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PUBLIC SERVICE LEGISLATION AND PUBLIC SERVICE REFORM

Abstract

Legislation is one important component of the public service reform agenda. Legislative change contributes to both of the objectives of change: strengthening the role of the public service as part of executive government, and ensuring the organisational flexibility and system leadership needed to help meet the challenges New Zealand faces. To this end the Public Service Bill will be designed to reinforce the spirit of service and help build public trust by articulating common purpose, principles and values for the public service. It will formalise the role of the public service in supporting the Māori–Crown relationship. The legislation will also address building the capacity of the public service to work as a single system by enabling new organisational forms, leadership arrangements, and a modernised framework for public service employment.

Keywords public service reform, spirit of service, Māori–Crown relationship, legislation, State Sector Act

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The Public Service Bill and public service reform

Most readers will be aware that a Public Service Bill will be before Parliament and, once enacted, will replace the State Sector Act 1988. The State Sector Act has formed the statutory framework for the public service since 1988. Its repeal and replacement is the most publicly visible part of the wider public service reform agenda of which the bill constitutes a significant, but by no means the only, part.

The change process has two basic objectives: to underpin and strengthen the role of the public service as part of executive government, and to ensure that in future we have the organisational flexibility and system leadership to help meet the challenges that New Zealand faces.

I want to be completely clear that our public service works with high integrity, displays a robust spirit of service among public servants, and is responsive to the changing policies and needs of governments and communities. New Zealand's public service has an enviable international reputation for integrity and effectiveness. Recent surveys reinforce this reputation. New Zealand is ranked second overall out of 38 countries assessed on central civil service performance in the 2019

International Civil Service Effectiveness Index (Blavatnik School of Government and Institute of Government, 2019). New Zealand scored first in integrity, capabilities and procurement. The 2018 Transparency International Corruption Perceptions Index ranked New Zealand second out of 180 countries and territories for having the lowest level of perceived public sector corruption (Transparency International, 2018). The 2018 Victoria University of Wellington Institute for Governance and Policy Studies survey showed meaningful improvement in trust in government since 2016 (IPGS and Colmar Brunton, 2018). Separate reports like these are building a compelling story about how well our country is being served by the public service.

But this does not mean that we cannot do better. There are ways in which we both can do better and need to do better in order to meet the challenges New Zealand will face in the future. In this article I want to describe how we are going about it.

The spirit of service

In terms of how we work, the basic requirement, from both citizens and government, is one of commitment to service. New Zealanders expect public institutions that work for them. For this reason the public service has to work, and be seen to work, with an underlying ethos and motivation founded on a spirit of service to the nation.

In the 1980s and 1990s, the public service was reformed to follow economic theories that assumed that public servants were motivated by self-interest (Boston et al., 1996; Osborne and Gaebler, 1992). This turned out not to be a good model for understanding how and why public servants act the way they do. That is not to say that public servants are never influenced by self-interest, but they are also motivated by a desire to help their community. The difference between motivations in the public service and in other fields has now been the subject of considerable study (Perry, 1996, 1997; Crewson, 1997; Brewer, Selden and Facer II, 2000; Perry and Hondeghe, 2008). Janet and Bob Denhardt described some of these motivations in their popular essay 'The power of service':

The basic requirement, from both citizens and government, is one of commitment to service. New Zealanders expect public institutions that work for them.

We care about our country, our community, and our neighbors. Each of us, whether we wear a uniform, a suit, a jacket, coveralls, or a hard hat, plays a role in improving the lives of others. Service to the public – helping people in trouble, making the world safer and cleaner, helping children learn and prosper, literally going where others would not go – is our job and our calling. (Denhardt and Denhardt, 2001)

In New Zealand we have described this calling to make a difference as 'a spirit of service to the community'. The term was first used in 1945 by public administration theorist Edgar Gladden, who stated that the requirement of the public service is that it be 'impartially selected, administratively competent, politically neutral and imbued with the spirit of service to the community' (Gladden, 1945). This description was incorporated into the long title of New Zealand's 1962 State Services Act, and retained in the purpose statement of the 1988 State Sector Act.

The spirit of service is expressed in many ways, depending on the role of the public servant and the function of the

agency in which they work. For some it is expressed in their compassionate approach to front-counter interactions with members of the public; for others in the expertise and assertiveness they bring to the provision of advice to ministers; and for others in their observance of professional codes and standards in their work. What I have come to believe in my time as a public servant is that the spirit of service must characterise the interactions that the public service has with society if we are to meet the expectations placed on us.

I do not mean to suggest that the spirit of service is missing now. Our people sign up to the public service because they have a spirit of service to the community. They don't need anybody creating it for them. That is why they do their jobs and the exceptions are rare in the overall picture. But we do need to ensure that the departments and agencies of the public service are the kind of environment that allows public servants to give full expression to their spirit of service.

