



<b>Report Title:</b>	<b>Establishing a Social Investment Agency</b>		
<b>Report No:</b>	<b>2024-0105</b>		
<b>Date:</b>	<b>16 April 2024</b>		
<b>To:</b>	<b>Hon Nicola Willis, Minister for Social Investment</b>		
<b>Action Sought:</b>	Discuss steps for establishing the new agency and chief executive appointment processes	<b>Due Date</b>	24 April 2024
<b>Contact Person:</b>	<b>Alastair Hill, Acting Deputy Commissioner, Strategy and Policy</b>		
<b>Contact No:</b>	9(2)(a) privacy		
<b>Encl:</b>	No	<b>Priority:</b>	Medium
<b>Security Level:</b>	<b>SENSITIVE</b>		

## Executive Summary

1. We understand you intend to establish a central agency, the Social Investment Agency (SIA), to advance the Government's social investment approach, and that the SIA will replace the Social Wellbeing Agency (SWA). This report provides advice on the steps required to legally establish the SIA to inform the development of policy advice to Cabinet. This includes considerations around chief executive appointments and acting arrangements and other transitional matters.
2. We understand you intend for the SIA to be established on 1 July. This will require Cabinet policy decisions to be taken by 29 April. This is because Budget moratorium runs 29 April to 30 May, and delaying policy decisions until June would make 1 July 2024 unfeasible for legal establishment through usual processes. See **Appendix 1** for an overview of the timeline and steps for 1 July establishment. If Cabinet decisions are unable to be obtained by 29 April, 1 August would be the earliest feasible establishment date. See **Appendix 2** for an overview of the timeline and steps for 1 August establishment.
3. Recruitment of a permanent chief executive is an important step, recognising that finding a person with the right capabilities and experience will be integral to the success of the new agency. Chief executive recruitment and appointment processes are authorised by Cabinet and usually takes a minimum of four months to complete. This means that regardless of when the new agency is legally established and the existing SWA disestablished (1 July or 1 August), acting chief executive arrangements will need to be put in place 9(2)(g)(i) free and frank  
The appropriate details of the acting arrangements, including timing and whether there is overlap between the two roles, will depend on the timing of policy decisions and announcements. It would be useful to engage with you about your views and expectations.
4. An acting 'establishment' chief executive for the new agency can be appointed by the Public Service Commissioner following Cabinet policy decisions to prepare for the transition to the new agency. This includes, for example, completing consultation with staff on the change, and operational matters such as transfer of existing contractual obligations, negotiation of

**SENSITIVE**

continued shared services support, and activities necessary to establish the department as a separate reporting entity (obtaining a bank account, GST registration, NZBN etc.)

5. There are choices about the scope of the establishment chief executive role. This includes, for example, the relationship with the transition unit and the degree to which the role shapes strategy, policy and the forward work programme ahead of a permanent appointment. The role of an establishment chief executive tends to be focused more heavily on change management and organisational design than the role of a substantive chief executive, meaning we may look for different capabilities in candidates for these two positions.

### **Recommended Action**

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We recommend that you:

- a **discuss** the advice in this report with officials
- b **agree** that Te Kawa Mataaho Public Service Commission release this briefing once it has been considered by you and relevant decisions have been announced.

*Agree/disagree.*

Hon Nicola Willis

**Minister for Social Investment**

**Minister for the Public Service**

## Purpose of Report

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6. We understand you intend to establish a central agency to advance the Government's social investment approach with an establishment date of 1 July 2024.
7. This report provides advice around the machinery of government process for establishing the new agency to inform Cabinet policy decisions.
8. The report builds on previous advice on institutional arrangements to support a social investment approach [reports 2023-0310 and 2024-0026 refer].

