New Zealand Law Society
Te Kāhui Ture o Aotearoa

Public Service Amendment Bill

Submission of the New Zealand Law Society Te Kāhui Ture o Aotearoa

28 August 2025

1 Introduction

1.1 The New Zealand Law Society Te Kāhui Ture o Aotearoa (**Law Society**) welcomes the opportunity to comment on the Public Service Amendment Bill (**Bill**), which seeks to amend the Public Service Act 2020 (**Act**).

1.2 This submission has been prepared with input from the Law Society's Employment Law and Public Law Committees.[1]

1.3 The Law Society does not wish to be heard in relation to this submission, but is available to answer any questions, if that would be helpful.

2 Purpose of the public service (clause 10)

2.1 Clause 10 of the Bill replaces section 11 of the Act with a new provision which refocuses the purpose of the public service to six key areas. Of note, the new provision:

(a) removes the purpose of supporting the Government "to pursue the long-term public interest"; and

(b) replaces the purpose of enabling "both the current Government and successive governments to develop and implement their policies" with supporting "the Government" to do so.

2.2 In its 2020 submission on the Public Service Legislation Bill 189-1 (the **2019 Bill**), the Law Society supported the codification of the constitutional conventions of political neutrality and supporting the Government to pursue the long-term public interest.[2] By expressly unwinding the codification of these principles, clause 10 arguably undermines the principle of political neutrality in the public service (which is recognised as a 'public service principle' in section 12(1)(a) of the Act, and identified as one of the policy objectives of this Bill).[3]

2.3 Similarly, replacing the term "current and successive governments" with "the Government" could signal an intention to depart from political neutrality by encouraging greater alignment with the policies and decisions made by the Government of the day.

2.4 Further, the removal of the purpose of supporting the Government "to pursue the long-term public interest" appears to be at odds with:

(a) the requirement in section 52(1)(d) of the Act for chief executives in the public service to support their Ministers "to act as a good steward of the public interest" (noting the concept of "stewardship" here requires some consideration of the long-term public interest);[4] and

---

1 More about these committees can be found on the Law Society's website: www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/.

2 Law Society submission on the Public Service Legislation Bill 189-1 (14 February 2020) at page 3. A copy of that submission is available here: www.lawsociety.org.nz/branches-sections-and-groups/law-reform-committees/law-reform-submissions/bills/.

3 Explanatory Note of the Bill; Te Kawa Mataaho Public Service Commission *Regulatory Impact Statement: Amendments to the Public Service Act 2020* (19 March 2025) at pages 1, 2 and 11.

4 While the Bill repeals section 52 of the Act (which currently contains this requirement), new section 11A in clause 11 of the Bill (which now sets out the principal responsibilities of chief executives) will carry this requirement over.

(b) the amendments to Schedule 6 that will require the chief executive of the Department of Prime Minister and Cabinet to issue guidance to other chief executives to "support long-term thinking in policy development" and "increase the capability of the public service to undertake long-term thinking in policy development".[5]

2.5 The Regulatory Impact Statement (**RIS**) for the Bill,[6] and the amendments contained in other parts of the Bill, suggest these apparent departures from the goal of the public service to maintain political neutrality are likely unintentional. The Law Society therefore recommends:

(a) retaining the purposes currently provided for in section 11 of the Act (i.e., to support the Government "to pursue the long-term public interest" and to enable "both the current Government and successive governments to develop and implement their policies"); or

(b) alternatively, amending new section 11 so it includes an express requirement for the public service to remain politically neutral when carrying out its functions.

3 Reappointment of chief executives (clause 46)

3.1 Clause 46(6) amends Schedule 7 of the Act (by repealing clauses 4 and 5) which would mean that the Public Service Commissioner no longer has the option to recommend to the Minister that an existing chief executive be reappointed at the end of their fixed term without a contested process. While we acknowledge that the Public Service Commissioner can proceed directly to contested processes for these positions presently, it is possible that removing this option could:

(a) discourage chief executives who wish to remain in their role from providing free and frank advice to Ministers, as required under section 12(1)(b) of the Act (and we note this issue is not discussed in the RIS or proactively released Cabinet materials);

(b) and, as a result, undermine political neutrality in the public service (particularly when read together with the amendments in clause 10, which are discussed above).

