



Public Finance Amendment Act 2020

Public Act 2020 No 41
Date of assent 6 August 2020
Commencement see section 2

Contents

	Page
1 Title	3
2 Commencement	3
3 Principal Act	3
4 Section 1A amended (Purpose)	3
5 Section 2 amended (Interpretation)	3
6 Section 7C amended (Responsibility for, and administration and use of, appropriations)	4
7 Section 14 amended (Content of Estimates)	4
8 Section 15C amended (End-of-year performance information requirements)	5
9 Section 15D amended (Exemptions from end-of-year performance information requirements for certain categories of expenses and capital expenditure)	5
10 Section 19 amended (Power of Secretary to obtain information)	5
11 Section 19A amended (Provision of end-of-year performance information other than by Ministers)	5
12 Section 26Z amended (Power of Secretary to obtain information)	5
13 Section 29A amended (Power of Secretary to obtain information)	5
14 Part 4 heading amended	5
15 Section 34 amended (Responsibilities of chief executives: financial management of departmental matters)	6
16 Section 36 amended (Responsibilities of chief executives: reporting)	6
17 Section 37 amended (Power of chief executives to obtain information)	6

18	Section 38 amended (Departments must provide information on strategic intentions)	6
19	Section 40 amended (Requirements for information on strategic intentions)	6
20	Section 41 amended (Minister may grant extension of time for, or waive, requirement to provide information on strategic intentions)	6
21	Section 43 amended (Departments must prepare annual reports)	7
22	Section 43A repealed (Departmental agencies must prepare annual reports)	7
23	Section 44 amended (Obligation to present and publish annual reports)	7
24	Section 45 amended (Contents of annual report of department)	8
25	Section 45AA replaced (Contents of departmental agency annual report)	8
	45AA Contents of annual report of specified agency	8
	45AB Waiver from requirement to include financial statements in specified agency's annual report	9
26	Section 45B amended (Annual financial statements)	9
27	Section 45C amended (Statement of responsibility)	10
28	New section 45CA inserted (Statement of responsibility for specified agencies)	10
	45CA Statement of responsibility for specified agencies	10
29	Section 45D amended (Audit report)	11
30	Section 45E amended (Application of this Part to intelligence and security departments)	11
31	Section 45H amended (Application of subpart)	11
32	Section 65S amended (Departmental Bank Accounts)	12
33	Section 65ZE amended (Departments may give guarantee or indemnity specified in regulations if in public interest)	12
34	Section 75 amended (Minister may exercise powers relating to <i>bona vacantia</i>)	12
35	Section 80 amended (Treasury instructions)	12
36	Section 80A amended (Minister of Finance instructions)	12
37	Section 81 amended (Regulations, Orders in Council, and notices)	12
38	Section 82 amended (Consultation and approval requirements for regulations or instructions relating to reporting standards)	12
39	New section 82A inserted (Certain specified agencies with intelligence and security aspect treated as intelligence and security departments)	13
	82A Certain specified agencies with intelligence and security aspect treated as intelligence and security departments	13

The Parliament of New Zealand enacts as follows:**1 Title**

This Act is the Public Finance Amendment Act 2020.

2 Commencement

This Act comes into force on the day after the date of Royal assent.

3 Principal Act

This Act amends the Public Finance Act 1989 (the **principal Act**).

4 Section 1A amended (Purpose)

In section 1A(2)(d), replace “, departmental agencies,” with “(including departmental agencies, interdepartmental executive boards, and interdepartmental ventures),”.

5 Section 2 amended (Interpretation)

- (1) In section 2(1), definition of **chief executive**, replace paragraphs (a) and (aa) with:

- (a) in the case of a department (other than a department referred to in paragraphs (aa) to (ac)), the chief executive of the department appointed under the Public Service Act 2020:
- (aa) in the case of a departmental agency, the chief executive of the departmental agency appointed under the Public Service Act 2020:
- (ab) in the case of an interdepartmental executive board, the board selected under the Public Service Act 2020:
- (ac) in the case of an interdepartmental venture, the board constituted in accordance with the Public Service Act 2020:

- (2) In section 2(1), definition of **department**, replace paragraph (a)(i) with:

- (i) a department (as defined in section 5 of the Public Service Act 2020); or
- (ia) a departmental agency; or
- (ib) an interdepartmental executive board; or
- (ic) an interdepartmental venture; or

- (3) In section 2(1), definition of **departmental agency**, replace “section 27A of the State Sector Act 1988 (*see also* section 27B of that Act)” with “section 5 of the Public Service Act 2020”.

