

State Sector Amendment Bill

Government Bill

As reported from the committee of the whole
House

This bill was formerly part of the State Sector and Public Finance Reform Bill as reported from the Finance and Expenditure Committee. The committee of the whole House has further amended the bill and divided it into the following bills:

- this bill comprising clauses 1 and 2, Part 1, and Schedule 1
- Public Finance Amendment Bill (No 2) comprising Part 2 and Schedules 1A to 3A
- Crown Entities Amendment Bill comprising Part 3 and Schedules 3B to 4

State Sector Amendment Bill

Key to symbols used in reprinted bill

**As reported from the committee of the whole
House**

text inserted

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Hon Dr Jonathan Coleman

State Sector Amendment Bill

Government Bill

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2	Commencement	
(1)	Section 56 and Schedule 1 come into force on the earlier of—	
	(a) a date appointed by the Governor-General by Order in Council; and	5
	(b) 2 years after the date on which this Act receives the Royal assent.	
(2)	The rest of this Act comes into force on the day after the date on which it receives the Royal assent.	
3	Principal Act	10
	This Part amends the State Sector Act 1988 (the principal Act).	
4	Long Title repealed	
	Repeal the Long Title.	
5	New section 1A inserted (Purpose)	15
	After section 1, insert:	
“1A	Purpose	
	The purpose of this Act is to promote and uphold a State sector system that—	
	“(a) is imbued with the spirit of service to the community; and	20
	“(b) operates in the collective interests of government; and	
	“(c) maintains appropriate standards of integrity and conduct; and	
	“(d) maintains political neutrality; and	25
	“(e) is supported by effective workforce and personnel arrangements; and	
	“(f) meets good-employer obligations; and	
	“(g) is driven by a culture of excellence and efficiency; and	
	“(h) fosters a culture of stewardship.”	30
6	Section 2 amended (Interpretation)	
(1)	In section 2, definition of appropriate Minister , after “department”, insert “or departmental agency” in each place.	

- (2) In section 2, definition of **chief executive**, after paragraph (a), insert:
 “(aa) in relation to a departmental agency, means the person holding office under section 31 as the chief executive of the departmental agency.” 5
- (3) In section 2, replace the definition of **Crown entity** with:
 “**Crown entity** has the meaning given to it by section 7 of the Crown Entities Act 2004”.
- (4) In section 2, replace the definition of **department** with:
 “**department** has the meaning given to it by **section 27A**”. 10
- (5) In section 2, definition of **employee**, paragraph (b),—
 (a) replace “—” with “any chief executive”; and
 (b) repeal subparagraph (i).
- (6) In section 2, definition of **State services**, after paragraph (ab), insert:
 “(aba) organisations named or described in Schedule 4, and companies named in **Schedule 4A**, of the Public Finance Act 1989; and” 15
- (7) In section 2, insert in their appropriate alphabetical order:
 “**departmental agency** has the meaning given to it by **section 27A** 20
27A
 “**host department** has the meaning given to it by **section 27A**
 “**key position** has the meaning given to it in **section 50(2)**
 “**ministerial staff** means employees (including acting, temporary, or casual employees) who are employed on events-based employment agreements— 25
 “(a) by the department that is responsible for the employment of ministerial staff across all Ministers’ offices; and
 “(b) to work directly for a Minister in a Minister’s office 30
 rather than in a department

Example

The Hon Honour Able’s ministerial staff includes 1 Senior Private Secretary, 1 Ministerial Secretary, 1 Ministerial Adviser, 1 Press Secretary, and 1 Private Secretary. 35

An event that could terminate the staff’s events-based agreement is Minister Able no longer holding her Ministerial portfolio.

“**outcome**—

“(a) means a state or condition of society, the economy, or the environment; and

“(b) includes a change in that state or condition

“**stewardship** means active planning and management of medium- and long-term interests, along with associated advice”.

7 New section 2A inserted

After section 2, insert:

“2A Status of examples

“(1) An example used in this Act is only illustrative of the provisions to which it relates. It does not limit those provisions.

“(2) If an example and a provision to which it relates are inconsistent, the provision prevails.”

8 Cross-heading above section 4 amended

In the cross-heading above section 4, replace “*Duties, functions*” with “*Role, functions, duties*”.

9 New section 4A inserted (Role of Commissioner)

After section 4, insert:

“4A Role of Commissioner

The Commissioner’s role is to provide leadership and oversight of the State services so as to ensure the purpose of this Act is carried out, including by—

“(a) promoting the spirit of service to the community; and

“(b) promoting the spirit of collaboration among agencies; and

“(c) identifying and developing high-calibre leaders; and

“(d) working with State services leaders to ensure that the State services maintain high standards of integrity and conduct and are led well and are trusted; and

“(e) overseeing workforce and personnel matters in the State services; and

“(f) advising on the design and capability of the State services; and

- “(g) evaluating the performance of Public Service leaders, including the extent to which they carry out the purpose of this Act; and
- “(h) supporting the efficient, effective, and economical achievement of good outcomes by the State services; 5
and
- “(i) promoting a culture of stewardship in the State services.”

10 Section 5 amended (Duty of Commissioner to act independently) 10
 In section 5, replace “employees” with “Public Service chief executives”.

