

13 August 2018



Dear [REDACTED]

**Official Information Request: Public Service Chief Executive Appointments**

**Our Ref: 2018/0091**

I refer to your official information request received on 13 June 2018 for:

- *all advice and correspondence asked for, sent and received on the appointment mechanisms for the five public service chief executives appointed in June, especially that which deals with using the clauses of the Act that allow for the transfer from one department or another. (Part one)*
- *this should include advice sought and drawn on by the Commissioner in making these appointments, the mechanisms for it, how approaches were made to the individuals in question (Part two)*
- *the Comms plan for the announcement (Part three)*
- *any correspondence to and from the Ministers office advising of the process, and the decisions arrived at (Part four)*
- *advice/emails/reports/briefings on diversity (gender and ethnic) in the decision making around these appointments. Was there any consultation with the Ministry of Women or Ministry of Pacific Peoples, or any groups seeking to improve diversity, on these appointments? (Part five)*

**Documents released**

In response to your request, please find enclosed the following documents:

| Item | Date          | Document Description   | Decision   |
|------|---------------|--|--|
| 1    | 2 May 2018    | <b>SSC Aide Memoire:</b> Public Service Chief Executive Appointments                         | Released in full   |
| 2    | 22 May 2018   | Run-sheet  | Released in full   |
| 3    | 27 March 2018 | <b>HOSS office consultation cover sheet:</b> Chief Executive movements – implementation plan | Released in part   |
| 4    | 5 June 2018   | <b>SSC Report:</b> Public Service Chief Executive Appointments                               | Also publicly available at:<br><a href="http://www.ssc.govt.nz/appointments-public-service-chief-executives">http://www.ssc.govt.nz/appointments-public-service-chief-executives</a> |
| 5    | 5 June 2018   | <b>Cabinet Paper:</b> Public Service Chief Executive Appointments                            | Also publicly available at:<br><a href="http://www.ssc.govt.nz/appointments-public-service-chief-executives">http://www.ssc.govt.nz/appointments-public-service-chief-executives</a> |

Following recruitment processes for Public Service chief executive (CE) roles, a media statement from the Commissioner announcing the appointment(s) is prepared, with consultation with the relevant department(s) affected occurring prior to release.

Enclosed is the run-sheet noted in the table above, that was used for the CE changes you refer to. It provides a timeline for when the Commissioner's media statement would be released, when contact with relevant CEs would occur following Cabinet consideration and when CEs could advise their staff of the changes relevant to their agency.

Some information has been removed from documents listed as items 4 and 5 in the above table and will continue to be withheld under the OIA, on the grounds described in the documents.

### **Documents withheld**

There are a small number of other documents covered by parts one and two of your request that were used in the process of determining these appointments. Included in these documents are such things as legal advice and personal information. As such, I have decided to withhold these in full under the following sections of the OIA, as applicable:

- section 9(2)(a) – to protect the privacy of natural persons, including deceased people
- section 9(2)(g)(i) – to maintain the effective conduct of public affairs through the free and frank expressions of opinions
- section 9(2)(f)(iv) – to maintain the current constitutional conventions protecting the confidentiality of advice tendered by Ministers and officials
- section 9(2)(h) – to maintain legal professional privilege

In making my decision, I have considered the public interest considerations in section 9(1) of the OIA and do not consider that the public interest outweighs the interest of maintaining confidentiality, the effective conduct of public affairs and privacy of the individuals concerned.

### **Transferring CEs (response to parts one, two and four)**

Under the State Sector Act 1988, the State Services Commissioner's role is to appoint CEs of the Public Service. To do this, the Commissioner is able to use a combination of recruitment, reappointment and transfer mechanisms to make appointments.<sup>1</sup>

A significant number of vacancies could have arisen in the two years following the General Election in 2017. Ten Public Service CE terms ended or roles become vacant in 2018, with six more ending in 2019. Around half of CE roles potentially become vacant across these two years.

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<sup>1</sup> The process for appointing and reappointing Public Service CE is set out in sections 35 and 38 of the State Sector Act 1988. The Act provides for input by the Government, but provides statutory independence for the Commissioner in the selection of the person for the job.

Section 37A was added to the State Sector Act 1988 in 2013 to enable more flexible deployment of CE capability and talent by allowing serving chief executives to be transferred into other CE roles.

