POLICY Quarterly

FOCUS ON
Public Service Reforms

Editorial

New Zealand is internationally known as a distinguishably 'entrepreneurial' country when it comes to administrative reforms. The incorporation of New Public Management ideas through the 1988 State Sector Act and 1989 Public Finance Act has been frequently portrayed as an emblematic case of transformative administrative reform. Since then, New Zealand government has not stood still when it comes to reforms. The Public Finance Act has been amended 58 times and the State Sector Act at least 13 times since they were first enacted. More recently, State Services Minister Chris Hipkins announced what has been presented as the 'biggest transformation of the Public Service in 30 years'. A new Public Service Act and a new Public Finance Act are now due to replace their predecessors at any time.

This special issue of *Policy Quarterly* brings a most needed and timely reflection on the nature, advantages and potential risks of the proposed reforms. It contains both official and critical views on what we can expect in the upcoming public administrative era in New Zealand, and provides crucial reflections on both philosophical and practical elements of the Public Service Bill and amendments to the Public Finance Act.

It starts with an enlightening contribution from Peter Hughes. In order to contextualise and set the tone for subsequent debates, the state services commissioner and head of state services provides a clear overview of the main goals of current reforms. Among other elements, he emphasises the importance of incorporating the values and purpose of the public sector in legislation and the role of the new bill in promoting conducive environments for the manifestation of public servants' 'spirit of service'; the building of a more proactive and meaningful Māori–Crown relationship; and the fostering of stronger team-based leadership for the public service.

John Ryan, the controller and auditor-general, complements Hughes' account with a reflection on the great opportunities that current reforms represent for shaping a new and more trustworthy public accountability system. The importance of clearly stating and recognising values in public service activities is similarly emphasised in his article, which stresses the need for accountability reports that go beyond an exclusive focus on performance. This issue is also picked up by Ian Ball, who critically and rigorously reflects on the proposal of moving beyond the focus on output-based performance management towards an emphasis on outcomes and wellbeing. Addressing the proposed changes to the Public Finance Act, Ball offers a crucial analysis of the interrelationship between the Public Finance Act and the State Sector Act and the importance of aligning the financial and administrative management systems while avoiding 'one-size-fits-all' solutions.

A similar warning against overly 'purist' administrative solutions is given by Flavia Donadelli and Martin Lodge. Scrutinising the theoretical roots of the proposed reforms, the authors recognise strong elements of what has been referred to in the literature as the 'post-New Public Management' model. Although conceding that this theoretical coherence is a laudable aspect of current reforms, they also stress the importance of more incremental, piecemeal and often 'inelegant' administrative adjustments. This same message is reinforced by Bob Gregory and Kristen Maynard, who reflect on the vital importance of humanising, and incorporating the idea of wairua into, public services. Their article not only directly contributes to the operationalisation of the reform goal of building a more proactive and meaningful Māori–Crown relationship, but is relevant for the goal of improving public services for all New Zealanders. Pointing to the tensions between the Weberian/westernised and Māori administrative traditions, the authors argue that incorporating the concept of wairua into New Zealand public services can contribute to a truly 'transformational' state sector agenda.

That debate on transformational values resonates with Richard Norman's reflections on the organisational culture changes represented by the proposed legislation. Norman uses a 'competing values' framework to interpret current reforms and observes that a departure from market values and New Public Management methods is underway. Whether legislative changes can successfully generate such a change in values is a question sensibly raised by both Gregory and Maynard's and Norman's articles.

The special issue is rounded off with some key questions on the extent of transformations being proposed. Simon Chapple discusses the effects of a managerialist ideology on the New Zealand public service, remarking that the shift from permanent employment to fixed-term chief executive contracts brought about by the 1988 State Sector Act favoured higher levels of politicisation and less specialist expertise at the top of the public service. As the author observes, employment arrangements that gave rise to such results are not being addressed by current reforms.

In all, this special edition raises some crucial and pressing questions about the directions of current reforms. It assembles enlightening reflections that will positively contribute to the successful implementation of currently proposed legislative changes. We hope that this initiative will spark even more interest in and debate on the topic, which will certainly favour the continuous improvement of New Zealand public services.

Flavia Donadelli , *Guest editor*
2 November 2019

Peter Hughes

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

Peter Hughes took up the role of State Services Commissioner and Head of State Services in July 2016. Previously he served as Secretary for Education for three years and has worked in chief executive and senior public service roles for the past two decades. He is a former Professor of Public Management at Victoria University, and is currently the chair of the board of the Australia and New Zealand School of Government.

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; Osbourne 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 Hondeghem, 2008). Janet and Bob Denhardt described some of these motivations in their popular essay 'The power of service':

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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 Māori–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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John Ryan

Does public accountability even matter

if the public sector is performing well?

Abstract

Improving performance has been the mantra and driving force behind much of New Zealand's public sector[1] reform work since the mid- to late 1980s. These reforms have had a positive effect and this performance drive remains important today. However, it would also be fair to say that New Zealand and its public sector have changed significantly over the past two to three decades, and these changes have altered the relationship between the public sector and the public of New Zealand. The public are demanding more of our public accountability system. In today's diverse, dynamic and connected world, how well the public sector tells its story and assures the public it is meeting its expectations is as important as how well the public sector manages itself and delivers services.

Keywords public accountability, trust and confidence, performance, public service reform, public audit

John Ryan began his term as Controller and Auditor-General on 2 July 2018. He has held senior executive positions in a range of public sector organisations and in the private sector. His experience spans corporate, regulatory and operational management, and assurance.

Since the mid- to late 1980s, the focus of New Zealand's public sector has been firmly on improving service delivery and fiscal control. This focus followed a decade of poor economic growth, high inflation, rising unemployment and a worsening fiscal balance (Carroll, 2012, p.10).

In its briefing to incoming ministers in 1987, the New Zealand Treasury observed that effective management systems were crucial 'if the electorate is to have confidence that its interests are being pursued by the Government'. The Treasury (successfully) argued, among other things, that '[s]ystems of accountability and incentives have not adapted over time to encourage the most efficient and most effective public service' (Treasury, 1987). In response, reforms were introduced that included improving parliamentary scrutiny, better monitoring arrangements, and stronger management incentives for good performance. In particular, the Public Finance Act 1989 ushered in an era of greater transparency and replaced an input-focused approach

with a managerialist output- and performance-focused public sector.

This long-term focus on public sector performance goes a long way towards explaining why the State Services Commission's most recent Kiwis Count survey shows that a large proportion of New Zealanders (80%) trust the public sector based on their most recent experience of using public services. The high trust shown by people who use public services has been steadily increasing over time. It is also reasonably consistent across all demographic variables measured.

However, the same survey also shows that only half of New Zealanders (50%) trust the public sector brand more generally, and that there are some significant differences between regions, ethnicity and population ages, and among those with disabilities. Māori and Pasifika communities, especially, have low trust in the public sector generally (Sate Services Commission, 2019, pp.5–6). New Zealand usually compares favourably with other countries in surveys of public trust. However, the findings from this survey raise an interesting question. Why would New Zealanders have relatively low trust in the public sector brand when they have such high trust in its performance?

The State Services Commission explains that, based on similar surveys in Canada, when people evaluate services they have used recently, they draw on particular memories of actual experiences. However, when people judge the public sector more generally, they draw on opinions and possibly stereotypes of government, and these tend to be negative. The original Canadian survey suggests that these opinions or stereotypes could derive from the media, friends or political events (Erin Research Inc., 1998, p.6).

While these explanations help in understanding how the two findings could differ, they do not explain why these 'negative' opinions and stereotypes exist in the first place.

In working within the public sector for many years, I have seen a lot of competent, reliable and honest people work very hard to ensure that the public's taxes and rates are used to deliver public services in an effective and efficient way. However, what I also see is that a lot of the information we present to the public and to Parliament does not properly capture what the public sector does and why; nor is the information presented in a way that New Zealanders can find, relate to, understand, examine or act on. Dormer, in researching accountability and public governance in New Zealand, also observes that, currently, 'governments, and individual government agencies, often publish significant amounts of information that is neither read nor understood by those to whom they are accountable' (Dormer, 2018, pp.31–2).

Negative opinions and stereotypes derived through the media, friends or political events will certainly affect the public's overall perception of the public sector. One of the reasons why these

opinions and stereotypes may exist to begin with is that the public may not have the right information, in the right form, at the right time and place, to make an informed judgement of trustworthiness.

It may also clarify why O'Neill in the United Kingdom observes that, although 'the accountability revolution has made striking advances, in which increased demands for control and performance, scrutiny and audit have been imposed … we find in fact growing reports of mistrust' (O'Neill, 2002, p.14).

The role of public accountability in maintaining public trust and confidence
A recent discussion paper by my office asserts that, in today's diverse, dynamic and connected world, how well the public sector tells its story and assures the public it is meeting their expectations is as important as how well the public sector manages itself and delivers services (Office of the Auditor-General, 2019). In other words, the public accountability system is as important as the public management system.

Although the paper is not a detailed review of our current constitutional accountability arrangements, it suggests that the public is demanding more of our public accountability system. The paper discusses four possible reasons why the public accountability system may need rethinking if it is to continue to support public trust and confidence in the public sector more generally.

What the public sector thinks is important is not what the public thinks is important
In discussing the many public accountability concerns that arose in the wake of the 1995 Cave Creek disaster, Scott observed that, despite the 'rapid development of accountability systems, the

… public agencies may be too focused on publishing measures that matter to them rather than on what matters to the public.

demand by the public for accountability seems louder', and that perhaps 'the failure of the array of sophisticated accountability institutions to satisfy the growing demands for accountability means that the wrong approach has been taken or, at the very least, that something in the approach is missing' (Scott, 2001, pp.155, 157).

One possible reason for Scott's observation that something may be missing is the significant differences that can exist between what the public thinks is important for holding the public sector accountable and what the public sector thinks is important. For example, research in the United States found that leaders in government, business, education and health believed improved accountability resulted from improved targets and benchmarks, but the public believed that improved accountability addressed broad moral and ethical issues (Johnson, Rochkind and DuPont, 2011, p.6). Furthermore, leaders relied on greater transparency and disclosure, but this did not necessarily reassure the public. Rather,

Figure 1: Important factors in trusting and not trusting public organisations – responses to our 2012 survey

Responses that relate to competence	Responses that relate to reliability	Responses that relate to honesty
'skilled personnel'	'checks are in place'	'corruption' or 'not corrupt'
'past performance'	'wasting money'	'public servants are well intentioned'
'poor decision making'	'bureaucracy'	'politically neutral'
	'red tape'	'people/bodies with their own agenda'

the public often felt overwhelmed and manipulated (ibid., pp.11–12).

Other research supports these findings, suggesting that public agencies may be too focused on publishing measures that matter to them rather than on what matters to the public. Espeland and Sauder observe that 'making institutions accountable now usually means making them "auditable"' (Espeland and Sauder, 2007, p.2). According to Power, auditability for organisations involves, among other things, less public dialogue, lower levels of trust and less localised standards (Power, 1994, pp.7, 26–70). Gill and Zuccollo, in discussing the role and limits of performance measures in a public accountability context, claim that 'what managers think is important in terms of performance can often differ from what citizen and service users think is important' (Gill and Zuccollo, 2012, p.5).

O'Neill suggests that three main attributes play a major role in how people judge the trustworthiness of others: competence, reliability and honesty (O'Neill, 2013). In 2012 my office asked New Zealanders what were important factors in trusting or not trusting public organisations. Figure 1 categorises the responses from the internal research report, under the three attributes.

What the responses show is that all three attributes are clearly important and a trusting relationship cannot be built on competence or performance alone. Public organisations also need to demonstrate integrity and ethical behaviours such as dependability, reliability, fairness, loyalty and truthfulness. As Miller and Listhaug observe, assessing trust in government is a 'summary judgement' that the system is 'fair, equitable, honest, efficient and responsive to society's needs' (Miller and Listhaug, 1990, p.358). Simply put, there is little point in a well-performing system if it is seen to be lacking in integrity and ethical values.

Changes in technology and media platforms are changing the nature of the relationship between the public and the public sector

In many countries, including New Zealand, societal and individual expectations are changing as a result of more access to information, evolving technologies and media platforms, and greater interconnectedness. Today, more than ever, information is available to be aggregated, distributed, scrutinised, and used within and outside the public sector. Roy noted as early as 2008 that 'information is everywhere, and answerability has been diffused in many directions beyond Parliament' (Roy, 2008, p.546). For a public accountability system to be effective in an increasingly connected and informed world, it needs to have structures and processes that can meet multiple, and sometimes fluid, public relationships and expectations.

Today, how the public establishes trust is becoming less institutionalised and more individualised through distributed networks of individuals. Although questions about trust may remain the same (for example, who are you? is your information reliable? will you do what you say?), establishing trust with a wide network of online strangers is based on immediate reputational feedback mechanisms rather than traditional processes, intermediaries and institutions. New businesses are increasingly placing the reputational feedback mechanism at the centre of their business models. For example, Uber relies on a feedback system for drivers and customers to manage the behaviour of both parties and enable access to the platform.

Although the public sector has cautiously embraced new technologies and forms of social media, the pervasiveness of the media's influence on the public means that the public sector needs to be able to work with and leverage this relationship in a more proactive way. In the last few decades, the media has fundamentally changed as a result of the internet, new technologies, and competition for revenue in a shrinking and increasingly fragmented market. The consequences of these changes have been serious for media institutions and have significantly affected how well-informed certain communities are. At the same time, the internet, the rise of social media and new technologies have made it significantly easier for misinformation and 'fake news' to spread.

Recent research in Canada found that, although there was greater access to public information about government, there was little evidence that technology had improved the amount and quality of oversight (Lindquist and Huse, 2017, pp.645–6). The authors suggested that more thinking was needed about how to involve the public more, including looking at the ways accountability information was supplied and used by Parliament and the public.

