



Report Title:	Minor or Technical Amendments to the Public Service Act 2020		
Report No:	MoSR 2025-0360		
Date:	30 April 2025		
To:	Hon Judith Collins KC, Minister for the Public Service		
Action Sought:	Agree to the proposed amendments	Due Date	As soon as possible
Contact Person:	Callum Butler, Manager, Strategy, Policy and Integrity		
Contact No:	9(2)(a) privacy		
Encl:	Yes – Proposed minor or technical amendments	Priority:	High
Security Level:	STAFF IN CONFIDENCE		

Executive Summary

1. This paper seeks your approval of a list of proposed minor policy or technical amendments to the Public Service Act 2020. Most of these proposed amendments focus on clarifying and streamlining:
 - a. employment provisions for public servants,
 - b. provisions for chief executive and acting chief executive appointments, and
 - c. provisions around the functions of the Public Service Commissioner.
2. A full list of proposed amendments is attached at **Appendix 1**.
3. This paper also outlines options for the transitional provisions relating to the shift from two Deputy Public Service Commissioners to one.

Recommended Action

We recommend that you:

- a **note** that Cabinet has agreed to amend the Public Service Act 2020.
- b **note** that Cabinet authorised you as the Minister for the Public Service to make decisions on both minor policy and technical amendments to the Act, consistent with the policy described in the papers you submitted to Cabinet on amendments to the Act.
- c **agree** to the proposed minor or technical amendments listed in Appendix 1.
Agree/disagree.
- d **discuss** with the Commission officials the options for the transitional provisions for the shift from two Deputy Public Service Commissioners to one.
- e **review** the General Policy Statement for inclusion in the draft Bill.

- f **agree** that the Public Service Commission release this briefing in full once the Bill has been introduced.

Agree/disagree.

Hon Judith Collins KC

Minister for the Public Service

Purpose of Report

4. On 31 March, Cabinet agreed to amend the Public Service Act 2020 (the Act) and authorised you as Minister for the Public Service to make decisions on both minor policy and technical amendments [CAB-25-MIN-0085].
5. This report provides you with a list of proposed minor or technical amendments to the Act and seeks your approval of these amendments. A summary of the proposed minor or technical amendments is outlined by theme below, with further detail on each proposal provided at Appendix 1.
6. This report also:
 - a. outlines options for the transitional provisions for the shift from two Deputy Public Service Commissioners to one, for discussion, and
 - b. provides a draft General Policy Statement for your review.

Themes of proposed minor or technical amendments

Employment provisions

7. There are some ambiguities and inconsistencies in the employment provisions for public servants in the Act. There is an opportunity to tidy up the provisions around:
 - a. the transfer of staff from one agency to another due to machinery of government changes,
 - b. appointments for temporary or casual employees, and
 - c. the requirement for the Commissioner to approve agencies' review of appointment procedures.

Chief Executive provisions

8. There are some ambiguities in the provisions around the appointment, roles and responsibilities of public service chief executives. There is an opportunity to clarify the provisions around the:
 - a. immunity of chief executives and employees from liability when carrying out their duties,
 - b. ability of chief executives to delegate their responsibilities, and
 - c. appointment of acting chief executives.

