

The Treasury

Disestablishment of the Productivity Commission Information Release

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Creator: Offices of the Minister of Finance, Minister for the Public Service, and the Minister for Regulation

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[36] 9(2)(h) - to maintain legal professional privilege

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Office of the Minister of Finance and Minister for the Public Service

Office of the Minister for Regulation

Chair, Cabinet

Disestablishing the Productivity Commission

Proposal

1. This paper seeks agreement to formally disestablish the Productivity Commission (the Commission) through introducing legislation to repeal the New Zealand Productivity Commission Act 2010 (the Act) and disestablish the Commission.

Relation to government priorities

2. We have committed to starting work to improve the quality of regulation within our first 100 days in Government. This includes identifying a preferred approach to the establishment of a new regulatory agency, as well as the approach to disestablishment of the Productivity Commission, which will provide a source of funding to the new agency.

Background

3. The Productivity Commission is an Independent Crown Entity established by the New Zealand Productivity Commission Act 2010 (the Act), which is administered by the Treasury. The Commission produces a combination of inquiries requested specifically by Ministers and general work to further research and public understanding on issues around productivity.
4. The Commission is governed by a board consisting of a Chair and three Commissioners that is accountable and reports to the Minister of Finance. The Commission currently employs 22 staff and has approximately \$5.930 million of annual funding.

Process for disestablishing the Commission

5. We recommend the following approach to disestablishing the Commission, with the intention that the Commission's substantive operations (to the extent permitted by law) end no later than February 2024. To achieve this, we seek agreement to:
 - 5.1 *Request the board to commence the winding up process immediately.* Until the legislation takes effect, all legal responsibility for the entity remains with the board. To give both the Commissioners and staff certainty about the process and timeframe for disestablishment, the Minister of Finance will formally advise the board of Cabinet's intended approach to disestablish the Commission and the expectations of the wind up of operations as soon as possible and no later than February 2024. This will enable them to commence

an orderly winding up of the entity’s functions, staffing and contracts, to the extent permitted by the overarching legislative framework until such a time as the repeal legislation is enacted.

5.2 *Issue drafting instructions for a Bill to repeal the Act.* Alongside a winding up process led by the board, legislation is required to repeal the Act and formally disestablish the Commission. We recommend issuing drafting instructions to the Parliamentary Counsel Office for a Bill to repeal the Act; disestablishing the Commission; terminating positions of the existing board members/ Commissioners; terminating any remaining employment positions; and transfer any remaining assets, liabilities and reporting obligations to the Treasury as monitoring department to complete the winding up process.

6. The Parliamentary Counsel Office has advised that mid February is the earliest feasible timeframe to seek Cabinet approval to introduce the Bill. Therefore, we intend to seek Cabinet’s approval in mid February 2024 to introduce the Bill to the House and to progress the Bill under urgency. ^[36]

Additional considerations

Disestablishment of Commissioners

7. The Commission is currently composed of three Commissioners and one chair, who are board members for the purpose of the Crown Entities Act.
8. The proposed legislation would remove their positions by virtue of the entity being disestablished. The Minister of Finance proposes to send a letter to the Commissioners informing them of our intention to disestablish the Commission, and formally notifying them that their positions will be disestablished once the legislation is enacted and the Commission is disestablished.

Staff

9. Disestablishment of the Commission will mean payment of whatever redundancy entitlements apply to staff under Employment Agreements. The proposed legislation would dissolve all remaining employment positions within the Commission.

Implementation

10. We will seek Cabinet agreement to introduce the draft Bill on 12 February 2024.

Milestone/Activity	Timeframe
Cabinet approves introduction of Bill	12 February 2024
Bill introduced to the House and passed through all stages under urgency	Next available sitting day in February 2024 after Cabinet approves introduction of the Bill
Royal Assent	Before 20 February 2024
Act commences	20 February 2024