What success looks like and how it should be demonstrated is changing
Central agencies are proposing reforms to improve the stewardship of New Zealanders' intergenerational well-being. These reforms are not intended to lessen the public sector's accountability obligations but to change the focus, form and approach of those obligations. Many New Zealand researchers have already suggested that a move towards more collaboration and an outcomes focus means that new accountability models, such as joint or shared accountabilities, may be needed. As part of those changes, the public audit function may also need to adapt and evolve.

Maintaining the public's trust and confidence will be an important part of the shift from a 'management' approach to a 'system stewardship' approach. For Ranson and Stewart, a stewardship approach in the public sector involves 'not merely giving an account by the steward but also that the steward can be held to account and that

how that can be done is known to the public to whom accountability is due' (Ranson and Stewart, 1994, p.241)

The current reforms are also focusing more on well being outcomes. Compared with agency inputs, activities and outputs, well being outcomes are more interrelated, dynamic, uncertain and long term. Encouraging and supporting public sector objectives such as learning, adaptability, strategic thinking, representation and innovation may be as important as focusing on incentivising good decision making, internal control and performance.

Accountability information about well-being outcomes may be less precise when compared with traditional activity or output information. The information will also need to reflect the aspirations of multiple parties who may be affected by those outcomes. This may mean more targeted data and less reliance on averages or majority populations. Waring warns that approaches to preparing wellbeing outcome indicators should avoid 'the all-too-common approach of trying to raise averages and not worrying enough about those left behind' (Waring, 2018, p.83).

Because of these many differences, new ways of describing what success looks like may also be needed. These could include, for example, measuring the sustainability, resilience and fairness of wellbeing outcomes, where the focus is on issues of equity and legitimacy rather than just performance.

In Wales, for example, the Well-being of Future Generations (Wales) Act 2015 is designed to ensure that all 'public bodies take account of the long-term, help to prevent problems occurring or getting worse, take an integrated and collaborative approach, and considers and involves people of all ages' (Welsh Government, 2016, p.3). Under the act, there are five new measures of agency success: long-term thinking, prevention, integration, collaboration and involvement. These are wider than the traditional measures of agency performance, and the Welsh Audit Office audits each new measure. The auditor-general for Wales recently commented that he had to audit behaviours of public officials as part of his role.

To support this new wellbeing approach, public accountability structures in Wales

> Performing competently might not be enough, by itself, to maintain public trust and confidence.

have also been strengthened, including through new and/or expanded review roles for the future generations commissioner, overview and scrutiny committees, and the auditor-general for Wales (ibid., pp.6, 13, 34).

Again, compared to traditional activity and output measures, outcomes will be of more interest to people and communities because of their direct impacts on people's daily lives. The mechanisms and forums through which an account is given and judgements made may need to evolve to allow more familiar, convenient and relevant options to interact and engage. Simply publishing output information may not be enough to meet the public's expectations. Different forums in different places and at different times may be needed to ensure that the account is understood and informed judgements made. For example, more direct, collective and community-based accountability forums may be more relevant when dealing with Māori/Crown relationships.

The relationship with Māori is evolving

While accountability may be a universal desire for most people, there is not one universal way of approaching and establishing accountability. Greater cultural diversity can offer both insights and opportunities to improve public accountability systems and the relationships between governments and different cultures.

In New Zealand, the Crown has a special relationship with Māori that was established when the Treaty of Waitangi was signed in 1840. However, throughout the country and over time, the quality of that relationship has varied. As noted earlier, Māori trust in the public sector brand is currently lower than that of non-Māori.

As part of the recently proposed reforms to the state sector, there is a significant focus on supporting the Māori/Crown relationship and improving the public sector's capability to meet Māori needs and aspirations. Holding senior public officials accountable for supporting this relationship is an important part of the reforms. A new Māori/Crown Relations portfolio has recently been created that seeks to establish a closer partnership between Māori and the Crown to resolve social and environmental challenges and to develop opportunities for economic development. Being properly accountable for that partnership will be an important part of ensuring that the relationship is resilient and sustainable. Understanding the expectations of all parties, and particularly what the Māori community expects, is an essential first step.

Accountability in tikanga Māori is highly contextual, reflects cultural relationships that are more collective than individual, and involves more direct accountability avenues. It also has a mix of formal and informal mechanisms. Māori perspectives on public accountability differ in many ways from what is sometimes referred to as the 'Western' approach. To fully understand these differences, we must first ask what accountability to Māori would look like. Learning from these answers will help achieve a more relevant public accountability system and allow stronger and more durable relationships with Māori in a post-Treaty settlement world.

Does public accountability matter if the public sector is performing well?

In the last 30 years, new challenges and opportunities for the public sector have emerged from considerable changes in technology, social and cultural diversity, and the way the public sector delivers public services and what it focuses on. New

Zealanders have also become increasingly informed and connected, and the country is moving quickly into a 'Post-Treaty' period would be 1840 - 2019. In this more diverse, dynamic and connected world, the public demands more from our public accountability system. How the public sector tells its story and assures the public it is meeting its expectations will be fundamental to maintaining the public's trust and confidence in the public sector.

Although public officials and their agencies are primarily accountable to their ministers and through them to Parliament, they must also act to maintain the trust and confidence of the public they serve. The public may expect a more direct accountability relationship, not just as users of public services but as the ultimate owners of public resources. In parts of the public sector this is already happening with, for example, greater public participation in policy development. However, much more will need to be done if the public sector is to engender and maintain increased public trust and confidence.

The current system of public accountability has many strengths, but the public sector cannot be complacent. Performing competently might not be enough, by itself, to maintain public trust and confidence. The public's changing expectations could mean, for example, that more emphasis on behaviours, like truthfulness, respect and fairness, is needed.

The recently announced reforms to the state sector envision a unified public service, focused on agencies working together to improve outcomes, as stewards of New Zealanders' intergenerational well-being. These reforms are an opportunity to shape a system of public accountability that complements the public management system and meets the needs of New Zealanders today and in the future.

To realise this opportunity, public accountability will need to be thought about from the perspective of those it is there to provide assurance to. It involves developing closer and more direct relationships with communities of people, and this starts with the public sector understanding what is important to these communities, when it is important, and why.

What could this mean for the role of the public audit?

The public audit function continues to be a fundamental part of the public accountability system. As the public sector moves towards greater stewardship, shared values, collaboration and a focus on wider wellbeing outcomes, the public audit function will need to adapt.

The idea of stewardship means being motivated by common objectives, having shared interests, and working together to achieve shared goals. Auditing in a stewardship environment could mean, for example, that an audit of a set of financial statements would focus on helping an entity ensure that its financial story is understandable, engaging and useful, rather than simply materially correct at one point in time.

Traditional audit practices, including the performance audit, help improve organisational performance by independently reviewing management and governance disciplines for internal controls, processes, reporting, guidelines and policies. A greater focus on intergenerational wellbeing outcomes may extend the audit across time and into new areas of organisational success, such as collaboration, innovation and involvement.

The European Organisation of Supreme Audit Institutions has also observed that '[e]thics, integrity and transparency of state officials' and civil servants' actions have become a growing focus of public attention' (European Organisation of Supreme Audit Institutions, 2014, p.7). As such, more and more ethical audits are being carried out in various countries as a way of building integrity, fostering ethical decision making and safeguarding the reputation of the organisation. As an example, the Brazilian Court of Audit has used 'enhanced' performance audits to help identify and reduce social inequalities. The audits focused on three issues of equity, geographical distribution of resources, access to goods and services and results achieved by programmes.

Conclusion

The public accountability system has served us well over the past 30 years but it may no longer be keeping pace with the public's expectations for greater public sector accountability. Attempts by the public sector to reduce this growing expectation gap through greater participation, openness and transparency are a good start, but they may not fully capture what the public expects of the public sector in terms of being accountable.

The recently announced public sector reforms will continue to alter the relationships that exist within the public sector and between the public sector and the public. New ways of thinking about public accountability are needed if we are to maintain and build New Zealander's trust and confidence in the public sector.

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1   For the purposes of this article, public sector means the government of the day and its agencies, including local government and its agencies.

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Ian Ball

Public Financial Management and
Reforms to the
State Sector Act

Abstract

This article addresses changes to the Public Finance Act that have been proposed in the Public Finance (Wellbeing) Amendment Bill or are being considered for future legislative or administrative action. It discusses these changes in the context of the State Sector Act. The interrelationship between the two pieces of legislation is described, as are the implications of proposed changes to the Public Finance Act. These changes include requirements for the specification of objectives for wellbeing (outcomes) in the budget process and reporting of wellbeing by the Treasury at least every four years. Changes also include, potentially, greater flexibility in the nature of appropriations and the selection of the services that will be provided within an appropriation, as well as legislative support for the public service to operate in a more 'joined-up', innovative and collaborative way.

The article identifies as a strength of the proposed changes to the Public Finance Act and the State Sector Act that they maintain consistency between the two acts, but also identifies the risk of replacing one one-size-fits-all system with a different one-size-fits-all system, and considers a 'two-track' public management system as an alternative.

Keywords Public Finance Act, State Sector Act, wellbeing, outcomes, outputs, appropriations, budget

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This issue of *Policy Quarterly* is focused on the reforms proposed by the current government to the State Sector Act. It is important also to address proposed and potential changes to the Public Finance Act, given the interrelationship between these two pieces of legislation.

There is a common theme to the statements of the minister of finance and the minister of state services on why reform to the two acts is needed. The theme is that while both have had positive benefits, in terms both of the government's fiscal performance and of the performance of the government in meeting the needs of citizens, the acts are now over 30 years old, the world has changed and become ever more complex and interrelated, and both acts need to be changed to be fit for purpose. In the words of the minister of finance: 'It is time, 30 years on, to bring the Public Finance Act into the 21st century and put wellbeing and collaborative government at the centre of our approach' (Robertson, 2019).

This article will introduce the role of the Public Finance Act and describe the manner in which the State Sector Act and the Public Finance Act were designed to operate as 'twins'. It will address a major set of changes made to the Public Finance Act since it was passed and the rationale for those changes. It will describe and assess key changes currently being proposed for the public financial management system, considering also the relationship to the changes concurrently being proposed for the State Sector Act.

The article draws on some of the contributions to the 'New Zealand's Public Finance Act at 30: lessons, achievements and future directions' (PFA30) conference held at the end of July 2019 at Victoria University of Wellington.

Role of the Public Finance Act
The Public Finance Act 1989 establishes the architecture for the public financial management system. This system serves a number of purposes. It establishes certain key components of the relationship between Parliament and the government, including the conditions under which the government can consume resources, when Parliament has authorised that action

through an appropriation. The act also establishes the powers of the government in relation to borrowing, securities, derivatives, investment, banking and guarantees.

The Public Finance Act establishes the legislative arrangements for the government's management of its overall fiscal position, including the specification of the principles of responsible fiscal management and requirements for documents that provide transparency for budget decisions. It establishes the ex post reporting and audit requirements for the government.

New Zealand's public service performs well by international standards in responsiveness to government, effectiveness for New Zealanders, and integrity.

In establishing the nature and types of appropriation, the act determines key aspects of the functioning of the public financial management system at the departmental or Crown entity level, including the requirement to have an accrual-based accounting system that can record expenses or capital expenditure against an appropriation.[1] The act also specifies the reporting requirements of departments (and departmental agencies) and Crown entities, which mirror and reinforce the nature of the appropriations.

One of the most significant features of the act, in relation to how it influenced the behaviour of both departments and ministers, is that it was outputs, rather than outcomes, which were specified as the basis

for the appropriations.[2] Outputs are the 'goods or services that are supplied by a department' or other organisation (s2). Outcomes were, until 2013, defined in the act as 'a state or condition of society, the economy, or the environment and (b) includes a change in that state or condition' (ibid.). The requirement to specify appropriations in output terms was a fundamental change mandated by the Public Finance Act, and one that has a number of challenges in its implementation.[3]

The public financial management system can be seen as having two key roles in relation to the performance of the government:[4] fiscal performance, relating to the government's aggregate fiscal position; and outcome achievement, encompassing the effectiveness and efficiency of the government's activities.

In relation to fiscal performance, there is little debate over the effectiveness of the Public Finance Act. The fiscal performance and position of the New Zealand government are very strong relative to the decades (of deficits) before the introduction of the legislation. They are also very strong relative to comparable countries such as Australia, Canada, the United Kingdom and the United States (Ball, 2019). And there is international recognition of the level of transparency associated with the fiscal management system in New Zealand.[5] On this dimension of performance, the present government seems satisfied with the functioning of the act.

As was noted by the minister of finance and other speakers at the PFA30 conference, New Zealand also ranks very highly in international indices of standard of living and social progress, and also in the quality of the public service. Or, as the minister of state services noted in his overview of the proposals for reform of the State Sector Act:

New Zealand's public service performs well by international standards in responsiveness to government, effectiveness for New Zealanders, and integrity. The proposals in these papers are not about fixing a system that is fundamentally broken. Rather, they are about improving from a high base; ensuring the public service is making the biggest possible difference to the

Figure 1

Reporting Requirements of the Public Finance Act - a history	
The Original Act	"Set out the link between the classes of outputs to be purchased by the Crown and the Government's desired outcomes
1992 Amendment	"The performance targets and other measures by which the performance of the Crown entity or group may be judged in relation to its objectives
1994 Amendment	"A Statement of objectives specifying the performance for each class of outputs forecast to be achieved as agreed with the Minister
2004 Amendment	"Future operating intentions .. explaining ... nature and scope of the department's functions and intended operations, the specific impacts, outcomes, or objectives that the department seeks to achieve or to contribute to ...
2013 Amendment	"A concise explanation of how performance against the appropriation will be assessed ... Information on the department's strategic intentions that ... set out the strategic objectives that the department intends to achieve or contribute to

wellbeing of New Zealanders, delivering services that are easy to access and joined up around their needs, and serving an ever more diverse and changing community. (Hipkins, 2019c)

Notwithstanding the performance of the public management system in New Zealand, both this and previous governments have identified issues with outcome achievement and the efficiency of the system. Consequently, the Public Finance Act has been amended 58 times since 1989 (Brumby, 2019) and the State Sector Act 13 times since its enactment in 1988 (Hipkins, 2019c, para 13). A key issue of concern is the output focus of appropriations and accountabilities, and the conclusion that this focus encourages departments and Crown entities to operate in 'silos' and creates barriers to collaboration. These issues, apparently, have not been adequately addressed by successive amendments to the acts, and are a key basis for the major reforms now proposed.