- (4) In section 2(1), insert in their appropriate alphabetical order:

functional chief executive has the meaning given in section 5 of the Public Service Act 2020

interdepartmental executive board has the meaning given in section 5 of the Public Service Act 2020

interdepartmental venture has the meaning given in section 5 of the Public Service Act 2020

relevant department means,—

- (a) in relation to an interdepartmental venture, a relevant department specified for the venture in Part 4 of Schedule 2 of the Public Service Act 2020;
- (b) in relation to an interdepartmental executive board, each department listed in the Order in Council made under section 26 of the Public Service Act 2020 for the board for the purposes of subsection (2)(b) of that section

specified agency means any of the following:

- (a) a departmental agency;
- (b) an interdepartmental executive board;
- (c) an interdepartmental venture

specified date, in Part 4, has the meaning given in section 44(6)

- (5) In section 2(1), definition of **host department**, replace “has the meaning given in section 27A(1) and (2) of the State Sector Act 1988” with “means the host department specified for the departmental agency in Part 2 of Schedule 2 of the Public Service Act 2020”.
- (6) In section 2(1), definition of **Vote**, after “1 department”, insert “(but see subsection (2))”.
- (7) After section 2(1), insert:
 - (2) The reference to department in paragraph (a) of the definition of Vote in subsection (1) includes a specified agency only if the Minister has approved the specified agency’s administration of a Vote.
 - (3) Section 6 of the Public Service Act 2020 does not apply in relation to this Act.

6 Section 7C amended (Responsibility for, and administration and use of, appropriations)

After section 7C(4), insert:

- (5) The reference to department in subsection (2)(b) does not include a departmental agency that, under Part 2 of Schedule 2 of the Public Service Act 2020, is not empowered to manage assets or liabilities.

7 Section 14 amended (Content of Estimates)

After section 14(1)(c), insert:

(ca) if the appropriation administrator is a specified agency and the Vote is not administered by the specified agency, the department administering the Vote; and

8 Section 15C amended (End-of-year performance information requirements)

- (1) In section 15C(2)(c), replace “a departmental agency,” with “a functional chief executive,”.
- (2) In section 15C(3), replace “a departmental agency,” with “a functional chief executive,”.

9 Section 15D amended (Exemptions from end-of-year performance information requirements for certain categories of expenses and capital expenditure)

In section 15D(2)(a), replace “a departmental agency,” with “a functional chief executive,”.

10 Section 19 amended (Power of Secretary to obtain information)

- (1) In section 19(1), replace “a departmental agency,” with “a functional chief executive,”.
- (2) In section 19(4), replace “departmental agency, or” with “a functional chief executive, or an”.

11 Section 19A amended (Provision of end-of-year performance information other than by Ministers)

In section 19A(1), replace “departmental agency,” with “functional chief executive,”.

12 Section 26Z amended (Power of Secretary to obtain information)

- (1) In section 26Z(1), replace “departmental agency,” with “functional chief executive,”.
- (2) In section 26Z(4), replace “departmental agency, or” with “a functional chief executive, or an”.

13 Section 29A amended (Power of Secretary to obtain information)

- (1) In section 29A(1), replace “departmental agency,” with “functional chief executive,”.
- (2) In section 29A(4), replace “departmental agency, or” with “a functional chief executive, or an”.

14 Part 4 heading amended

In the Part 4 heading, delete “and departmental agencies”.

15 Section 34 amended (Responsibilities of chief executives: financial management of departmental matters)

- (1) In section 34(3), replace “any departmental agency,” with “any functional chief executive,”.
- (2) In section 34(3), replace “or departmental agency,” with “or that functional chief executive,”.
- (3) After section 34(3), insert:
- (4) Subsection (1)(a) applies to a specified agency only to the extent that the specified agency manages assets or liabilities.

16 Section 36 amended (Responsibilities of chief executives: reporting)

Repeal section 36(2).

17 Section 37 amended (Power of chief executives to obtain information)

- (1) In section 37(1), replace “or departmental agency may” with “may”.
- (2) In section 37(1), delete “or departmental agency (as applicable)”.
- (3) In section 37(3), delete “or departmental agency”.