11 Section 6 replaced (Functions of Commissioner)
 Replace section 6 with:

“6 Functions of Commissioner 15
 For the purpose of carrying out the Commissioner’s role, the principal functions of the Commissioner are to—

- “(a) review the State sector system in order to advise on possible improvements to agency, sector, and system-wide performance; and 20
- “(b) review governance and structures across all areas of government, in order to advise on—
 - “(i) the allocation and transfer of functions and powers; and
 - “(ii) the cohesive delivery of services; and 25
 - “(iii) the establishment, amalgamation, and disestablishment of agencies; and
- “(c) review the performance of each department and each departmental agency; and
- “(d) appoint leaders of the Public Service, which includes— 30
 - “(i) acting as the employer of chief executives of departments and chief executives of departmental agencies; and
 - “(ii) reviewing the performance of chief executives of departments and chief executives of departmental agencies; and 35

- “(e) promote leadership capability in departments and other agencies; and
- “(f) promote strategies and practices concerning government workforce capacity and capability; and
- “(g) promote good-employer obligations in the Public Service; and 5
- “(h) promote and reinforce standards of integrity and conduct in the State services; and
- “(i) promote transparent accountability in the State services; and 10
- “(j) exercise such other functions with respect to the administration and management of the Public Service as the Prime Minister from time to time directs (not being functions conferred by this Act or any other Act on a chief executive other than the Commissioner).” 15

12 Section 8 amended (Power of Commissioner to conduct inspections and investigations)

Replace section 8(1) with:

- “(1) This section applies when the Commissioner is carrying out his or her functions in respect of the Public Service.” 20

13 Section 9 amended (Power to obtain information)

- (1) In section 9(1),—
 - (a) delete “a department, or”; and
 - (b) delete “under section 6(a), (ha), or (i)”; and
 - (c) delete “department’s or”. 25
- (2) In section 9(2), delete “department or”.

14 Section 14 amended (Acting Commissioner or acting Deputy Commissioner)

Replace section 14(1) and (2) with:

- “(1) The Governor-General in Council, on the recommendation of the Prime Minister, may appoint an acting Commissioner or acting Deputy Commissioner to act for the Commissioner or Deputy Commissioner (as applicable) in the event of— 30
 - “(a) the incapacity of the Commissioner or Deputy Commissioner by reason of illness or absence; or 35

- “(b) any reasonable cause that requires the Commissioner or Deputy Commissioner to stand down (whether temporarily or in respect of a particular matter).
- “(2) **Subsection (1)** also applies where the Deputy Commissioner is performing or exercising the functions, duties, and powers of the Commissioner under section 12(3).” 5
- 15 Section 17 amended (Vacation of office)**
In section 17(2),—
- (a) delete “any department or organisation of”; and
(b) delete “of a department”. 10
- 16 Section 23 amended (Delegation of functions or powers)**
In section 23(3)(c), replace “; or” with “.”.
- 17 Section 27 replaced (Public Service defined)**
Replace section 27 with:
- “**27 Public Service defined** 15
The Public Service comprises departments (and any departmental agencies that are part of those departments).
- “**27A Meaning of department, host department, and departmental agency** 20
“(1) In this Act,—
“**department** means a department specified in Schedule 1
“**departmental agency** means a departmental agency specified in the first column of **Schedule 1A**, which is part of its host department
“**host department** means the department identified as the host department of a departmental agency in the second column of **Schedule 1A**. 25
- “(2) Unless the context otherwise requires, every reference in this or any other enactment to a department includes any departmental agency that is part of the department. 30
- “**27B Relationship between departments and departmental agencies**
Except as provided in this or any other enactment,—

- “(a) the functions, duties, and powers of a departmental agency may be determined by the appropriate Minister of the departmental agency in conjunction with the appropriate Minister of the host department; and
- “(b) the working arrangements between a departmental agency and its host department must be agreed by their respective chief executives and approved by their appropriate Ministers.”

- 18 Section 28 amended (Delegation of functions or powers of appropriate Minister)** 10
 In section 28(1), after “department”, insert “or departmental agency” in each place.
- 19 Section 30A amended (Amendment of Schedule 1 to reflect reorganisations within Public Service)**
- (1) In the heading to section 30A, after “**Schedule 1**”, insert “**and Schedule 1A**”. 15
- (2) In section 30A(1), replace “abolished” with “disestablished”.
- (3) After section 30A(1), insert:
 “(1A) The Governor-General may, by Order in Council, amend **Schedule 1A** if a departmental agency is disestablished, if its name, its host department’s name, or its host department is changed, or if a new departmental agency is established.” 20
- (4) In section 30A(2),—
- (a) after “department”, insert “or departmental agency”; and 25
- (b) replace “abolished” with “disestablished”.
- 20 Sections 30C to 30G repealed**
 Repeal sections 30C to 30G.
- 21 Section 30H amended (Consequential changes to references to departments following reorganisations)** 30
- (1AA) In the heading to section 30H, after “**departments**” insert “**or employees of departments**”.
- (1) In the heading to section 30H, after “**departments**”, insert “**or departmental agencies**”.

-
- (2) In section 30H(1),—
- (a) after “particular department”, insert “or departmental agency”; and
 - (b) after “the department’s”, insert “or departmental agency’s”; and 5
 - (c) after “the department”, insert “or departmental agency”.
- (3) In section 30H(2),—
- (a) after “particular department”, insert “or departmental agency”; and
 - (b) after “the department”, insert “or departmental agency”; 10
and
 - (c) replace “abolished” with “disestablished”; and
 - (d) after “new responsible department”, insert “or new responsible departmental agency”.
- (4) In section 30H(3),— 15
- (a) after “particular department”, insert “or departmental agency”; and
 - (b) replace “between departments” with “elsewhere in the Public Service”; and
 - (c) after “new responsible department”, insert “or new responsible departmental agency”. 20
- (4A) After section 30H(3), insert:
- “(3A) If an enactment or other thing refers to employees of a particular department and that reference is no longer appropriate because the department’s name has changed, the reference 25
must be read as a reference to the employees of the department under its new name.
- “(3B) If an enactment or other thing refers to employees of a particular department and that reference is no longer appropriate because the department has been disestablished, the reference 30
must be read as a reference to the employees of the new responsible department.
- “(3C) If an enactment or other thing refers to employees of a particular department and that reference is no longer appropriate because functions have been transferred elsewhere in the Public Service, the reference must be read as a reference to the 35
employees who perform the relevant functions.”
- (5) In section 30H(4),—

