

# **HON JUDITH COLLINS KC, MINISTER OF DEFENCE**

## **REGULATORY IMPACT STATEMENT: DEFENCE (WORKFORCE) AMENDMENT BILL**

**August 2025**

This publication provides the Regulatory Impact Statement that assisted Cabinet to make final policy decisions in June 2025 regarding proposed changes to support the Chief of Defence Force in managing their workforce during industrial action.

This pack has been released on the Ministry of Defence website, available at:  
<https://www.defence.govt.nz/publications/defence-workforce-amendment-bill-ris/>

It has been necessary to withhold certain information in accordance with the following provisions of the Official Information Act 1982. Where information is withheld the relevant sections of the Act are indicated in the body of the document. Where information is withheld under section 9(2) of the Act it is not considered that the public interest outweighs the need to protect it.

Information is withheld where making it available would be likely to prejudice the security or defence of New Zealand or the international relations of the Government of New Zealand [section 6(a)]. Information is also withheld in order to:

- protect the privacy of natural persons [section 9(2)(a)]
- maintain the constitutional conventions that protect for the time being the confidentiality of advice tendered by Ministers of the Crown and officials [section 9(2)(f)(iv)] and
- maintain legal professional privilege [section 9(2)(h)].



# Regulatory Impact Statement: Defence (Workforce) Amendment Bill

<b>Decision sought</b>	This Regulatory Impact Statement (RIS) will inform final Cabinet decisions regarding proposed changes to support the Chief of Defence Force in managing their workforce during industrial action.
<b>Agency responsible</b>	New Zealand Defence Force and Ministry of Defence
<b>Proposing Ministers</b>	Minister of Defence
<b>Date finalised</b>	18 June 2025

## Briefly describe the Minister's regulatory proposal

The Minister's chosen regulatory proposal aims to:

- better support the Chief of Defence Force (CDF) in managing their workforce when New Zealand Defence Force (NZDF) civilian staff take industrial action where this risks prejudicing national security, or the ability and / or readiness of the Armed Forces to perform specific operational activities that are integral to core defence outputs, or if it is necessary for the work to be performed for reasons of safety or health; and
- address procedural issues when military personnel are authorised to conduct the work of striking public service employees by:
  - extending the duration of these Ministerial authorisations from 14 days to 30 days; and
  - clarifying that if a Ministerial authorisation expires when the House is adjourned, it should be automatically extended to a time where the House is next sitting.

## Summary: Problem definition and options

### What is the policy problem?

The Chief of Defence Force (CDF) is currently constrained by the Defence Act 1990 (the Act) in how they can respond to industrial action taken by civilian staff, when this prejudices national security, or the ability of the NZDF to safely and effectively perform its core functions.

The impacts of these constraints were felt when NZDF civilian staff undertook industrial action in late 2024. Civilian staff provide expertise and resourcing to enable the NZDF to perform functions and duties, such as keeping military bases secure. Issues that were highlighted by this event include:

- **Issue A:** Military personnel can currently only be authorised (by the Minister of Defence) to conduct the work of civilian staff taking industrial action for reasons relating to health and safety.<sup>1</sup> The CDF cannot command military personnel to conduct the work of civilian staff taking industrial action if it is critical to maintaining national security or the ability of the NZDF to safely and effectively perform its functions, unless there is a clear risk to health and safety.
- **Issue B:** Military personnel can only be authorised to conduct the work of NZDF civilian staff or public service employees taking industrial action for a maximum of 14 days.<sup>2</sup> Should the Minister wish to extend this authorisation, they must seek approval from the House.<sup>3</sup> This means these processes can be vulnerable to the scheduling of Parliament, and are out of step with similar authorisations, where this level of approval is not necessary.
- **Issue C:** The process of seeking approval from the House to extend an authorisation (under the Act) risks information being publicly disclosed in Parliament that may highlight security vulnerabilities and sensitive operational details. This could prejudice national security, put members of the NZDF at risk and hinder operational security and effectiveness.

### Views of regulated parties and other stakeholders about the problem

Regulated parties and stakeholders include NZDF civilian staff who are union members, relevant unions, the CDF, members of the Armed Forces, the Minister of Defence, the Ministry of Business, Innovation and Employment (MBIE), Ministry of Justice (MoJ), the Department of the Prime Minister and Cabinet (DPMC), the Public Service Commission (PSC), Department of Corrections (Corrections), Government Communications Security Bureau (GCSB), and New Zealand Security Intelligence Services (NZSIS).

Stakeholders who have been involved in the development of this proposal (the government agencies listed above) understand the issue and support the preferred option.

NZDF civilian staff, and relevant unions have not been consulted at this stage, but will have an opportunity to share their views during Select Committee, after a bill (the Defence (Workforce) Amendment Bill) is introduced to the House.

### Have non-regulatory options been explored?

Yes – but we found that the above issues could not be resolved without regulatory change.

### What is the policy objective?

The intended outcomes of these changes are to ensure that:

- the CDF has greater flexibility to manage their workforce in instances where national security or the ability of the NZDF to safely and effectively perform its core functions are impacted by NZDF civilian staff taking industrial action (**Objective 1**);
- the right of civilian staff to take industrial action is preserved, and military personnel do not unnecessarily conduct the work of civilian staff (**Objective 2**); and
- critical authorisations for members of the Armed Forces to conduct the work of striking public service employees are not vulnerable to House scheduling constraints (**Objective 3**).

<sup>1</sup> Employment Relations Act 2000, s 97(4).

<sup>2</sup> Defence Act 1990, s 9(8).

<sup>3</sup> Defence Act 1990, s 9(8).

### How will success or failure be measured?

The Ministry of Defence has a role as regulatory steward to consider, monitor or review its legislation on a regular basis. The Ministry of Defence will be responsible for monitoring, evaluating or reviewing the success of these proposed changes.

The NZDF will also keep the Ministry of Defence informed of the workability of these changes, so if further amendments are required, these can be considered.