## Background

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9. Social investment will require a shift in the way that social sector agencies operate, increasing use of evidence, evaluation and innovative practices. Embedding the approach will require a concerted and ongoing focus with strong leadership, Ministerial direction and Cabinet backing.
10. To support this, we understand your preference is to establish an agency called the Social Investment Agency (SIA)<sup>1</sup> to support your leadership of the social investment approach, and that the Social Investment Agency would replace the Social Wellbeing Agency (SWA).
11. We understand you intend for the SIA to have a central role. We note that other central agencies – the Public Service Commission, the Department of the Prime Minister and Cabinet, the Treasury and the Ministry for Regulation – are all standalone public service departments (as opposed to departmental agencies like the SWA) so our assumption is that the SIA should be established as a department.
12. The other key decisions that will contribute to the SIA's position as a central agency are the core role, functions and mandate of the agency, which should centre on driving improvement in the system of government agencies. This can include, for example, lifting capability and influencing policy decisions across other portfolios and agencies, setting standards, reviewing social sector spending, directing social investment funding towards desired outcomes, helping to facilitate needed data and evidence infrastructure, and supporting the use of evidence and insights about what works to underpin improvements in services and outcomes.
13. We understand you are interested in advice on the process to legally establish the new agency by 1 July. This is discussed below and a timeline for agency establishment is attached as **Appendix 1**. We have also prepared a timeline for a 1 August establishment. This is the earliest feasible establishment of the SIA if Cabinet decisions are taken immediately following the Budget moratorium in early June (see **Appendix 2**).

## Process for establishing a department

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14. The following steps are required to legally establish a new department:
  - a. The first step is seeking **Cabinet policy decisions** on the agency role, form and funding. The policy paper can also seek Cabinet authorisation for the Parliamentary Counsel Office (PCO) to draft orders in council to establish the agency.
  - b. The second step is the **order in council process**. This includes PCO drafting the orders, preparing a paper for the Legislation Cabinet Committee, and the passage

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<sup>1</sup> We understand you may also be considering alternative names including the Ministry for Social Investment. Either name is acceptable for a public service department, the organisational form we propose you use if your objective is to establish a central agency.

of the orders through the Cabinet, Executive Council and gazetting processes. This process takes around four weeks.

- c. The final step is the legal establishment which takes four weeks (following the completion of the **28-day rule period**).
15. Recruitment for a permanent chief executive is also initiated following Cabinet policy decisions, and is run in parallel to the legal establishment process. The formal recruitment process usually takes at least four months to complete, following APH agreement to a position description. The Public Service Commissioner can appoint an acting chief executive until the permanent chief executive is appointed. Chief executive arrangements are discussed in more detail below.
16. While it typically takes at least two months to legally establish a department following Cabinet policy decisions, legal establishment can be achieved more quickly in some circumstances. The Ministry for Regulation, for example, was quickly established in law through a waiver of the 28-day rule, and by adopting a staged implementation which saw some elements of the transition process (e.g. staff transfers) delayed until after legal establishment.
17. In a situation where an agency is being disestablished and a new agency is being created, as is the case with the SWA and SIA, time is needed for a smooth transition from one legal entity to the other. This includes time to appoint an acting chief executive, consult with staff (allowing a minimum of 2 weeks), and attend to a host of transitional matters such as transfer of leases, corporate services arrangements, IT services, payroll and accommodation.
18. Accordingly, we do not recommend shortening the usual establishment process (for example by seeking a waiver of the 28-day rule) as this time will be important to prepare for the new agency. Consequently, the minimum time between Cabinet policy decisions and legal establishment will be approximately 8 weeks.
19. More detail on the necessary transitional arrangements in this specific case will require engagement with the SWA, and the Ministry for Social Development (MSD) who provide the SWA with shared services. We will work with those agencies to initiate transition planning in the period immediately following Cabinet policy decisions, and will update you as necessary through this process.