18 Section 38 amended (Departments must provide information on strategic intentions)

After section 38(5), insert:

- (6) This section and sections 38A to 40 do not apply to a departmental agency that, under Part 2 of Schedule 2 of the Public Service Act 2020, must operate within the strategic and policy framework of its host department (but *see* section 40(3)).

19 Section 40 amended (Requirements for information on strategic intentions)

- (1) In section 40(2)(b), replace “departmental agencies hosted by the departments” with “specified agencies for which the department is a host or relevant department (or, if the department is a specified agency, the department’s host or relevant departments)”.
- (2) After section 40(2), insert:
- (3) If, for the period to which the information relates, a specified agency identified under subsection (2)(b) is not required to provide information on its own strategic intentions (*see* sections 38(6) and 41(3A)), the information described in subsections (1) and (2) must also cover that specified agency.

20 Section 41 amended (Minister may grant extension of time for, or waive, requirement to provide information on strategic intentions)

After section 41(3), insert:

- (3A) The Minister may grant a specified agency a waiver of the requirements of section 38 if the Minister is satisfied that, having regard to the functions and operations of the specified agency, it is appropriate for the information required under that section in relation to the specified agency to be provided by the specified agency's host or relevant departments.
- (3B) A waiver granted under subsection (3A) may apply for a period of up to 3 years.

21 Section 43 amended (Departments must prepare annual reports)

- (1) In section 43(1), delete “, excluding operations on which any departmental agency hosted by the department is required to report under section 43A”.
- (2) After section 43(1), insert:
- (1A) The annual report is not required to cover operations—
- (a) of any specified agency for which the department is a host or relevant department; and
 - (b) on which the specified agency is required to report under this Part.
- (3) Replace section 43(2) with:
- (2) Not later than 15 working days after the specified date, the department must provide the annual report and the audit report (if any)—
- (a) to its responsible Minister; and
 - (b) if the department is a departmental agency, to the responsible Minister for the departmental agency's host department.

22 Section 43A repealed (Departmental agencies must prepare annual reports)

Repeal section 43A.

23 Section 44 amended (Obligation to present and publish annual reports)

- (1) Replace section 44(1) with:
- (1) The responsible Minister of a department must present the annual report of the department, and any applicable audit report, to the House of Representatives.
- (2) In section 44(2)(a), replace “audit date” with “specified date”.
- (3) In section 44(4), delete “or departmental agency”.
- (4) In section 44(4)(a), replace “audit date” with “specified date”.
- (5) In section 44(5), delete “or departmental agency” in each place.
- (6) In section 44(6), repeal the definition of **audit date**.
- (7) In section 44(6), after the definition of **audit report**, insert:

specified date means,—

- (a) in the case of a department that receives an audit report under section 45D, the date on which the department receives the audit report;
- (b) in the case of any other department, the date that is 2 months after the end of the financial year.

24 Section 45 amended (Contents of annual report of department)

- (1) In section 45(2)(a), replace “departmental agency hosted by the department is required to report under section 43A” with “specified agency for which the department is a host or relevant department is required to report under this Part”.
- (2) In section 45(4), replace “departmental agencies hosted by the department” with “specified agency for which the department is a host or relevant department”.
- (3) Replace section 45(5) with:
- (5) This section does not apply to a specified agency. (*See* section 45AA.)

25 Section 45AA replaced (Contents of departmental agency annual report)

Replace section 45AA with:

45AA Contents of annual report of specified agency

- (1) The annual report of a specified agency must provide the information that is necessary to enable an informed assessment to be made of the specified agency’s performance during the financial year, including how well the specified agency is managing the resources it controls.
- (2) The annual report of a specified agency must contain the following information in respect of the financial year to which it relates:
 - (a) an assessment of the specified agency’s operations; and
 - (b) an assessment of the specified agency’s progress in relation to its strategic intentions or, if the specified agency is not required to provide information on its own strategic intentions under section 38, in relation to,—
 - (i) in the case of a departmental agency, any of the host department’s strategic intentions that are relevant to the departmental agency;
 - (ii) in the case of an interdepartmental executive board or an interdepartmental venture, any of its relevant departments’ strategic intentions that are relevant to the specified agency; and
 - (c) information about the specified agency’s management of its organisational health and capability; and
 - (d) if the specified agency administered an appropriation in that financial year, statements of expenses and capital expenditure for the specified agency that comply with section 45A; and