The State Sector Act and the Public Finance Act

At the time the State Sector Act and the Public Finance Act were enacted it was intended that they would operate in tandem and be mutually reinforcing. This reflected the view that state sector employment and financial management arrangements were subsystems within a broader public management system; and that management systems work better when their various components operate in an integrated fashion, providing consistent signals, accountabilities and incentives to actors within the system. The Treasury's briefing to the incoming government in 1987, which articulated the rationale for the proposed changes, stated:

> When considering reform of the public sector it is essential to recognise the mutually reinforcing nature of these elements and to avoid piecemeal change that could weaken or distort the incentives of those given responsibility for management decisions to act in a way consistent with the objectives they have been given. (Treasury, 1987, vol.1, p.55)

In the financial management context, the implications of seeking an integrated system were most radically reflected in the following statement:

> If we are to move to an accrual accounting system we would also need an accrual budgeting system so that actual results can be measured against plans and budget. The accounting system would need to be on the same basis as the budgeting system to avoid the possibility of conflicting objectives. An accrual budgeting system is one which is expressed in terms of costs to be incurred rather than in funds to be obligated or spent. (ibid., pp.83–4)

This recognition of the need to have coherence within the accounting, budgeting and appropriations systems was fully reflected in the Public Finance Act.[6]

The aim of having consistent and mutually reinforcing elements could also be seen in the way 'performance' was defined, specified and measured for purposes of both acts. Specifically, the concept of 'performance' envisaged clear distinctions between: 'ownership performance' and 'purchase performance';[7] inputs, outputs and outcomes;[8] and Crown and department.[9] These distinctions were embedded in the nature of appropriations as well as in the performance management documentation under the State Sector Act. For example, 'outputs' were a key component in the specification of departmental and chief executive performance and accountability within State Sector Act performance management arrangements, as well as being a basis for budgeting, appropriation and reporting[10] under the Public Finance Act.

A further illustration of the interrelationship between the two pieces of legislation can be seen in the process through which the Public Finance Act was implemented. The move to accrual budgeting and accounting necessitated a dramatic improvement in departmental accounting systems. The decision-making authority given to chief executives by the State Sector Act enabled them to establish accrual accounting systems within 18 months. Such a rapid transition would not have been possible prior to the act.[11]

Changes to the Public Finance Act since enactment

It was noted above that the Public Finance Act has been amended 58 times since enactment. While a number of these amendments are relatively trivial, others have greater significance. One significant set of changes relates to the manner in which performance intentions and

achievements are specified. Warren (2019) presents the changes in Figure 1.

This figure captures the continuing struggle to manage 'performance' in relation to outputs (services) and, more particularly, outcomes, or wellbeing.[12] In the original act both concepts were seen as being important to making policy choices, with outputs being one form of intervention the government could take to achieve its desired outcomes. When ministers, through the planning and budgeting process, had determined the outputs they wished departments to deliver, those outputs became the basis for formal chief executive and departmental accountability; outcomes, while constituting the rationale for government action, were not the basis for such accountability.[13]

In the period since the act was implemented, there has been a consistent ambition to emphasise the role of outcomes in representing the fundamental purpose of public services and to incorporate outcomes more directly into the formal management system. There has been a parallel pattern of diminishing the significance of outputs.[14] This ambition has been articulated consistently in reviews of the public financial management system and given effect through successive changes to the system.[15]

The legislative change in 2013, designed to give greater focus to outcome achievement, resulted in the introduction of a new type of appropriation, adding to those already existing. This 'multi-category appropriation' is specified as follows:

2 or more categories of 1 or more of the following:
(i) output expenses:
(ii) other expenses:
(iii) non-departmental capital expenditure. (s7A(1)(g))

The intent of this somewhat inelegant specification of an appropriation type is clarified in the following section, where it is specified that the appropriation must be approved by the minister of finance and 'must include only categories of expenses or non-departmental capital expenditure that contribute to a single overarching purpose' (s7B(b)).

> In the period since the [Public Finance Act] was implemented, there has been a consistent ambition to emphasise the role of outcomes in representing the fundamental purpose of public services and to incorporate outcomes more directly into the formal management system. There has been a parallel pattern of diminishing the significance of outputs.

In effect, this amendment enables appropriations for expenses of different types, including different output categories and non-departmental capital expenditure, so long as those expenses 'contribute to a single overarching purpose'. 'Purpose' is not defined in the act, though Treasury describes the intent of this set of amendments as being to 'lift the strategic focus of statements of intent to drive a clearer focus on results and outcomes' (Treasury, 2019).

Interestingly, the 2013 amendments removed the definition of 'outcome' (though not 'output') from the act. Irrespective of this,[16] the concept is still in current usage, whether described as 'outcome' or 'wellbeing'.

At the very least, the 2013 amendment enables appropriations, and the associated accountability, to be defined in terms of a set of expenses and capital expenditure designed to achieve a single purpose or outcome. This is a fundamental change to the act, arguably the most significant since it was enacted. In an important way, it reverts to the programme budgeting approach which New Zealand implemented in the Public Finance Act 1977, in that a programme comprised a set of activities designed to achieve a single outcome, and programmes were the basis for appropriation.

The fundamental problem with programme budgeting that the Public Finance Act sought to address was that it oversimplifies the nature of the relationship between outputs and outcomes. It does this by identifying a number of different activities (or outputs) that contribute to one outcome, and then formatting the budget, with its associated accountabilities, on that basis. However, the relationship between outputs and outcomes is not many outputs to one outcome, as the programme concept (and the definition of a multi-category appropriation) implies, but often many to many, and also complex and dynamic, and with interrelationships between different outcomes (health, education and income, for example). An activity or output that contributes to a health outcome may also contribute to educational and income outcomes. Therefore, relating an appropriation to a single outcome had the effect of ignoring the other outcomes to which the set of outputs contributed.

The rationale for the Public Finance Act focusing on outputs rather than outcomes within the accountability and appropriations structures was outlined by the author in a 1992 presentation, in which it was concluded:

There are some international precedents for giving outcomes a higher profile in the design of government management systems than has occurred in the New Zealand reforms. There are also some

good reasons for being sceptical about any attempt at comprehensive and detailed specification of outcomes, any attempt to construct a budget on an outcomes basis, or any attempt to hold managers explicitly accountable for outcomes. (Ball, 1992)

In the same paper it was noted that the Government Accounting Standards Board in the United States had addressed this issue in its 1990 research report *Service Efforts and Accomplishments Reporting*:

The extent to which public agencies can affect or control the outcomes and efficiency of the service being measured is of continuing concern to public officials. As with financial performance, SEA reporting does not indicate why the results are what they are, or what or who has caused or contributed to those results. These questions can be answered only, if at all, through in-depth evaluation and investigation. Fortunately, for public disclosure of SEA information, as with financial information, it is acceptable that the information presented should be appropriate and accurate in measuring results. This information is not expected to indicate clearly who or what caused the reported performance to be at the levels it is. (Government Accounting Standards Board, 1990, p.18)

This conclusion recognises the challenges and limitations in using outcome information for accountability purposes, and reflects the rationale for the manner in which outcomes were, earlier, addressed in the Public Finance Act. However, it nevertheless supported the reporting of outcomes provided the measurement is 'appropriate and accurate'. The Public Finance Act did not require such reporting of outcomes, either at the departmental[17] or whole-of-government level. This is a key element of the changes the government is now proposing. This issue is discussed further in the following section.

It is very significant that the 2013 amendment changed the act in a manner which enabled outcome-based

appropriations, albeit the specific wording requires such an appropriation to 'contribute to a single overarching purpose'. Despite the changes, in the June 2019 speech announcing his intention to institute public service reforms, State Services Minister Chris Hipkins stated:

When I came into this job as Minister of State Services, I said the Public Service needs to be adaptive and responsive to the changing needs of citizens. I talked about what we needed to do to make this happen. These include moving from outputs to outcomes, even though outcomes are

> It is very significant that the 2013 amendment changed the act in a manner which enabled outcome-based appropriations, albeit the specific wording requires such an appropriation to 'contribute to a single overarching purpose'.

harder to measure and harder to control. (Hipkins, 2019a)

The minister's statement reflects the continued ambition to find a way to place more focus on outcomes within the formal management system and less focus on outputs, notwithstanding the earlier efforts to achieve this 'rebalancing'.

Proposed changes to the Public Finance Act
There are two key areas in which the government has indicated a desire to

reform the public financial management system. The first is to establish an independent fiscal institution, and the second is to embed intergenerational wellbeing into that system. Both these topics have been the subject of discussion papers issued by Treasury (Treasury, 2018a, 2018b). However, the proposal for an independent fiscal institution will not be discussed further here. It is noteworthy that in his conference speech the minister of finance did not refer to the independent fiscal institution in relation to either the amendments to the Public Finance Act that he will 'soon' introduce[18] or the ongoing work programme he described.[19] Rather, he stated:

Our modernisation of the public finance system, addressing its current limitations, is a key element of aligning the public sector to a wellbeing approach. The work programme includes three important themes – they are:
• Firstly, changing the overarching framework for measuring success and identifying the priorities, through amendments to embed wellbeing in the Public Finance Act, as well as the government's broader commitment to sustainable development goals
• Secondly, changing the financial management framework, to increase flexibility, encourage collaboration and support and enable a more strategic focus. This includes changes to the appropriation system and a different approach to planning and reporting
• And thirdly, rethinking the approach to the Budget, so that we look at existing as well as new spending, and create more space to focus on the challenges and trade-offs needed to improve wellbeing for all New Zealanders. (Robertson, 2019)

All three themes envisage changes to the Public Finance Act. The first suggests that the act will be amended to establish a process for specifying wellbeing objectives alongside financial and economic objectives, and to specify the associated

reporting requirements. The second refers to 'changes to the appropriation system' which may, or may not, require changes to the act.[20] The third theme seems less obviously to imply changes to the Public Finance Act, as the key focus of this theme is better examination of the 'baseline' level of expenditure. The fixed nominal baseline and allowances approach to the budget process is not specified in the act, and could be changed without amending it. However, the minister also noted that within this theme the appropriation system could be changed (Robertson, 2019).

There is a clear relationship between the three themes: all three seek to make the public financial management system perform better in achieving outcomes (wellbeing).

Theme 1: Overarching framework for measuring success

In relation to the first theme, the minister stated that he:

will soon introduce legislation to amend the Public Finance Act so it includes two key changes:

- The Government will be required to set out how its wellbeing and fiscal objectives will guide its Budget
- The Treasury will be required to report on the state of current and future wellbeing in New Zealand, at least every four years

These changes recognise that we expect wellbeing monitoring to evolve over time as theory, evidence and data availability develop and improve.

Embedding wellbeing in the Public Finance Act may be contentious, depending on how it is done. Scott (2019) identified the risk of politicising the Treasury, if, as is proposed, Treasury is responsible for reporting on the achievement of wellbeing objectives. Differing views on New Zealand's wellbeing can often be factually supported, whether defined as outcomes (i.e. 'a state or condition of society, the economy, or the environment') or through a framework such as the Living Standards Framework. Descriptions of wellbeing and assessments of wellbeing status will always be the subject of intense political debate.

However, 'embedding wellbeing' may also be seen as entirely consistent with the act, or as a logical development from the planning, budgeting and reporting framework established by it. Embedding wellbeing in the Public Finance Act is entirely consistent with the idea that outcomes are, and should be, the ultimate focus of public service activity. Outputs are one means by which outcomes are achieved, along with transfers, regulation, taxation and ownership. The act as originally enacted envisaged that ministers would choose the outputs (or other interventions)

> Embedding wellbeing in the Public Finance Act may be contentious, depending on how it is done. Scott (2019) identified the risk of politicising the Treasury, if, as is proposed, Treasury is responsible for reporting on the achievement of wellbeing objectives.

that they considered would best achieve their desired outcomes. 'Embedding wellbeing' can be seen as elaborating the specific aspects of wellbeing that will be considered in the budget planning and decision-making process and be the subject of formal ex post reporting requirements.

There is a significant respect in which embedding wellbeing into the Public Finance Act is a logical development of the framework underpinning the act. The framework envisages that an entity should state at the beginning of a period the

performance it is seeking to achieve during that period. At the end of the period there should be reporting against the desired performance, which enables accountability for performance to be demonstrated.

In relation to departments, this accountability is expressed through reporting on both 'ownership' performance, primarily through the financial statements, and performance in relation to operations and strategic intentions (formerly outputs), which will normally include reporting on services delivered as well, often, as information related to outcomes. To reinforce the importance of both dimensions of performance (ownership and strategic intentions), the act requires that both dimensions be subject to audit in departmental annual reports.

The situation is different for the government as a whole, the Crown.[21] At the beginning of a year, as part of the budget documentation, the government produces forecast financial statements for the next three years. At the end of the year the government produces a set of financial statements, comparing actual performance and position against the forecasts,[22] and these statements are audited. The financial statements constitute the ex post reporting on the government's fiscal performance.[23] There is no reporting on the government's performance in terms of outcome achievement or wellbeing equivalent to that required of departments in relation to strategic intentions or service delivery. In this sense, reporting on outcomes or wellbeing can be seen as a logical extension of the framework underpinning the Public Finance Act. In the same way that departments are accountable for delivery of the agreed services and are required to report on this, the government as a whole is accountable for outcomes, and under the proposed reforms would be required to report on their achievement.