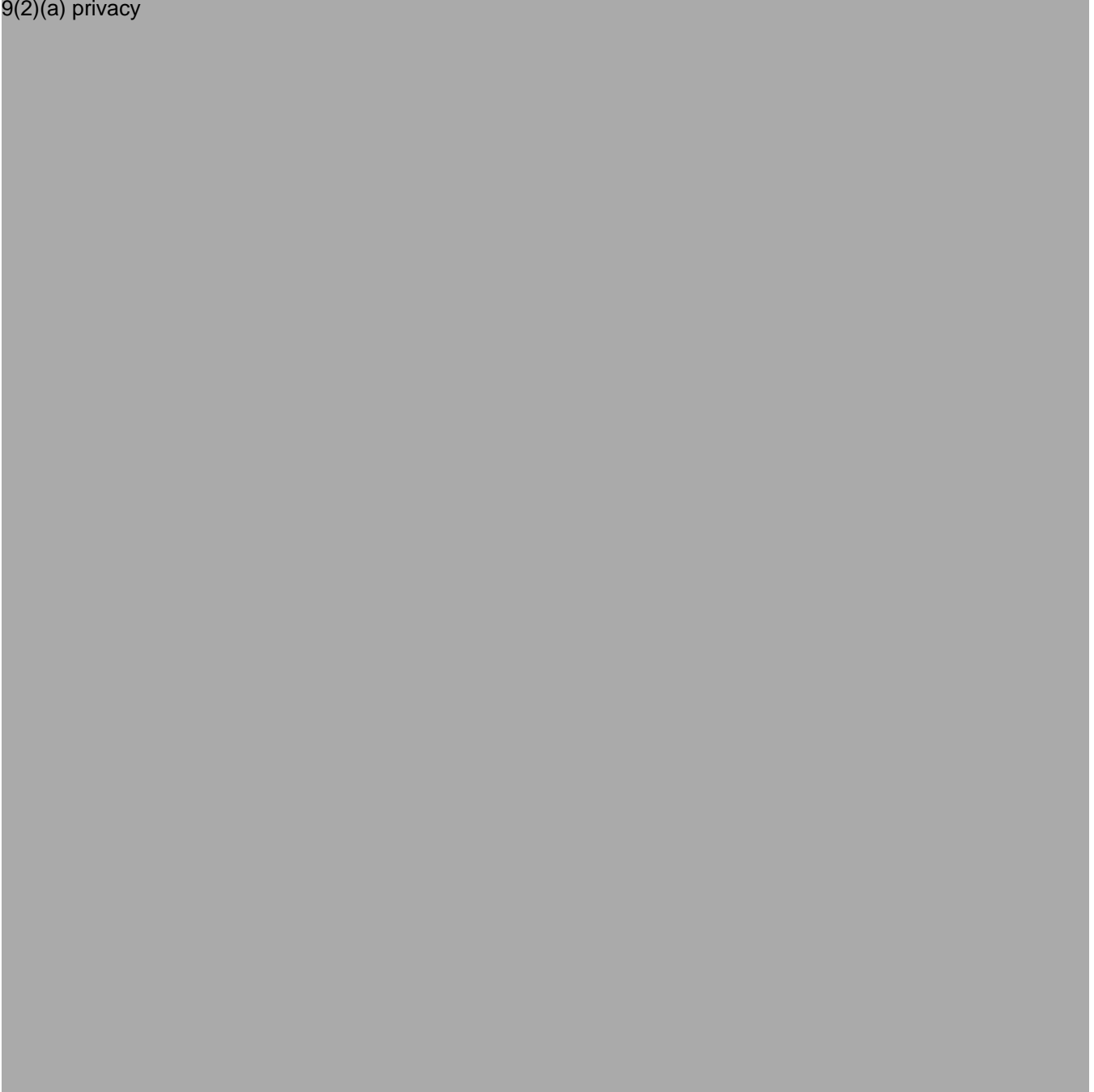
Commissioner's functions

9. There are some inconsistencies and minor unintended consequences introduced when the Act changed from the State Sector Act 1988 to the Public Service Act 2020. There is an opportunity to amend the provisions around:
 - a. the Commissioner's investigative and integrity promotion functions, and
 - b. the composition of a panel for appointing chief executives.

Transitional Provisions for Deputy Public Service Commissioners – STAFF IN-CONFIDENCE

10. Cabinet recently agreed to your proposal to reduce the number of Deputy Public Service Commissioners from two to one [CAB-25-MIN-0085].