- (a) after “**department**”, insert “**or new responsible departmental agency**”; and
- (b) after “department”, insert “or departmental agency”.
- 22 Section 30I amended (Consequential changes to references to chief executives following reorganisations) 5**
- (1) In section 30I(1),—
- (a) after “particular department”, insert “or departmental agency”; and
- (b) after “the department”, insert “or departmental agency”; and 10
- (c) after “the department’s”, insert “or departmental agency’s”.
- (2) In section 30I(2),—
- (a) after “particular department”, insert “or departmental agency”; and 15
- (b) after “the department”, insert “or departmental agency”; and
- (c) replace “abolished” with “disestablished”.
- (3) In section 30I(3),—
- (a) after “particular department”, insert “or departmental agency”; and 20
- (b) replace “between departments” with “elsewhere in the Public Service”.
- (4) In section 30I(4), after “whose department”, insert “or departmental agency”. 25
- 23 Section 30J amended (Application of consequential changes to references)**
- (1) In section 30J(1)(a), (2), (3), and (4), replace “abolition” with “disestablishment”.
- (2) In section 30J(3), replace “abolished” with “disestablished”. 30
- 23A Section 30K amended (Other saving and transitional matters arising from reorganisations within Public Service)**
- In section 30K, replace “abolition” with “disestablishment”.

23B Section 30L amended (Effect of reorganisations within Public Service)

In section 30L(1), replace “abolition” with “disestablishment”.

24 Section 31 amended (Chief executives)

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Replace section 31(1) with:

- “(1) Each department and each departmental agency must have, as its administrative head, a chief executive.”

25 Section 32 replaced (Principal responsibilities)

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Replace section 32 with:

“32 Principal responsibilities

- “(1) The chief executive of a department or departmental agency is responsible to the appropriate Minister for—

“(a) the department’s or departmental agency’s carrying out the purpose of this Act; and

15

“(b) the department’s or departmental agency’s responsiveness on matters relating to the collective interests of government; and

“(c) the stewardship of the department or departmental agency, including of its medium and long-term sustainability, organisational health, capability, and capacity to offer free and frank advice to successive governments; and

20

“(d) the stewardship of—

“(i) assets and liabilities on behalf of the Crown that are used by or relate to (as applicable) the department or departmental agency; and

25

“(ii) the legislation administered by the department or departmental agency; and

“(e) the performance of the functions and duties and the exercise of the powers of the chief executive or of the department or departmental agency (whether imposed by any enactment or by the policies of the Government); and

30

“(f) the tendering of free and frank advice to Ministers; and

35

“(g) the integrity and conduct of the employees for whom the chief executive is responsible; and

- “(h) the efficient and economical delivery of the goods or services provided by the department or departmental agency and how effectively those goods or services contribute to the intended outcomes.
- “(2) Except as provided in any other enactment,— 5
- “(a) the chief executive of a department is not responsible for the performance of functions or duties or the exercise of powers by that part of the department that comprises any departmental agency hosted by the department; and 10
- “(b) the chief executive of a departmental agency is responsible only for the performance of functions or duties or the exercise of powers by that part of the department that comprises the departmental agency.”
- 26 Section 33 replaced (Duty to act independently) 15**
 Replace section 33 with:
- “33 Duty to act independently**
- “(1) Despite **section 32**, in matters relating to decisions on individual employees (whether matters relating to the appointment, promotion, demotion, transfer, discipline, or the cessation of the employment of any employee, or other matters),— 20
- “(a) the chief executive of a department is responsible for acting independently (and is not responsible to the appropriate Minister); and
- “(b) the chief executive of a departmental agency is responsible for acting independently (and is not responsible to the appropriate Minister or to the chief executive of the host department). 25
- “(2) The independence provided in **subsection (1)** is subject to— 30
- “(a) the requirement in **section 50(4)** that a chief executive may only appoint an employee to a key position with the Commissioner’s agreement; and
- “(b) the requirement in **section 59(5)** that a chief executive have regard to the wishes of the relevant Minister in relation to decisions on ministerial staff.” 35

27 Section 34 amended (Functions, responsibilities, duties, and powers)

- (1) In section 34(1) and (2), after “of a department”, insert “or departmental agency”.
- (2) In section 34(2), after “or that department”, insert “or departmental agency”.

28 Section 35 amended (Appointment of chief executives)

- (1) In section 35(1), replace “44, and 91”, with “and 44”.
- (2) In section 35(2), after “of a department”, insert “or departmental agency”.
- (3) In section 35(4)(a), after “the Commissioner”, insert “or Deputy Commissioner”.
- (4) In section 35(4)(b), after “the Deputy Commissioner”, insert “or an employee of the Commissioner”.
- (5) After section 35(4), insert:
 - “(4AA) In relation to a vacancy or an impending vacancy in the position of chief executive of a departmental agency, the panel established under subsection (4) must also include the chief executive of the host department.”
- (6) In section 35(4A), delete “as constituted under subsection (4)”.
- (7) In section 35(4B), (5), (9), (10), and (11)(a), replace “the Commissioner” with “the chairperson”.
- (8) In section 35(5) and (6), replace “The Commissioner” with “The chairperson”.
- (9) In section 35(7), (8), (9), (10), and (11), replace “the Commissioner’s” with “the chairperson’s”.
- (10) Repeal section 35(12).