There have been initial moves in this direction, with an amendment to the Public Finance Act requiring reporting on child poverty, the proposals outlined in the Treasury's discussion paper on wellbeing, and the proposed requirement that 'The Treasury will be required to report on the state of current and future wellbeing in New Zealand, at least every four years'. The introduction of the Public Finance

Figure 2: Using a wellbeing approach to improve strategic decision-making
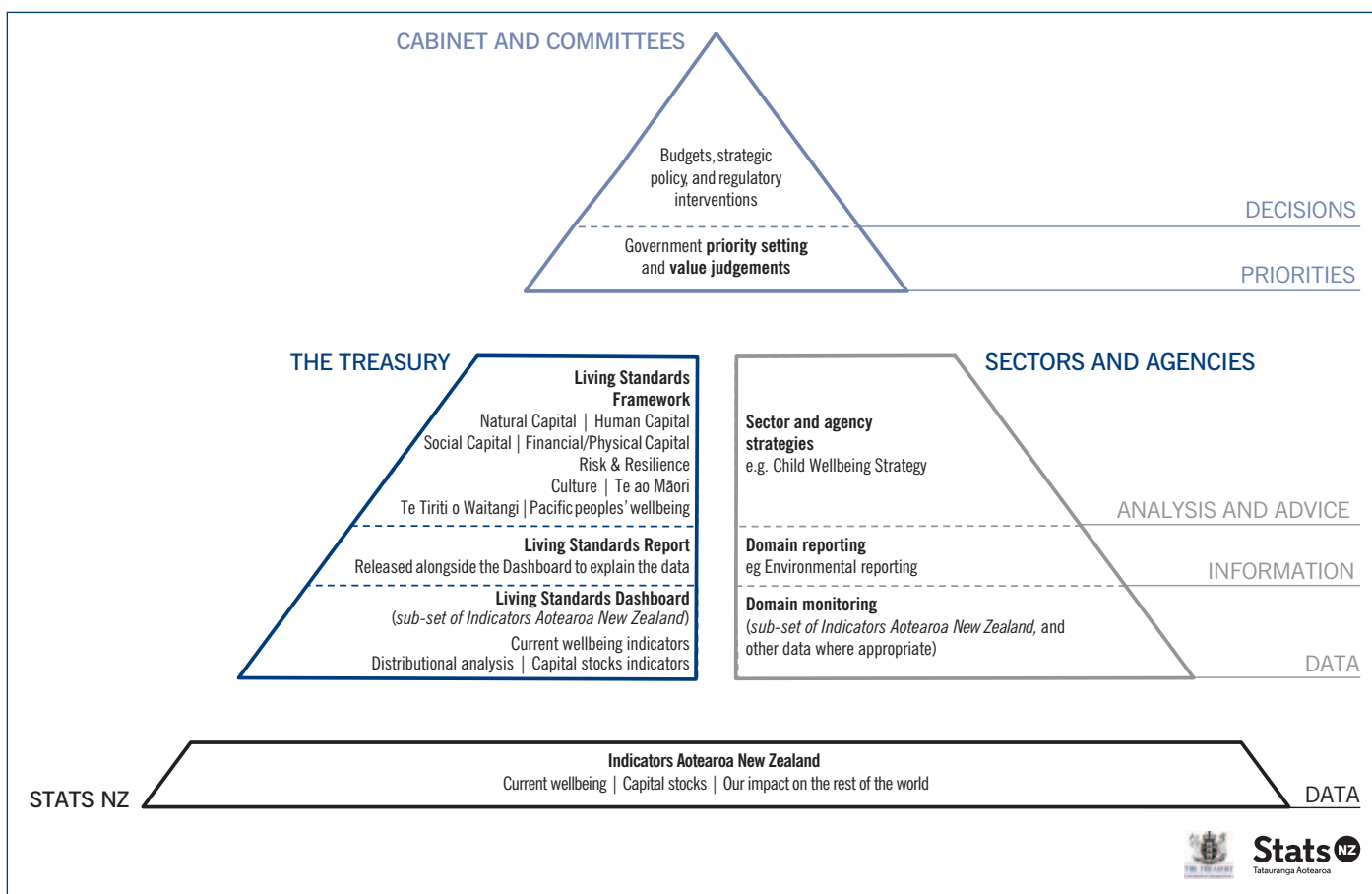
(Wellbeing) Amendment Bill confirms the intent expressed in the earlier discussion paper.

However, the way forward could be more coherent with the underlying structure of the act in at least two ways. First, part 3 of the Public Finance Act deals with 'Reporting by Government reporting entity', and states the reporting requirements for monthly and annual financial statements, and the associated audit requirements. Reporting ex post on outcome achievements would logically sit within or alongside part 3 of the act.[24] As discussed above, attributing causation to changes in outcomes or wellbeing makes accountability more difficult than is the case with reporting on outputs (or operations and activity) by departments. Nevertheless, reporting on outcomes targeted by government provides useful information on the extent to which its priority outcome or wellbeing targets are being met.

The proposed requirement that Treasury 'report on the state of current and future wellbeing in New Zealand, at least every four years' has two aspects that warrant comment. First, if reporting were done only every four years,[25] there would be a disjunction with both the annual budget cycle and the electoral term. From a management perspective, it would mean there was infrequent feedback on levels of achievement[26] and therefore a lack of information as a basis for re-evaluating prior budget decisions and reprioritising if required. Arguably, one of the reasons the Public Finance Act has been successful in terms of fiscal management is that there is feedback on performance on a monthly basis, allowing (indeed encouraging) management to respond in a timely fashion to emerging circumstances and events. On this basis, reporting on at least an annual basis would seem desirable. While it may be that for some outcomes relatively little or no change could be observed within a year, in other cases more rapid change would be expected. Indeed, it may be that outcomes change as a result of factors other than government interventions, and this may also be relevant information.

Further, with a three-yearly electoral cycle, it could emerge that the government in office at the time the reporting on wellbeing takes place was not in government for the majority of the reporting period. Insofar as the text would necessarily describe and explain the wellbeing achievements (reflected in the data in Indicators Aotearoa New Zealand or the Living Standards Dashboard), this opens significant scope for alternative interpretations, which could make the reporting highly contentious and diminish both public confidence in the reporting and the longevity of the wellbeing focus.

Second, there is the question of which organisation(s) should have responsibility for reporting on wellbeing performance and in which document(s) should this reporting take place. As stated above, a distinction between ex ante and ex post reporting is a key element of the Public Finance Act framework. Hence, the budget documentation should articulate the wellbeing priorities and objectives the government is seeking to achieve through the budget, alongside the fiscal objectives. A step was taken in this direction in the 2019 Wellbeing Budget.

Given the concerns above, it is not clear which organisation or organisations should best be responsible for the ex post

reporting – the element of the process that closes the accountability loop – notwithstanding the amendment bill's specification that this be Treasury's responsibility.

The Treasury and Statistics New Zealand have produced a diagram (Figure 2) which depicts the components of a wellbeing approach to strategic decision making. This identifies a number of different forms of reporting: Indicators Aotearoa New Zealand, the Living Standards Dashboard and the Living Standards Report, as well domain reporting and domain monitoring by sectors and agencies. However, the text in the 'Cabinet and Committees' level of the diagram suggests that the data and information referred to in the document is intended for decision-making purposes, rather than ex post reporting.

The discussion paper issued by Treasury in 2018 considered reporting wellbeing within a number of budgetary documents, and stated:

As a part of developing our understanding of how to measure and report on wellbeing, the Government is piloting non-legislative options for embedding a wellbeing focus in public sector departments' strategic planning and performance reporting, before considering further legislative changes. (Treasury, 2018a)

This suggests the government is correctly conscious of the difficulty of finding the right approach to ex post reporting of wellbeing. Insofar as outcomes are affected by all parts of the Crown reporting entity, there might be a case for the production of an annual outcomes report being managed through collaboration by the central agencies and Statistics New Zealand.

Theme 2: Changing the financial management framework
The second theme identified by the minister is to change the financial management framework 'to increase flexibility, encourage collaboration and support and enable a more strategic focus. This includes changes to the appropriation system and a different approach to planning and reporting'

> The level of transaction costs and the nature and extent of scrutiny in the budget process are affected by the Public Finance Act primarily through its specification of the nature of the appropriation structure.

(Robertson, 2019).[27]

The minister elaborated by identifying three problems in the performance of the existing system:
- the difficulty and transaction costs associated with moving funding from one 'pool' to another, reallocating resources from less to more effective programmes;
- the difficulty of reporting in one place the result of collaborative efforts of multiple departments or agencies in achieving a single outcome, illustrated by the example of 'a joint venture of eight government agencies who work on reducing and eliminating domestic violence' (ibid.);
- the cost and ineffectiveness of agencies' strategic planning processes, where strategic plans 'end up sitting on the shelf gathering dust'. The minister indicated that the government was 'testing a fundamentally different approach with one or two pilots where each pilot will put a spotlight on a specific long-term issue'.

The way the government seeks to address these three problems is underpinned by a common proposition: that government performance will be enhanced if there is flexibility to reallocate resources between activities that are carried

out by different agencies acting collaboratively in pursuit of single outcome-based objectives, and that the formal aspects of the planning, budgeting, operations and reporting of the joint activities should be aggregated in line with the 'specific long-term issue'.[28]

While this proposition may be valid for a certain subset of the government's activities, it may not be optimal for all. Below, consideration is given to the possibility that the management system needs to accommodate a two-track approach.

Theme 3: Rethinking the approach to the budget
In relation to the third theme, the minister noted:

My experience of the past two Budgets is that they involved quite high transaction costs focussed on a relatively small proportion of government spending. Ministers also had little visibility of what was being funded through baselines and where there were opportunities to stop some things to fund other new initiatives.

As a small first step, we will consider bringing in:
- Single departmental output appropriations for small departments and consolidating small appropriations to provide more flexibility to move funding between programmes and output classes (work that will be phased over two years)

Looking further ahead, we will consider
- Aggregating non-departmental appropriations aligned to high-level outcome areas
- Introducing multi-department, multi-Minister appropriations, allowing multiple departments to be responsible – collaboratively – for what they achieve. (Robertson, 2019)

In the statements above, a number of issues are raised:
- a concern for the level of transaction costs in the budget process;

Figure 3

	Outcome-focussed Collaboration	Output-focussed Specialisation
Expectations	Achievement of Shared Goals	Delivery of Services
Operating Model	Value-add through collaboration	Value-add through specialist skill
Information needs	Fast feedback loops from citizens	Fast feedback loops from system
Accountability for	Commitment to shared goals and mana to achieve them	The quality, quantity and cost of the provision of services
Accountable to	Citizens before hierarchy	Hierarchy before citizens
Accountability direction	Horizontal between collaborators	Up through the hierarchy
Trade-offs generally favour	Effectiveness	Efficiency
Funding	Collective / Relationships	Services

- the relatively small proportion of the total budget that is scrutinised in the annual budget process;
- the degree of flexibility a department should have to adjust the set of outputs it produces within a single appropriation; and
- whether the appropriation system should have an even greater 'outcome' focus than that granted by multi-category appropriations, by allowing multi-department and multi-minister appropriations.

The level of transaction costs and the nature and extent of scrutiny in the budget process are affected by the Public Finance Act primarily through its specification of the nature of the appropriation structure. However, the manner in which the government chooses to administer its budget process, within the requirements of the act, is the major determinant of the costs. As in any budget system, there is a trade-off between the desire for scrutiny and contest, and the possibility of efficiencies and reallocations, on the one hand, and the desire to minimise the transaction costs on the other.

At one extreme, an organisation could adopt a variant of a 'zero-based budgeting' approach. This approach forces an annual reconsideration of all existing expenditure, and is seen as being of value in facilitating the reallocation of resources to more productive uses. In reality, the transaction costs of a zero-based budgeting process militate against its full implementation,[29] though its methodology is consistent with the desire of the government to give greater consideration to baseline expenditure. An incremental approach to budgeting, essentially taking last year's expenditure as given, will certainly be less costly to administer, but leaves on the table the value that could be extracted from increasing efficiency and reallocating expenses to interventions that make a greater contribution to outcomes.

The fixed nominal baseline system that has been used in New Zealand errs very much towards the incremental end of the spectrum, where, as the minister notes:

About 98 per cent of government expenditure – or $89 billion – sits outside the annual Budget process, and yet – as I've already mentioned – we spend most of our time assessing how to allocate the next two per cent or so located at the margin through each Budget. (ibid.)

The system of fixed nominal baselines has at least two effects. First, it limits the amount of analysis and scrutiny that needs to be undertaken in relation to baseline expenses, reducing transaction costs. However, it also reduces the incentives on departments to re-examine the value generated by services within the baseline.

Certainty of forward funding reduces the incentive to seek greater efficiency or more innovative services.

The dilemma the minister faces is that he wishes to reduce the transaction costs associated with the budget process while increasing the scrutiny of baseline expenditure. In his speech he indicated that the intent is to look at 'baselines and marginal expenditure together to better prioritise what will improve wellbeing for New Zealanders, and ensure sustainable resourcing to deliver it'. He indicated that the government was looking to achieve this through baseline reviews, where, ultimately, '80 per cent of baselines are covered by a review every few years'.

The following quotation suggests that the minister considers that a significant element of the transaction costs arises from the number of appropriations:

There are currently about 840 appro-priations, and more than a thousand if you [count] the components of multi-category appropriations, which are reported on
More than half – 50 per cent – of the money is in just two per cent of the appropriations
45 per cent of appropriations – again, almost half – have less than $5m in each appropriation (less than one per cent of the money). (ibid.)