9(2)(a) privacy



9(2)(a) privacy

General Policy Statement

13. The Public Service Amendment Bill must include a General Policy Statement that reflects the Government's policy position. We recommend that you review the draft statement below and provide any feedback:

This Bill amends the Public Service Act 2020 (the Act) which provides the statutory framework for the operation of the Public Service. The objectives of the Bill are to:

- drive improvements in Public Service performance*
- ensure that the Public Service can efficiently and effectively serve the government to deliver value for money for all New Zealanders, and*
- create more stability by removing prescription and allowing individual Governments more flexibility to express certain policy objectives using non-legislative levers.*

The amendments to this Act add to, remove, or change existing provisions to:

- clarify the role of the Public Service and streamline the responsibilities of the public service chief executives*
- reinforce the core principles of political neutrality, appointment on merit to all positions and professional competence*
- improve chief executive and agency performance management (including to ensure better oversight and transparency of public service conduct)*
- ensure capability in key positions that oversee common operational functions, and*
- provide for better management of risks to national security or the national interest.*

It is considered that the amendments to the Act provided by the Bill will have a clarifying and enabling effect on the operation of the Public Service. The Bill retains the core construct and purposes of the Act.

Next Steps

14. Public Service Commission officials are available to discuss any of the proposed amendments and the transitional provisions relating to Deputy Commissioners with you as necessary.
15. Once you have taken decisions, the Commission will issue further drafting instructions to the Parliamentary Counsel Office reflecting these.

Appendix 1: Proposed minor or technical amendments

Context	Issue	Proposed change
Employment provisions		
Sections 85-94 and clauses 7-11 of Schedule 8 of the Act set out the rules and provide information regarding transfer of functions and employees between agencies.	It is difficult to fully understand the rules and information about transfers as the information is not all in one place.	Rearrange provisions relating to transfers of functions and employees so related information sits together in the Act.
Clauses 1-5 of Schedule 8 of the Act set out the regime for vacancies and appointments in the Public Service, including the requirement to notify employees within the organisation about appointments and the opportunity to request a review of the appointment.	There is an inconsistency in these provisions as not all appointments that are subject to review must also be notified. Specifically, temporary or casual appointments are reviewable but are not required to be notified.	Amend clause 4 of Schedule 8 to remove the exception to the notification obligation for appointment of temporary or casual employees.
Clause 5 of Schedule 8 of the Act requires chief executives to put into place a procedure for reviewing appointments, and requires the procedure to be approved by the Commissioner and to comply with the Commissioner's guidelines.	The requirement to have procedures approved by the Commissioner adds a compliance requirement on chief executives and an administrative burden on the Commission, with little benefit to the system or to chief executives. Further, it is contrary to our approach to other internal procedures.	Amend clause 5(2) of Schedule 8 to remove the requirement for the Commissioner's approval of review of appointment procedures (while retaining requirements to comply with Commissioner's guidelines).
Chief Executive provisions		
Under section 104 of the Act, public service chief executives, Deputy Commissioners, and public service employees are immune from liability in civil proceedings for good-faith actions or omissions when carrying out or intending to carry out their responsibilities or when performing or exercising or intending to perform or exercise their functions, duties, or powers.	Some public service chief executives are also concurrently statutory officers. It is not explicit that this provision provides immunity to those chief executives when acting in their capacity as a statutory officer, such as the chief executive of the Public Service Commission when acting as Public Service Commissioner.	Clarify that public service chief executives who hold another statutory office, such as Public Service Commissioner, are covered by section 104 immunities when acting in either capacity.
Clause 2(4) of Schedule 6 of the Act allows a public service chief executive to delegate functions or powers to an individual working in the Public Service as a contractor or as a secondee from elsewhere in the State services.	There is uncertainty as to whether this provision applies to third-party employees – i.e. employees of the contractor contracted to undertake work for the public service agency.	Clarify definition of 'contractor' to explicitly include both people directly engaged by the agency on a contract for services, and also someone who works for them (e.g.