29 Section 36 amended (Reappointment of chief executives)

Replace section 36(1) with:

- “(1) The Commissioner may recommend to the Minister that the existing chief executive of a department or departmental agency be reappointed for a further term.
- “(1A) Section 35(7) to (10) apply (with any necessary modifications) to the recommendation under **subsection (1)** as if it were a recommendation under section 35(6).”

30 Section 37 amended (Appointment and reappointment of Government Statistician)

- (1) In section 37(1), replace “Subject to section 91, the” with “The”.
- (2) In section 37(2),— 5
- (a) delete “complying with”; and
- (aa) delete “and (12)”; and
- (b) after “section 35”, insert “have been complied with, and must announce publicly that the appointment has been made”. 10

31 New section 37A inserted (Transfer of chief executives)

After section 37, insert:

“37A Transfer of chief executives

- “(1) The Commissioner may recommend to the Minister that a chief executive of a department or departmental agency be transferred into a vacancy or an impending vacancy in the position of chief executive in— 15
- “(a) that department or departmental agency (as applicable); or
- “(b) another department or departmental agency. 20
- “(2) Section 35(7) to (10) apply (with any necessary modifications) to a recommendation under **subsection (1)** as if it were a recommendation under section 35(6).
- “(2A) Section 35(6) to (11) do not apply to a recommendation under **subsection (1)** if it relates to a transfer of a chief executive of a department or departmental agency into a vacancy or an impending vacancy in the position of Government Statistician. 25
- “(3) Before making a recommendation under **subsection (1)**, the Commissioner must— 30
- “(a) believe on reasonable grounds that the transfer would be in the public interest; and
- “(b) obtain the chief executive’s agreement to the transfer; and
- “(c) consult the appropriate Ministers.
- “(4) The Commissioner may make a recommendation under **subsection (1)** without notifying the vacancy or impending va- 35

cancy or examining other applicants or establishing a panel under section 35(4).”

32 Section 38 amended (Conditions of employment of chief executives)

- (1) Before section 38(1), insert: 5
 “(1AA) The Commissioner has, except as expressly provided to the contrary in this Act, the rights, powers, and duties of an employer in relation to chief executives.”
- (2) In section 38(3),—
 (a) replace “shall obtain the agreement of” with “must consult”; and 10
 (b) replace “to the conditions” with “about the conditions”.

33 Section 39 amended (Removal from office)

- (1) In section 39, after “of a department”, insert “or departmental agency”. 15
- (2) In section 39, insert as subsection (2):
 “(2) The Commissioner must consult the chief executive of the host department before removing a chief executive of a departmental agency under subsection (1).”

34 Section 40 amended (Acting chief executive) 20

- (1) In section 40(1), replace “functions, powers, and duties” with “functions, duties, and powers”.
- (2) In section 40(1)(c), after “another department”, insert “or departmental agency”.
- (3) In section 40(1)(e), replace “an employee” with “any person”. 25
- (4) In section 40(1),—
 (a) replace “directed” with “appointed”; and
 (b) replace “direction” with “appointment”; and
 (c) replace “given” with “made”.
- (5) After section 40(1), insert: 30
 “(1A) Where a new department or departmental agency is to be established on a certain date, the Commissioner may appoint as an acting chief executive any person the Commissioner considers suitable to exercise and perform all or any of the func-

tions, duties, and powers of the chief executive of that new department or departmental agency.

- “(1B) The position of an acting chief executive appointed under **subsection (1A)** ceases to exist on the date a chief executive of the new department or departmental agency takes office after being appointed under section 35.” 5
- (6) In section 40(2), replace “direction” with “appointment” in each place.
- (7) In section 40(3),— 10
- (a) replace “directed” with “appointed”; and
 - (b) after “subsection (1)”, insert “or **(1A)**”; and
 - (c) replace “functions, powers, and duties” with “functions, duties, and powers”.
- 35 Section 41 amended (Delegation of functions or powers)**
- (1) Replace section 41(1) with: 15
- “(1) A Public Service chief executive may, either generally or particularly, delegate in writing to a person described in **subsection (1A)** or **(2A)** any of the functions or powers of the chief executive under this Act or any other Act (including functions or powers delegated to the chief executive under this Act or any other Act), except that— 20
- “(a) the delegation of functions or powers delegated to the chief executive by a Minister requires the prior written approval of that Minister; and
 - “(b) the delegation of functions or powers delegated to the chief executive by the Commissioner requires the prior written approval of the Commissioner.” 25
- (2) After section 41(1), insert:
- “(1A) The following persons may be a delegate under **subsection (1)** or a subdelegate under **subsection (2)**: 30
- “(a) another Public Service chief executive:
 - “(b) a Public Service employee:
 - “(c) an individual working in the Public Service as a contractor or as a secondee from elsewhere in the State services in relation to a function or power of the Public Service: 35
 - “(d) the holder for the time being of any specified office in the Public Service.”