Cost-of-living Implications

11. None

Financial Implications

12. The Commission is funded from the Vote Finance non-departmental output expense appropriation with funding of \$5.930 million per year. The Commission has invoiced and received funding to cover operations up to 28 February 2024. We propose the outstanding amount of \$1.977 million remaining in the appropriation is not drawn down by the Commission.
13. We propose the substantive operations of the Commission finish no later than February 2024. There will be costs associated with the disestablishment of the Commission prior to the passing of legislation and potentially beyond due to any outstanding liabilities, including but not limited to the payment of redundancies and meeting any residual management responsibilities. Agencies are working to confirm whether these costs can be met through the Commission's cash reserves of \$2.995 million as at 30 June 2023. Depending on timing of the repeal of the legislation and disestablishment of the Productivity Commission, it may be necessary to fund some of these costs through Treasury appropriations.
14. In addition to expenses associated with disestablishment, there will likely be a number of ongoing Productivity Commission assets (e.g., website and information management) that will need to be managed by Treasury, for which the Treasury is not currently funded.
15. The legislation when passed will transfer any remaining assets and liabilities to the Treasury to complete the disestablishment process. Currently there is no appropriation with sufficient scope in Vote Finance for Treasury to meet the costs.
16. We propose that Cabinet authorise the Minister of Finance and the relevant Associate Minister of Finance who has delegated authority to act as Minister of Finance on Vote Finance (joint Ministers) to approve establishing new appropriations as necessary, and to agree carry-forward of unspent funding into the next financial year as necessary in case of delay, on the condition that any such changes to baselines are fiscally neutral overall.
17. We propose Cabinet authorise joint Ministers' approval for changes to operating and capital baselines necessary to enable the Treasury to meet any disestablishment expenses and manage assets after the Productivity Commission has been disestablished.
18. Once the residual costs required to wind up the Commission are discharged, any unspent funding in the appropriation will be returned to the Crown. Any baseline funding for 2023/24 and outyears for the non-departmental output expense appropriation "Inquiries and Research into Productivity-Related Matters" in Vote Finance and remaining net assets of the Productivity Commission that are not required to be transferred to enable the Treasury to meet any disestablishment expenses and manage assets after the Productivity Commission has been disestablished will be returned as part of the baseline update process, once these amounts have been finally determined.

19. Any existing or new appropriations affected by the changes described above will require revised or new performance reporting measures. The Treasury will advise and seek agreement of the relevant appropriation Minister(s) for appropriate end-of-year performance information for inclusion in the 2023/24 Supplementary Estimates.
20. There may be ongoing costs beyond the 2023/24 financial year, for example ongoing information storage costs. Officials will consider options for how to manage these once the extent of any ongoing costs is confirmed.
21. Work is underway on the Regulatory agency. We will report back to Cabinet in the New Year on funding arrangement for the new agency, consistent with the 100-day plan.
22. To allow for the establishment of the new regulation agency we propose the Minister for Regulation (as responsible Minister for the new regulatory agency) and the Minister of Finance and the relevant Associate Minister of Finance with delegated authority to act as Minister of Finance to jointly approve any changes to operating baselines necessary to enable the Treasury to meet any establishment expenses. This will include establishing new appropriations as necessary on the condition that any such changes to baselines are fiscally neutral overall.

Legislative Implications

23. This paper seeks authority to issue drafting instructions to Parliamentary Council Office for a Bill to disestablish the Productivity Commission.

Impact Analysis

Regulatory Impact Statement

24. Cabinet has decided to suspend the requirement for Regulatory Impact Statements for 100-day Plan initiatives that involve solely the repeal of legislation [CAB-23-MIN-0468 refers].

Climate Implications of Policy Assessment

25. None.

Population Implications

26. None.

Human Rights

27. None.

Use of External Resources

28. No external resources have been engaged in the development of this paper. The Commission may need to engage external expertise (e.g. human resources and legal services) to support the wind down as there is no capability in the organisation. The Treasury may also require external expertise to manage any residual disestablishment responsibilities transferred from the Commission.

Consultation

29. This paper has been drafted by the Treasury in consultation with the Public Service Commission and the Parliamentary Counsel Office. The Department of Prime Minister and Cabinet has been informed.

Communications

30. Cabinet's agreement to repeal the Act and disestablish the Productivity Commission will be communicated to the House of Representatives upon the introduction of a Bill.
31. The Minister of Finance, as responsible Minister for the Productivity Commission, will advise the board of the Productivity Commission of the relevant recommendations as agreed by Cabinet, including our expected timeline.

Proactive Release

32. This Cabinet Paper will be proactively released following the introduction of the Bill.

Recommendations

The Minister of Finance, Minister for the Public Service and the Minister for Regulation recommends that the Committee:

- 1 **note** that Cabinet's 100-day plan includes plans for the establishment of a new regulation agency and disestablishment of the Productivity Commission [CAB-23-MIN-0468]