However, when assessing transaction costs, the size of the transaction is also significant. Using the minister's numbers, the mean transaction size for the 2% of appropriations that constitute 50% of government expenditure is approximately $2.3 billion. These, obviously, are very significant amounts and the process of establishing the nature of what is to be delivered, issues of distribution, assignment of risks, etc. can be expected to generate substantial transaction costs.[30] The mean transaction size for the other 98% of the appropriations is $46.5 million, and even this amount would seem to warrant serious analysis and scrutiny.

The need for examination of the base implies some increase in transaction costs, whether that examination is conducted annually or selectively over a number of years. Consistent with this, it is reasonable

to look to reduce transaction costs where it is efficient to do so. However, the transaction costs associated with the efficient allocation of approximately $90 billion should, if the allocation process is rigorous, be significant. The test is whether the transaction costs are warranted by the results of the allocation process, not by the ease with which departments can comply with the requirements of the process.

Same problem, alternative solution. Or is it?
The ministers of state services and finance both acknowledge that the existing acts have been successful, but identify performance issues that remain. As described above, the minister of finance is proposing a work programme and legislative amendments that have the public financial management system focus more on outcomes, give ministers and departments greater flexibility in selecting outputs within appropriations, and support collaborative work between agencies.

While it might be argued that much of what the minister seeks could be achieved within the existing legislation, the changes are predicated on the view that legislative changes can better support the direction in which he aims to take the system.

Warren (2019) described two different approaches to managing activities within the public sector, which he describes as 'outcome-focused collaboration' and 'output-focused specialisation'. The differences between the two approaches are summarised in Figure 3.

Warren also refers to organisations which operate a 'two-track' system in which they manage different types of service or activity in different ways, specifically by managing some functions through hierarchies and other functions through networks.

Warren's contention is that the public management system currently operates in a hierarchical manner and that this is suitable for a subset of public services which are more routine in nature, and are produced more efficiently through output-focused specialisation. However, for other activities such a hierarchical approach leads to the issues that are problematic in the current system: the creation of siloes, lack of collaboration and the need for

greater flexibility. For these other activities, which address complex problems that require learning, adaption and experimentation, outcome-focused collaboration, operating through networks rather than hierarchies, is more effective.[31]

An important element of the rationale for the State Sector Act and the Public Finance Act was that the context and managerial issues confronting different departments are very different, and the pre-existing, highly centralised, approach did not allow for managers to be responsive to those differences. However, as has been observed,[32] there are elements of the public financial management system that are

> The description of the proposed changes to the Public Finance Act and the State Sector Act, taken together, suggests that they represent a move from one 'one-size-fits-all' model to a different 'one-size fits-all' model.

themselves insufficiently responsive to the differences between those services that can most effectively be delivered through outcome-focused collaboration and those that can best be delivered through output-focused specialisation.[33]

The changes being proposed for the State Sector Act seek to move the whole public service from output-focused specialisation to outcome-focused collaboration. The changes proposed by

the minister of finance are also supportive of outcome-focused collaboration. However, the specific nature of some of the changes[34] seems at least to open the possibility of tailored application, depending on the nature of the activity, even if the language used by the minister's implies the universal application envisaged by the State Sector Act reforms.

As currently described, the changes are not explicitly confined to a subset of public services, which opens the possibility that, if applied too widely, outcome-focussed collaboration could be used where a more hierarchical approach would be superior. This is certainly the intent of the State Sector Act approach. However, if the Public Finance Act changes are enabling, rather than applying to all services, then the changes may be adopted only in those areas where outcome-focused collaboration is the superior approach. Were this to be the case, the solution proposed by Warren might still be achieved, albeit that there is not within the current proposals a clearly defined two-track system.

The place of outputs in the system
The minister noted in his speech to the conference that the Public Finance Act when it was first introduced 'shone a light on what government was spending money on' (Robertson, 2019). It did this by requiring departments to specify the outputs they were producing, enabling ministers to make strategic decisions about whether they considered those outputs were adding value.

In seeking to have the budget process examine the base as well as the margin, the same information set is required: that is, a clearly described set of outputs. The value of activities within the base is not a function of the level or type of expense, but of the services (or other interventions) that are produced. To examine the base, ministers need a clear picture of what services are produced. As the minister notes: 'As a Government, we can't ensure a joined-up, long-term approach to enhancing wellbeing, if we don't actively look at what agencies are doing, and how it creates public value' (ibid.).

Unfortunately, the clear ex ante specification of outputs, the subsequent management of their production and their

costing, and their ex post reporting involves significant transaction costs. This runs against the minister's intention to make the process 'easier for agencies': 'It's important for us to make it easier for agencies to plan, deliver and account for their work programmes, and to do it collaboratively, and cost-efficiently, with a minimum of waste' (ibid.).

However, in the period since the act was first implemented there has been a progressive degradation in the quality of output specification, meaning that it is now more difficult for ministers to see clearly what departments are delivering. The transaction costs associated with the specification and reporting, ex ante and ex post respectively, of outputs means that unless this information is used by management, especially in the budget process, the incentives to continue to produce it are significantly weakened. The use of a baseline in the budgeting process reduces the incentives on departments to produce high-quality output information, as their revenue stream is not dependent on the production of that information. Similarly, high-quality information on output costs also has significant transaction costs, and if output costs do not play a significant role in determining departmental budgets there will be a reduced incentive to produce this information, leading to a degradation in information quality. In order for ministers to examine the base, whether through periodic spending reviews or as part of the annual budget process, the decline in the quality of this information will need to be reversed.

How do these proposed changes interrelate with the State Sector Act changes?
The close relationship between the Public Finance Act and State Sector Act at the time they were passed was noted above. This important interrelationship is also recognised by the current government in advancing its reform programme. And it is also recognised that the '[c]hanges to the State Sector Act 1988 will build on the high performance base of the Public Service, with the overall aim of delivering better outcomes and services for New Zealanders' (State Services Commission, 2019).

> … ministers acknowledge that the New Zealand public management system has produced good results and is highly regarded internationally and by New Zealanders, but the ministers are nevertheless seeking further improvements.

One of the issues raised by the minister of state services in explaining the need for the repeal of the State Sector Act and its replacement with a Public Service Act is that the departmental form of organisation alone is not flexible enough to help us meet all the needs of New Zealanders. Over and again we have found the basic departmental form inflexible for:

3.1 allowing different departments to work together to address complex problems which cross organisational boundaries;
3.2 creating autonomy, or independence, without the cost and complexity of a separate department;
3.3 creating greater visibility and strengthening accountability for important issues and priorities. (Hipkins, 2019b)

Building on the 2013 amendments to the State Sector Act, and the development of the System Design Toolkit, the changes proposed by the minister will give legislative backing to the following: an Interdepartmental Executive Board; public service joint ventures; a more flexible departmental agency model; and functional

chief executives. In relation to these new organisational forms, the minister notes:

To give effect to these new organisational forms in legislation, some will require amendment to the Public Finance Act 1989. These consequential amendments would not alter the fundamental elements of the public finance framework – parliamentary authorisation of expenditure, transparency of objective setting and decision-making, and clear lines of accountability and reporting from officials to Ministers and Parliament. What would change is the range of administrative units able to become appropriation administrators, performance and strategic reporters and assume public finance responsibilities under the Act. (ibid., p.12)

This recognition of the need for appropriation system changes to reflect the new organisational forms reinforces the idea that the two pieces of legislation should be complementary and mutually reinforcing.

The discussion above concerning a 'two-track' system raises the possibility of having different operating modes within the public sector – outcome-focused collaboration and output-focused specialisation. The description of the proposed changes to the Public Finance Act and the State Sector Act, taken together, suggests that they represent a move from one 'one-size-fits-all' model to a different 'one-size-fits-all' model. While this may have the merit of being a coherent system, it does not reflect the experience of the past 30 years in two ways. First, for some activities an output-focused, hierarchical approach to management may be most efficient. Second, the range of activities in the public sector militates against a 'one-size-fits-all' approach. While the original legislation went a considerable distance in enabling decision making in different organisations to reflect their individuality, the experience since has been that the system as a whole does not sufficiently accommodate the variation within the organisations that make up the public service.

Conclusion

The changes being proposed for the State Sector Act and the Public Finance Act are significant. They envisage a public management system that operates in a way that is significantly different to that originally envisaged by the acts, but in a way that reflects and extends a number of changes that have been formalised through amendments to both acts since their original passage.

Key elements of these changes include an intent to focus more on outcomes than outputs, a desire to give ministers and departments greater flexibility in the nature of appropriations and the selection of the services that will be provided within an appropriation, and a desire for the public service to operate in a more 'joined-up', innovative and collaborative way. These changes reflect perceived issues in the operation of the system and the complexity of some of the problems New Zealand still faces. There is also an intent to change the budget process to make it both more efficient and more comprehensive, with reduced transaction costs and greater scrutiny of baseline expenditure.

A strength of the changes proposed by the ministers of state services and finance is that they maintain the complementarity of the two acts, emphasising the importance of a coherent public management system with consistent incentives on decision makers. The focus of both is firmly on wellbeing, both emphasise the importance of collaboration between departments, and both rely more heavily on the spirit of public service to drive performance than on clear accountabilities.

However, there are risks associated with the proposed changes, and this article identifies some of the tensions inherent in the nature of them. Both ministers acknowledge that the New Zealand public management system has produced good results and is highly regarded internationally and by New Zealanders, but the ministers are nevertheless seeking further improvements. The changes may or may not be successful. Or, perhaps the more likely result is that they are successful for some parts of the public sector, where the nature of the problems requires more flexible and experimental interventions, but less successful where the nature of the

outputs and their relation to outcomes is better understood and production more routine. In the words of the *Economist* (1992), '[t]ime will tell'.

1   The different types of appropriation include appropriation for output expenses, other expenses, borrowing expenses and capital expenditure. There are also appropriations for benefits or related expenses (transfers) and multi-category appropriations.

2   For departments, outputs remain the basis for most appropriations, though there has been a pattern over time of aggregating outputs into fewer appropriations. This gives greater flexibility to departments at some cost to parliamentary authority in relation to the purpose of the authorised expenses.

3   Key challenges are the effort required to specify ex ante the service(s) that will be delivered in the budget period, and the measurement (including costing) and monitoring of the services actually delivered. For reasons that will be addressed below, there are also incentive issues with outputs as the basis for accountability. Because it is markedly easier to establish accountability for output delivery than for outcome achievement, departments have stronger incentives to ensure their outputs are delivered, and as a consequence, it is argued, departments are less willing to collaborate with other organisations in achieving outcomes.

4   As distinct from the assignment of decision rights between the Parliament, the ministers and departmental chief executives.

5   A number of speakers at the PFA30 conference, including the minister of finance and international speakers, referenced the high level of fiscal transparency.

6   While arguably part of the reason for the rapid introduction and successful functioning of the act, its integrated nature has been little emulated internationally, although the adoption of accrual reporting has been (Brumby, 2019).

7   Ownership performance relates to the aspects of an organisation's performance that would be of interest to its owner, such as maintenance of capital, financial performance, organisational strategy and risk management. Purchase performance relates to the interests that a customer might have – including the nature of the product or service, the quantity and quality of the service, location of delivery and cost. These two interests – purchase and ownership – could conflict: for example, if a department were to run down capital to meet service demands. Accrual accounting was needed to measure performance on both dimensions – whether capital was being maintained (ownership) and the cost of services (purchase).

8   Both acts largely removed controls over inputs, other than the appropriation mechanism that specified total input costs. In exchange for freedom to manage inputs, departmental managers were accountable for the delivery of outputs. Through the strategy development and budget processes ministers determined the nature and level of services (or other interventions) required, based on the outcomes they were seeking to achieve.

9   This distinction required clarity as to the accountability of ministers and chief executives and departments. So, for example, ministers would determine and be accountable for the level of income tax, while Inland Revenue would be accountable for the collection of the tax, and associated services. Similarly, the Department of Conservation (DOC) would be accountable for the management of Crown assets such as the national parks. In these examples, tax revenue would be revenue of the Crown, not Inland Revenue, and the national parks would be on the Crown balance sheet, not DOC's.

10   Reporting of outputs was required in the Statement of Service Performance, and to emphasise the need for high-quality information this statement was, like the financial statements, required to be audited.

11   In the international setting, the speed with which the accrual accounting systems were put in place in New Zealand is notable. Most departmental directors of finance (as they were then described) had little or no experience of establishing or operating an accrual-based accounting system, as this was not required in the context of a cash-based and Treasury-operated accounting system. In many cases, chief executives recruited new chief financial officers who had the requisite skills and experience. This process would have been significantly more difficult and time-consuming if the necessary skills, at both CFO and subordinate levels, had been developed internally rather than imported.

12   Little (2018) suggests that the changes have led to a '"patchwork" system' and noted that: 'The irony is that the

overall effect of these changes can be to take us further away from a more meaningful performance framework.'

13   While outcomes were not formally the basis for chief executive accountability, in an environment where ministers were seeking to achieve their priority outcomes, chief executives had an incentive to demonstrate how their department's outputs contributed to the minister's outcomes, and to seek improvements to the design or delivery of their outputs.

14   This pattern of diminishing the significance of outputs is illustrated by the use of terms such as 'widgets' to describe outputs. The progressive lessening of the specification and reporting requirements in relation to outputs in the formal system has the effect of reducing the transaction costs of the system, but runs counter to the point that it is only through the production of outputs (or other interventions) that outcomes can be achieved; outcomes cannot themselves be directly achieved without some form of intervention.

15   The introduction of strategic result areas (SRAs), the Better Public Services initiative, the social investment approach and the Living Standards Framework all represent attempts to find a way of better managing the achievement of outcomes.

16   At the time it was removed from the act, 'outcome' was defined as: 'outcome – (a) means a state or condition of society, the economy, or the environment; and (b) includes a change in that state or condition' (s2(1)).

17   Departments were required to report on their service delivery, though not the outcomes achieved. This requirement was amended a number of times and now refers to 'operations' and 'strategic intentions'.