- (3) Replace section 41(2) with:
- “(2) A person to whom a function or power has been delegated under **subsection (1)** by a chief executive may, with the prior written approval of that chief executive, subdelegate the function or power to any other person described in **subsection (1A)**.” 5
- (4) After section 41(2), insert:
- “(2A) A Public Service chief executive may delegate under **subsection (1)** a clearly identified function or power to a person outside the Public Service (whether or not the person is within the State services), but only after— 10
- “(a) obtaining the appropriate Minister’s prior written approval; and
- “(b) satisfying himself or herself that any potential conflicts of interest will be avoided or managed. 15
- “(2AA) However, a delegate described in **subsection (2A)** may not subdelegate the delegated power or function under **subsection (2)**.
- “(2B) A delegation described in **subsection (2A)** must be noted, with a description of how effectively the delegated function or power was performed or exercised,— 20
- “(a) in the case of a delegation made by the chief executive of a department, in the annual report of that department; or
- “(b) in the case of a delegation made by the chief executive of a departmental agency, in the annual report of that departmental agency. 25
- “(2C) A delegate described in **subsection (2A)** must comply with the following obligations in relation to the performance of a delegated function or the exercise of a delegated power (in the same way as a delegate described in **subsection (1A)** must comply with them): 30
- “(a) all relevant statutory obligations; and
- “(b) all relevant obligations in a code of conduct set by the Commissioner under section 57(2). 35
- “(2D) Any information held by a delegate described in **subsection (2A)** in relation to the performance of a delegated function or the exercise of a delegated power is, for the purposes of the

Official Information Act 1982 (*see* section 2(5) of that Act), deemed to be held by,—

“(a) in the case of a delegation made by the chief executive of a department, that department; or

“(b) in the case of a delegation made by the chief executive of a departmental agency, the host department of that departmental agency. 5

~~“(2E) If the delegate described in **subsection (2A)** is outside the Public Service, the Ombudsmen Act 1975 and the Official Information Act 1982 apply to the delegate— 10~~

~~“(a) in relation to the performance of a delegated function or the exercise of a delegated power; and~~

~~“(b) as if the delegate were an organisation named in Schedule 1 of the Ombudsmen Act 1975.”~~

“(2E) In relation to the performance of a delegated function or the exercise of a delegated power, the Ombudsmen Act 1975 and the Official Information Act 1982 apply to a delegate described in **subsection (2A)** as if the delegate were an organisation named in Schedule 1 of the Ombudsmen Act 1975.” 15

(5) In section 41(3), after “in the same manner”, insert “, subject to the same restrictions,”. 20

(6) After section 41(4), insert:

“(4A) Where a chief executive or a delegate of the chief executive uses a written document to inform any other person of an action taken by a delegate of the chief executive, the document must— 25

“(a) state that the action was taken by a delegate of the chief executive; and

“(b) give the delegate’s name and office; and

“(c) inform the other person that a copy of the instrument of delegation may be inspected at the chief executive’s office.” 30

36 Section 43 amended (Review of performance of chief executive)

After section 43(1), insert: 35

“(1A) When reviewing the performance of a chief executive of a departmental agency, the Commissioner must consult the chief executive of the host department.”

37 Section 44 amended (Special provisions in relation to certain chief executives) 5

(1) In section 44(1),—

(a) replace “43, and 91” with “and 43”; and

(b) replace “apply” with “applies”.

(2) Repeal section 44(1)(a), (b), and (c).

(3) After section 44(1), insert: 10

“(1A) Nothing in sections 35, 36, 38, and 39 applies in respect of the Solicitor-General, and a review of the Solicitor-General’s performance under section 43—

“(a) must only pertain to the Solicitor-General’s responsibilities as the chief executive of a department; and 15

“(b) must not pertain to the performance of the independent and constitutional functions of the Solicitor-General or the performance of persons assisting the Solicitor-General in the performance of those functions.”

(4) Repeal section 44(2)(d). 20

38 Sections 46 to 48 replaced

Replace sections 46 to 48 with:

“46 Object

The object of this Part is to specify the Commissioner’s responsibilities for developing senior leadership and management capability in the Public Service. 25

“47 Responsibilities of Commissioner

“(1) The Commissioner is responsible for developing and implementing a strategy for the development of senior leadership and management capability in the Public Service, which could include, for example, the flexible deployment of individuals to developmental roles in the Public Service (with the agreement of the individuals and the relevant chief executives). 30

“(2) The Commissioner may promote the strategy to other agencies in the State services, and may invite employees in the State 35

services to participate in initiatives under the strategy (with the agreement of the relevant chief executives).

“48 Responsibilities of chief executives

Each chief executive of a department or departmental agency is responsible for— 5

- “(a) developing senior leadership and management capability in the department or departmental agency; and
- “(b) assisting the Commissioner to fulfil the Commissioner’s responsibilities under **section 47.**”

39 Section 49 amended (Secondments) 10

Replace section 49(1) with:

- “(1) The Commissioner may arrange for a State services employee to be seconded elsewhere in the State services (with the agreement of the employee and the relevant chief executives) for the purpose of developing senior leadership and management capability in the State services.” 15

40 Section 50 replaced (Other organisations in State services)

Replace section 50 with:

“50 Key positions in Public Service

- “(1) After consulting the chief executive of a department or departmental agency, the Commissioner may designate a position in the department or departmental agency that meets the criteria in **subsection (2)** as a key position. 20
- “(2) For the purposes of this section and **section 33(2)(a)**, **key position** means a position in a department or departmental agency that, in the opinion of the Commissioner, is key— 25
 - “(a) because of its potential to develop senior leaders; or
 - “(b) because it is critical to the Public Service.
- “(3) The Commissioner must publish a list of key positions on an Internet site maintained by or on behalf of the Commissioner. 30
- “(4) A chief executive may only appoint an employee to a key position with the Commissioner’s agreement.”