In these circumstances, with respect to the first suite of potential vacancies, the Commissioner decided the best approach was to implement a mix of transfers and re-appointments as well as recruiting new CEs into roles.

He considered the relative benefits of these options in relation to individual roles and the CE cohort as a whole. It was not in the best interests of the government nor the system to lose experienced leaders at this time. The priority first and foremost is to deliver on the Government's programme, while stewarding the Public Service to be fit for the future.

The mix enables the Commissioner to respond to the need for real momentum on the new Government's ambitious priorities by ensuring the right person is in the right role at the right time, but with an eye to ensuring the diversity of the cohort. He is able to retain expertise by placing experienced CEs into new roles through transfer and is enabling new talent to enter the Public Service with upcoming vacancies. Currently we are recruiting for five roles, including some of the biggest roles in the Public Service.

These are deliberate decisions that strengthen the CE cohort. The transfers themselves do not change the shape nor gender balance of the current cohort.

### **Diversity in CE appointments (response to part five)**

The Government has clear and public objectives for improved gender diversity. Since his appointment in 2016, the Commissioner has been explicit about his goals to achieve equal gender representation in the CE ranks and not just overall, but within "larger", "medium" and "smaller" sized roles.

Before the announcement of transfers, of 30 Public Service CEs, 13, or 43%, were women. Four women are in what would be regarded as "large" roles.

Over the past two years, progress has been made, including on weighted gender representation, and we are now not far from gender equality in the CE ranks. The appointment of two women to roles previously held by men would achieve this.

Although not assuming any particular individual outcome, as appointment remains merit-based, with five roles being recruited to (and more to come in 2019 as other CE terms end), the Commissioner is confident that the gender-balance goals will be met or exceeded.

SSC's CE selection processes, whether by way of re-appointment, transfer or recruitment, are structured decision-making processes. These include the use of diverse panels to consider selection; evidence to support decision-making; and ensuring the collateral for recruitment is appropriate. The processes have been strengthened over the past two years.

As unconscious bias is a relatively new area of research and advice on how to address it is still growing, we recently asked Diversity Works to run an unconscious bias lens across the CE recruitment process and make suggestions to build it further. They considered that SSC presented a thorough, well documented process, appropriate to the role seniority, which acknowledges and addresses unconscious bias in both language and process.

None-the-less, we will continue our programme of work in this area, and incorporate their suggestions for further improvement. The areas that SSC is looking at cover clarity of what we ask of applicants; ensuring recruitment consultants reflect diversity in their consultancy; bringing unconscious bias to the front of mind for recruitment panels; and making information about appointment processes more transparent. Alongside this SSC

is working with the broader Public Service and the Public Service Association to develop guidance on the use of assessment services and tools.

Neither the Ministry for Women nor the Ministry of Pacific Peoples are directly consulted as part of the CE recruitment process. This is not appropriate as it is a statutorily independent process conducted by the Commissioner. However, SSC is working very closely with the Ministry for Women on gender diversity and gender pay and similarly with the Ministry for Pacific Peoples and Te Puni Kokiri on diversity matters.

One of the Commissioner's early actions was to ensure that diversity and inclusion outcomes are a priority for Public Service CEs. To this end, CEs have collectively committed to Papa Pounamu, the State Sector Diversity and Inclusion Programme, which has an over-arching goal of creating a more diverse and inclusive Public Service through agencies that reflect, understand and value the diversity of the communities they serve. The four key areas of focus of the Programme are: gender, ethnicity, disabled people and LGBTQIA+/Rainbow.

Overall, the Public Service is making progress in gender representation in the senior leadership tiers. Female representation at the senior leadership level has increased strongly over the past decade. The Human Resources Capability Survey shows that at 30 June 2017, the percentage of women in the top three tiers of senior management was 47.9%, up from 37.8% in 2007.

Over the same period the gender pay gap for these leadership tiers has fluctuated, reaching a high of 11% in 2012, sitting at 9.7% in 2017.

As more women fill larger CE roles, and fill them on merit, the gender pay gap will close at the CE level, which we expect to be evident in the CE remuneration disclosure.

There is more to do - at CE and other leadership levels. The Government has announced a target that women would hold at least 50 per cent of roles in the top three tiers of leadership in government agencies by the end of 2019.