For this reason, the spirit of service has been central to my communications and messaging to public service leaders, at all levels, during my period as state services commissioner. It is also central to my expectations of other public service leaders in their own spheres of responsibility.

One of the many ways in which we can give the necessary prominence to the spirit of service is through legislation. For this reason, the notion of the spirit of service will be expressed in legislation in such a way that it underpins everything else. Furthermore, it will place an explicit responsibility on the commissioner and the chief executives to create a public service that allows our people to give full expression to the spirit of service that they bring to their work.

It should be stressed that the spirit of service is not something which can be left to agencies to address through their own individual efforts. It is a system issue, and a system leadership issue, because failure to work in a spirit of service in one agency or department will always reflect on all others and the public service as a whole. Failure for one means failure for all. We have to aim at the same high level of commitment, motivation and integrity in

each agency, and this requires a system-wide approach based on alignment among the departments and Crown agents that make up the public service.

A trusted and unified public service, active in its support of our system of democratic government

As discussed above, on all international comparisons the New Zealand public service enjoys high levels of public trust and confidence. One way we can ensure this into the future is by being very clear about the role definition for the public service and by giving this greater visibility and force by placing it in legislation. To an extent this is about codifying existing conventions relating to, and expectations of, the public service. By bringing them together in one place the new act will promote clear understanding, and facilitate communication, among both the public and public servants.

The government has decided that parts of the new act will relate to the purpose of the public service, the principles by which it works, the culture and behaviour expected of individual public servants, and the range of public agencies to be formally included within the public service.

Purpose

The current legislation does not set out a clear purpose for the public service. It talks about the purpose of the act itself; it talks about government departments and the state services commissioner; it is silent on the public service.

There are choices about how the purpose of the public service is conceptualised and, therefore, how it is formally expressed. There is a continuum of possibilities. At its narrowest the public service is seen as simply an advisory service to, and execution arm of, executive government. At the other end are those who see the purpose of the public service in broader, and more constitutionally relevant, terms. These see the public service as part of executive government, and in no way separate from it, but with a distinct role in underpinning the legitimacy of our democratic form of government. A lot of this latter conceptualisation is reflected in our current conventions and statutory provisions. The new statute will express a

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view that is at this end of the spectrum, explicitly reflecting a broader view of the purpose of the public service – that is, a much bigger, more profound role for the public service than simply being the advisory and execution arm of the executive branch of government.

Principles to underline the purpose

The broader view of the purpose of the public service is reflected in several elements of our existing conventions and statutory provisions. These are the requirement for independent decision making by chief executives in employment matters, the requirement of political neutrality, the requirement for the tendering of free and frank advice, the existing long-term responsibilities of chief executives for the health of their departments, and the responsibilities chief executives have under the Official Information Act. New legislation will bring together the concepts underlying these into a clear statement of the principles of the public service. These are the things that the public service as a system does to support

our system of democratic government, which are: political neutrality, free and frank advice, merit-based appointments, open government and stewardship.

Culture and behaviour

Every organisation has a culture, and the cultures of particular agencies in the public service will remain to some extent distinct. But we have identified the need to have some bedrock, unifying values, that are expected to be expressed in the behaviour of all public servants. Many jurisdictions define public service values and the government sees it as a positive move to include values in our new legislation. Consequently, the government has decided to write them into the legislation. Placing these in one, prominent place will help ensure the integrity of the system, and hence its trustworthiness in the eyes of New Zealand.

In the public consultation that preceded the policy decisions we consulted on draft values. The government has taken a decision to write these into the legislation so that they endure and cannot be easily changed.

A unified public service

In our state sector there is a central divide between the group of agencies which formally constitute the public service, and those which form the wider state services. But the boundary with the wider state sector where we operate often does not make much sense. We have, outside the formal public service, a number of agencies which, in effect, perform the kind of policy and service delivery functions typical of public service departments, and in which ministers have a close and direct interest. These are the Crown agents, a type of Crown entity required to give effect to government policy. The proposal is to bring these Crown agents within the ambit of the public service proper

This does not involve a change to the operating model for the Crown agents involved. But it will widen the group of public institutions that are covered by the principles and values. It is very important that we entrench these as widely as possible. In our part of the world, we are the last person standing on politically neutral appointments.

The Māori–Crown relationship

A second major focus of the new legislation is building the Māori–Crown relationship. The government has placed major emphasis on this area; there is a ministerial portfolio focusing on this, and a new departmental agency, Te Arawhiti, to help lead and support the government focus on this.

The current State Sector Act mentions nothing about the Crown–Māori relationship and nothing about the Treaty of Waitangi. Addressing this gap is one way to ensure that the public service does its job of supporting the Crown to develop the special relationship with Māori. It is proposed that the new statute set out expectations on the public service to support the Crown to fulfil its Treaty responsibilities. It will place responsibilities on the public service commissioner and chief executives. We will have clear duties to build a culturally competent public service that reflects and serves and delivers for Māori. We will also take responsibility for actively supporting Māori leadership practice in the public service.