The International Labour Organisation Committee on Freedom of Association (CFA) is able to examine alleged violations of freedom of association (whether or not the country concerned has ratified the relevant Conventions). A decision by the CFA to examine a complaint could be seen as way to measure the success or failure of proposed changes in appropriately preserving the right of civilian staff to take industrial action.

### What indicators will be used to measure this?

The key indicators will be:

1. The CDF being able to appropriately manage their workforce in response to industrial action taken by civilian staff when this risks prejudicing national security, the ability and / or readiness of the Armed Forces to perform specific operational activities that are integral to core defence outputs, or safety or health, while doing what the CDF can to preserve the rights of civilian staff taking industrial action.
2. The extension of authorisations for members of the Armed Forces to conduct the work of striking public service employees (where this is necessary for reasons of safety or health) do not require the House to reconvene if in recess to approve the extension authorisation.

### What policy options have been considered, including any alternatives to regulation?

The options considered include:

<b>Option 1</b>	Maintain the status quo by making no changes (do nothing, aside from relying on negotiations or other alternative employment tools, such as mediation).
<b>Option 2</b>	<p>Make procedural changes when military personnel conduct the work of NZDF civilian staff and other public service employees by:</p> <ul style="list-style-type: none"> <li>• extending the duration of Ministerial authorisation in s 9(8) of the Act from 14 days to up to 60 days; and</li> <li>• providing for an authorisation to extend until Parliament is next sitting, if it would expire when the House is adjourned.</li> </ul>
<b>Option 3A</b> <i>(MoD's preferred option)</i>	<p>Empower the Minister of Defence to support the CDF to manage their workforce, when national security or safety is at risk, by:</p> <ul style="list-style-type: none"> <li>• enabling the Minister to authorise the Armed Forces to conduct the work of NZDF civilian staff who are taking industrial action where this work is required to avoid prejudicing national security, or the ability of the NZDF to respond to a potential emergency or crisis, or if it is necessary for the work to be performed for reasons of safety or health;</li> <li>• removing the requirement to pass a resolution in the House before extending an authorisation; and</li> <li>• requiring the Minister to notify Parliament and relevant stakeholders of an authorisation (without sharing sensitive information).</li> </ul> <p>Make procedural changes when military personnel are authorised to conduct the work of public service employees by:</p> <ul style="list-style-type: none"> <li>• extending the duration of these Ministerial authorisations from 14 days to 30 days; and</li> </ul>

	<ul style="list-style-type: none"> <li>clarifying that if a Ministerial authorisation expires when the House is adjourned, it should be automatically extended to a time where the House is next sitting.</li> </ul>
<b>Option 3B</b> <i>(NZDF and the Minister's preferred option)</i>	<p>Empower the Minister of Defence to support the CDF to manage their workforce, when national security, safety or the delivery of core outputs is at risk by:</p> <ul style="list-style-type: none"> <li>enabling the Minister to authorise the Armed Forces to conduct the work of NZDF civilian staff who are taking industrial action where this work is required to avoid prejudicing national security, or the ability and / or readiness of the Armed Forces to perform specific operational activities that are integral to core defence outputs, or if it is necessary for the work to be performed for reasons of safety or health;</li> <li>removing the requirement to pass a resolution in the House before extending an authorisation; and</li> <li>requiring the Minister to notify Parliament and relevant stakeholders of an authorisation (without sharing sensitive information).</li> </ul> <p>Make procedural changes when military personnel are authorised to conduct the work of public service employees by:</p> <ul style="list-style-type: none"> <li>extending the duration of these Ministerial authorisations from 14 days to 30 days; and</li> <li>clarifying that if a Ministerial authorisation expires when the House is adjourned, it should be automatically extended to a time where the House is next sitting.</li> </ul>

#### What consultation has been undertaken?

We have undertaken targeted consultation and engagement with relevant government agencies.

The public will have an opportunity to provide their feedback on the preferred option via Select Committee when a bill (the Defence (Workforce) Amendment Bill) is introduced to the House.

#### Is the preferred option in the Cabinet paper the same as preferred option in the RIS?

The preferred option in the Cabinet paper is the same as the NZDF's preferred option in this RIS (Option 3B).

However, in responding to Issue A (that, currently, authorisations to conduct the work of NZDF civilian staff are constrained to reasons of safety or health), the NZDF and the Ministry of Defence agreed that this threshold needed to be expanded, but had different views about the scope of that expansion.

The NZDF preferred an approach that would enable a Ministerial authorisation if industrial action of NZDF civilian staff prejudiced national security, or the ability and/or readiness of military personnel to perform specific operational activities that are integral to core defence outputs. The Ministry of Defence preferred a slightly narrower approach that would enable a Ministerial authorisation if it was required to avoid prejudicing national security, or the ability of the NZDF to respond to a potential emergency or crisis. Beyond this, the NZDF and the Ministry agree on all other components of the preferred option in the Cabinet paper and this RIS.

The preferred option in the Cabinet Paper (Option 3B) reflects the NZDF's preferred approach, and the preferred option of the Minister, and is explored in greater detail in this RIS. However, for completeness (as this is a joint NZDF and Ministry of Defence RIS), the Ministry's preferred approach in responding to Issue A is included in the options analysis.

### Summary: Minister's preferred option in the Cabinet paper (Option 3B)

#### Costs (Core information)

- Financial costs are expected to be negligible, as changes would be incorporated into existing processes.

- The preferred option would reduce the bargaining power of NZDF civilian staff taking industrial action, when compared with the status quo.
- The preferred option is expected to have minimal impacts on the bargaining power of public service employees.
- Members of the armed forces may conduct the work of NZDF civilian staff in broader circumstances during industrial action than in other areas of the public service. This could be seen as inconsistent.