### **Machinery of government advice for 1 July establishment**

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20. A 1 July 2024 establishment requires Cabinet policy decisions to be taken by 29 April. This is because Budget moratorium runs 29 April to 30 May, and delaying policy decisions until June would not allow sufficient time to implement the change by 1 July.
21. We understand a draft Cabinet paper is currently being prepared by your Office which will seek Cabinet decisions to establish the SIA on 1 July. The process needed to legally establish the SIA and disestablish the SWA by this date is summarised at **Appendix 1**.
22. This includes Cabinet authorisation for the Parliamentary Counsel Office to undertake the necessary drafting of orders in council to amend the Public Service Act 2020 and the Ombudsman Act 1975. Decisions through the policy paper will enable a subsequent Cabinet paper to be prepared with the orders in council for decisions by the Cabinet Legislative Committee on 23 May and by Cabinet and Executive Council on 27 May. On 30 May, the orders would be gazetted (triggering the 28-day rule) which will enable the SIA to be legally established on 1 July.

## **1 August option if Cabinet decisions are taken after Budget moratorium**

23. In the event that Cabinet decisions are not taken in April, we have prepared and appended an alternative timeline of 1 August (summarised at **Appendix 2**). This would be the earliest feasible establishment date and require consideration at the first available Cabinet committee meeting following the Budget moratorium. This is the Cabinet Business Committee on 4 June.
24. At your request, we can provide other timing options beyond 1 August.

## **Chief executive arrangements for the SWA and SIA**

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### **Appointing a chief executive to the SIA role**

25. Appointing a permanent chief executive with the right capabilities and experience will be vital to the success of the new agency.
26. 9(2)(g)(i) free and frank [REDACTED].
27. Cabinet decisions would authorise the Commission to conduct the recruitment process. This process usually takes at least four months to complete, so could be completed by September/October.

### **Acting arrangements while the chief executive recruitment is undertaken**

28. 9(2)(g)(i) free and frank [REDACTED]
29. The appropriate details of the acting arrangements, including timing and whether there is overlap between the two roles, will depend on the timing of policy decisions and announcements. It would be useful to engage with you about your views and expectations on the approach to these acting arrangements.
30. The establishment chief executive will help prepare for the transition to the new agency. There are a range of things needed to operationalise the Social Investment Agency (and transition from the Social Wellbeing Agency). This includes, for example:
- a. consultation with staff (with the expected proposal being to bring across existing staff and skill sets as a basis for the new agency)
  - b. developing the organisational strategy, structure and ways of working
  - c. work programme development
  - d. transfer of existing contractual obligations, negotiation of continued shared services support, and activities necessary to establish the department as a separate reporting entity (obtaining a bank account, GST registration, NZBN etc.)
31. Accordingly, there are choices about the scope of the establishment chief executive role, and it would be useful to engage with you about your views and expectations. For example, this could be someone with strong change management skills and an experienced leader to advise on design and set up and operation of the agency. The role could also look at the strategy, policy, work programme development and other aspects the social investment approach to support the incoming permanent chief executive (potentially replacing or working alongside the transition unit being established in The Treasury).

32. The Public Service Commissioner can directly appoint an acting chief executive, or undertake an expression of interest (EOI) process and appoint a suitable candidate. Our preference in these situations is to run the EOI process within the public service (i.e. through Public Service Chief Executives communicating the opportunity within their respective agencies) to find a suitable candidate. We would commence this following Cabinet policy decisions. We will be available to discuss the approach and timing of chief executive recruitment and processes with you.

**Agencies will continue to work together to support the transition**

33. The Treasury is preparing complementary advice on the other decisions to be taken through the Cabinet policy paper, including on the high-level social investment approach and budget and funding arrangements.
34. The central agencies supporting the transition unit in the Treasury will continue to support you through the process of establishing the Social Investment Agency and placing it on a strong footing.

**Next steps**

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35. We recommend that you discuss this advice with officials, and use it to inform your decisions on the timing of Cabinet policy decisions.