Productivity Commission disestablishment

- 2 **note** that disestablishment of the Productivity Commission requires legislation to:
 - 2.1 repeal the Productivity Commission Act 2010 and remove references to the Commission in other Acts
 - 2.2 disestablish the Commission;
 - 2.3 terminate positions of the existing board members/Commissioners;
 - 2.4 dissolve any remaining employment positions within the Commission; and
 - 2.5 transfer any remaining assets, liabilities and reporting obligations to the Crown as necessary to complete the winding up process
- 3 **note** that the Commission and its board will continue to exist as a matter of law until the disestablishment legislation comes into effect
- 4 **agree** that the Minister of Finance issue drafting instructions to the Parliamentary Counsel Office for a Bill to:
 - 4.1 repeal the New Zealand Productivity Commission Act 2010;
 - 4.2 disestablish the Commission;
 - 4.3 terminate positions of the existing board members/Commissioners;
 - 4.4 dissolve any remaining employment positions within the Commission; and
 - 4.5 and transfer any remaining assets, liabilities and reporting obligations to the Treasury
- 5 **authorise** the Minister of Finance and Minister for Regulation to make additional policy decisions, consistent with the general policy intent, on issues that arise in drafting and passage through the House
- 6 **authorise** the Minister of Finance and Minister for Regulation to make minor and technical changes to the policy decisions in this paper, consistent with the general policy intent, on issues that arise in drafting and passage through the House
- 7 **note** our intention to return to Cabinet for approval to introduce the Bill on 12 February 2024
- 8 **note** that the Minister of Finance will provide written guidance to the board confirming the Government's intention to introduce a Bill repealing the Commission's Act and disestablishing the Commission

- 9 **note** that the Minister of Finance intends to work with the Commission's board to ensure its affairs are in order to the extent possible to manage the operational wind up of the entity (to the extent permitted by law) in advance of legislative disestablishment
- 10 **agree** that a place will be sought on the 2024 Legislative Programme for this Bill, with Priority 2 (must be enacted in 2024)

Financial implications

- 11 **note** that the core funding for the Productivity Commission is through a non-departmental output expense appropriation "Inquiries and Research into Productivity-Related Matters" in Vote Finance of \$5.930 million per annum
- 12 **note** that for 2023/24 financial year to date, \$3.953 million has been advanced to the Productivity Commission, and a balance of \$1.977 million remains within the appropriation described above
- 13 **note** as 30 June 2023 date the Productivity Commission has \$2.995 million in cash reserves on its balance sheet
- 14 **note** that while the intention is that the Productivity Commission will meet disestablishment expenses (including but not limited to the payment of redundancies and meeting any residual management responsibilities) to the extent possible from its cash reserves described above, depending on timing of repeal of the relevant legislation it may be necessary to transfer some of this funding to the Treasury to meet these disestablishment expenses
- 15 **note** that, in addition to expenses associated with disestablishment, there will likely be a number of Productivity Commission assets (e.g., website and information management) that will need to be managed by Treasury, and appropriated for within the Treasury
- 16 **authorise** the Minister of Finance (as responsible Minister for the Productivity Commission) and the relevant Associate Minister of Finance with delegated authority to act as Minister of Finance on Vote Finance (joint Ministers) jointly to approve any changes to operating and capital baselines necessary to enable the Treasury to meet any disestablishment expenses and manage assets after the Productivity Commission has been disestablished, including establishing new appropriations as necessary, and to agree to carry-forward of unspent funding into the next financial year as necessary in case of delay, on the condition that any such changes to baselines are fiscally neutral overall
- 17 **agree** that any baseline funding for 2023/24 and outyears for the non-departmental output expense appropriation "Inquires and Research into Productivity-Related Matters" in Vote Finance and remaining net assets of the Productivity Commission that are not required to be transferred to enable the Treasury to meet any disestablishment expenses and manage assets after the Productivity Commission has been disestablished be returned to the centre as part of the baseline update process, once these amounts have been finally determined
- 18 **note** that the Treasury will advise and seek agreement of the relevant appropriation Minister(s) for appropriate end-of-year performance information for inclusion in the

2023/24 Supplementary Estimates for any existing and new appropriations affected by the changes described above

- 19 **note** there may be ongoing costs beyond the 2023/24 financial year, for example ongoing storage costs, and officials will consider options for how to manage these once the extent of these ongoing costs is confirmed
- 20 **note** work is underway on the Regulatory agency and the Minister for Regulation will report back to Cabinet in the New Year on funding arrangement for the new agency, consistent with the 100-day plan
- 21 **authorise** the Minister for Regulation (as responsible Minister for the new regulation agency) and the Minister of Finance and the relevant Associate Minister of Finance with delegated authority to act as Minister of Finance on Vote Finance to jointly approve any changes to operating baselines necessary to enable the Treasury to meet any establishment expenses for the new regulatory agency, including establishing new appropriations as necessary on the condition that any such changes to baselines are fiscally neutral overall

Authorised for lodgement

Hon Nicola Willis

Minister of Finance
and Minister for the Public Service

Hon David Seymour

Minister for Regulation