### Benefits (Core information)

- The proposal enables the CDF to rearrange their workforce during industrial action, when such action prejudices national security, or the ability of the NZDF to safely and effectively perform its core functions.
- The proposal aligns the extent of House oversight required in relation to s 9 authorisations with similar legislative authorisations (which is an improvement from the status quo, which is considerably more onerous).
- The proposal aligns the duration of a s 9 authorisation with the realities of industrial action.
- The proposal removes the risk of s 9 authorisations in relation to the work of NZDF civilian staff expiring because of House scheduling constraints.
- The proposal significantly reduces the risk of s 9 authorisations in relation to the work of public service staff expiring because of House scheduling constraints.
- The proposal reduces the risk of sensitive information being discussed in the public domain.

### Balance of benefits and costs (Core information)

- We consider it is acceptable for members of the armed forces to conduct the work of NZDF civilian staff in broader circumstances than the rest of the public service because of the importance of the work of NZDF civil staff for maintaining national security and performing core defence outputs. This is also appropriate, and can be more easily actioned, given the nexus between the work of NZDF civil staff and members of the armed forces.
- It is appropriate that the procedural requirements under s 9 of the Act are consistent with similar legislative requirements, and are reasonable in the context of present-day industrial action.
- In our view, the continuation of a s 9 authorisation should not be put at risk merely by scheduling challenges that may prevent the extension of an authorisation.
- Staff taking industrial action retain some bargaining power under the proposal because of the costs to NZDF of using members of the armed forces to conduct the work of striking NZDF civil staff.

### Implementation

The proposal requires amendments to the Defence Act 1990.

### Limitations and Constraints on Analysis

Targeted engagement with relevant unions (prior to the introduction of a bill) would have assisted in providing a public view about the impacts of the preferred option, and provided insights that may have improved the preferred option.

I have read the Regulatory Impact Statement, and I am satisfied that, given the available evidence, it represents a reasonable view of the likely costs, benefits and impact of the preferred option.



**BRIG James Kennedy-Good**  
 Director, Defence Legal Services  
 New Zealand Defence Force  
 17.06.2025



**Bronwyn Evans-Kent**  
 Director, Defence Policy  
 Ministry of Defence  
 17.06.2025

### Quality Assurance Statement

**Reviewing Agency:** Ministry of Defence

**QA rating:** Partially Meets

**Panel Comment:**

The panel assesses this RIS partially meets the criteria for quality assurance. It contains all necessary information and is clear and concise. The panel assesses the analysis of the preferred option (3B) underestimates the dilution of bargaining power of NZDF civilian staff compared to Option 3A. The RIS has not been consulted with all key affected parties. The panel recommends consideration be given to how NZDF civilian staff will be notified of the changes to ensure they are able to provide feedback via the Select Committee process, and how any issues raised will be addressed within the overall process.

Released by the Minister of Defence



## Section 1: Diagnosing the policy problem

---

### What is the context behind the policy problem and how is the status quo expected to develop?

*Civilian staff work closely with military personnel to maintain national security and ensure the Armed Forces can operate safely and effectively*

1. The NZDF comprises military personnel, who make up the armed forces, and civilian staff, who provide specialist expertise and additional resource to augment the capacity of military personnel.
2. Military personnel are required to be combat ready for armed conflict if it occurs, and perform a wide range of duties such as delivery of military training overseas, sanctions enforcement, and participation in armed conflict.
3. Civilian staff undertake a range of activities, some of which contribute to the ability of the Armed Forces to maintain national security or safely and effectively perform its core functions. This includes work such as providing security at military bases and other sensitive facilities; specialist testing of NZDF capabilities and technology; weapons and munitions servicing; intelligence analysis; and aircraft maintenance.
4. If these activities cannot be performed, military bases and facilities can become unprotected, and the Armed Forces cannot as effectively prepare for, and carry out its functions (particularly during deployment or responding to a serious emergency). This can risk national security and prejudice the NZDF's ability to safely and effectively undertake operations and activities.
5. Civilian staff also undertake activities that support the NZDF in the delivery of its more general or secondary functions. This can include everyday (or business as usual) work undertaken by civilian staff at the New Zealand Defence College, the Human Resources Service Centre, Defence Shared Services Group call centres and mail rooms, or those who support the maintenance, and operation of, defence estate infrastructure, personnel archives and medals, and defence libraries. These are activities that are unlikely to have an impact on the ability of the NZDF to maintain national security, or safely and effectively undertake operations and activities.

*The CDF needs to manage their workforce to maintain national security, and enable the NZDF to perform its functions, while preserving the right of civilian staff to undertake industrial action*

6. Unlike military personnel, civilian staff have a right to take industrial action. As with any civilian workforce, their ability to do so is fundamental for ensuring workers' rights and fair working conditions.
7. The right to strike is a key aspect of freedom of association at international law. Likewise, in New Zealand, the Courts have regarded this right as a "fundamental protection" for workers that is necessary to preserve striking workers' bargaining power.
8. New Zealand has obligations in various free trade agreements (FTAs) to respect, promote and realise all fundamental principles and rights at work, including freedom of association. New Zealand has also committed to, in its FTA with the European Union, to make continued and sustained progress towards the ratification of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87).
9. In an NZDF context, a decision to take industrial action can mean that functions and duties performed by civilian staff are at risk of not being performed. This can impede the security of military bases and facilities, and the ability of military personnel to effectively prepare for and carry out operations.
10. Current legislation restricts the extent to which the CDF can use military personnel to conduct the roles of civilian staff in the event of industrial action.



*Procedural constraints exist within the process for authorising military personnel to conduct the work of striking NZDF civilian staff or public service employees*

11. There are some procedural constraints within the current process for authorising military personnel to conduct the work of striking NZDF civilian staff or public service employees. Specifically, authorisations of this nature expire after 14 days, unless extended by a resolution of the House of Representatives. This presents the following challenges:
  - 11.1. The 14-day expiry is no longer fit for purpose in the context of present-day industrial action. Since the introduction of tools to resolve employment disputes under the Employment Relations Act 2000 (such as early mediation), industrial action has become a last resort measure that occurs only when there has been a significant breakdown in negotiations. This means industrial action is more likely to last for longer than 14 days, and so any associated authorisation for military personnel to conduct the work of striking staff is more likely to require an extension.
  - 11.2. If the House of Representatives is in recess when an authorisation expires (for example, over the Christmas recess period), either the House must be reconvened to pass a resolution extending the authorisation, or the authorisation will expire.