18   In the period since the minister made this speech the government has introduced the Public Finance (Wellbeing) Amendment Bill.

19   It is possible that the minister did not refer to this potential reform because it would not be given effect through an amendment to the Public Finance Act, but through separate legislation. It would, however, constitute a significant change to the performance management system.

20   For example, the appropriation system could be changed by making significantly greater use of multi-category appropriations and/or multi-year appropriations, without necessitating changes to the act.

21   The reporting entity for the forecast and actual financial statements of the Crown comprises ministers of the Crown, departments, offices of Parliament, the New Zealand Superannuation Fund and the Reserve Bank of New Zealand (the core Crown segment); state-owned enterprises, mixed-ownership model companies, Air New Zealand Limited, Kiwi Group Holdings Limited (the state-owned enterprises sector); the Crown entities sector; plus other entities not fully consolidated into the financial statements of the government, principally tertiary education institutions.

22   The government also produces unaudited monthly financial statements, except for the first two months and the last month of the year.

23   Information in the government's financial statements is the basis for assessing conformance with the principles of responsible fiscal management contained in the act.

24   It should be noted that recent amendments to the Public Finance Act have included reporting requirements in the appropriation part of the act. Specifically, sections 15C (End-of-year performance information requirements) and 15EA (Main Appropriation Bill: supporting information relating to child poverty) require information that relate to wellbeing status rather than to plans. Clearly distinguishing ex ante objectives and ex post achievements enables clearer communication about achievements relative to plans, and thus more effective accountability.

25   It may be that the four-yearly report is intended to be similar to the Investment Statement, a document that is required by section 26NA of the act to be prepared by the Treasury at least every four years. However, this statement is largely based on information that has already been reported in the financial statements, which are the formal ex post reporting documents. It is not clear where the equivalent formal reporting of wellbeing achievements is intended to take place, if not in the proposed Treasury report.

26   In this article I will use the term 'achievements' in relation to wellbeing performance. However, it has been noted above that the attribution problem means it is difficult or impossible to demonstrate that the wellbeing changes are the result of government action. Notwithstanding this, it is central to the reforms the government is considering that it wishes to formalise the place of wellbeing in the planning, budgeting and reporting processes, and by implication this is how it is choosing to be held accountable.

27   The issues addressed in themes 2 and 3 are not the subject of the changes in the Public Finance (Wellbeing) Amendment Bill.

28   This term appears equivalent to the term used to define a

multi-category appropriation – a 'single overarching purpose'.
29 A March 2015 article in the Wall Street Journal (Kesmodel, 2015) noted the recent revival of the zero-based budgeting approach.
30 While these transaction costs might be substantial, they would be very significantly less than the transaction costs associated with contract specification and performance monitoring in relation to an equivalently sized commercial contract.

31 Little (2018): 'The current financial and vertical accountability structures incentivise silos – good for delivering discrete, tangible outputs that are delivered by a single agency, *but* creating a barrier to helping those with complex needs and tackling complex issues that fall across departmental boundaries.'
32 Little (2018) refers to 'a hierarchical, top-down control model, and a one-size fits all approach'.
33 The focus on outputs for accountability purposes and the

requirement for ex ante specification of services to be delivered are two examples.
34 In particular, changes to the appropriation system appear to recognise that some activities require greater flexibility as to the nature of services than do others.

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Richard Norman

Rediscovering Public Service in New Zealand after 30 Years of New Public Management?

Abstract

Legislation change is 'easy' compared with changing organisational cultures, which have the most powerful influence over whether rhetoric about a 'spirit of service' will translate into realities for citizens and political leaders. The competing values framework, developed in reaction to one-size-fits-all models of private sector management, helps show the scale of the change being sought with the proposed Public Service Act.

Keywords competing values, organisation culture change, navigation capabilities, market, clan, network, hierarchy

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Changing workplace cultures will be the most challenging part of the review of the 1988 State Sector Act. For 30 years the New Zealand public service has been organised using managerial practices, which were once seen as best practice for multi-divisional corporations. Market-like techniques such as contestability, accountabilities, strategic plans and 'SMART'[1] goals were adopted in 1988 as alternatives to slow-moving, inwardly focused bureaucracy. Now the emphasis is on reducing the fragmentation which tends to be a by-product of those techniques by emphasising system-wide values such as 'spirit of service', stewardship and 'free and frank advice'.

Figure 1
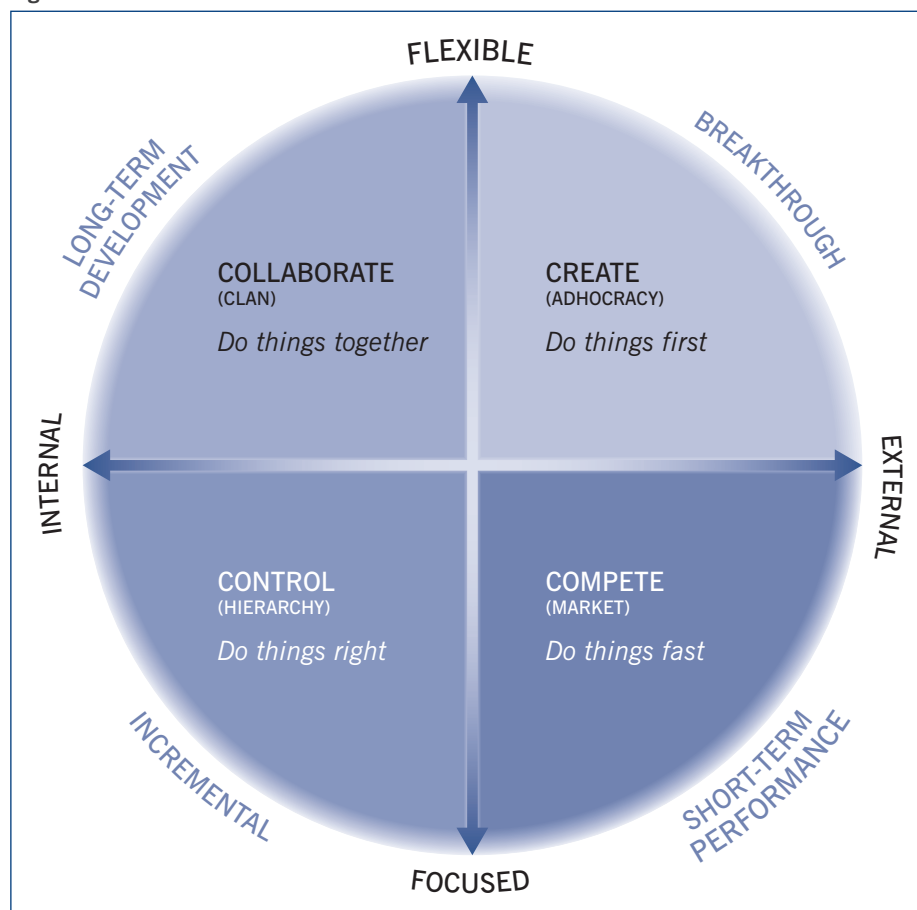
Source: Cameron, n.d.

The organisation model adopted in the 1988 legislation predates the internet and was enabled by then new spreadsheets which could be used to centralise and analyse increasingly large volumes of numbers. Now the internet provides infinite interconnections, and social media and search corporations have grown to a scale where they challenge the powers of governments. Legislation for public service change is part of a rethink about the purpose and form of organisations for an era of global connections.

The simplicity and certainty of the 'Friedman doctrine' of 1970 that a company's only responsibility is to its shareholders is being rethought. One example of this change is the mission statement of the United States Business Roundtable, which represents chief executives from companies which have in total about 15 million employees. The Business Roundtable now states that the primary purpose of companies is to 'benefit ... all stakeholders – customers, employees, suppliers, communities and shareholders' (Business Roundtable, 2019). This replaces a statement adopted in 1997 which

expounded the Friedman doctrine that shareholder interests are primary (Economist, 2019).

New Zealand's Wellbeing Budget of 2019 involves broadening the purpose of governments beyond a dominant focus on economic results. Now, natural, human and social forms of 'capital' are given attention alongside financial and physical capital. Proposed changes to the State Sector Act can be seen as part of a rethinking of the market and business values that have dominated public sector discourse since the major reforms of the 1980s.

This article uses the 'competing values' diagnostic shown in Figure 1 to interpret the tensions and changes in values. (The competing values framework is described in detail in Cameron and Quinn, 2011 and Cameron et al., 2014.)

The reforms of 1988 broke up a unified, internally focused public service which had strongly embedded values of 'collaborate' and 'control' – cultures of clans and a unified hierarchy. The television series *Yes Minister* in Britain and the New Zealand play and television series *Glide Time* and *Gliding On* satirised this culture. Hierarchy

was visible through a nationwide public service register, which contained the pay grades for a public service headed by 'permanent secretaries'. Business values were adopted as the driving force for change, reflecting the triumph of Western markets over Soviet communism and advocacy for 'reinventing government' (Osborne and Gaebler, 1993) and 'banishing bureaucracy' (Osborne and Plastrik, 1997). Health, education, science, engineering, housing and other government functions were restructured to force public entities into competition with each other and with private sector and non-profit alternatives. Permanent secretaries were replaced by chief executives who were incentivised to deliver specified outputs and held accountable for the delivery of those outputs. New Zealand was the first nation state to adopt private sector accounting in the early 1990s, and its decision makers have benefited from annual reporting about the government's balance sheet. Currently, unlike comparable countries which have negative government net worth, the New Zealand government has net assets valued at 45% of annual gross domestic product (Ball, 2019).

The market values now embedded in New Zealand's public sector are captured by Max Harris, one of a generation which has known no other system (Matthews, 2017), in his book *The New Zealand Project:*

the private sector is an engine of innovation and creativity. The pursuit of self-interest, and the presence of competition, are beneficial since they can produce that innovation and creativity. … Governments should be slow to act in the economy, since government intervention tends to stifle innovation and disrupt market forces. … Recipients of government support can become dependent. Well-intentioned government action can have unintended consequences. 'Fairness' is an empty concept that might be best defined by what people accept within the market. There is no such thing as society, or the public. Choose self-interest. Choose self-regulation. Choose markets. (Harris, 2017, p.55)

Market values emphasise responsiveness to customers and fast action. Such values can foster innovation in services and achieve accountability for results. But they come with risks (see Appendix). Markets can become focused on the short term, fostering internal competition, blaming and gaming in pursuit of funds and statistics which claim results for individual organisational units. Over the course of 30 years of New Public Management, markets established to foster business-like competition for public services have effectively become hierarchies, which use competition to ration public funds. A group representing social service providers has recently claimed that such contracting is covering just under two thirds of the full cost of services – meaning underfunding by government of $630 million (MartinJenkins, 2019).

The competing values model offers a simplified but multi-layered technique for identifying types of cultural change being asked of organisations in this environment. The reforms of 2019 seek, by contrast, 'a compassionate, unified public service that is motivated by a spirit of service to the community' (Hipkins, 2018). The proposed principles are political neutrality, free and frank advice, merit selection, openness and stewardship. Proposed values are for a public service that is impartial, is accountable, behaves with integrity, is respectful and is committed to service (State Services Commission, 2019).

The competing values framework provides a 'see at glance' explanation of some of the tensions within a large organisational system such as the New Zealand public service (or a corporation such as Microsoft, described below). Overemphasis on one or two values can create unstable organisations. The framework instead emphasises that leaders must focus on both internal and external issues. Organisations need both internally focused commitment from staff *and* effective external services for customers, citizens or elected representatives. Organisations need to be flexible both in the face of changing needs *and* in the use of controls which ensure delivery and financial viability.

The location which has supported the development of the competing values

framework is significant. It began in the 1980s at the Business School of the University of Michigan, based in Ann Arbor, a leafy city of 114,000 people less than an hour's drive from Detroit, a city based on Ford and General Motors, major adopters of hierarchy and market values with their 'one best way' production and marketing techniques (Kanigel, 1997).

> Organisation cultures take much longer to change than the time it takes to pass even the most complex legislation.

Such analytical techniques were also introduced to the United States government in the 1960s by Robert McNamara, who moved from Ford to become the US secretary of defense between 1961 and 1968.

At a time when the market dominance of the American automobile industry was under challenge from Japanese and European competitors, the competing values framework was a challenge to the 'rational management' of the motor industry (Quinn, 1988). The 'collaborate' and 'create' quadrants of the framework draw on sociology, psychology and anthropology to understand human contributions to organisational success. The 'control' and 'compete' quadrants describe the values behind the quest of businesses for market share and profit. The languages of economics, accounting, law and marketing tend to dominate these perspectives. The framework captures at a glance more than 100 years of fierce debate about 'how to organise', with advocates of

efficiency-focused 'scientific management' focusing on control and standardisation and the 'humanist' advocates focusing on people and flexibility.

Competing values which large organisations currently must accommodate are summarised by Ulrich et al. (2017, p.186). Organisations and their leaders must balance:

- global and local demands;
- the need for change (flexibility, adaptability) and stability (standardisation);
- taking time to gather information and making timely decisions;
- internal and external hiring;
- individual employee needs and collective organisational goals;
- internal focus on employees and external focus on customers and investors;
- top-down organisational control and bottom-up employee empowerment.

Proposals for a Public Service Act to replace the State Sector Act are a reaction against a dominance of market and control values. But the extent to which legislative change can lead to a dominant new cultural value of 'spirit of service' will be strongly influenced by managers and analysts who have learned managerial skills through the dominant systems of the past 30 years.