If you wish to discuss this decision with us, please feel free to contact [Ministerial.Services@ssc.govt.nz](mailto:Ministerial.Services@ssc.govt.nz).

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at [www.ombudsman.parliament.nz](http://www.ombudsman.parliament.nz) or freephone 0800 802 602.

Please note that we intend to publish this letter (with your personal details removed) and enclosed documents on the State Services Commission's website.

Yours sincerely



Dallas Welch  
Deputy Commissioner  
**State Services Commission**



# AIDE-MÉMOIRE

**Date:** 2 May 2018 **Security Level:** In Confidence

**For:** Rt Hon Jacinda Ardern, Prime Minister  
Hon Chris Hipkins, Minister of State Services

**Report No:** SSC2018/467

## Public Service Chief Executive Appointments

|                        |   |
|------------------------|---|
| <b>Purpose</b>         | You are meeting with the State Services Commissioner and Deputy State Services Commissioner on 9 May. The following advice outlines a proposal for 'general package' approach to Chief Executive (CE) appointments over the coming 12 months.   |
| <b>Date of meeting</b> | Wednesday 9 May, 11:00 – 11:30 am   |
| <b>Proposal</b>        | <p>Under the State Sector Act 1988, the State Services Commissioner's role is to appoint CEs of the Public Service.</p> <p>As Commissioner, I am able to use a combination of recruitment, reappointment and transfer mechanisms to strengthen the overall leadership of the CE cohort. In relation to vacant roles, I can:</p> <ul style="list-style-type: none"> <li>• appoint a new CE into the role</li> <li>• reappoint the current CE</li> <li>• transfer an existing CE into the role</li> <li>• appoint an Acting CE into the role for a finite period.</li> </ul> <p>There are a number of Public Service CE terms ending this year. I am proposing taking a 'general package' approach to the Cabinet's Appointment and Honours Committee (APH) comprising:</p> <ul style="list-style-type: none"> <li>• a number of re-appointments</li> <li>• transfer of a number of existing CEs, which will result in some consequential vacancies.</li> </ul> <p>The impacted roles are detailed at the end of this aide-memoire.</p> |

### The appointment and reappointment of Public Service CEs

The process for appointing Public Service CEs is set out in sections 35 and 38 of the State Sector Act 1988. The Act provides for input by the Government, but provides statutory independence for the Commissioner in the selection of the person for the job.

The Act provides for input by the Government at four points in the CE appointment process:

1. consultation with the Minister of State Services and the responsible Minister on any matters they wish the Commissioner to take into account in making an appointment to the position
2. consultation with the responsible Minister in relation to the panel nominees
3. formal consideration by Cabinet of the nomination that I have made prior

- 
- to it being forwarded to the Governor General
4. consultation with the Minister of State Services and the Prime Minister about the terms and conditions of employment before finalising those conditions.

At the commencement of the recruitment process, following consultation with Ministers on the position description, SSC will prepare a Cabinet paper for the Minister of State Services to take to Cabinet's Appointment and Honours Committee (APH) noting the impending vacancy and asking for confirmation of the position description.

At the completion of the selection process, the Minister of State Services will be briefed on the recommended appointment and a further paper will be prepared for the Minister requesting that APH accept the Commissioner's recommendation to appoint, and asking that it authorise the recommendation be forwarded to the Governor-General in Council.

The Governor-General will decide whether the Commissioner's recommendation is to be accepted or declined. As you know, in practice, Cabinet considers the nomination for approval and the matter is forwarded to Executive Council, where the Governor-General acts on that advice.

If accepted, the Governor-General in Council indicates acceptance of the nomination and the Commissioner will then appoint and announce the appointment. Ministers tend not to comment on these appointments.

### **Transferring Public Service CEs**

Section 37A was added to the Act when it was amended in 2013 to enable more flexible deployment of CE capability and talent by allowing the Commissioner to recommend to the Minister of State Services that a current CE be transferred into a vacant CE position.

Section 37A enables the Commissioner to recommend a current CE for appointment to a CE vacancy or impending vacancy without having to advertise the position or convene a selection panel. As a result, the roles and responsibilities of Ministers and myself differ slightly to those that apply for appointments. The Government's role is:

- 1) to be consulted by me on a proposal for transfer
- 2) formal consideration by Cabinet of the nomination that I have made prior to it being forward to the Governor General
- 3) consultation with the Minister of State Services and the Prime Minister about the terms and conditions of employment before finalising those conditions.