- (e) if the specified agency managed assets or liabilities in that financial year (and does not have a waiver under section 45AB), annual financial statements for the specified agency that comply with section 45B; and
 - (f) if the specified agency has a waiver under section 45AB, information about where financial information about the specified agency's assets, liabilities, expenditure, and revenue can be found (*see* section 45B(3)); and
 - (g) a statement of responsibility that complies with section 45CA; and
 - (h) any other matters that relate to or affect the operations of the specified agency that the specified agency is required, has undertaken, or wishes to report on in its annual report.
- (3) If the annual report must contain annual financial statements under subsection (2)(e), the annual report must also contain, in respect of the financial year after the financial year to which the annual report relates, forecast financial statements for the specified agency that comply with section 45BA.
- (4) The annual report must identify the specified agency's host or relevant departments.

45AB Waiver from requirement to include financial statements in specified agency's annual report

- (1) The Minister may grant a waiver from the requirements to include the financial statements described in section 45AA(2)(e) and (3) if the Minister is satisfied that the preparation of separate financial statements by the specified agency is not justified having regard to—
- (a) the functions and operations of the specified agency; and
 - (b) the materiality of the assets, liabilities, expenditure, and revenue of the specified agency.
- (2) Before granting a waiver to a specified agency under this section, the Minister must consult—
- (a) the specified agency's responsible Minister; and
 - (b) if the specified agency is a departmental agency, the host department's responsible Minister.
- (3) A waiver granted under this section may apply for a period of up to 3 years.
- (4) As soon as practicable after granting a waiver under this section, the Minister must present to the House of Representatives notice of the waiver and the Minister's reasons for granting it.

26 Section 45B amended (Annual financial statements)

After section 45B(2), insert:

- (3) If a specified agency for which the department is a host or relevant department has a waiver under section 45AB, the financial statements must include, and

disclose separately from the assets, liabilities, expenditure, and revenue of the department, the department's share (determined in accordance with generally accepted accounting practice) of the assets, liabilities, expenditure, and revenue of the specified agency.

27 Section 45C amended (Statement of responsibility)

(1) Before section 45C(1)(a), insert:

(aaa) a statement that, in the opinion of the department's chief executive, the annual report fairly reflects the operations, progress, and organisational health and capability of the department; and

(2) Repeal section 45C(2).

(3) Replace section 45C(3) with:

(3) The statement of responsibility must be signed and dated by the chief executive of the department.

(4) After section 45C(3), insert:

(4) This section does not apply to a specified agency. (*See* section 45CA.)

28 New section 45CA inserted (Statement of responsibility for specified agencies)

After section 45C, insert:

45CA Statement of responsibility for specified agencies

(1) A statement of responsibility relating to the annual report of a specified agency must include—

(a) a statement that, in the opinion of the specified agency's chief executive, the annual report fairly reflects the operations, progress, and organisational health and capability of the specified agency; and

(b) if the annual report contains statements of expenses and capital expenditure,—

(i) a statement of the responsibility of the specified agency's chief executive for the preparation of the statements of expenses and capital expenditure and for the judgements expressed in them; and

(ii) a statement of the responsibility of the specified agency's chief executive for ensuring that end-of-year performance information on each appropriation administered by the specified department is provided in accordance with sections 19A to 19C, whether or not that information is included in the annual report; and

(c) if the annual report contains financial statements,—

(i) a statement of the responsibility of the specified agency's chief executive for the preparation of the financial statements and for the judgements expressed in them; and

- (ii) a statement that, in the opinion of the specified agency’s chief executive, the financial statements fairly reflect the financial position and operations of the specified agency for the reporting period; and
 - (iii) a statement that, in the opinion of the specified agency’s chief executive, the forecast financial statements fairly reflect the forecast financial position and operations of the specified agency for the financial year to which the forecast financial statements relate; and
 - (d) if the annual report contains statements of expenses and capital expenditure or financial statements (or both), a statement of the responsibility of the specified agency’s chief executive for having in place a system of internal control designed to provide reasonable assurance as to the integrity and reliability of financial reporting; and
 - (e) a statement of the responsibility of the specified agency’s chief executive for the accuracy of any end-of-year performance information prepared by the specified agency (*see* section 19A), whether or not that information is included in the annual report.
- (2) The statement of responsibility must be signed and dated by the chief executive of the specified agency.

