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| Report Title:   | Public Service Act Amendments – Draft Cabinet paper and Bill   |           |              |
| Report No:      | MoSR 2025-0506   |           |              |
| Date:           | 11 June 2025   |           |              |
| To:             | Hon Judith Collins KC, Minister for the Public Service   |           |              |
| Action Sought:  | Agree to release the draft Cabinet paper and Public Service Amendment Bill for departmental and ministerial consultation   | Due Date  | 16 June 2025 |
| Contact         | Callum Butler, Manager – Strategy, Policy and Integrity  |           |              |
| Contact No:     | 9(2)(a) privacy  |           |              |
| Encl:           | <ul style="list-style-type: none"><li>Draft Cabinet paper;</li><li>Public Service Amendment Bill v7.0; and</li><li>Draft letter to Leader of the House on the Bill</li></ul> | Priority: | High         |
| Security Level: | IN CONFIDENCE  |           |              |

### Purpose of this report

1. This report attaches a draft paper for Cabinet Legislation Committee that would seek approval to introduce the Public Service Amendment Bill, and a draft of the Bill itself. We seek your agreement to release these documents for departmental and ministerial consultation between 16 and 27 June. We also attach a draft letter to the Leader of the House seeking comfort with the proposed timeframes for the Bill.

### Background and proposed timeframe for Cabinet consideration

2. On 31 March 2025, Cabinet agreed with your proposed reforms to the Public Service Act 2020, invited you to issue drafting instructions to the Parliamentary Counsel Office, and noted that you would report back to Cabinet in July 2025 with a draft Bill and timeline for the parliamentary process [CAB-25-Min-0085 refers]. Since then, we have briefed you on a number of minor and technical amendments [MoSR 2025-0360 and 0486 refers], and on transitional provisions [MoSR 2025-0480 refers].
3. The draft Cabinet paper attached to this report seeks Cabinet Legislation Committee's approval to introduce the Bill. We propose you lodge this paper for consideration at the Committee meeting on **24 July**, with **Cabinet confirmation and introduction of the Bill on Monday 28 July**. The full, proposed timeline for Cabinet is set out below:

|            |   |
|------------|---|
| 16-27 June | Departmental and ministerial consultation<br>Assessment of consistency with the New Zealand Bill of Rights Act 1990 |
| 11 July    | Final briefing to you with lodging version of Cabinet paper and the Bill  |
| 17 July    | Papers lodged for Cabinet Legislation Committee   |

|         |   |
|---------|---|
| 24 July | Cabinet Legislation Committee                 |
| 28 July | Cabinet confirmation and introduction of Bill |

### **Bill drafting & key amendments discussed in the draft Cabinet paper**

4. Bill drafting has progressed well, and subject to detailed transitional provisions (not able to be included in time for this report) and final proofing, the Bill enclosed is a complete draft. The draft Cabinet paper notes Cabinet's previous policy decisions and summarises the themes and categories of amendments, with specific amendments listed in an appendix. It describes minor and technical amendments at a high level.

#### *Issues likely to attract public comment*

5. Consistent with the template, the draft Cabinet paper highlights issues likely to be contentious or attract public comment. In this context, we have highlighted:
  - a. the removal of policy requirements in relation to pay equity and remuneration decisions being free from bias;
  - b. the removal of requirements in relation to diversity and inclusion; and
  - c. the new power for the Commissioner to direct the restriction (or prohibition) of the use of specific products, services, or vendors by public service agencies in order to protect national security or the national interest.
6. In relation to the first topic, we have emphasised the key points made in your previous Cabinet papers about the existing provision for equal pay and pay equity under the Equal Pay Act 1972, and that lack of bias is implicit in human rights law and the good employer provisions of the Act. We have also emphasised the view that policy direction on these issues by the Government of the Day can be adequately provided via the Government Workforce Policy Statement.
7. For diversity and inclusion, we have emphasised that the 'good employer' provisions substantively provide for an inclusive workplace, requiring employers to treat all people with respect and dignity and create an environment where people are looked at in the round. As with pay equity, we have emphasised that these objectives can be better given effect via the Government Workforce Policy statement. We have also foreshadowed how you might respond to questions about appointments where an applicant's knowledge of or relationship with a specific community will be relevant - noting that these things can be included in position descriptions, but that selection should be based on functional attributes, not the identity of the applicant per se.
8. In relation to (c), we have emphasised the heightened strategic environment and the risk that some products, services, or vendors may inadvertently allow malicious actors to access and control sensitive information, disrupt critical infrastructure, or otherwise present risks to national security or the broader national interest. This issue is discussed further below in relation to compliance with the Legislation Guidelines.