The ability to transfer CEs provides the flexibility to adapt quickly to the needs of the system at any given time, foster a development path for CEs, provide opportunities for CEs to gain a wider range of skills and experience, and ensure they are working where they can be most effective.

Before making a recommendation to transfer an existing CE the Commissioner must, under section 37A(4):

- believe on reasonable grounds that the transfer is in the public interest, and
- obtain the CE's agreement to the transfer, and
- consult appropriate Ministers (in practice this means Ministers with portfolio interests in the relevant departments).

I have received advice on how I should assess the public interest, which is that I should consider the following matters:

- 
- the state of the departments under consideration, and the ability of the CE being considered to perform effectively in the new environment
  - public confidence in the departments in question, or in the public service generally
  - the relationships of the CE(s) and relevant Ministers
  - the Commissioner's awareness of the current state of the employment market and the likelihood of suitable candidates presenting themselves through a recruitment process
  - whether or not the transfer will assist in promoting the broader purposes of the State Sector Act, e.g. to foster a system that operates in the collective interest of government, or to assist me to carry out my role, e.g. promoting collaboration and developing leaders
  - the benefits of moving with speed to fill the position, and
  - public opinion or potential response to the use of the transfer power.

### **My rationale for the transfer of some Public Service CEs in this case**

I have given careful consideration to the options available to me to perform my role of nominating candidates for various impending vacancies for CEs, and to the above factors.

For each, I have considered the relative benefits of conducting a recruitment process compared with reappointment and transfer for these positions. I have considered each position in terms of what is required to take forward the organisation and whether or not a full recruitment process is likely to bring forward candidates that would perform better in the role than a CE that I am able to transfer under section 37. I have also considered the overall system benefit of both retaining key skills in the senior public service leadership cohort and developing the current CEs, while still providing opportunity for new leaders to enter public service or to progress from other more junior public service roles.

My proposal to fill these roles through a mixture of transfers, reappointment and new appointments strikes the right balance between retaining and deploying established skills, and providing opportunity for new talented individuals. In each case where I am looking to recommend a transfer, I am confident that the public interest test is met. Each candidate for transfer is, by my assessment, the right person to lead the organisation in question and meet the relevant Minister's needs. By implementing this mix of transfers and appointments I will further our system wide objectives, in terms of strengthening the overall CE cohort.

The proposal that I currently have in mind will be further tested as I undertake consultation with the relevant Ministers and further conversations with the relevant CEs to seek their agreement to a transfer, before my proposals are finalised and presented for Cabinet consideration.

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#### **Process and timeframe**

I have discussed the package approach with the Minister of State Services who supports my recommendation.

I am seeking your support to take a general package approach directly to Cabinet on 28 May, and your support for this approach with Ministers. The time proposed timelines for the general package approach is detailed below:

- 23 May – Minister of State Services lodges Cabinet paper
- 28 May - Cabinet and Governor-General in Council

- 
- 29 May – Announcement

Following your support with Ministers, I will then be meeting separately with responsible Ministers to discuss my intentions for each CE position and to receive any feedback they may have, as outlined in the statutory process.

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**Impacted CE roles**

The roles that I intend to make appointments to variously are:

Reappointments:

- Director and Chief Executive, Serious Fraud Office
- Chief Executive, Department of the Prime Minister and Cabinet
- Secretary of Defence and Chief Executive, Ministry of Defence
- Government Statistician and Chief Executive, Statistics New Zealand

Transfers:

- Director-General for Primary Industries and Chief Executive, Ministry for Primary Industries
- Secretary for Internal Affairs and Chief Executive, Department of Internal Affairs

Consequential vacancies

- As a result of the appointments, if accepted, there would be a number of consequential vacancies on which I will provide further advice.