29 Section 45D amended (Audit report)

- (1) In section 45D(1)(b), before “its annual report”, insert “if required to forward statements or any other information under paragraph (a),”.
- (2) Replace section 45D(1A) with:
 - (1A) The department or functional chief executive most recently identified in the supporting information for an Appropriation Act as providing end-of-year performance information on an appropriation for a financial year must, within 2 months after the end of that financial year, forward to the Auditor-General—
 - (a) the end-of-year performance information; and
 - (b) the document in which that information will be presented to the House of Representatives and published (if not already provided).
- (3) In section 45D(2)(b), replace “departmental agency (as the case may be)” with “functional chief executive”.

30 Section 45E amended (Application of this Part to intelligence and security departments)

After section 45E(4), insert:

- (5) *See also* section 82A.

31 Section 45H amended (Application of subpart)

Repeal section 45H(1)(b).

32 Section 65S amended (Departmental Bank Accounts)

After section 65S(3), insert:

- (4) This section does not apply to a departmental agency that, under Part 2 of Schedule 2 of the Public Service Act 2020, is not empowered to manage assets or liabilities.

33 Section 65ZE amended (Departments may give guarantee or indemnity specified in regulations if in public interest)

After section 65ZE(5), insert:

- (6) This section does not apply to a departmental agency that, under Part 2 of Schedule 2 of the Public Service Act 2020, is not empowered to manage assets or liabilities.

34 Section 75 amended (Minister may exercise powers relating to *bona vacantia*)

- (1) In section 75(2), replace “or departmental agency, on” with “, on”.
- (2) In section 75(2), replace “, department, or departmental agency” with “or department”.
- (3) In section 75(4) and (5), replace “, department, or departmental agency” with “or department”.

35 Section 80 amended (Treasury instructions)

- (1) Replace section 80(1) with:

- (1) The Treasury may issue instructions to departments for all or any of the purposes specified in section 81(1)(a), (ab), (b), (bc), (bd), and (c) to (e).
- (1A) Subsection (1) is subject to the provisions of this Act and of any regulations made under this Act.

- (2) In section 80(2), delete “or departmental agency” in each place.

36 Section 80A amended (Minister of Finance instructions)

- (1) Repeal section 80A(3)(a)(ia).
- (2) In section 80A(4), delete “a departmental agency,”.
- (3) In section 80A(4), delete “departmental agency,”.

37 Section 81 amended (Regulations, Orders in Council, and notices)

- (1) In section 81(1)(a), delete “, departmental agencies,”.
- (2) In section 81(1)(ac) and (ba), delete “departmental agencies,”.

38 Section 82 amended (Consultation and approval requirements for regulations or instructions relating to reporting standards)

In section 82(1)(a), delete “departmental agencies,”.

39 New section 82A inserted (Certain specified agencies with intelligence and security aspect treated as intelligence and security departments)

After section 82, insert:

82A Certain specified agencies with intelligence and security aspect treated as intelligence and security departments

- (1) This section applies to a specified agency if,—
 - (a) in the case of a departmental agency, the specified agency's host department is an intelligence and security department;
 - (b) in the case of an interdepartmental executive board or an interdepartmental venture,—
 - (i) all of the specified agency's relevant departments are intelligence and security departments; or
 - (ii) 1 or more, but not all, of the specified agency's relevant departments are intelligence and security departments and the Minister has granted the specified agency a waiver under subsection (4).
- (2) Part 4 applies, with any necessary modifications, to the specified agency as otherwise provided for in that Part,—
 - (a) as if the specified agency were an intelligence and security department; and
 - (b) as modified by section 45E(1)(a) and (2) to (4); and
 - (c) as if section 221(1), (2)(i), and (4) to (7) of the Intelligence and Security Act 2017 were substituted for sections 43 and 44.
- (3) The rest of this Act applies, with any necessary modifications, in relation to the specified agency as if the specified agency were an intelligence and security department.
- (4) The Minister may grant a waiver from the requirements that would otherwise apply under this Act to a specified agency described in subsection (1)(b)(ii) if the Minister considers that, having regard to the functions and operations of the specified agency, the waiver is necessary to protect New Zealand's national security.
- (5) As soon as practicable after granting a waiver under this section, the Minister must present to the House of Representatives notice of the waiver and the Minister's reasons for granting it.

Legislative history

22 July 2020

Divided from Public Service Legislation Bill (Bill 189–1), third reading

6 August 2020

Royal assent

This Act is administered by the Treasury.