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| AIDE MEMOIRE | Amendments to the Public Service Act 2020 – Cabinet discussion | | |
| Reference Number: | MoSR 2025-0265 | | |
| Date: | 21 March 2025 | | |
| To: | Hon Judith Collins KC, Minister for the Public Service | | |
| Contact: | Callum Butler, Manager Strategy, Policy and Integrity, 9(2)(a) privacy | | |
| Encl: | Appendix – Summary of proposals | Priority: | High |
| Security Level: | IN CONFIDENCE | | |

Purpose To support discussion of papers proposing amendments to the Public Service Act 2020 at the Cabinet Social Outcomes Committee (SOU)

Date of meeting 26 March 2025

Summary of proposals You are proposing amendments to the Public Service Act 2020 that will:

- Drive improvements in Public Service performance, efficiently and effectively serving the government to deliver value for money for all New Zealanders; and
- Reinforce the core principles of political neutrality, appointment on merit to all positions and professional competence.

A more detailed summary of proposals is in **Appendix 1**.

Two matters raised during Ministerial consultation may come up for discussion. Key points from the Cabinet papers and our previous advice (MoSR-2025-0228) are below.

Section 73, 'good employer' provisions You are proposing to remove ss 73(3)(i) and (j).

- These provisions deal with recognition of the importance of pay equity and ensuring the remuneration decisions are without bias.
- Removing these will return the good employer provisions to the form it was prior to changes made in the Public Service Act 2020.

You are proposing to keep the rest of s 73 intact.

- The good employer provisions were introduced in the State Sector Act 1988. They were broadly acceptable to all governments and stood the test of time.
- At their core the provisions are about ensuring the fair and proper treatment of employees, and generally align with your expectation that employees must be treated fairly, with respect, and appointed on merit.
- They provide a framework that allows all employees to demonstrate merit through fair processes, and ensure that agencies are drawing on the widest possible talent pool to fill vacancies and decide on promotions.



Andy Foster MP has proposed a members' bill on related matters [the Public Service (Repeal of Diversity and Inclusiveness Requirements) Amendment Bill].

- The Bill is aligned to your proposals, except that it also proposes removal of s 73(3)(d)(iii) which relates to recognising the "need for greater involvement of Māori in the public service".

■ 9(2)(h) legal privilege
[Redacted]

During consultation, 9(2)(h) legal privilege
[Redacted] based on
an employment court case involving NZ Customs.

■ 9(2)(h) legal privilege
[Redacted]

■ [Redacted]
[Redacted]
[Redacted]

■ [Redacted]
[Redacted]
[Redacted]

Accountability structures (flexible organisational forms)

During consultation, some comments proposed to remove Interdepartmental Executive Boards (IEBs), department agencies (DAs) and functional chief executives (FCEs). The comments suggested that these models confuse and/or dilute chief executive accountability.

- These entities provide Government with flexibility to organise the Public Service in different ways, particularly where the Government is struggling to get cross-agency action on an issue or wants to enforce shared services for smaller agencies.
- You are proposing to introduce 'sunset clauses', by amending the establishing provisions to require that IEBs and FCEs have an end date for their operation.
- Chief executives and board chairs will review arrangements for existing IEBs and advise relevant Ministers if they remain necessary, and host departments will do the same for DAs and FCEs, in consultation with the Public Service Commission.
- Officials will work with the Treasury on possible changes to the Public Finance Act 1989 to address concerns around reporting and financial arrangements.

Noted

Hon Judith Collins KC
Minister for the Public Service

Appendix – Summary of proposals

The Coalition Agreement between the New Zealand National Party and ACT New Zealand contains a requirement to: “Amend the Public Service Act 2020 to clarify the role of the Public Service, drive performance, and ensure accountability to deliver on the agenda of the government of the day.”

Paper 1 – Clarifying the role and responsibilities of the Public Service

- The Public Service Act 2020 (the Act) added new responsibilities to the core role of chief executives (CEs).
- Changes have de-emphasised the responsibility to implement the Government’s policies and make efficient use of taxpayer money.
- Prescriptive provisions that distract agencies from their core mission should be removed.
- The Act should emphasise the fundamental characteristics of the Public Service.

Clarifying the role of the Public Service (p3)

- Clarify the purpose statement to focus on delivering for the Government of the day.
- Elevate ‘general responsibilities’ to follow the purpose statement, renamed ‘principal responsibilities’, and re-ordered and clarified to focus effort.
- Maintain the public service principles, but streamline obligations relating to the principles.
- Remove the standalone ‘spirit of service’ section and a reference be restored in the purpose of the Public Service, in line with previous legislation.