3.2 We acknowledge that the intention of these amendments is to "reinforce the principles of merit-based appointments" within the public service.[7] However, in light of the concerns we have identified, we query whether it would be more appropriate to follow a contestable appointment process for the initial appointment of a chief executive, without automatically extending this process to reappointments. The reappointment process could then continue to be subject to the performance measures the Public Service Commissioner would already have in mind when considering whether to recommend the reappointment of a chief executive absent a contested process.

---

5 See clause 45(10) of the Bill, which inserts new clause 10 of Schedule 6.

6 Te Kawa Mataaho Public Service Commission *Regulatory Impact Statement: Amendments to the Public Service Act 2020* (19 March 2025).

7 RIS at page 10.

3.3 It is also worth noting here that an assessment of merits would be inherent in any recommendation to reappoint a chief executive under the existing provision in the Act. This raises questions as to whether it is necessary to repeal the discretionary power to recommend a reappointment in order to meet the stated merits-based appointment goal of the Bill. Further, the discretionary reappointment power in the Act is consistent with reappointment frameworks in comparable jurisdictions (such as Australia and the United Kingdom).[8] This suggests it may be desirable to have a more flexible discretionary reappointment process to provide continuity in leadership where that is appropriate (for example, where reappointment can help promote a strong public service).

3.4 We invite the Select Committee to seek advice from officials on these points, and to delete clause 46(6) of the Bill if the Committee considers the existing optional reappointment process better balances the need to make merit-based appointments against the need to ensure the public service remains politically neutral, and able to provide free and frank advice.

4 Notification of employee appointments made by chief executive or board (clause 47)

4.1 Clause 47(1) of the Bill will require departments and interdepartmental ventures to "notify" appointments of temporary and casual employees. The appointment of these employees does not presently require such notification under the Act.

4.2 It is possible that these new notification requirements will place an additional burden on departments which might frequently bring in casual and temporary employees to cover, for example, seasonal work increases. We therefore query whether it would be appropriate to limit the scope of this amendment by clarifying that temporary and casual appointments must be notified only if they are appointed for more than (for example) three or six months. Including such a timeframe may strike a more appropriate balance between ensuring the purpose of this amendment (which is not specified in the Bill, RIS or proactively released Cabinet materials) and avoiding an unnecessary administrative burden for public service employers who make use of casual and temporary employees.

4.3 It is also worth noting that "temporary" employment is not defined or expressly recognised in the Employment Relations Act 2000 (**ERA**); the ERA refers only to "fixed term" employment.[9] As a result, it is unclear whether the proposed requirement to notify temporary appointments extends to fixed term appointments, or whether it refers to something other than fixed term appointments. We presume it is a reference to fixed term appointments, given the 2019 Bill initially referred to "employees on fixed-term employment agreements",[10] and this terminology was subsequently amended to refer to "acting, temporary, or casual employees" during the passage of that Bill. In any case, it could be helpful to amend section 4(1) of Schedule 8 to identify the types of temporary or fixed term appointments which would need to be notified under the Bill.

---

8 Public Service Act 1999 (Cth), s 58; United Kingdom Cabinet Office *Governance Code on Public Appointments* (8 February 2024) at [3.4]-[3.5].

9 ERA, s 66.

10 2019 Bill, cl 4(2).

4.4 We also note that, by definition, casual employees do not have an ongoing employment relationship: they may be engaged for only a few days, or from time to time, over a longer period. In such circumstances, it is unclear whether the chief executive must notify such appointments only at the outset of the person's first engagement, or each time the same casual employee is brought in for a few days. For example, a casual employee may be engaged to cover a receptionist position when the receptionist is unwell or on leave. There may be a regular person the employer engages on such occasions, who is contacted only that morning and brought in to work only on one day, or a few days, to cover the position. If appointments are notified (for example) on a weekly basis, which we understand is often the case for administrative ease, this may also mean that a casual employee's 'appointment' (for example, to cover the reception desk for two days) may be notified several days after their brief period of casual employment has ended already.

4.5 We suggest clarifying the point at which a casual employee's appointment needs to be notified; whether that is only when they are first engaged, or whether there must be notification every time they are then brought in to work on a casual basis.

4.6 In any case, the notification requirements in both cases (temporary and casual appointments) may become administratively burdensome and, absent any rationale for this amendment, its practical impacts must be carefully considered. One option for limiting any administrative burden would be to introduce a timeframe threshold for notifying appointments of a certain duration only, as we have suggested above.

Jesse Savage
Vice-President