A more useful way of understanding the capabilities the new legislation will need in order to be effective is captured in the term 'paradox navigator', used by Ulrich et al. The concept of paradox has roots in Eastern philosophy, where the different energies of yin (female) and yang (male) interact, each working independently and together, generating constant change. The word paradox is based on Greek language. The concept of paradox is contained in management theories such as 'behavioral complexity, polarity, flexible leadership, duality, dialectic, competing values, dichotomies, competing demands, and ambidexterity'. Navigating involves 'constantly steering, adjusting, adapting, and evolving more than the disciplines of managing, which implies controlling, resolving, administering, and solving' (ibid., p.178). Tensions, debates, dialogue and conflicts which emerge as a result of paradoxical thinking can be a positive contributor to organisational change:

When people in an organization agree all the time or act out of their existing roles, adaptation is less likely. Navigating paradox accepts and heightens disagreements that enable organizations to change and evolve. (ibid., p.179)

Market methods adopted in the 1980s sought to tackle financial crisis by reducing complexity to specified results and the measurable. The change challenge now is for a stronger focus on values of collaboration and creativity, difficult capabilities to measure and place in accountability frameworks. Rhodes describes such values at work in British public services as 'craft' skills of 'counselling, stewardship, prudence, probity, judgment, diplomacy, and political nous'. He uses the term 'craft' rather than 'science' to

accept the importance of experiential knowledge as well as formal knowledge. The craft is learned on the job. A craft involves passing on practical beliefs and practices from generation to generation. In contrast to a science, a craft has no one best way. ... The craft is learned from a 'master,' and the novitiate moves from apprentice to journeyman to master. ... Much of that knowledge is tacit. It has not been systematized. It is complex. Often, it is secret. (Rhodes, 2015, p.638)

The terms used by Rhodes align with the people-focused values of clan and network cultures. External analysts seeking evidence of performance and contract-ready specifications are likely to find such cultures frustrating, but the tacit and in-depth understanding of craft skills enables members of clans and networks to learn and adapt.

From a study of skills needed for 21st-century public service in local government in Britain, Needham and Mangan (2014) also identify 'navigating' as a core capability. Roles which help navigation include being a networker, storyteller, system architect and municipal entrepreneur; market and control roles are 'commissioning' and 'broking'.

The introduction of legislation to emphasise a 'spirit of service' for the New

Zealand government has an interesting parallel in change since 2014 at the major software corporation Microsoft. The chief executive appointed that year, Satya Nadella, had been on the staff of Microsoft since 1992, when it was beginning to overtake IBM in market leadership in personal computing. Nadella became the third chief executive of Microsoft at a time when it was losing market share. In a book about the experience, he identifies a catalyst

> The change of title from 'State Sector' Act to 'Public Service' Act is a helpful change of language which gives prominence to the human contribution of service and seeks to move on from the image of a state sector as a series of contracts.

for his determination to achieve change as a cartoon caricature of Microsoft as divisions pointing guns at each other, an image which equally encapsulates fragmentation and competition in public service systems.

Collaboration and creativity were at the core of the change process Nadella adopted. His language is similar to that of 'spirit of service':

In order to accelerate our innovation, we must rediscover our soul – our unique core. We must all understand and embrace what only Microsoft can contribute to the world and how we can once again change the world. I consider

the job before us to be bolder and more ambitious than anything we have ever done. Microsoft is the productivity and platform company for the mobile-first, cloud-first world. We will reinvent productivity to empower every person and every organization on the planet to do more and achieve more. (Nadella, 2017, pp.78–9).

The Microsoft culture had been rigid:

Each employee had to prove to everyone that he or she knew it all and was the smartest person in the room. Accountability – delivering on time and hitting numbers – trumped everything. Meetings were formal. Everything had to be planned in perfect detail before the meeting. And it was hard to do a skip-level meeting. If a senior leader wanted to tap the energy and creativity of someone lower down in the organization, she or he needed to invite that person's boss, and so on. Hierarchy and pecking order had taken control, and spontaneity and creativity had suffered as a result.

Finally, we are one company, one Microsoft – not a confederation of fiefdoms. Innovation and competition don't respect our silos, our organisation boundaries, so we have to learn to transcend those barriers. We are a family of individuals united by a single, shared mission. (ibid., pp.100–2)

By 2019, Microsoft was achieving record financial results, which Nadella attributed to 'deep partnerships with leading companies in every industry' (Microsoft, 2019). In contrast to the 1990s when the company was the focus for anti-competition practices, it has escaped the increasingly negative publicity surrounding Amazon, Google and Facebook. The chief executive of Microsoft acted to change an organisation culture of the 1980s and 1990s; the language used is similar to that used by those who seek change in public services.

After 30 years, the cultural values of a style of business of the 1980s and 1990s are deeply embedded in New Zealand public sector cultures. Legislation change is straightforward compared with changing

organisational culture – that combination of behaviours and tacit and explicit knowledge which together add up to 'how we do things around here'.

The change of title from 'State Sector' Act to 'Public Service' Act is a helpful change of language which gives prominence to the human contribution of service and seeks to move on from the image of a state sector as a series of contracts. The Wellbeing Budget and the proposed public service changes are part of an international rethinking about what money can't buy:

The most fateful change that unfolded during the past three decades was not an increase in greed. It was the expansion of markets, and of market values, into spheres of life where they don't belong ... We need a public debate about what it means to keep markets in their place. To have this debate, we need to think through the moral limits of markets. We need to ask whether there are some things money should not buy. (Sandel, 2012, p.7)

Shifting from outputs specified through contracts to a spirit of service involves navigating competing values of focus and flexibility.

Those areas of government which now regularly attract controversy tend to be in-person services delivered by professionals – services that are not easily automated, and where public demand is invariably greater than available budgets. Such services include health, welfare, education, justice, science, and regulation in areas such as building construction, safety of light aircraft and adventure tourism. In a previous era, the public image of the typical public servant was of a clerical worker or public works labourer. Now, the typical public sector employee is a doctor, nurse, teacher, university academic, librarian, judge, courts manager, corrections officer, military officer, scientist, regulator or policy adviser. The 21st century public service consists largely of professionals, encouraged in their educational preparation to be independent thinkers and to collaborate as well as compete with fellow members of their profession. For the 'caring' professions, the cultural type of 'clan' with a strong focus

on relationships and human development is likely to be a closer fit than values of hierarchy or markets. Professions involved in research, policy advice and education are more likely to fit with the 'adhocracy' or network quadrants of the competing values framework, where the focus is on change and innovation.

> New Zealand's reorganisation of the vocational education sector ... is likely to be a first test of seeking balance between competing values after 30 years during which polytechnics, universities, industry training organisations and private providers have been in competition for funds based on student numbers.

Theory has a direct impact on day-to-day organisation practices. Legislative change and a focus on aspirational, positive goals can help the New Zealand public service move on from theory dating from a period of triumphant Anglo-American, market-based thinking. Sumantra Ghoshal, in a much-cited article entitled 'Bad management theories are destroying good management practices' (Ghoshal, 2005),[2] described the impact of theories embedded in the New Zealand public management model. Agency theory views organisations

as problems and risks, because essentially no one is to be trusted to do their jobs; rather, tight monitoring and control of people is required to prevent 'opportunistic behavior' (Williamson, 1975). Multiple policy ministries and funding agencies were established to guard against 'opportunistic behaviour' through competition for funds and detailed specification of outputs. During the first half of the 1990s, at the height of belief in this formula, the science, housing and health sectors were all reorganised to force competition between providers. Market-like competition between schools was introduced in the late 1980s and extended to tertiary education, with competition and incentives for research funding added after 2003. The problem with theories which set out to solve the 'negative problem' of human imperfections, as Ghoshal argues, is that they set up self-fulfilling prophecies (Ghoshal, 2005).

New Zealand's reorganisation of the vocational education sector (Tertiary Education Commission, 2019) is likely to be a first test of seeking balance between competing values after 30 years during which polytechnics, universities, industry training organisations and private providers have been in competition for funds based on student numbers. The minister of education, Chris Hipkins, responsible for vocational education is also minister of state services and responsible for the proposed new Public Service Act.

The market model enabled and forced polytechnics to pursue niche markets and strategies outside their own regions. This led to innovation such as that of the Southland Institute of Technology in Invercargill, which used local trust funds and lowered costs to provide no-fees education which has attracted students from around New Zealand. But by 2018 many polytechnics were in financial crisis, as students increasingly favoured university study or work over study. The government-created market forced polytechnic managers and staff into financial survival mode, providing similar generic and low-capital courses, and into competition with each other for students from the largest and fastest growing city, Auckland. Almost every tertiary education provider established an outpost in the central

business district of Auckland, while training for skills needed for major parts of the economy, such as building and construction, farm work and viticulture, was financially risky and student enrolments dropped significantly.

As the review of the vocational sector noted:

> Some institutes of technology and polytechnics have continued to experience growth and are high-performing institutions, but others have suffered from falling domestic enrolments in recent years. Some institute of technology and polytechnic growth has come from competing in other regions or through international student enrolments. All regions deserve to be backed to succeed; there's strength in combining forces to support each other. (Ministry of Education, 2019a).

After nearly 30 years of 'market' as the dominant value, hierarchy is explicitly back as a core value for the vocational education sector. Instead of competing, polytechs and industry training organisations will be organised into a New Zealand Institute of Skills and Technology, which 'will be a consolidated organisation that makes strategic use of capital, achieves greater efficiency in programme design, development and delivery, and reduces the duplication of functions within the current vocational education network' (Ministry of Education, 2019b).

Reforms designed to foster and force collaboration and creative responses include the creation of 'workforce development councils' which will give industry greater leadership across vocational education in sectors such as construction and infrastructure, manufacturing and technology, primary industries and social and services sectors.

The capabilities needed to establish a new balance of values for vocational education are signalled in Change 4 in the proposal for change. This is an aspiration and an ideal which captures the challenge of organisational culture change:

> The Institute will have a *new focus and culture*, different from the institutions that are integrated into it. It will mean

that all the regions are able to *share resources*, support each other and share accountability to deliver high performance. (Ministry of Education, 2019a, emphasis added)

Navigating competing values will be a major challenge for those leading the new strategy for vocational education.

> ## Legislation is the easy work compared with the leadership needed to encourage and cajole many small changes in service in organisational cultures.

Embedding a 'spirit of service' at the heart of the public service is another level of complexity and challenge. The competing values framework and its visual recognition of the need to navigate opposites and work with paradoxes is a useful technique for new aspirations for collaboration and creativity which don't lose important accountability and economic sustainability goals.

Conclusion

Organisation cultures take much longer to change than the time it takes to pass even the most complex legislation. The proposed Public Service Act is an opportunity and a prompt to rethink organisation systems which have created a one-size-fits-all straightjacket around public service performance. Markets, contracts and money have become the dominant language of public organisations, reflecting the emphasis on a single competing value embedded into the routines of budgets and performance reporting.

The framework established in the 1980s reflected the enthusiasm of the era for market values as a replacement for cumbersome hierarchies and central planning. But competing values are the essence of politics. Public services are the means for implementing political decisions. The emphasis on market values and New Public Management methods has over more than 30 years sought to categorise public services as technical issues which can be resolved through competition and citizen/client demand.

New Zealand's coalition government seeks to make an impact on multidimensional issues such as climate change, inequalities, housing development and water quality. None of these can be delivered by single agencies narrowly focused on production-style performance targets. These cross-cutting political issues need organisation systems which encourage and reinforce creativity and collaboration without neglecting important strengths of hierarchy and markets. Legislation is the easy work compared with the leadership needed to encourage and cajole many small changes in service in organisational cultures.

The title of a history of a New Zealand government department is a helpful summary of this challenge of navigating competing values. The Department of Labour was founded by the reforming Liberal government of the 1890s as part of its political mandate to tackle disparities of wealth, power and economic development in that era. The history of the department is *Holding the Balance* (Martin, 1996). That balance involved navigating between the interests of employers and organised labour represented by trade unions. Today's balancing act for public services is similar. How can a relatively small and isolated country generate sufficient wealth from a volatile international marketplace and provide a 'fair go' for its citizens?

A new Public Service Act with an emphasis on a 'spirit of service' brings collaboration and creativity into legislation which has for 30 years emphasised 'contracting' and control. The proposed emphasis is potentially more motivating for those working for public agencies. But as the coalition government has found

during its 2019 'year of delivery', that implementation is hard to guarantee. The competing values framework shows at a glance the tensions of translating political rhetoric or legislation change into action.

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Appendix: Strengths and weaknesses of competing values

Clan culture (Collaborate)

Effective
- Participate, engage
- Loyal to each other
- Care for people
- Self-organising teams
- Development, education
- Coaching
- Friendly, supportive, comfortable

Ineffective
- Culture of complaints
- Chat culture
- Disease to please
- Groupthink
- Paternalism
- Helplessness
- Us versus them

Adhocracy culture (Create)

Effective
- Innovate, experiment and learn
- Entrepreneurial; take action
- Create and align with others
- 'Mistakes don't exist'
- New projects
- What rules, not how to
- Respect for professionals

Ineffective
- Withdrawn culture
- Autistic genius: I do it my way
- Hyperactive – exhaustion
- Doing before thinking
- Starting things but not see it through
- Chaotic, wasting resources

Hierarchy culture (Control)

Effective
- Clarity and security
- Quality, reliability, timeliness
- Efficiency
- Control and coordination
- 'Everything is controlled'
- 'No surprises, but incidents that will be handled.'
- Clear decisions
- 'Processes are vital but timely, reliable outcomes count'

Ineffective
- Culture of complaints
- Power culture
- Hiding, hoarding, helplessness
- Us versus them
- Bully or secretly divide and conquer
- Play games
- Play your part on stage
- Wrong decisions by one signature from the power position
- Slow decisions – waiting for signatures
- No decisions – hiding
- Procedure is more important than the product/outcome

Market culture (Compete)

Effective
- Getting things done
- Results orientation
- Competitive
- Confident
- Customer focus
- High Performance
- External focus; responsive
- 'We are the best – and that's fun.'
- 'Who wins …?'

Ineffective
- Performance grail; exhaustion or short-term results
- Internal competition
- Power culture
- Hiding, hoarding
- Blaming, gaming
- Bully or secretly divide and conquer
- 'My scores are more important than yours'

Source: adapted from Bremer, 2012, pp.192, 196, 199–20, 202.