### **What is the policy problem or opportunity?**

#### *Summary of the problem*

12. Currently, the CDF's ability to use military personnel to conduct the work of NZDF civilian staff in the event of industrial action is constrained to situations where there is a risk to health and safety. Absent such a risk, the CDF cannot use military personnel to conduct these roles where industrial action poses a risk to national security or the ability and / or readiness of the Armed Forces to perform specific operational activities that are integral to core defence outputs.
13. In addition, to use members of the armed forces to conduct the work of civilian staff or public service staff beyond 14 days, authorisation must be obtained from the House – a process which is highly vulnerable to House scheduling, and which (in relation to the work of NZDF civilian staff) risks sensitive information pertaining to national security being discussed in the public domain.

#### *Current legislative powers*

14. Under s 9(2) of the Act, the Armed Forces may be used to conduct the work of public service employees taking industrial action, provided:
  - 14.1. the use of the Armed Forces for this purpose has been authorised by the Minister of Defence in writing, specifying the part or parts of the Armed Forces that may be used and the public service or public services that may be performed; and
  - 14.2. the Minister of Defence informs the House of Representatives of the authorisation, and provides the written authorisation to them.
15. An authorisation granted under s 9(2) of the Act expires after 14 days and can only be extended if the House of Representatives passes a resolution to extend an authority for a period that is specified in the resolution.<sup>4</sup> A resolution requires a House debate and vote.
16. However, if Parliament is dissolved or has expired before or after an authorisation, and has not been summoned to meet before the authority would lapse, the Governor-General, being satisfied that it is necessary to extend the authority, may extend the authorisation by proclamation approved in Executive Council for a period specified in the proclamation.

---

<sup>4</sup> Defence Act 1990, s 9(8)(a).

17. If the House is adjourned when an authorisation expires, the Minister of Defence would need to arrange for the House to reconvene in order to pass a resolution.
18. These provisions have been used in the past to backfill public service employees who have taken industrial action. For example, military personnel have been authorised to act as corrections officers during industrial action at prisons.
19. Section 97(4) of the Employment Relations Act 2000 provides express provisions to allow other people (like members of the armed forces) to cover functions performed by striking staff where there are risks to safety or health. However, there are no similar provisions accounting for industrial action that affects national security or core defence outputs.

20.

s9(2)(h)

21.

22. In addition, s 9(8) of the Act requires that any authorisations issued under s 9(2) expire after 14 days unless extended by resolution of the House of Representatives, or the Executive Council if Parliament is dissolved.
23. As the ability to backfill critical roles beyond 14 days requires approval of the House, this is vulnerable to the scheduling and availability of the House. For example, if the House is in recess, this approval cannot be obtained, prejudicing the NZDF's ability to continue activities required of it by Government.
24. The process of seeking an authorisation from the House risks illuminating security vulnerabilities and discussing sensitive operational details in the public domain.

### Why are changes required now?

25. The constraints of s 9 processes were acutely felt by the NZDF at the end of 2024 when civilian staff undertook industrial action in support of bargaining for a new collective agreement. This experience highlighted the onerous process required to enable the CDF to use members of the armed forces to carry out critical operational and security tasks that would ordinarily be carried out by civilian staff. There was also uncertainty over the scope of roles that s 9 authorisations could cover.
26. The ability to extend s 9 authorisations beyond 14 days in this case was put in serious doubt as the authorisations were set to expire just before Parliament went into recess for the Christmas break.

s9(2)(h)

27. The process of seeking extended authorisations from the House also risked the public disclosure of information in Parliament that could have highlighted security vulnerabilities and sensitive operational details.
28. Changes are needed to ensure that the CDF is able to manage their workforce appropriately in future periods of industrial action, when this poses a risk to national security or core defence outputs.
29. These changes need to be in the form of legislative amendments, as the issues outlined stem from the legislative framework itself and therefore are unable to be resolved with non-regulatory options.

30. Changes are also needed to address the procedural issues engaged in the s 9 authorisation process, to reduce the risks that a critical authorisation may be unable to be extended due to House scheduling, or that sensitive security information may be publicly disclosed.

31. In sum, the following issues were identified through this process:

*Issue A: Authorisations are limited to health and safety*

34. Personnel can only be authorised by the Minister of Defence to conduct the work of civilian staff taking industrial action for reasons relating to health and safety.<sup>5</sup>

35. This means the CDF cannot command military personnel to conduct the work of NZDF civilian staff if it is critical to maintaining national security or the ability of the NZDF to safely and effectively perform its functions, unless there is a clear risk to safety or health. If industrial action occurs, no one is able to perform these essential duties if a direct threat to health and safety is absent.

*Issue B: Authorisations expire after 14 days*

36. Military personnel can only be authorised to conduct the work of NZDF civilian staff or other public service employees taking industrial action for a maximum of 14 days. Should the Minister wish to extend this authorisation, they must seek approval from the House. As a result:

36.1. a process to maintain national security (among other factors) is vulnerable to the scheduling and the availability of Parliament; and

36.2. the process is out of step with other authorisations – for example, no other agencies are required to seek approval from the House when employing or engaging people from their own organisations to perform the work of their own striking employees, even if this is for an extended duration.

*Issue C: Current processes risk disclosing sensitive or classified information*

37. The process of seeking approval from the House to extend an authorisation (under the Act) risks information being publicly disclosed in Parliament that may highlight security vulnerabilities and sensitive operational details.

38. This could prejudice national security, put members of the NZDF at risk, and hinder operational security and effectiveness.