41 Part 5 heading replaced

Replace the Part 5 heading with:

**“Part 5
“Government workforce policy and
personnel provisions”.**

- 42 New subpart 1 of Part 5 and subpart 2 of Part 5 heading inserted** 5
After the Part 5 heading, insert:
“Subpart 1—Government workforce policy
- “55A Commissioner’s functions in relation to this subpart**
The Commissioner has the following functions in relation to this subpart: 10
- “(a) to provide advice and guidance to the State services (except Crown Research Institutes and their subsidiaries) on workforce matters; and
 - “(b) to consider whether to draft and submit draft government workforce policy for ministerial approval as a Government Workforce Policy Statement; and 15
 - “(c) to advise affected agencies on the operation of any Government Workforce Policy Statement; and
 - “(d) to facilitate the operation of any Government Workforce Policy Statement in conjunction with affected agencies. 20
- “55B Government workforce policy**
- “(1) The Commissioner may draft government workforce policy and, after consulting the affected agencies and any other parties that the Commissioner considers appropriate, submit it to the Minister for his or her consideration. 25
 - “(2) Government workforce policy must relate to workforce (including employment and workplace) matters for the purpose of fostering a consistent, efficient, and effective approach to such matters across the State sector.
 - “(2A) Workforce matters may, without limitation, address (in relation to the affected agency or agencies)— 30
 - “(a) the Government’s expectations about the negotiation of collective agreements and individual employment agreements in the State Services (being expectations that do not determine pay or conditions); and 35
 - “(b) the development of workforce strategy.

- “(3) Government workforce policy must specify the agency or agencies to which it applies, which may be any or all of the following:
- “(a) a department or departments:
 - “(b) a Crown agent or Crown agents: 5
 - “(c) an autonomous Crown entity or autonomous Crown entities.
- “(4) The Minister may approve government workforce policy as a Government Workforce Policy Statement.
- “(5) A Government Workforce Policy Statement is not a regulation 10
for the purposes of the Regulations (Disallowance) Act 1989 or the Acts and Regulations Publication Act 1989.
- “**55C Government Workforce Policy Statement: process**
- “(1) As soon as practicable after the Minister’s approval under **section 55B(4)**, the Commissioner must— 15
- “(a) send the Government Workforce Policy Statement to the affected agencies; and
 - “(b) publish the Government Workforce Policy Statement on an Internet site maintained by, or on behalf of, the Commissioner. 20
- “(2) A Government Workforce Policy Statement may be amended, revoked, or replaced in the same way as it may be made.
- “**55D Government Workforce Policy Statement: implementation**
- “(1) A department must give effect to a Government Workforce 25
Policy Statement.
- “(2) A Crown agent must give effect to a Government Workforce Policy Statement.
- “(3) An autonomous Crown entity must have regard to a Government Workforce Policy Statement. 30
- “(4) Despite **subsections (1) to (3)**, a Government Workforce Policy Statement may not—
- “(a) create, alter, or remove employment or other legal rights or obligations; or
 - “(b) determine or alter the content of the law applying to 35
employees or chief executives or the Commissioner.

“Subpart 2—Personnel provisions”.

- 43 Section 56 amended (General principles)**
 In section 56(2)(c), after “appointment”, insert “(except in the case of ministerial staff)”.
- 44 Section 57 amended (Commissioner may set minimum standards of integrity and conduct)** 5
- (1) In section 57(1)(b), after “Crown entities”, insert “(except for tertiary education institutions and Crown Research Institutes and any of their subsidiaries)”.
- (2) After section 57(1)(b), insert: 10
 “(ba) companies named in **Schedule 4A** of the Public Finance Act 1989.”
- (3) Replace section 57(3) with:
 “(3) The Commissioner may apply a code to any agency or agencies referred to in subsection (1), or to any particular persons or groups of persons undertaking particular functions in such an agency or agencies, with any variations that the Commissioner thinks appropriate in light of the legal, commercial, or operational context of the agency or agencies or of the persons or groups of persons. 15
 20
- “(4) The Commissioner’s functions include providing advice and guidance to the State services (except Crown Research Institutes and their subsidiaries) on matters, or at times, that affect the integrity and conduct of those within the State services (including, for example, on the interpretation of relevant standards and on the application of a code of conduct in specific cases).” 25
- (4) After section 57(4), insert:
 “Compare: 1988 No 20 ss 6(ha), 57C(2)”.
- 45 Section 57A amended (Agencies must comply with minimum standards except in particular circumstances)** 30
 In section 57A(1), after “employees”, insert “and individuals working as contractors or secondees in relation to a function, duty, or power of the agency”.

- 46 Section 57C amended (Commissioner’s powers when setting and enforcing minimum standards)**
Repeal section 57C(2).
- 47 Section 58 amended (Equal employment opportunities)**
- (1) After the heading to section 58, insert: 5
“(1) The Commissioner’s functions include promoting, developing, and monitoring equal employment opportunities programmes and policies for the Public Service.”
- (2) In section 58(3), after “For the purposes of”, insert “this section and”. 10
- (3) After section 58(3), insert:
“Compare: 1988 No 20 s 6(g)”.
- 48 Section 59 replaced (Employees of departments)**
Replace section 59 with:
- “59 Employees of departments”** 15
- “(1) In relation to the functions, duties, and powers of a department, the chief executive of the department—
- “(a) may appoint such employees of the department (including acting, temporary, or casual employees) as the chief executive thinks necessary; and 20
- “(b) may, subject to any conditions of employment included in the employment agreement applying to an employee, at any time remove that employee from his or her office or employment; and
- “(c) has, except as expressly provided to the contrary in this Act, the rights, powers, and duties of an employer in respect of the employees of the department. 25
- “(2) In relation to employees of a host department who perform the functions or duties or exercise the powers of a departmental agency, the chief executive of the host department is deemed by this subsection— 30
- “(a) to have delegated to the chief executive of the departmental agency the following rights, duties, and powers:
- “(i) those described in **subsection (1)(a), (b), and (c)** and 69(a) and (c); and 35
- “(ii) those described in sections 60 to 64; and

