



Te Kawa Mataaho

Public Service Commission

5 June 2025

9(2)(a) privacy

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Official Information Request

Our Ref: PSCR 2025-0501

I refer to your official information request received on 9 May 2025 for:

"I note today's release of Cabinet papers concerning proposed changes to the Public Service Act 2020.

I am requesting a copy of all advice tendered by officials on these changes.

The scope of my request is confined to documents, such as reports, aide memories, "A3s", presentations, etc, where this was the substantive topic - it does not include, e.g., references to this advice in updates on the progress of the commission's work programme, or emails."

Information being released

Please find enclosed and listed in the table below document in scope of your request

Item	Date	Document Description	Decision
1	10 February 2025	Agency Meeting with Minister for the Public Service - agenda item: Public Service Amendment Bill	Released in part

I have decided to release the document listed above, subject to information being withheld under section 9(2)(f)(iv) of the Official Information Act 1982 (OIA) to maintain the current constitutional conventions protecting the confidentiality of advice tendered by Ministers and officials.

Information publicly available

The following advice provided to the Minister for the Public Service is covered by your request and is publicly available on Te Kawa Mataaho Public Service Commission's (the Commission's) website at the links provided for in the table below.

Item	Date	Document Description	Website Address
2	11 December 2024	MoSR 2024 – 0327 – REPORT – Legislative Programme – Public Service portfolio	https://www.publicservice.govt.nz/assets/DirectoryFile/2024-0327-REPORT-2025-Legislative-Programme-Public-Service-portfolio.pdf

3	27 January 2025	MoSR 2025-0020 – REPORT – Public Service Portfolio Legislation Programme	https://www.publicservice.govt.nz/assets/DirectoryFile/MoSR-2025-0020-REPORT-Public-Service-Portfolio-Legislation-Programme-2025.pdf
4	3 February 2025	MoSR 2025-0064 – AIDE MEMOIRE – Agenda – Discussion on scope for Public Service Amendment Bill	https://www.publicservice.govt.nz/assets/DirectoryFile/MoSR-2025-0064-AIDE-MEMOIRE-Agenda-Discussion-on-scope-for-Public-Service-Amendment-Bill.pdf
5	5 February 2025	MoSR 2025 -0085 – REPORT – Scope of Amendments to the Public Service Act 2020	https://www.publicservice.govt.nz/assets/DirectoryFile/MoSR-2025-0085-REPORT-Scope-of-amendments-to-the-public-service-act.pdf
6	19 February 2025	MoSR 2025-0135 – REPORT - Draft papers and advice – Public Service Amendment Bill	https://www.publicservice.govt.nz/assets/DirectoryFile/MoSR-2025-0135-Report-Draft-papers-and-advice-Public-Service-Amendment-Bill.pdf
7	28 February 2025	MoSR 2025-0160 - REPORT - Final draft Cabinet papers for ministerial consultation	https://www.publicservice.govt.nz/assets/DirectoryFile/MoSR-2025-0160-REPORT-Final-draft-Cabinet-papers-for-ministerial-consultation.pdf
8	14 March 2025	MoSR 2025-0228 – REPORT - Public Service Act amendments - updated draft Cabinet papers	https://www.publicservice.govt.nz/assets/DirectoryFile/MoSR-2025-0228-REPORT-Public-Service-Act-amendments-updated-draft-Cabinet-papers.pdf
9	18 March 2025	MoSR 2025-0226 – REPORT – Good employer obligations in the Public Service	https://www.publicservice.govt.nz/assets/DirectoryFile/MoSR-2025-0226-REPORT-Good-employer-obligations-in-the-Public-Service-.pdf
10	21 March 2025	MoSR 2025-0265 – AIDE MEMOIRE - Amendments to the Public Service Act 2020 – Cabinet discussion	MoSR-2025-0265-AIDE-MEMOIRE-Amendments-to-the-Public-Service-Act-

			2020-Cabinet-discussion.pdf
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Accordingly, I have refused your request for the documents listed in the above table under section 18(d) of the Official Information Act 1982 (OIA) on the grounds the information requested is or will soon be publicly available.