**What consultation has been undertaken?**

*Targeted engagement and consultation with Government departments*

39. Targeted engagement was carried out with the Ministry of Business, Innovation and Employment (MBIE), the Public Service Commission (PSC), the Department of the Prime Minister and Cabinet (DPMC), the Ministry of Justice (MOJ), the Department of Corrections, and the Government Communications Security Bureau (GCSB) / New Zealand Security Intelligence Service (NZSIS). Agencies were sympathetic to the need for changes to occur, considered that the proposals were measured solutions to the identified issues, and did not otherwise raise any significant concerns. Other relevant comments and suggestions from these agencies have been incorporated into the paper.

40. The public will have an opportunity to provide their views during Select Committee, once a Bill (the Defence (Workforce) Amendment Bill) has been introduced to the House.

---

<sup>5</sup> Employment Relations Act 2000, s 97(4).

41. We also provided options to the Minister of Defence about undertaking public consultation and / or engaging with unions.<sup>6</sup> We suggested options including: undertaking full public consultation, targeted engagement with the Council of Trade Unions (recommended), or to give stakeholders the opportunity to share their views during the Select Committee phase.
42. The Minister decided to rely on the Select Committee process as an opportunity for NZDF civilian staff and relevant unions to provide feedback on the preferred option.

## Section 2: Assessing options to address the policy problem

---

### What objectives are sought in relation to the policy problem?

43. The objectives are to ensure that:
- the CDF has greater flexibility to manage their workforce in instances where national security or the ability of the NZDF to safely and effectively perform its core functions are impacted by NZDF civilian staff taking industrial action (**Objective 1**);
  - the right of civilian staff to take industrial action is preserved, and military personnel do not unnecessarily conduct the work of civilian staff (**Objective 2**); and
  - critical authorisations for members of the Armed Forces to conduct the work of striking public service staff are not prevented from being extended solely due to House scheduling constraints (**Objective 3**).

### What criteria will be used to compare options to the status quo?

44. The following criteria will be used to compare options to the status quo:
- **The CDF's latitude to manage their workforce** – how well the option enables the CDF to appropriately manage their workforce in response to industrial action taken by civilian staff when this has significant impacts (i.e. how well the option addresses Objective 1).
  - **Preservation of the right to strike** – how well the option preserves the right of all civilian staff to take industrial action, and ensures that military personnel do not unnecessarily conduct the work of civilian staff (i.e. how well the option addresses Objective 2).
  - **Resolution of procedural challenges** – how well the option resolves procedural challenges, while still ensuring Parliament has appropriate oversight of decisions that permit military personnel to conduct the work of civilian staff taking industrial action (i.e. how well the option addresses Objective 3).

### What options are being considered?

#### Option 1 – Do nothing / maintain the status quo

45. Under this option, no changes would be made. This means if NZDF civilian staff take industrial action and this poses a risk to national security or the delivery of core defence outputs, but not to health and safety, the CDF will not be able to use members of the armed forces to conduct the work of striking civil staff.

#### Pros –

---

<sup>6</sup> Please note this sentence was corrected following Cabinet Business Committee (CBC) as part of a final proofread before proactive release.

**Cons –**

- Industrial action (in some circumstances) would continue to prejudice national security, or the ability of the NZDF to safely and effectively perform its core functions.
- The procedural challenges faced when an extension to a s 9 authorisation is required will remain, meaning:
  - the ability to obtain an extension remains vulnerable to the scheduling and availability of the House; and
  - the process of seeking an extension from the House risks information being publicly disclosed in Parliament that may highlight security vulnerabilities and sensitive operational details.

**Option 2 – Procedural changes**

46. Under this option, procedural changes would be made in situations where military personnel conduct the work of NZDF civilian staff and other public service staff by:
- 46.1. extending the duration of Ministerial authorisation in s 9(8) of the Act from 14 days to up to 60 days; and
  - 46.2. providing for an authorisation to extend until when Parliament is next sitting, if it expires when the House is adjourned.

**Pros –**

- Reduces the likelihood of requiring an extension to an authorisation, and lowers the risk of being vulnerable to the availability of the House.
- Introduces a mechanism for an extension to carry over if it expires when the House is adjourned.
- Reflects changes in industrial relations where industrial action often substantially exceeds 14 days.

**Cons –**

- Maintains the requirement for the House to pass a resolution to extend an authorisation, meaning that there is a continued risk of security vulnerabilities being discussed in the public domain.
- Does not resolve constraints relating to the range of possible impacts of industrial action.
- A change to the duration of authorisations from 14 to 60 days may not be appropriate when military personnel are authorised to conduct the work of public service employees, in the absence of examples of public service strikes having lasted for this period of time.

**Option 3A – Support the CDF to manage their workforce when national security or safety or health is at risk, and make procedural changes (MoD's preferred option)**

47. Under this option, the Minister of Defence would be empowered to support the CDF to manage their workforce when national security or safety is at risk by:
- 47.1. enabling the Minister to authorise the Armed Forces to conduct the work of NZDF civilian staff who are taking industrial action where this work is required to avoid prejudicing national security or the ability of the NZDF to respond to a potential emergency or crisis, or if it is necessary for the work to be performed for reasons of safety or health.
  - 47.2. removing the requirement to pass a resolution in the House before extending an authorisation; and
  - 47.3. requiring the Minister to notify Parliament and relevant stakeholders of an authorisation (without sharing sensitive information).

48. This option also proposes to make procedural changes when military personnel are authorised to conduct the work of public service employees by:

- 48.1. extending the duration of these authorisations from 14 days to 30 days; and
- 48.2. clarifying that if a Ministerial authorisation expires when the House is adjourned, it should be automatically extended to a time where the House is next sitting.