## APPENDIX 1 | Timeline to establish the Social Investment Agency by 1 July 2024

Step	April	May					June	July
Cabinet policy decisions	24 April   Policy paper lodged with Cabinet Office	29 <sup>th</sup> Apr – 2 <sup>nd</sup> May 29 Apr   Cabinet Policy paper considered, PCO authorised to prepare Orders in Council	6 <sup>th</sup> – 10 <sup>th</sup>	13 <sup>th</sup> – 17 <sup>th</sup>	20 <sup>th</sup> – 23 <sup>rd</sup>	27 <sup>th</sup> – 30 <sup>th</sup>		
Legislative process	LEG paper drafting and engagement with PCO around orders in council and agency and ministerial consultation undertaken.		16 May   LEG paper with orders in council lodged with Cabinet Office	23 May   LEG LEG paper with orders in council considered	27 May   Cabinet 27 May   EC 30 May   Gazette	<div>28-day rule</div> <div>Allows time to work through transitional arrangements (see establishment CE activity)</div> <div>1 July   SIA can be legally established</div>		
Permanent chief executive appointment process	Draft position description for the permanent CE role is developed and accompanying APH Cabinet paper prepared.		16 May   APH paper with CE position description lodged with Cabinet Office	21 May   APH APH considers position description	27 May   Cabinet Formal recruitment for a permanent CE can commence	<div>Permanent CE recruitment &amp; appointment</div> <div>Usually a minimum of 4 months subject to a robust process and finding the right candidate (September/October 2024)</div>		
Transitional arrangements (including establishment chief executive)	<div>Detailed planning for and initiation of transitional activities including consultation with staff on the change (minimum 2 weeks) and operational matters such as transfer of existing contractual obligations, negotiation of continued shared services support, and other activities necessary to establish the agency.</div> <div>Confirming scope of acting role and preparing for, and undertaking, a Commission-led recruitment process for an acting (establishment) chief executive.</div>					<div>Implementation of transition</div> <div>Appointment of establishment chief executive and implementation of transitional activities necessary to establish the new department. Acting arrangements will depend on timing of policy decisions and announcements.</div>		

**SENSITIVE**

## APPENDIX 2 | Timeline to establish the Social Investment Agency by 1 August 2024

Step	May	June				July	August
Cabinet policy decisions	Cabinet policy paper drafting & consultation and lodged with Cabinet Office on 30 May	3 <sup>rd</sup> – 7 <sup>th</sup> 4 June   <b>CBC</b> Policy paper considered following Budget moratorium	10 <sup>th</sup> – 14 <sup>th</sup> 10 June   <b>Cabinet</b> Cabinet decisions authorise orders in council to be prepared by PCO	17 <sup>th</sup> – 21 <sup>st</sup>	24 <sup>th</sup> – 28 <sup>th</sup>		
Legislative process	LEG paper drafting and engagement with PCO around orders in council and agency and ministerial consultation undertaken	13 June   LEG paper with orders of council lodged with Cabinet Office	20 June   <b>LEG</b> LEG paper with orders of council considered	24 June   <b>Cabinet</b> 24 June   <b>EC</b> <b>Gazetting</b> on June 27 initiates the 28-day before the orders are in force	28-day rule Allows time to work through transitional arrangements (see		1 August   SIA is legally established
Permanent chief executive appointment process	Draft position description for the permanent CE role is developed and accompanying APH Cabinet paper prepared	13 June   APH paper with CE position description lodged with Cabinet Office	18 June   <b>APH</b> APH considers position description	24 June   <b>Cabinet</b> Formal recruitment for a permanent can commence	CE recruitment and appointment process Usually a minimum of 4 months subject to a robust process and finding the right candidate (September/October 2024)		
Transitional arrangements (including establishment chief executive)	Detailed planning for and initiation of transitional activities necessary to establish the new department. Confirming scope of acting role and preparing for, and undertaking, a Commission-led recruitment process for an acting (establishment) chief executive.				Implementation of transition Implementation of transition including consultation with staff on the change (minimum 2 weeks) and operational matters such as transfer of existing contractual obligations, negotiation of continued shared services support, and other activities necessary to establish the new agency. Acting arrangements will depend on timing of policy decisions & announcements.		

**SENSITIVE**