Some relevant information has been removed from documents listed in the above table and should continue to be withheld under the OIA, on the grounds described in the documents.

If you wish to discuss this decision with us, please feel free to contact Enquiries@publicservice.govt.nz.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that we intend to publish this letter (with your personal details removed) and enclosed documents on the Commission's website.

Yours sincerely



Nicky Dirks

Manager – Ministerial and Executive Services
Te Kawa Mataaho Public Service Commission



Agenda Item Two – Public Service Amendment Bill

This annotated agenda is to support a discussion with you on specific areas of potential change in the proposed amendment to the Public Service Act 2020:

- 1) Promoting diversity and inclusion
- 2) Pay equity
- 3) Māori-Crown relationships
- 4) Long-term insights briefings
- 5) Public Service Leadership Team
- 6) Transfer of chief executives
- 7) 9(2)(f)(iv) confidentiality of advice

The first five items were raised at your meeting with officials on 4 February as new provisions added in 2020 which added to chief executive responsibilities. The final two items were signalled as areas of interest by office of the previous Minister for the Public Service.

Topic One – Promoting diversity and inclusion

Context

1. The Act requires chief executives to be guided by the principle that the group comprising all public servants should reflect the makeup of society, and foster a workplace that is inclusive of all groups through employment policies and practice.

Implications of removal

2. As the legal employer of public servants in their respective agencies, chief executives are responsible for developing employment policies that are consistent with the law and policy expectations set by the Government.
3. Removing these provisions would remove some prescription on chief executives when developing policies for their agencies. This may reduce focus on increasing diversity and inclusion in the public service, though chief executives may still choose to retain existing policies that are consistent with these principles.

Option

4. General levers exist in the Act for the Government to set workforce policy expectations which the public service must give effect to. In practice, the Public Service Commissioner supports the Government in implementing its expectations by issuing guidance for agencies on how they can comply. These levers provide a more flexible tool for setting Government workforce policy expectations going forward, and avoids the need for prescription in primary legislation.

Topic Two – Pay Equity

Context

5. Section 73(3)(i) of the Act requires pay equity to be one of the matters covered in the employment policies of public service agencies. Employment policies must recognise “the importance of achieving pay equity between female and male employees”. This is one of

two 2020 additions to requirements for agency employment policies, alongside recognising “the importance of remuneration decisions being free from bias” (s73(3)(j)).

6. Sections 81 to 84 of the Act provide a governance mechanism for pay equity bargaining in the public service. These make the Commissioner responsible for all pay equity bargaining. The Commissioner may (and does) delegate responsibility for this to agency chief executives, subject to any conditions.

Implications of removal

7. Section 73, in essence, encourages employers to address pay equity in a proactive way. Ideally that will mean addressing their legal obligations in a way that avoids the expense of bargaining and settlement under the Equal Pay Act provisions. The provision could be removed and government policy expectations could be used to require public service employers to manage pay equity risks prudently. Expectations relating to remuneration decisions being free of bias could also be addressed through policy rather than legislation.
8. Removal of the governance mechanism in sections 81-84 would reduce the government’s oversight of, and influence over, pay equity bargaining. This could increase risks around the cost of settlements.

Option(s)

9. The new section 73 requirements could be removed from primary legislation and addressed through workforce policy instead (i.e. using the general levers described under topic one).

Topic Three – Māori-Crown relationships

Context

10. Section 14 includes that the role of the public service includes supporting the Crown in its relationships with Māori under the Treaty of Waitangi. This clarifies that the public service does not have Treaty obligations in its own right (unless specified in another statute) and its role is to support Ministers.
11. It also places responsibilities on the Commissioner and chief executives “for developing and maintaining the capability of the public service to engage with Māori and to understand Māori perspectives”. This provision also references other chief executive responsibilities in the Act relating to existing good employer requirements and the leadership strategy.
12. Section 15 outlines who these responsibilities are owed to and how these apply. This is to be clear that duties are imposed only on chief executives and the Commissioner, they are owed only to the appropriate Minister, are only in relation to a specific scope (e.g. in relation to functions or the operation of an agency) and are focused on matters within chief executives and the Commissioner’s direct control (e.g. capability).