**Pros –**

- Enables military personnel to conduct the work of NZDF civilian staff taking industrial action when it can be shown that not conducting this work would prejudice national security, the ability to respond to an emergency / crisis, or safety or health.
- Minimally deviates from existing employment relations law, and ensures that decisions to respond to industrial action are fair to civilian staff who do not enjoy all the benefits of being military personnel.
- Enables more efficient decision-making by removing the requirement to obtain House approval for extensions to s 9 authorisations.
- Addresses the procedural challenges related to instances where military personnel are authorised to conduct the work of public service employees taking industrial action.

**Cons –**

- Will impact the bargaining power of civilian staff to some extent.
- May mean that certain NZDF activities cannot take place where the role of striking civilian staff is central to core defence outputs, but there is no link to national security or safety or health.
- Removal of the requirement to seek House approval to extend an authorisation may be viewed as a removal of an important check on Ministerial power.

**Option 3B – Support the CDF to manage their workforce when national security, delivery of core outputs, or safety or health is at risk, and make procedural changes (*the NZDF and the Minister's preferred option*)**

49. Under this option, the Minister of Defence would be empowered to support the CDF to manage their workforce when national security, the delivery of core defence outputs, or safety or health is at risk by:

49.1. enabling the Minister to authorise the Armed Forces to conduct the work of NZDF civilian staff who are taking industrial action where:

- i. this work is required to avoid prejudicing:
  - national security; or
  - the ability and / or readiness of the Armed Forces to perform specific operational activities that are integral to core defence outputs; or
- ii. it is necessary for the work to be performed for reasons of safety or health.

49.2. removing the requirement to pass a resolution in the House before extending an authorisation; and

49.3. requiring the Minister to notify Parliament and relevant stakeholders of an authorisation (without sharing sensitive information).

50. This option also proposes to make procedural changes when military personnel are authorised to conduct the work of public service employees by:

- 50.1. extending the duration of these authorisations from 14 days to 30 days; and

50.2. clarifying that if a Ministerial authorisation expires when the House is adjourned, it should be automatically extended to a time where the House is next sitting.

**Pros –**

- Enables military personnel to conduct the work of NZDF civilian staff in instances that meet the threshold under Option 3A or when industrial action prejudices the ability and / or readiness of the Armed Forces to perform specific operational activities that are integral to core defence outputs.
- Provides greater flexibility for the NZDF workforce to be rearranged when this is required for core defence outputs, but may not meet the threshold of being required for national security, emergency response, or safety or health.
- Ensures the NZDF can meet Government expectations in terms of its core operational outputs.
- Enables more efficient decision-making by removing the requirement to obtain House approval for extensions to s 9 authorisations.
- Addresses the procedural challenges related to instances where military personnel are authorised to conduct the work of public service employees taking industrial action.

**Cons –**

- Has a slightly more significant impact on the bargaining power of NZDF civilian staff (compared with other options) in that it will provide the NZDF with a greater ability to backfill work where NZDF civilian staff are taking industrial action. However, this will be dependent on the members of civilian staff, and when they choose to take industrial action (should they choose to do so).
- Removal of the requirement to seek House approval to extend an authorisation may be viewed as a removal of an important check on Ministerial power.

Released by the Minister of Defence



## How do the options compare to the status quo/counterfactual?

	Option 1 – Do nothing / maintain the status quo	Option 2 – Procedural changes	Option 3A – Support the CDF to manage their workforce when national security or safety or health is at risk, and make procedural changes	Option 3B – Support the CDF to manage their workforce when national security, delivery of core outputs, or safety or health is at risk, and make procedural changes
CDF's latitude to manage workforce	0	0	+	++
Preservation of right to strike	0	0	-	-.6
Resolution of procedural challenges	0	++	++	++
Overall assessment	0	2	2	3

<sup>6</sup> The Ministry's view is that the negative impact of this option on the preservation of the right to strike is dependent on the NZDF civilian staff who decide to take industrial action and when this occurs. For example, there may be instances where the impact of Options 3A and 3B on bargaining power is the same. Likewise, there may be instances where the negative impact on bargaining power is less under Option 3A than 3B. However, this is not considered consequential enough to warrant a major difference in the points allocated in this table.

**What option is likely to best address the problem, meet the policy objectives, and deliver the highest net benefits?**

51. In NZDF's view, Option 3B is likely to best address the problem, meet policy objectives, and deliver the highest net benefits.
52. This option best supports criteria to support the CDF in managing their workforce in a wider range of circumstances, reduces the risk of the NZDF being unable to deliver on government agreed outputs in the event of industrial action, and ensures that the right of NZDF civilian staff and public service employees to take industrial action is preserved. This option is preferred over Option 1 as it responds to existing challenges, whereas Option 1 maintains them.
53. This option is preferred over Option 2 as it recognises that responding to industrial action within the NZDF warrants a different approach than industrial action outside of the NZDF.
54. This option is preferred by NZDF over Option 3A because it would support the NZDF to conduct a broader range of operations (during a period where civilian staff are taking industrial action) to ensure the NZDF is always ready to respond should an unexpected event require it. For example, exercises that support interoperability and readiness, training activities, and the transport of aircraft or vessels around New Zealand could be undertaken under this option. These activities would be out of scope for Option 3A, other than where industrial action impeded the ability of the NZDF to carry those activities out safely or without risk to national security.
55. In practice, the changes enacted by Option 3B would mean:
  - 55.1. there would no longer be an expiry on an authorisation, and subsequently, no requirement to seek approval from the House to extend an authorisation. Instead, an authorisation would be ended when it is no longer reasonable or necessary to continue. This responds to Issues B and C, as it ensures these decisions are not vulnerable to the scheduling and availability of the House, reflects similar authorisations, and ensures that sensitive information is not shared in Parliament.
  - 55.2. the Minister would be required to notify Parliament and relevant stakeholders of an authorisation, but would not be required to include sensitive information in a notification. This ensures transparency about a decision to authorise the military personnel to conduct the work of civilian staff, and maintains privacy in relation to sharing sensitive information in Parliament (which responds to Issue C, but this would only apply to NZDF staff).
56. We note that in assessing the options, there will necessarily be a degree of trade-off between Objectives 1 and 2 in that an option that provides the CDF with the greatest latitude to manage their workforce (and therefore best satisfies Objective 1), is unlikely to also have the least impact on the right to strike (and therefore best satisfy Objective 2). An appropriate balance between these objectives must be found.