- “(iii) those described in sections 82 and 83; and
“(b) not to have those rights, duties, and powers in relation to those employees.
- “(3) The chief executive of a departmental agency may exercise the rights, duties, and powers deemed to have been delegated to him or her under **subsection (2)** in the same manner, subject to the same restrictions, and with the same effect as if they had been conferred on him or her directly by this Act and not by delegation. 5
- “(4) Appointments under **subsection (1)(a) or (2)(a)(i)** (except of ministerial staff) are provisional pending the outcome of any review under section 65. 10
- “(5) The chief executive of the department that is responsible for the employment of ministerial staff across all Ministers’ offices must have regard to the wishes of the relevant Minister in relation to ministerial staff.” 15

49 Sections 61A and 61B replaced

Replace sections 61A and 61B with:

- “**61A Restriction of redundancy payments in certain situations**
- “(1) A Public Service employee who has received a notice of redundancy is not entitled to a redundancy payment if, before the employee’s employment has ended, the employee either— 20
- “(a) is offered and accepts another position in the State services (either in the employee’s current department or elsewhere in the State services) that— 25
- “(i) begins before, on, or immediately after the date on which the employee’s current employment ends; and
- “(ii) is on terms and conditions of employment (including redundancy and superannuation conditions) that are no less favourable; and 30
- “(iii) is on terms that treat service within the State services as if it were continuous service; or
- “(b) is offered an **alternative position** in the State services (either in the employee’s current department or elsewhere in the State services) that— 35

- “(iaaa) begins before, on, or immediately after the date on which the employee’s current employment ends; and
- “(i) is a position with comparable duties and responsibilities to those of the employee’s current position; and 5
- “(ii) is in substantially the same general locality or a locality within reasonable commuting distance; and
- “(iii) is on terms and conditions of employment (including redundancy and superannuation conditions) that are no less favourable; and 10
- “(iv) is on terms that treat service within the State services as if it were continuous service.
- “(2) Sections 60, 61, and 65 do not apply in relation to the offer of an alternative position. 15
- “(3) This section overrides Part 6A of the Employment Relations Act 2000.
- “Compare: 1988 No 20 ss 30E, 30F, 61A, 61B(1)
- “61AB Transitional provision relating to restriction of redundancy payments 20**
- “(1) The new redundancy-related sections do not apply until the expiry of 3 years after the commencement of this section.
- “(2) The old redundancy-related sections continue to apply until immediately before the expiry of 3 years after the commencement of this section. 25
- “(3) For the purposes of this section,—
- “**new redundancy-related sections** means sections 61A and 61B after their amendment by the State Sector and Public Finance Reform Act **2012** 30
- “**old redundancy-related sections** means sections 30C, 30D, 30E, 30F, 61A, and 61B as they were in force immediately before their repeal by the State Sector and Public Finance Reform Act **2012**.

“61B Application of employee provisions to transfers of functions between Crown entities and departments

“(1) The following provisions apply both to a transfer of functions from a Crown entity to a department and to a transfer of functions from a department to a Crown entity: 5

“(a) **sections 61A** and 61C:

“(b) sections 30H, 30I, and **61D** in so far as—

“(i) those sections relate to a collective employment agreement that binds the chief executive of the Crown entity or department before the transfer of the functions; and 10

“(ii) that collective employment agreement applies to an employee whose position in the Crown entity or department ceases to exist as a result of the transfer of functions. 15

“(2) The sections referred to in **subsection (1)** apply in respect of the Crown entity or department that functions are transferred from—

“(a) as if any reference to Department A in those sections were a reference to that Crown entity or department; 20
and

“(b) with all other necessary modifications.

“Compare: 1988 No 20 s 30D”.

49A Section 61C amended (Union coverage where department ceases to be part of Public Service) 25

In section 61C, replace “abolition” with “disestablishment”.

50 New section 61D inserted (Application of collective agreements to employees following reorganisations)

After section 61C, insert:

“61D Application of collective agreements to employees following reorganisations 30

“(1) This section limits which employees may be bound by a collective agreement that—

“(a) binds the chief executive of Department A before a transfer of functions from Department A to Department B and that, as a consequence of sections 30H and 30I, 35

- binds the chief executive of Department B after that transfer of functions (**collective agreement A**); or
- “(b) binds the chief executive of Department B before that transfer of functions (**collective agreement B**).
- “(2) After that transfer of functions,— 5
- “(a) the only employees of Department B who are entitled to be bound by or enforce collective agreement A are those employees who are appointed to a position in Department B that has been established (whether or not previously existing in Department A) to enable Department B to perform the transferred functions; and 10
- “(b) the only employees of Department B who are entitled to be bound by or enforce collective agreement B are those employees who hold, or are appointed to, a position other than a position referred to in **paragraph (a)**. 15
- “(3) **Subsection (2)** does not bind an employee to a collective agreement, or entitle an employee to be bound by or enforce a collective agreement, if the employee would not otherwise be bound by, or be entitled to be bound by or enforce, that agreement. 20
- “(4) This section limits which employees may be bound by collective agreements (including collective employment contracts), and the coverage of those agreements, under Part 6 of this Act and sections 56(1), 57, 62(3), 63(3), and 243 of the Employment Relations Act 2000. 25
- “(5) This section does not apply to a collective agreement to the extent that the parties agree otherwise.
“Compare: 1988 No 20 s 30G”.
- 51 New section 66 inserted (Certain sections do not apply in relation to ministerial staff)** 30
After section 65, insert:
- “**66 Certain sections do not apply in relation to ministerial staff**
Sections 60, 61, 64, and 65 do not apply in relation to ministerial staff.” 35