Implications of removal

13. Removal of this provision in its entirety would not change the role the public service has in supporting the Crown in its relationships with Māori under the Treaty. However, this provision has provided clarity for the public service and Ministers about this part of its role, and its removal risks drawing confusion, criticism and scrutiny.
14. There is an overall expectation that chief executives will ensure departments have the necessary capability to appropriately advise and support Ministers. Removing chief executives’ responsibilities to develop and maintain public service capability in this area would not remove this overall requirement. Though it would remove clarity from the Act about who is accountable for ensuring the public service can perform this part of its role.

15. Removing reference to good employer requirements or leadership strategy would not have an effect in practice, as they will remain in their respective parts of the Act.
16. We would like to discuss this provision with you in relation to your objectives.

Topic Four – Long-term Insights Briefings

Context

17. The Act requires each chief executive to produce a Long-term Insights Briefing at least once every three years. The policy intent of the provision was to introduce a task that requires long-term strategic thinking, and therefore support chief executives in their stewardship obligations and enhance their ability to serve successive governments. The briefings also put information into the public domain, which is intended to support informed political and public debate.

Implications of removal

18. We understand your concern with Long-term Insights Briefings (raised with you by chief executives) is that it directs resources and does not deliver benefits. Removing the requirement to produce long-term insights briefings would allow chief executives to reprioritise the resources that they currently have committed to the task, allowing them to focus more on immediate priorities.
19. Removing the requirement to produce briefings creates a risk that agencies do not engage in long-term strategic thinking, and do not generate the intended benefits described above. There is also a reputational risk if long-term thinking does not continue in some form, as multilateral organisations and other similar jurisdictions also conduct foresight activities and promote these as a feature of good government. Note that in some cases chief executives already have other requirements to produce similar ‘stewardship reports’ in a specific area (e.g. the Treasury’s long-term fiscal statement) which mitigates this risk.

Option(s)

20. If you wish to remove the requirement to produce briefings from the legislation, there are options to replace it with a less resource-intensive alternative – for example one centralised briefing – or DPMC continuing to promote long-term thinking without a legislative provision.

Topic Five – Public Service Leadership Team

Context

21. The Act requires that the Commissioner establish a ‘Public Service Leadership Team’ comprising the chief executives of department and select other chief executives. The team is intended to provide strategic leadership of the public service, and assist chief executives to fulfil their responsibilities.

Implications of removal

22. The leadership team requires some time commitment from chief executives. However, we consider it has a positive impact on cross-agency relationships, and assists chief executives (including system leaders such as the GCDO) to raise and work through cross-cutting issues and seek support for initiatives with their colleagues. Removing the provisions may send a signal that this not a priority.

Option(s)

23. The leadership team was convened by the Commissioner in 2014, prior to its inclusion in the Public Service Act, and it could continue to be convened without statutory support. On balance we consider some formalisation of the leadership team has benefits that outweigh (limited) costs.

Topic Six – Transfer of chief executives

Context

24. The Act allows the Commissioner to recommend transfer of a sitting chief executive (or a Deputy Public Service Commissioner) into another vacant chief executive role, without running a full appointment process. This requires the agreement of the chief executive, consultation with the relevant ministers, and approval of the Governor-General in Council.


Implications of removal

25. Removing the provision would help to meet your stated desire for contestable processes to be run for any chief executive appointment (thereby increasing the opportunities for people from outside the cohort of sitting chief executives to apply for chief executive roles). The transfer provision has been used sparingly (only once, other than to support machinery of government changes) so has not contributed significantly to chief executive movement between roles.
26. Removing the provision reduces flexibility; for example, the ability to identify capability from within the existing cohort that would meet the needs of an important vacancy, to provide continuity where there has been a machinery of government change, or to manage a relationship breakdown between a particular chief executive and minister.


Option(s)

27. The provision could be removed or retained, noting the implications above. Note that a transfer requires the approval of the Governor-General, so the Government of the day has the opportunity to decline a proposed transfer if they want the Commissioner to instead run a contestable process.

9(2)(f)(iv) confidentiality of advice



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IN CONFIDENCE