*Scope of Option 3B*

57. An approach that enables Ministerial authorisation when industrial action prejudices the ability and / or readiness of the Armed Forces to perform specific activities that are integral to core defence outputs ensures that activities that might not meet the definition of an immediate emergency / crisis are within scope.

58. In the NZDF's view, the scope of Option 3B remains appropriately limited to the NZDF's most essential functions and duties. Under this option, many tasks of NZDF civilian staff could not be conducted by the Armed Forces – for example, the work of civilian staff who work at the New Zealand Defence College, Human Resources Service Centre, Defence Shared Services Group call centres and mail room, or those who support the maintenance and operation of defence estate infrastructure, personnel archives and medals, and defence libraries.

59. s9(2)(a), s6(a)

*How will this option preserve the right to strike?*

60. Under Option 3B, industrial action will still have a considerable impact on NZDF operations. This is because members not ordinarily trained to perform the duties of civilian staff will be required to step into these roles (where it is safe to do so), while work that would otherwise be performed by military personnel will not be delivered (or will be delivered at reduced levels), or the resources of the NZDF will be stretched in order to fulfil all relevant military and civilian related duties. As such, NZDF civilian staff will retain bargaining power in the event they decide to strike following enactment of this proposal.

61. s6(a)

62. The NZDF also considers that the difference in impact on the right to strike between Options 3A and 3B is limited, as only a small number of activities performed by civilian staff that would not be captured by Option 3A would be captured by Option 3B. For example, during the industrial action that occurred between September 2024 and January 2025, NZDF estimates that there were, at most, 11 striking individuals who could not have had their work covered under Option 3A that could have been covered under Option 3B. This being so, the impact on civilian staff of broadening the scope under Option 3B (as compared with Option 3A) is limited. The extension to the scope of s 9 authorisations in the NZDF context under Option 3B is justified as it is necessary for ensuring that all tasks integral to the NZDF's ability and readiness to deliver critical defence outputs are able to be performed.

64. The use of this measure will also always be a last resort if negotiations are unsuccessful, and will be avoided where possible.
65. The removal of the requirement to seek House approval is appropriate as the existing requirement is considerably more onerous compared to similar authorisations. For example, no other agencies are required to seek approval of the House when employing or engaging people to perform the work of their own striking employees, even if for an extended duration. As a further example, in the context of a national emergency, the Minister must inform the House of declaration or extension of a state of national emergency, but the House's approval is not required for either a declaration of a state of emergency, or the extension of a state of emergency. Accordingly, replacing this requirement with a requirement to notify the House, rather than seek its approval, in relation to a s 9 authorisation seems proportionate.
64. Overall, NZDF considers the impact of Option 3B will be limited, as the situations requiring use of military personnel in these instances are rare, and even more so in the context of NZDF's civilian staff. To date, NZDF civilian staff have taken industrial action only twice, and on only one of these occasions (the industrial action that occurred between September 2024 and January 2025) were s 9 authorisations required.

*What will procedural changes entail?*

65. The procedural issues with s 9 that render the extension of s 9 authorisations subject to the availability of the House do not only impact authorisations obtained in relation to the work of NZDF civilian staff; they also arise when military personnel are authorised by the Minister of Defence to conduct the work of public service employees outside of the NZDF.
66. Option 3B is an appropriate response to this issue, and would have only very minor impacts on strike action in the public service, by slightly extending the duration of a s 9 authorisation and permitting authorisations to continue in the event the House is in recess until the next sitting date. The duration and procedure for s 9 authorisations proposed by Option 3B is consistent with similar authorisations in other legislation, and is aligned with the realities of modern day industrial action – specifically, that following the introduction of tools to resolve employment disputes under the Employment Relations Act 2000 (such as early mediation), industrial action is a last resort measure that occurs only when there has been a significant breakdown in negotiations, and therefore may be more likely to last for longer than 14 days. Option 3B would improve the practicality of s 9 in addressing situations where industrial action creates risks to safety or health.
67. The s 9 process would continue to require a House resolution before an extension to a s 9 authorisation can be granted, and would only be applicable when it is necessary for the work to be performed for reasons of safety or health. This will ensure that military personnel will only conduct the work of public service employees where it is justified, and for a period that is appropriate in the circumstances.

*The Ministry of Defence's preferred option for addressing Issue A is Option 3A*

68. There is one component of the preferred option where the Ministry of Defence would support a slightly different approach. This is in relation to Issue A (that currently, authorisations to conduct the work of NZDF civilian staff is constrained to reasons of safety or health). In the Ministry's view, Option 3A is likely to best respond to Issue A, rather than Option 3B. However, the Ministry agrees with all other elements of the preferred option.
69. Option 3A proposes a slightly narrower approach to the circumstances that enable the Minister of Defence to authorise military personnel to conduct the work of NZDF civilian staff taking

industrial action. Under this option, authorisations would be limited to instances where a decision to take industrial action prejudices:

- 69.1. national security;
  - 69.2. the ability of the NZDF to respond to a potential emergency or crisis; or
  - 69.3. if it is necessary for the work to be performed for reasons of safety or health.
70. Comparatively, the NZDF's preferred option permits the Minister of Defence to authorise military personnel to conduct the work of NZDF civilian staff in the circumstances outlined above, as well as when industrial action risks prejudicing the ability and / or readiness of the Armed Forces to perform specific operational activities that are integral to core defence outputs.
71. The Ministry prefers this approach in response to Issue A as it requires that a clear risk to national security or the ability of the NZDF to respond to a crisis / emergency or safety or health is demonstrated before a decision to respond to industrial action is made – a narrower approach compared with option 3B.
72. However, given that the impacts of options 3A and 3B on bargaining power are likely to be only marginally different in most instances, the Ministry is comfortable with the progression of Option 3B, provided there are supplementary measures to support this option, such as best practice guidance.