The community can expect to see a more proactive and meaningful engagement with Māori so that policies, programmes and services are more effective and outcomes are improved. Similar commitments may have been made in the past and there is a level of justified scepticism. But for the first time ever in our country it is proposed to give the associated responsibilities the force of law.

Better outcomes and better services

A third focus of new legislation will be enabling the system to better work for citizens. Part of this is about catching up with how people live now. The world has changed; everyone has devices, with access to the internet for the vast majority, and these have become a predominant way of accessing information and services. For the public service this is a challenge, as it means joining up different agencies to provide access to related information and services in a manner centred on the citizen, rather than the agency (Jensen et al., 2014). We face a further challenge in terms of the complexity of the issues that governments face these days: climate change or child poverty are not matters

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that can be addressed by agencies working on their own (Scott and Boyd, 2017b). They require more sophisticated ways of organising inter- and multi-agency work.

The reason is that the ways of working we now need cut against the grain of present public service structures and organisation. It is easy to overstate the case (and there are counter-examples (Scott and Boyd, 2017a)) but, in general, cross-agency work is fragile and hard to maintain without a high level of direct ministerial and chief executive attention; that is, the organisation itself tends not to be a supportive environment for the long term (Scott and Bardach, 2019).

As ever, the law is only one part, and not even a predominant part, of the answer. But we do need to change the statute. The existing State Sector Act does present an impediment to progress. The act was designed to address problems that existed at the time it was passed, mostly problems of bureaucratic over-centralisation and of lack of responsiveness to ministers.

Arrangements for working as a system were not a priority to its designers. To oversimplify, the assumption behind the act was that if each department just did its own prescribed job then the sum total of activity would be a well-functioning system. To an extent that was true and still is, for services best provided on a single-agency basis. But it does not do the trick for collaborative activity.

So government has decided that new legislation will provide a wider range of more flexible organisational options to help agencies join up around common problems: for example, by formally providing an ability to establish joint venture agencies between departments (Vitalis and Scott, 2015). We've got one of those with the family violence and sexual violence joint venture. But the problem is that with no legislative foundation for the form and governance of these bodies, it is difficult and time consuming to get them up and running. In future we need to be able to set up joint ventures more quickly and easily. The new act will facilitate this and enable us to take the approach to scale.

But a couple of caveats about this. First, new organisational options are enablers only. They will be useful case by case as one of the things that will help us work better. But they won't be the leading edge of major and immediate change.

Second, there's a lot more to successful change than just changing the law. The reform of the public service is a multidimensional change process within which law reform is an essential part. In the case of cross-agency collaboration, organisational forms will be part of the solution but so will a range of other factors: operating systems in agencies, alignment of IT platforms, sharing of people and appropriations, to name a few.

Stronger team-based leadership

A fourth focus will be on fostering stronger team-based leadership for the public service. The chief executives of the public service already work together as a stewardship team for the system and this is a key part of the reform we have been working to achieve (Scott, 2018). People who come into the chief executive team, the State Sector Leadership Team, always remark on how collaborative it is. We work

on problems; we solve them together; we plan for the future together. The intention is for the statute to support this leadership and teamwork into the future. It will put a responsibility on the commissioner to work with the chief executives in this way.

In the consultation document we also proposed a new senior leaders service made up of senior levels of the public service. Other countries do this. Australia has a senior leaders service; they have it in the UK; they have it elsewhere. And we've looked at what other countries do. We've listened to your feedback and we've thought hard about this and we've decided to take a different approach.

We will also move to strengthen cross-system leadership at below chief executive level. The new act will require a senior leadership strategy to be in place.

Arrangements for cross-system coordination will also be strengthened by providing in the new act for functional chief executives: that is, officials with chief executive rank who are responsible for leading functions across the system. This is a development, and a strengthening, of existing arrangements for functional leadership that currently operate in relation to IT, property, procurement, information security and occupational health and safety

Conclusion

Overall, the legislation will support two major features of the reform agenda: our concern with maintaining and strengthening the foundations of the system, and the need to work in new ways to deliver better services. The new legislative provisions in the first group,

those relating to purpose, principles, values and the Maori–Crown relationship, will come into effect from the passing of the new act. The organisational arrangements to support new ways of delivering services will be used on a case-by-case basis as needed. This latter group are enablers of change over time that will allow us to 'learn our way forward'.

Ministers have given this process considerable time and attention, reflecting the high expectations they have of the public service. I am pleased that such a high level of expectation has been placed on the public service and look forward to working with all public servants to deliver on it. I am grateful to the guest editor of *Policy Quarterly* for the invitation to provide a piece on the change agenda as a whole.

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