- 51A Section 77 replaced (Protection from liability)**
 Replace section 77 with:
- “77 Immunity for education service chief executives and employees** 5
 Education service chief executives and employees are immune from liability in civil proceedings for good-faith actions or omissions in pursuance or intended pursuance of their duties, functions, or powers.”
- 52 Section 77C amended (Performance of teachers)**
 In section 77C(1), delete “, with the agreement of the State Services Commissioner.” 10
- 53 Section 85 amended (Offence to attempt to influence Commissioner or chief executive)**
 In section 85(1), replace “influence the Commissioner or any Commissioner or any chief executive” with “influence the Commissioner or any chief executive”. 15
- 54 Section 86 replaced (Protection from liability)**
 Replace section 86 with:
- “86 Immunity for Public Service chief executives and employees** 20
 “(1) Public Service chief executives and employees are immune from liability in civil proceedings for good-faith actions or omissions in pursuance or intended pursuance of their duties, functions, or powers.
 “(2) *See also* section 6 of the Crown Proceedings Act 1950.” 25
- 55 Section 91 repealed (Transitional provisions for permanent heads)**
 Repeal section 91.
- 56 New Schedule 1A inserted**
 After Schedule 1, insert the **Schedule 1A** set out in **Schedule 1** of this Act. 30

56A Amendment to Tax Administration Act 1994

(1) This section amends the Tax Administration Act 1994.

(2) Replace section 7 with:

“7 Delegation of powers by Commissioner

“(1) The Commissioner may delegate in accordance with sections 5
41 and 42 of the State Sector Act 1988 any of the Commis-
sioner’s functions or powers under this Act or any other Act
(including functions or powers delegated to the Commissioner
under this Act or any other Act), except that—

“(a) the delegation of functions or powers delegated to the 10
Commissioner by a Minister requires the prior written
approval of that Minister; and

“(b) the delegation of functions or powers delegated to the
Commissioner by the State Services Commissioner re-
quires the prior written approval of the State Services 15
Commissioner.

“(2) However, the Commissioner may not delegate to a person out-
side the Public Service (as described in **section 41(2A)** of
the State Sector Act 1988) any of the following functions or
powers: 20

“(a) the Commissioner’s functions or powers in relation to
obtaining information from and about taxpayers (sec-
tions 16 to 21 of this Act); and

“(b) the Commissioner’s functions or powers in relation to 25
imposing civil and criminal penalties on taxpayers in
various circumstances (Part 9 of this Act, subpart 3 of
Part 4 of the Student Loan Scheme Act 2011, and Part
12 of the Child Support Act 1991); and

“(c) the Commissioner’s functions or powers in relation to
deducting amounts from payments due (section 157 of 30
this Act, section 193 of the Student Loan Scheme Act
2011 but in respect only of the powers in section 157
of this Act, and section 154 of the Child Support Act
1991); and

“(d) the Commissioner’s functions or powers in relation to 35
tax recovery agreements negotiated between the gov-
ernment of a territory outside New Zealand and the
Government of New Zealand (Part 10A of this Act).

“(3) Sections 41 and 42 of the State Sector Act 1988 apply to delegations under this section as if those delegations were made under **section 41(1)** of that Act.”

57 Consequential amendments to Crown Proceedings Act 1950 5

(1) This section amends the Crown Proceedings Act 1950.

(2) In section 6(1), after “and any other Act,”, insert “and except as provided in **subsection (4A)**.”

(3) In section 6(4), replace “Any enactment” with “Except as provided in **subsection (4A)**, any enactment”. 10

(4) After section 6(4), insert:

“(4A) Despite certain Crown servants being immune from liability under **section 86** of the State Sector Act 1988,—

“(a) a court may find the Crown itself liable in tort in respect of the actions or omissions of those servants; and 15

“(b) for the purpose of determining whether the Crown is so liable, the court must disregard the immunity in **section 86**.”

57A Consequential amendments to Clerk of the House of Representatives Act 1988 20

(1) This section amends the Clerk of the House of Representatives Act 1988.

(2) In the heading to section 17, replace “**State Services Commission**” with “**State Services Commissioner**”.

(3) In section 17(1), replace “State Services Commission” with “State Services Commissioner” in each place. 25

(4) After section 17(1), insert:

“(1A) The State Services Commissioner must exercise functions requested by the Speaker in accordance with subsection (1) consistently with the role of the Office of the Clerk of the House of Representatives and its separation from the executive government.” 30

57B Consequential amendments to Parliamentary Service Act 2000

(1) This section amends the Parliamentary Service Act 2000. 35

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- (2) In Schedule 1, after clause 15(1), insert:
“(1A) The State Services Commissioner must exercise functions requested by the Speaker in accordance with subsection (1) consistently with the role of the Parliamentary Service and its separation from the executive government.” 5

57C Amendment relating to Legislation Act 2012

- (1) This section takes effect on the repeal of the Acts and Regulations Publication Act 1989 and the Regulations (Disallowance) Act 1989.
- (2) Repeal **section 55B(5)** and substitute: 10
- “(5) A Government Workforce Policy Statement is neither a legislative instrument nor a disallowable instrument for the purposes of the Legislation Act 2012 and does not have to be presented to the House of Representatives under section 41 of that Act.” 15

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Schedule 1

s 56

New Schedule 1A inserted into ~~State Sector Act 1988~~ principal Act

Schedule 1A

ss 27A, 30A

Departmental agency

Host department

• • • • •

Legislative history

2 July 2013

Divided from State Sector and Public Finance Reform Bill (Bill 55–2) by committee of the whole House as Bill 55–3A