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**Responsible Manager:** Peter Hughes, State Services Commissioner

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## Runsheets

| Date          | Action  | Affected CEs   | Responsibility   |
|---------------|---|--|--|
| Tue<br>22 May | Talk to final Ministers re the package: <ul style="list-style-type: none"> <li>• Minister Mark</li> <li>• Minister Martin</li> <li>• Minister Curran</li> <li>• Minister Mahuta</li> <li>• Minister Salesa</li> <li>• Minister Henare</li> </ul>    | NA   | Dallas and Debbie  |
| Wed<br>23 May | Talk to final Ministers re the package: <ul style="list-style-type: none"> <li>• Minister Woods</li> <li>• Minister Faafoi (TBC)</li> </ul>   | NA   | Dallas and Debbie  |
| Wed<br>23 May | Debbie to call Helene, Martyn and Colin to discuss language 'retiring/stepping down' and incoming CEs   | Helene, Martyn and Colin   | Debbie Power   |
| Wed<br>23 May | Finalise comms for CE 'pairs' meetings  | NA   | Grahame Armstrong / Sia Aston  |
| Wed<br>23 May | Set up meeting with CE 'pairs' to meet Thursday/Friday/Monday   | NA   | Kim O'Keeffe   |
| Wed<br>23 May | Debbie to sign paper final Cabinet paper for lodging  | NA   | Debbie Power   |
| Thu<br>24 May | Paper lodged for consideration at Cabinet   | NA   | Christina Connolly   |
| Thu<br>24 May | Aide memoire provided to the Minister Office  | NA   | Juanita Te Kani  |
| Thu<br>24 May | Begin to meet with CE 'pairs' Ask each CE to bring an advisor with them (ideally someone who they can work with on their communications collateral)<br><br><i>CE 'pairs' briefed on the changes that impact on them, i.e. not the whole package</i> | Groups:<br>1. AK and BB – MFAT<br>2. HQ and AB – Defence<br>3. MD and RS – MPI<br>4. CM and PJ – DIA | Kim O'Keeffe will schedule meetings<br><br>Debbie, Sia/Grahame, and relevant ACs to attend |
| Fri<br>25 May | SSC media statement and email to CEs approved by Peter  | NA   | Grahame Armstrong / Sia Aston  |
| Mon<br>28 May | Final CE 'pair' meeting   | 'Pairs' as listed above  | As above   |

|   |  |   |  |
|---|--|---|--|
| Mon<br>28 May   | File note from consultation with Ministers   | NA  | Dallas Welch   |
| Mon<br>28 May   | Provide the Minister's Office with a draft of the PR   | AN  | Sia Aston  |
| Mon<br>28 May<br>(11:00 – 1:00 pm)                              | Cabinet meets  | NA  | MoSS   |
| Mon<br>28 May (4pm)   | Executive Council – Governor-General signs forms   | NA  | MoSS   |
| Mon<br>28 May<br>(after<br><br>(After has been through Cabinet) | Call affected CEs to advise them that paper has been through Cabinet   | Affected CEs  | Dallas to contact Julie Read and Liz MacPherson<br><br>ACs to contact: Helene Quilter, Andrew Kibblewhite, Brook Barrington, Andrew Bridgman, Ray Smith and Paul James |
| Tue 29<br>May 8.30 am   | Call to Chief Justice, Dame Sian Elias   | NA  | Peter Hughes   |
| Tue 29<br>May 9 am  | Public Service and non-Public Service Department CEs advised In-Confidence   | SSLT including affected CEs   | Toni Vincent   |
| Tue<br>29 May<br><br>From 9 am                                  | Affected CEs brief their LTs In-Confidence at special meetings on the changes that relate to their team, and signal broader changes: <ul style="list-style-type: none"> <li>• SFO: announce JR's reappointment</li> <li>• DPMC: announce AK's reappointment + BB being transferred into role in the future</li> <li>• MFAT: announce BB moving into new role (CE DPMC) + vacancy being created</li> <li>• Justice: announce AB moving into MoD role (in the future) + AK moving into Justice role (in the future)</li> <li>• MoD: announce HQ's reappointment and</li> </ul> | Affected CEs to advise their agency and key stakeholders<br><br>There may be a small number of key stakeholders CEs may wish to contact | NA   |

