting collectively agreed by PSLT via Papa Pounamu programme
	Removing D&I provisions not directly necessary for rights of disabled people, but maintain focus on EEO and reasonable accommodations (Whaikaha)	No change
	s73 and s75 changes have the potential to slow progress on pay equity in the public sector, propose that the Commissioner MUST issue a GWPS, not may (MfW)	No change – Minister direction clear after policy advice
	s73 and s75 changes have the potential for private organisations to interpret changes as a signal that closing gender pay gap is not a priority, or undermines credibility of work underway, propose mitigating communications to business leaders (MfW)	No change
	Recommend that diversity and inclusion remain an expectation both for chief executives and the Commissioner, or that policies addressing workforce and equity are required (TPK)	No change – Minister direction clear after policy advice
LTIBs (Paper 1)	Remove LTIBs (MFAT)	No change – Minister direction clear after policy advice
	Keep LTIBs but streamline form (IR)	No change – Minister direction clear after policy advice
	Keep LTIBs but reduce prescriptiveness, look at other stewardship levers (DPMC?) (DoC)	No change – Minister direction clear after policy advice
	Keep LTIBs led by central agencies (Australia model) (DIA)	No change – Minister direction clear after policy advice
	Keep LTIBs led by DPMC (DPMC)	No change – Minister direction clear after policy advice
	Keep LTIBs but focus on other stewardship documents and/or reduce prescriptiveness (TSY)	No change – Minister direction clear after policy advice
	If LTIBs removed, operational approach proposed for closing down requirement (DPMC)	No change – Implementation
Chief executive appointment (Paper 2)	More CE contestability may lead to churn or chilling effect (free & frank, stewardship), maybe shorter cycles as CEs look sooner (DoC)	No change – Minister direction clear after policy advice
	CE appointments to include option for extension without contest for continuity (MfE)	No change – Minister direction clear after policy advice
	Introduce streamlined recruitment process for CEs re-applying (DoC)	No change – Minister direction clear after policy advice
	Supports contestability (DIA)	No change – Minister direction clear after policy advice
	CE contestability to include option for EOIs from existing CEs rather than full market (DPMC)	No change – Minister direction clear after policy advice

Theme	Feedback	Response
	We see value in carefully weighing the relative costs and benefits of the power for the Commissioner to move CEs around without a contestable process (ie sch 7 s 6) (DPMC)	No change – Matter of practice
	Amend wording to signal an “unbiased merit-based appointment process” (MfEC)	Change – Paper 1 updated to include text “unbiased, merit-based appointment process”.
	Amendment to clarify how appointment provisions for Comm. of Police transferred (Police)	Changed
PAG (Paper 2)	Future proof legislative mechanism by making highly specialised roles/groups fixed term through an Order in Council, not legislation – avoids special categories (DIA)	No change – Minister direction clear after policy advice
	Potential for politicisation of PAG appointments, Potential PAG appointments will be unattractive to public servants, and comment on PAG role in translating priorities into performance expectations (DoC)	No change – Minister direction clear after policy advice
	Anchoring PAG to fixed-term appointments has potential to dilute expertise due to three-yearly turnover, notably for advisors with capability in Māori subject matter (TPK)	No change – Minister direction clear after policy advice
Chief executive performance (Paper 2)	Plan for performance reviews should be consulted on with chief executives too (DIA)	No change – Matter of practice
	Support for less prescriptiveness (DoC) Codifying performance management process mitigates risks around CE contestability (DoC)	No change
	Plan for performance review needs to consider CEs responsible to multiple Ministers, especially divergence of views	No change – Implementation (address in design of the proposed plan)
	Make clearer in text whether referring to CE or agency performance (DPMC)	Change – minor text edits to clarify
	Suggest that CE performance expectations include specific objectives relating to alignment/performance in relation to direction and guidance of system leads, and that system leads be invited to submit feedback to the Commissioner Ministers on this (GCDO)	No change – this is a matter for the plan the Commissioner will develop
	Noted Policing Act allows for Ministerial involvement in performance review (Police)	No change
Key positions (Paper 3)	PAG fixed-term / key positions doesn’t solve siloes. Centralised appointments? (CharterSchl)	No change – Minister direction clear after policy advice
	Key positions won’t allow talent to be moved around, adds burden (CharterSchl)	No change – Minister direction clear after policy advice
	Does not agree key position appointments will solve problem as described (DoC)	No change – Minister direction clear after policy advice
	Specialist expertise/system lead should provide a recommendation not a decision for key position appointments (CE has accountability) (Transport)	No change – Minister direction clear after policy advice
	Support key position provisions (DIA)	No change – Minister direction clear after policy advice
	Do not recommend proceeding with Key Positions; if it does proceed make central involvement limited to appointment panels and not performance reviews (TSY)	No change – Minister direction clear after policy advice