	<p>9(2)(h) legal privilege</p> <p>The provision also needs to be clearer that a contractor does not need to come from elsewhere in the State services.</p>	<p>a third-party employee). Clarify that the reference to 'from elsewhere in the State services' is only relevant to secondees and not to contractors i.e. contractors could be from outside of the State services.</p>
<p>Clause 9 of Schedule 7 provides that the Commissioner can only make an acting chief executive appointment if there is a vacancy, or the incumbent chief executive is absent from duty and unable to delegate. The Commissioner is not able to make an acting appointment when a chief executive is going to be absent for an extended period but is capable of delegation.</p>	<p>Circumstances have arisen where a chief executive is absent from duty for an extended period, such as a planned long-term medical leave. There would be benefits in the Commissioner making an acting appointment in such circumstances. These benefits can include assurance for ministers of the suitability of acting arrangements, providing the acting chief executive with a clearer mandate, and allowing the substantive chief executive to properly disengage from the role (e.g. while recovering).</p>	<p>Amend clause 9(1)(b) of Schedule 7 to allow the Commissioner to appoint an acting chief executive if the substantive chief executive is absent from duty and agrees that the Commissioner make the appointment.</p>
<p>Clause 9(5) of Schedule 7 of the Act states that the appointment of an acting chief executive ceases on the date on which a chief executive of the new department or departmental agency or functional chief executive takes office.</p>	<p>Acting arrangements are also required for absences and when there is a chief executive vacancy in an existing department or departmental agency, not just for new departments etc. An acting chief executive appointment ceases anytime a newly appointed chief executive takes office or a substantive chief executive returns to duty.</p>	<p>Amend clause 9(5) of Schedule 7 to clarify that an acting chief executive appointment ends when a newly appointed chief executive takes office, or the substantive chief executive returns to duty.</p>
<p><i>Commissioner's mandate and functions</i></p>		
<p>Under the State Sector Act 1988 the Commissioner had an "advice and guidance" mandate (s57(4)) for the State services (except for Crown Research Institutes and their subsidiaries). Public Service Act 2020 drafting unintentionally limited the guidance provision (s19) to the agencies covered by minimum standards (s17(2)).</p>	<p>The way the advice and guidance mandates were split out in drafting the Public Service Act 2020 unintentionally removed the Commissioner's ability to issue guidance on integrity and conduct to the wider State services.</p>	<p>Amend section 19(1) to reinstate the Commissioner's ability to issue guidance to the State services (excluding Crown Research Institutes and their subsidiaries).</p>
<p>Cabinet recently agreed to add a provision to the Act that explicitly allows the Commissioner to recover</p>	<p>It would be logical to make a related amendment to explicitly recognise cost recovery in relation to inquiries and investigations. This would reflect current practice</p>	<p>Add a new provision to explicitly enable the Commissioner to recover actual and reasonable</p>

reasonable costs from agencies as a result of Performance Improvement Reviews.	and ensure the Commission can continue to cost recover these activities.	costs from agencies subject to an inquiry or investigation.
Under clause 4 of Schedule 3 of the Act, for the purposes of carrying out the Commissioner's functions, the Commissioner or a person authorised by the Commissioner may enter the premises of a public service agency, require the production of information, or require a public service employee to answer questions.	The language in this provision is outdated. For example, it is possible to carry out the Commissioner's functions by requesting information electronically and meeting with public servants (in person or virtually) where required, rather than entering the premises of public service agencies.	Modernise the language of clause 4 of Schedule 3.
Schedule 7 of the Act contains the provisions relating to the appointment of public service chief executives, including composition of the appointment panel in clause 3.	Currently, the composition of the appointment panel unintentionally precludes the Commissioner from being on the panel when a Deputy Commissioner is the chairperson.	Amend clause 3(4)(b) of Schedule 7 so that the Commissioner may be a member of the panel without also being the chairperson.