|                           |  |                  |                                      |
|---------------------------|--|------------------|--------------------------------------|
|                           | <p>finishing her term + AB being transferred into the role (in the future)</p> <ul style="list-style-type: none"> <li>• MPI: announce MD retirement + Ray Smith being transferred into the role</li> <li>• Corrections: announce RS being transferred into MPI CE role + vacancy being created</li> <li>• DIA: announce Colin MacDonald's stepping down + PJ moving into the role. And that there will be an internal person acting until PJ starts.</li> <li>• MCH: announce PJ being transferred + vacancy being created</li> <li>• SNZ: announce LM reappointment.</li> <li>• CEs may also wish to advise other staff – e.g. CEs Offices</li> </ul> |                  |                                      |
| Tue<br>29 May<br>9:45 am  | CEs to advise all staff about the changes that are impacting on their agency   | All affected CEs | NA                                   |
| Tue<br>29 May<br>9.45 am  | There may be a small number of key stakeholders that need to be advised In-Confidence in terms of their current role   | All affected CEs | SSC – to advise the PSA              |
| Tue<br>29 May<br>9.50 am  | Geoff to contact Dr Ashley Bloomfield  | All affected CEs | SSC – to advise the PSA              |
| Tue<br>29 May<br>10.00 am | <b>Media statement issued and published on SSC website (will not include reappointments)</b>   |                  | Grahame Armstrong                    |
| Tue<br>29 May<br>10.00 am | <p>Pro-active release of information on SSC website</p> <p>Provide copies of the CAB paper to Ministerial Team to redact for uploading (once lodged at Cabinet)</p>  |                  | <p>Ministerial Team</p> <p>CEDAR</p> |

|                      |   |                                  |                         |
|----------------------|---|----------------------------------|-------------------------|
| Tue<br>29 May<br>TBC | Reappointments are Gazetted                       | Notice covers all reappointments | Juanita Te Kani         |
| Tue<br>29 May<br>TBC | Reappointments are Gazetted                       | Notice covers all reappointments | Juanita Te Kani         |
| Wed<br>30 May<br>TBC | Congratulatory letters from Peter to affected CEs | Notice covers all reappointments | Juanita Te Kani and ACs |

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# HoSS OFFICE CONSULTATION COVER SHEET

STATE SERVICES COMMISSION  
Te Kōwhiri o Ngā Tiri Kōwhiri



**TO:** Peter Hughes, Debbie Power  
**FROM:** Juanita Te Kani  
**SUBJECT:** Chief Executive movements – implementation plan  
**ACTION REQUIRED:** Discuss at Strategy meeting, 28 March 2018  
**Date:** 27 March 2018

## BACKGROUND INFORMATION

### Purpose

- 1 At Strategy tomorrow we will discuss the implementation plan for appointments in 2018. **Attached** is a copy of the CE movement plan for background information.

### Implementation

- 2 We are working to have:
  - 2.1 one omnibus approach to APH/CAB – reappointments and CE movements
  - 2.2 one announcement (internal and external)
  - 2.3 staggered start dates and issuing of warrants.
- 3 There are two key parts to executing these appointments:

#### Reappointments

- 4 The reappointment of a number of CEs:

| CE                 | Agency | Proposed reappointment term               |
|--------------------|--------|---|
| Helene Quilter     | MoD    | 1 year<br>(1 July 2018 to 30 June 2019)   |
| Liz MacPherson     | Stats  | 3 years<br>(26 Aug 2018 to 25 Aug 2021)   |
| Julie Read         | SFO    | 1 year<br>21 Oct 2018 to 20 Oct 2019      |
| Andrew Kibblewhite | DPMC   | 7 months<br>(25 June 2018 to 24 Jan 2019) |

- 5 **Attached** as Appendix One is a detailed plan to implement these reappointments, including progress to date.
- 6 **Note** that once the actions are complete, these reappointments can proceed independently of the 'CE Movements' process.

**CE Movements**

7 The proposed transfer of six current CEs to another Public Service CE role:

| CE                                    | New role | Proposed start date |
|---------------------------------------|----------|---------------------|
| 9(2)(f)(iv) confidentiality of advice |          | TBC                 |
| Brook Barrington (MFAT)               | DPMC     | TBC                 |
| Andrew Kibblewhite (DPMC)             | MoJ      | TBC                 |
| 9(2)(f)(iv) confidentiality of advice |          | 1 July 2018 TBC     |
| Ray Smith (Corrections)               | MPI      | 1 November 2018     |
| Paul James (MCH)                      | DIA      | June 2018 TBC       |

**Consequential Vacancies**

8 9(2)(f)(iv) confidentiality of advice

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