## Compliance sections

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### *Consistency with the Legislation Guidelines*

9. The Legislation Design and Advisory Committee (LDAC) has raised concerns or questions about three elements of the proposals:
  - ensuring there is a **clear need** for the proposed power for the Public Service Commissioner to restrict (or prohibit) the use of a particular product, service or vendor by public service agencies in order to protect national security or national interest (on top of existing levers), and **that the power is targeted to achieving that policy objective** (in particular, LDAC has questioned whether the power need extend to protecting the national interest as well as national security);
  - ensuring this power is **held by the appropriate person or body, and subject to sufficient safeguards** (including limiting the scope of the use of the power to situations where it is necessary); and
  - ensuring the proposal to provide for the fixed-term employment of members of the Policy Advisory Group in the Department of Prime Minister and Cabinet (DPMC) **interacts with existing employment law in a coherent way**.
10. We consider that the amendments as drafted meet these objectives. In relation to the national security direction power, we have included paragraphs in the draft Cabinet paper based on the discussions we previously had with you on this issue [MoSR 2025-0160 refers]. In particular, we have emphasised that existing tools and system levers do not provide a power to ensure restriction or prohibition in particular situations in a timely fashion. We have also explained how national interest is broader than national security and the distinct risks this contemplates.
11. We have emphasised that there is no single chief executive with responsibility for the full range of national security or national interest risks that may arise, and the leadership role of the Commissioner with respect to the public service. We have also highlighted your view that, while choices regarding national interest are often best made by Ministers, placing the power with a statutory officer would mitigate perceptions that any directions are politically motivated. We have emphasised the consultation the Commissioner must undertake (with relevant chief executives and the Minister) and the considerations they would need to turn their mind to before exercising this power, including the impact on markets and trade.
12. At the time of briefing, we are still finalising some detailed drafting as to the extent of notification required to vendors whose products or services are subject to a direction. There are models for this in existing legislation (such as the Terrorism Suppression Act 2002) and we will brief you further if there are any policy issues with this.
13. In relation to fixed-term employment of members of the Policy Advisory Group, we have accepted a specific recommendation by LDAC to 'deem' a specific rationale for the use of such terms in this context, rather than disapplying the relevant provisions of the Employment Relations Act 2000. This is explained in the draft Cabinet paper.

*Bill of Rights Act vetting*

14. We have provided advance notification to the Bill of Rights Act vetting team at the Ministry of Justice and will seek vetting in parallel with departmental consultation. While we do not expect significant concerns to be raised, it is possible that this exercise will express some concerns about the amendments to remove policy requirements for pay equity, freedom from bias, or diversity and inclusion. We will advise you of any issues raised as soon as possible following consultation.

**Policy costings unit proposal**

15. Policy decisions for the Minister of Finance's proposed policy costings unit have now been deferred to Cabinet Business Committee (CBC) on 16 June 2025.
16. We have previously advised your office that deferral of this issue will make it very challenging to draft the required provisions in the Public Service Amendment Bill. We cannot instruct Parliamentary Counsel Office without a Cabinet decision, so any amendments Ministers may wish to include after the CBC meeting would have missed the current window for departmental and ministerial consultation. In addition, LDAC expressed significant concerns about the unit, including its placement in the Executive branch of Government and the impact this would have on perceptions of the impartiality of the public service and its ability to serve the Government of the day.
17. We are able to discuss this issue and options with you should Cabinet wish to progress this proposal, but note that any option is likely to put pressure on timeframes for the Cabinet paper and therefore the timeframes for the Bill (discussed below).

**Timeline for the Bill**

18. The draft timeline for the Bill's progress is set out below:

|  |   |
|--|---|
| <b>28 July</b>   | Cabinet confirmation and introduction of Bill   |
| <b>31 July</b>   | First reading   |
| <b>1 December</b>  | Proposed date of report back from select committee<br><i>[Scrutiny Week 1-5 December]</i>                                     |
| <b>9 to 18 December</b><br>(last 6 sitting days of 2025) | Second reading, Committee of the Whole and Third reading<br><i>[Timing dependent upon Committee stage &amp; House agenda]</i> |
| <b>Within 7 days of 3<sup>rd</sup> reading</b>           | Royal assent and commencement   |

19. We have previously discussed the Bill's tight timeline with you and your office. In addition, we note:
- the Bill must be introduced on the same date as Cabinet agreement (28 July) to allow the First reading to take place by the end of July.
  - we have allowed four months of select committee consideration (seeking a shorter timeframe would enable unlimited debate on the motion to refer).
  - space may need to be prioritised on the House agenda for the second reading, Committee of the Whole House and Third reading between 9 and 18 December,

noting Scrutiny Week is 1 to 5 December and that 18 December is the last sitting day for the House in 2025.

20. We recommend you discuss the timeline for the Bill with the Leader of the House, and have provided a draft letter to support you.

### **Next steps**

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21. Should you agree with the recommendations in this report, we will release the draft Cabinet paper and Bill for agency consultation. Your office will distribute these papers for ministerial consultation (PCO will provide the latest draft Bill for circulation by Monday 16 June). We will brief you following consultation on any issues that need to be resolved prior to lodging the papers.

### **Recommended Action**

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We recommend you note the contents of this report, and:

- a) **agree** to release the draft paper for Cabinet Legislation Committee on the Public Service Amendment Bill and the Public Service Amendment Bill itself (subject to any further minor drafting changes by Parliamentary Counsel) for departmental and ministerial consultation

*Agree/disagree*

- b) **agree** to discuss the timelines for the passage of the Bill with the Leader of the House

*Agree/disagree*

Hon Judith Collins KC  
**Minister for the Public Service**