Streamlining chief executive responsibilities (p5)

Accountability structures (flexible organisational forms)

- Amend establishing provisions for Interdepartmental Executive Boards and functional chief executives to require an end date for their operation.
- Ask CEs/board chairs to review existing entities and advise whether they remain necessary.
- Have officials work with the Treasury to review the reporting and financial arrangements of these entities and consider changes to the Public Finance Act 1989 to address concerns.

Promoting diversity and inclusion (p6)

- Remove CEs’ functions and responsibilities relating to diversity and inclusion from the Act (s 75; and s 44(c), the Commissioner’s functions).
- Remove references to workforce diversity and inclusiveness from the list of matters that may be addressed by the Government workforce policy statements and the Commissioner’s three-yearly briefings on the state of the public service.
- Remove provisions that require CEs to have employment policies recognising the importance of achieving pay equity and decisions about remuneration being free from bias.
- Concerns were raised about the diversity and inclusion proposals in consultation. It is important to recognise that CEs remain responsible for employment relationships which treat all people with respect and dignity, and for creating an environment in which people are looked at in the round and given merit opportunities.

Long-Term Insights Briefings (LTIBs) (p7)

- Streamline the requirements for LTIBs, requiring DPMC to support agencies in long-term thinking as a core part of policy advice, and coordinate a single LTIB once each term of government.

Paper 2 – Driving improvements in performance

- CEs are critical to the performance of the system as a whole, but their appointment may not always have been on the basis of merit.
- There is an insufficient focus on driving performance, and performance management processes and transparency need to be strengthened.
- There is not enough transparency and oversight when public servants do not uphold the expected standards of integrity and conduct.

Reinforcing the principles of merit-based appointments (p3)

Contestability of re-appointment (p3), Appointments solely on merit (p4)

- Remove the provision for CE re-appointments, making all appointments fully contestable.
- Remove the requirement for the Commissioner to take diversity and inclusion into consideration when making CE appointments.

Government Statistician (p4)

- Transfer the provisions relating to the appointment of the Government Statistician to the Data and Statistics Act 2022, to align to other specific appointments in other legislation.

Deputy Public Service Commissioners (p4)

- Reduce the number of Deputy Public Service Commissioners from two to one.

Fixed-term appointments for the Policy Advisory Group (PAG) (p5)

- Add a special provision to allow for PAG advisors to be appointed on a fixed-term basis, at the discretion of the Secretary of DPMC.

Improving CE and agency performance management (p5)

Involve the appropriate Minister (p5)

- Require the Commissioner to consult with Ministers in setting performance expectations (including KPIs) and conducting performance reviews for CEs.
- Implement changes to performance pay for CEs (final decisions pending) alongside changes to the Act.

Develop a plan for reviewing the performance of chief executives (p6)

- Require the Commissioner to develop and publish a plan for CE performance reviews (including criteria for assessment and process) and consult with the Minister for the Public Service in developing the plan.

Agency performance improvement reviews (p6)

- Allow the Commissioner to conduct a performance improvement review of Public Service agencies or Crown entities by agreement with the appropriate Minister, and require the agency to respond to the findings and recommendations.

Integrity and conduct (p7)

- Require that the Commissioner must issue minimum standards for integrity and conduct.
- Require agencies to notify the Commissioner when they commence a misconduct or serious misconduct investigation in relation to senior public service leaders.
- Require agencies to report annually to the Commissioner on the outcomes of misconduct and serious misconduct investigations ceased or concluded in the past year.

Paper 3 – Breaking down silos

- There is a tendency for agencies to work in silos, especially regarding costly digital technology investments and adherence to common standards. There needs to be more flexibility.
- System leaders need more levers to drive improvements, including financial management.
- Risk management needs to be improved in relation to specific products, services or vendors.

Utilising and improve tools to reduce silos (p3)

- Work with the Commissioner and system leaders to make targeted use of under-utilised operational tools and levers (interdepartmental ventures, joint operational agreements, and system leader standards) to address siloed approaches.

Key positions (p4)

- Give the Commissioner the power, after consulting with the relevant CE, to designate key positions within the Public Service, such as Chief Financial Officers or Chief Information Officers.
- Allow CEs to only appoint an employee to a key position with the agreement of the Commissioner (or their delegate e.g. a system lead), and to consult the Commissioner (or their delegate) on performance reviews of that employee.

Better risk management (p5)

- To manage risk to New Zealand's national interest and national security, allow the Commissioner to issue a binding direction to one or more Public Service agencies and agencies mandated in the Protective Security Requirements to restrict (including prohibit) the use of a specific vendor, product or service or class of vendors, products or services by or within those agencies. This would include:
 - Requiring the Commissioner to consult with the Minister for the Public Service and seek the advice of public sector chief executives (NZSIS, GCSB, DPMC, MFAT).
 - Requiring the Commissioner to have regard to a range of matters to ensure relevant impacts are considered.
 - Allowing the Commissioner's direction to form the basis of corresponding guidance to agencies in the State Services.