**Is the Minister's preferred option in the Cabinet paper the same as the agency's preferred option in the RIS?**

73. The Minister's preferred option in the Cabinet paper is the same as the NZDF's preferred option in this RIS (Option 3B).
74. However, as noted above, the Ministry's preferred option in relation to Issue A departs slightly from this option and is reflected in Option 3A.

**What are the marginal costs and benefits of the preferred option in the Cabinet paper?**

Affected groups (identify)	Comment <i>nature of cost or benefit (eg, ongoing, one-off), evidence and assumption (eg, compliance rates), risks.</i>	Impact <i>\$m present value where appropriate, for monetised impacts; high, medium or low for non-monetised impacts.</i>	Evidence Certainty <i>High, medium, or low, and explain reasoning in comment column.</i>
<b>Additional costs of the preferred option compared to taking no action</b>			
Regulated groups (NZDF civilian staff who are union members, relevant unions, the CDF, military personnel)	Military personnel will not be performing their typical duties when backfilling civilian staff, leading to important work not being performed. However, the cost of this is covered under existing funding.	Low – costs are covered by existing funding.	High – confirmed by the NZDF.
	Bargaining power of civilian staff/unions reduced – but industrial action will still cause challenges for the NZDF (i.e. other duties will not be performed, or existing resources will be stretched).	Medium costs to civilian staff/unions – they will still have bargaining power, but this would be reduced under this change.	Medium – we assume this outcome, but this would need to be tested with civilian staff and unions to confirm.

Regulators (Minister of Defence, Parliament)	Legal challenge to a decision to authorise (via judicial review) may occur.	Medium – legal costs can range in \$100,000s. But authorisations occur infrequently, meaning risk of challenge is low.	Medium – based on history of NZDF civilian staff industrial action (last year was the first time strike action required an authorisation).
Others (International Labour Organisation Committee for Freedom of Association (CFA))	The CFA can examine violations of freedom of association – and may recommend changes to better preserve the right to strike – which would cost to implement.	Low – we consider that the CFA would consider decisions (relating to NZDF civilian staff) to fit within the realm of “essential services”.	High – confirmed by MBIE.
<b>Total monetised costs</b>	All costs expected to be covered under existing funding.		
<b>Non-monetised costs</b>	Medium	Low	Low
<b>Additional benefits of the preferred option compared to taking no action</b>			
Regulated groups (NZDF civilian staff who are union members, relevant unions, the CDF, military personnel)	Enables the CDF to manage their workforce if industrial action taken by NZDF civilian staff impacts national security or the ability of the NZDF to safely and effectively perform core defence outputs.	High	High
	Ensures that actions are limited to circumstances that are considered critical to national security or core defence outputs. Those in non-critical roles would be able to take industrial action without military personnel backfilling their roles (thus maintaining their bargaining power).	High	High
	Reduces the administrative burden on the NZDF/CDF as it clarifies when backfilling can occur and provides clarity to civilian staff (or potential civilian staff) about when their bargaining power as union members may be reduced.	Medium	Medium
Regulators (Minister of Defence, Parliament)	Reduces administrative burden for the Minister of Defence and Parliament as House resolutions are not required to extend an authorisation (relating to NZDF staff).	High	High
Others (International Labour Organisation [ILO] Committee for freedom of Association (CFA))	n/a	n/a	n/a

<b>Total monetised benefits</b>	Not available – dependent on provisions being used to respond to industrial action in the future.		
<b>Non-monetised benefits</b>	Medium	High	High

### Section 3: Delivering an option

---

#### How will the proposal be implemented?

75. Changes will be implemented via amendments to the Act to establish separate criteria and procedures for the Minister to authorise the use of armed forces to conduct the work of NZDF civilian staff during industrial action. This will include expanding the scope of s 9 for NZDF's purposes to situations involving risks to national security, the ability and / or readiness of the Armed Forces to perform specific operational activities that are integral to core defence outputs, or safety or health, and replacing the requirement to seek approval from the House to extend an authorisation beyond 14 days with a requirement to notify the House when this occurs.
76. Procedural changes for the public service more broadly will be implemented via amendments to s 9(8) of the Act. Specifically, the expiry date on s 9 authorisations will be extended from 14 days to 30 days, and if a s 9 authorisation is expected to expire when the House is adjourned, that authorisation will be automatically extended to a time where the House is next sitting.
77. Further non-legislative changes could also be implemented to provide clarity about what is expected when industrial action results in the risks outlined above. Some of these changes could include:
- 77.1. Information to be shared, or clauses included in new employment agreements which specify that military personnel may be authorised to conduct their work if a decision to take industrial action results in significant impacts. This could include information about where employees can seek assistance or raise concerns should they feel an authorisation is unjustified; and
- 77.2. Guidance to help decision-makers determine whether an authorisation for certain work is required. This could include examples of the types of activities which sit within the scope of authorisation, and which do not.

#### How will the proposal be monitored, evaluated, and reviewed?

78. The Ministry of Defence has a role as regulatory steward to consider, monitor or review its legislation on a regular basis. The Ministry of Defence will be responsible for monitoring, evaluating or reviewing the effectiveness of these proposed changes.
79. The NZDF will also keep the Ministry of Defence informed of the workability of these changes, so if further amendments are required, these can be considered.
80. The International Labour Organisation Committee on Freedom of Association (CFA) are able to examine alleged violations of freedom of association (whether or not the country concerned has ratified the relevant Conventions). A decision by the CFA to examine a complaint could be seen as way to measure the success or failure of proposed changes in preserving the right of civilian staff to take industrial action while ensuring that the CDF can appropriately manage their workforce when national security or the ability of the NZDF to safely and effectively perform its essential functions are impacted.