Theme	Feedback	Response
	Support for key positions proposals (GCDO)	No change
	Exclude Police from key positions powers (Police)	No change – Matter for drafting
Silos/system (Paper 3)	Bottom-up/multilateral approaches, won't work or will continue to be inefficient (DoC)	No change – Comment
	Give system leads ability to direct individual agencies (MBIE)	No change – Previous advice provided on this.
	Broaden system lead powers (specifics in relation to property) (MBIE)	Specific powers should be included in legislation relevant to the system lead role
	Suggestion that System Leads be enabled to issue agency-specific directions (GCDO)	
	Suggest that the role of system leads in setting long-term direction in their domains – and expectation that agencies consider this – be reflected in the Act (GCDO)	No change – current provisions are permissive (s 57 system leader standards can do this)
	Consider how existing system lead Cabinet mandates could be transitioned to formal standards (under s 57) (GCDO)	Change – added text in Paper 3 to reflect this.
	Risks of single point of failure at system lead level, but cross-system mechanisms have led to more diffuse accountability and issues falling through cracks (Transport)	No change
	Scale purchasing and efficiency may not extend to Crown entities (Transport)	No change – there are mechanisms that can be used in the Crown Entities Act to give effect to the same thing
	Support changes re: silos, system leadership (DIA)	No change
	Strengthen language around roles/responsibilities of CEs during strategic crisis (DPMC)	No change
Better risk management (Paper 3)	Country-neutral framing important (MFAT)	No change
	Support for requirement for Commissioner to consult MFAT, also Cabinet (MFAT)	No change
	Supports increased powers in the interest of national security (DoC)	No change
	The scope of the vendor/product ban (vendor/service/product) is drafted wider than problem statement (digital tech) – check to avoid accidental misuse (Defence)	No change
	Support ban power, will help make it work in practice (DIA)	No change
	Proposed track changes to Paper 3 around ban power/risk management section – framing, clarification of who can be consulted, and explicit comment re: issuing as guidance to wider State services (DPMC)	Change – technical edits incorporated as proposed
	Proposed track changes to Paper 3 around ban power/risk management section (DPMC) –	Change – technical edits incorporated as proposed
	Paper 1 Rec 9.8 to include reference to resilient public services (DPMC)	No change – too prescriptive
	Paper 1 Rec 9.8 consider strengthening stewardship (DPMC)	No change – Principle of Stewardship (s 12) remains
	Broaden application of power to restrict to wider State services (DPMC)	Change – include text to allow Commissioner direction to be issued as guidance to wider State services
	A range of technical comments to RIS to support analysis of power (NZSIS)	PSC to consider for RIS

Theme	Feedback	Response
	Track changes to Paper 3, to broaden the type of risks that may manifest (NZSIS)	Change - technical edits incorporated as proposed
	Track changes to Paper 3, broader scope to “direction to restrict (including prohibit)” and mirror the same in recs(NZSIS)	Change - technical edits incorporated as proposed
	Track changes to Paper 3, clarify that advice sought only from within public service (not “subject matter experts” and mirror the same in recs (NZSIS)	Change - technical edits incorporated as proposed
	Track changes to Paper 3, change language around protecting classified information to allow some controlled release and mirror the same in recs (NZSIS)	Change - technical edits incorporated as proposed
	Support power to restrict use of products, vendors or services, request a note be included about GCDO advice on drivers of inefficiencies (GCDO)	Change – text added alongside MO edits on same paragraph about forthcoming advice
	Support powers re: restricting use of products, services vendors; can be consulted (Police)	No change
Other	Gap in analysis around whether drift in focus or performance ascribed to 2020 Act (DoC)	Matter for RIS
	Relationship between portfolios (trade-offs between large & small agencies) (DoC)	Not in scope
	Department/Crown entity boundary (esp re risks/legal advice); collaboration	Not in scope
	Tension between Te Tiriti aspects of the Act and performance expectations?	Not in scope
	Suggestion for an annual regulatory systems bill (DoC)	Not in scope
	Strong support for strengthened role of the Commissioner (DoC)	No change
	Include ODESC [Officials Committee for Domestic and External Security Coordination] system responsibilities for CEs in Public Service Act (Paper 3) (DPMC)	No change – Not in policy scope, address through emergency management legislation process
	Wants to know more about the proposed framework to measure merit (MCH)	No change
	Consider Commissioner powers re: oversight/transparency with Crown agents/entities (TSY)	No change – broad comment
	Engage on any consequential amendments for the Public Finance Act (TSY)	No change – implementation