Robert Gregory and Kristen Maynard

Weber vs Wairua

towards a more humane bureaucracy in Aotearoa New Zealand?

Abstract

The essential elements of modern bureaucracy were identified by the German social scientist Max Weber (1864–1920) and remain central today to any understanding of how modern governmental systems work. At the core of Weber's understanding was the insight that bureaucracies are profoundly impersonal, even dehumanised, organisations, which is a key element in their ability to carry out complex, large-scale tasks. However, this dehumanised character is also one of bureaucracy's biggest weaknesses, since it inhibits the organisation's ability to relate to people in ways that are in tune with lived social experiences. This article argues that in Aotearoa New Zealand it should be possible to draw upon knowledge from te ao Māori, and especially the idea of wairua, to help fulfil aspirations for an improved public service, one that is more effective and humane for all New Zealanders. However, to do so will require a much greater appreciation of such knowledge than has so far been the case.

Keywords bureaucracy, wairua, Māori, Max Weber, spirituality, public service

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The proposed Public Service Act is intended, *inter alia*, to establish the behavioural and cultural foundations for a unified public service, ensure strong and capable leadership of the system, strengthen the Māori/Crown relationship and better meet the needs and aspirations of Māori, and ultimately deliver improved outcomes and services for all New Zealanders (State Services Commission, 2019). In this article, we suggest that these laudable aspirations could be facilitated in significant part by instilling in government agencies an understanding of the Māori idea of wairua, in pursuit of a more humane and effective bureaucracy, for the benefit of all people, Māori and non-Māori. This would sit well with the desire expressed by the state services commissioner, Peter Hughes, to weave the 'spirit of service' throughout the public service and for public servants to work with 'humility and compassion', and with a 'total focus on the client, citizen or customer' (School of Government, 2019). This is also timely, as it may reasonably be asked how effectively social service components of a 'Wellbeing Budget' can be effectively implemented by bureaucracies in which employees are regarded as 'human resources' rather than

as people (and citizens are often spoken of as customers, clients or cases).

The authentic embodiment of wairua within the public service would nevertheless be a challenging task, given the essential nature of modern Western bureaucracy, which is the characteristic form of all large complex organisations.

Bureaucracy

The main elements of modern bureaucracy (rule by the office) as identified by the German polymath Max Weber (1864–1920) continue to characterise contemporary governmental systems, in Aotearoa New Zealand as elsewhere. Weber did not use the term 'bureaucracy' as a negative epithet,

bureaucratised, even sociopathic, while others are repelled by the experience of working in bureaucracies and quickly get out. A third group – probably a minority – comprises people who are willing to work in public bureaucracies but at the same time do not allow themselves, in their thinking or in their actions, to become overly bureaucratised. In understanding the bureaucratic context in which they work, these people seek to generate and use discretion that will enhance their organisation's effectiveness and achieve the best possible outcomes for the people it is intended to serve. Bureaucracy thus endures as the characteristic form of modern administration, attempting

generally desirable, it can also give rise to inflexibility and perverse outcomes. So-called 'goal displacement', in which means become ends in themselves, is a common bureaucratic phenomenon (Basil Fawlty could run his hotel more easily and efficiently if people chose not to stay in it).

'Citizens expect to be treated as citizens, but the job instructs functionaries to treat them as objects on which to perform work' (Hummel, 2008, p.24). It is always better that bureaucrats relate to the citizens they serve in ways that are fair, respectful and sensitive, rather than arbitrary, abusive, uncaring or tactless. But despite their best intentions, the bureaucrat's desire to act compassionately is usually heavily constrained, and can seldom be encouraged to reach beyond the imperatives of managerial control. Therefore, many bureaucrats too readily become agents of the organisation, subjugating their own personal values and ethical codes in favour of those embedded in the organisation's collective culture and belief system. In fact, constitutional conventions like the doctrine of ministerial responsibility require them to do so. This control imperative is especially apparent in military and quasi-military organisations, but can also be found in social service organisations, where unofficial judgements are made and sustained about the 'worthiness' or otherwise of different groups of citizens, and officials are actively encouraged not to engage emotionally with their 'clients'.

> Bureaucracy is not a pure abstraction, however, but is everywhere composed of real human beings with emotions, opinions, capacities, prejudices, commitments and responsibilities.

in the way that the word has come to be commonly employed. Literally, as 'rule by the office', bureaucracies are profoundly impersonal systems of administration, consisting of hierarchy, an intense division of labour, calculable technical knowledge, the exercise of 'legal-rational' authority applied without fear or favour (*sine ira et studio*), codified written rules and regulations, and formal records. Weber argued that bureaucracy 'develops the more perfectly [it] is dehumanised, the more completely it succeeds in eliminating from official business love, hatred, and all purely personal, irrational, and emotional elements which escape calculation' (Weber, 1974, pp.215–6). This, according to Weber, is its 'special virtue', the elimination of both hatred and love. In Weber's 'pure' bureaucracy officials are not only 'faceless' but 'soulless' (Hummel, 2008, p.9).

Bureaucracy is not a pure abstraction, however, but is everywhere composed of real human beings with emotions, opinions, capacities, prejudices, commitments and responsibilities. Some readily become

through its own internal logic to successfully pursue complex, large-scale tasks which would otherwise remain beyond collective or individual human reach.

None of this is to deny that generally public servants try to work around, if not overcome, the many bureaucratic constraints that impede their ability to deal with people in ways that are more caring, just, humane and effective. But, paradoxically, they can do so despite the bureaucratic ecosystem within which they have to work, rather than because of it. And in the delivery of social services and benefits, citizens often have to depend on the work of intermediaries and advisers.

Universally, the bureaucratic imperative of systemic control tends to displace the quest to fulfil humane organisational purpose. Bureaucracies' supplicants are real people transformed into administrative 'cases'. And cases are dealt with 'objectively'; that is, as official objects, according to the rules. While the impersonal and objective application of rules and regulations is

Tikanga Weber and tikanga Māori

'Comparatist' academics have sought to identify how governmental systems reflect the cultural and historical 'traditions' found in different countries and jurisdictions (e.g., Painter and Peters, 2010), but the Weberian essence is a pervasive feature. Moreover, little if any of this work of governmental anthropology has focused on the *sui generic* form of public bureaucracy found in New Zealand, a Western colonised country with a unitary political system and a treaty that promised a special relationship between the colonising governors and the indigenous people of Aotearoa, the Māori. Since the signing of te Tiriti o Waitangi in 1840, this has been a most uneasy relationship, to say the least, marked by dramatic events such

as the New Zealand Wars in the 1860s, later land confiscation, and cases of direct state oppression.

The tensions have also been apparent in day-to-day government administration. Whereas, for example, Māori have a strongly oral rather than a written tradition, Weberian bureaucracy is characterised by a system of written communication, documentation and record-keeping. Whereas bureaucracy is based on the exercise of legal-rational authority (written and knowable rules applied without fear or favour, the rule of law), Māori have exercised what Weber called 'traditional authority' – that is, the customs of chiefly and iwi authority. Whereas authority in modern bureaucracies is impersonal, inherent in the office rather than the person holding the office, chiefly authority inheres largely in the person of the ariki. In Aotearoa New Zealand it is the Western model that dominates, in a political power imbalance reflected in the socio-economic inequalities that have for so long endured between Māori and Pākehā.

The country's 'revolutionary' state sector reforms of the 1980s and early 90s, at the forefront of the international New Public Management crusade, were often accompanied by rhetorical flourishes which promised an 'end to bureaucracy'. A rule-driven, hidebound governmental system was to be replaced by one which gave governmental bureaucrats the freedom and flexibility to achieve desirable public policy outcomes, in a 'business-like' manner, while at the same time being held more rigorously accountable for the ways in which they exercised this energising discretion. Yet the need for managerial accountability soon displaced the new 'freedoms' that managers exercised (Norman, 2003). So, while New Zealand's governmental bureaucracy is certainly different from what it was 30–40 years ago, it is still haunted by Weber's ghost (Gregory, 2007).

Nor is it obvious that, especially in the delivery of social services, New Zealand's government bureaucracies are more fair, just, equitable, humane and caring than they were before the reforms. Some might argue that they are significantly less so, especially given greater pressures that they have had to grapple with in areas such as

housing, child poverty, social welfare and income maintenance, and criminal justice, not to mention education and (mental) health, and the government's obligations under te Tiriti o Waitangi. The proposed state sector reforms promise to tackle these problems more effectively by unifying the public service, normalising a more cohesive and collaborative approach among agencies to cross-cutting issues, and supporting the Crown to fulfil its responsibilities under te Tiriti o Waitangi. However, bureaucracy is an immensely powerful instrument for organisational socialisation and indoctrination and so these proposals may not be sufficient to exorcise Weber's spectre.

Being Māori does not mean being invulnerable to bureaucratisation either. Consider, for example, the experience of the permanent head of the former Department of Māori Affairs, Ihakara (Kara) Puketapu, who in the late 1970s led, with Iri (now Dame Iritana) Tāwhiwhirangi, the Tu Tangata strategy, which included a new approach – 'kōkiri' – requiring Māori officers from his department to go out into Māori communities to talk kanohi ki te kanohi with Māori people to determine together how best the interests of Māori could be served (Puketapu, 1982a, 1982b). Under this new philosophy of administration the department was no longer to be seen as a social welfare agency, delivering from on high (that is, bureaucratically) what it or the government believed Māori people should receive. Nevertheless, Puketapu found that the Tu Tangata approach had to overcome entrenched bureaucratic ways, and that his department needed 'to move the very spirit and soul of the client community in a way never before perceived'; 'The Department … was very much structured in pyramid fashion, and with the habit of looking

inward to itself as a first priority instead of adopting a more outward stance' (Puketapu, 1982b, pp.4, 22).

A few years later, in 1988, the report (*Puao-Te-Ata-Tu*) of a ministerial advisory committee on a Māori perspective for the Department of Social Welfare found that 'New Zealand still has a long way to go before we can say we are successfully grappling with the implications of our multi-racial society', and observed,

'There is no doubt that the young people who come to the attention of the Police and the Department of Social

> Yet the concept of 'institutional racism' is a reification: when all is said and done, institutions are not racist; the people who comprise them are.

Welfare invariably bring with them histories of substandard housing, health deficiencies, abysmal education records, and an inability to break out of the ranks of the unemployed' (Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare, 1988, pp.7–8).

The report also argued that

'The most insidious and destructive form of racism … is institutional racism', which is 'the outcome of monocultural institutions which simply ignore and freeze out the cultures of those who do not belong to the majority. … Participation by minorities is conditional on their subjugating their own values and systems to those of "the system" of the power culture' (Ministerial Advisory Committee on a Māori Perspective for the Department of Social Welfare, 1988., p.19).

Yet the concept of 'institutional racism' is a reification: when all is said and done, institutions are not racist; the people who comprise them are. And so-called

'unconscious bias' can too easily be accepted as a euphemism for deep-seated racial prejudice.

So, while we in New Zealand may prefer to believe that our governmental bureaucracies are colour-blind, dealing fairly and equitably with all people regardless of their differing ethnicities, cultures and backgrounds, *Puao-Te-Ata-Tu* suggested otherwise. How much has changed since? Little, if anything, as suggested by the arguments presented in He Waka Roimata, the first report of the government's independent criminal justice advisory group (Safe and Effective Justice Advisory Group, 2019), and by the recent comments of the children's commissioner,

of te ao Māori and features in the public service, albeit to a limited extent, it has no operational definition. But nor do concepts such as love and wisdom. As Bruce (2000) has remarked, once one has experienced these things, there is no longer a need to explain what they are. Today it can be safely said that while there exists bountiful technical knowledge in public policymaking, wisdom is in much shorter supply.

Wairua/spirituality is important to a lot of New Zealanders, with a recent survey suggesting that many feel that spirituality is extremely or very important to their overall wellbeing and mental health (McCrindle Research, 2018). Over half of

public administration is described by Pyun and Gamassou as 'making a state not only economic, efficient and effective, *but also more human, sustainable and social*' (Pyun and Gamassou, 2018, p.246, emphasis added). It also aligns with some of the research on public sector motivation and job satisfaction, which suggests a movement away from economic self-interest towards intrinsic motivators such as making a difference, and that those who choose to work in the public service tend to be more spiritually inclined than those who do not (see, for example, Houston and Cartwright, 2007). A growing body of research also suggests that a more spiritually oriented workplace (namely, one that meets employees' spiritual needs and/or incorporates spiritual-like practices) can make a positive difference to employee job satisfaction, performance and the services they provide (see, for example, Carvajal, 2014; Lee, Lovelace and Manz, 2013). These findings are consistent with studies that have found an association between spiritual-like values (such as integrity, honesty and humility) and leadership that enhances organisational commitment, productivity and growth (Fernando, 2011).

It is not surprising, therefore, that public services worldwide, including New Zealand's, are turning towards more holistic, people-centred and value-based approaches in the hope of addressing complex policy issues and other key challenges facing governments today. These approaches resonate with a more humanistic and ecological form of spirituality, which has grown primarily from the field of psychology, particularly Maslow's (1943) needs hierarchy (of which self-actualisation is the highest) and Bronfenbrenner's ecological models of human development.

This diverse body of literature suggests that an authentic understanding and embodiment of wairua within the public sector becomes even more important when meeting people's needs and for changing behaviour. It also highlights the significant limitations of a Weberian bureaucracy. Since Weber's day, public bureaucracies, as essential instruments of the welfare state, have been increasingly called upon to carry out functions that were intended to change people's behaviour – to stay healthy, to not

> This conception of wairua contrasts with tikanga Weber and the New Public Management reforms, yet resonates with the increasing emphasis in public administration since the mid-1990s on public value, service, stewardship and citizenship.

Judge Andrew Becroft, who has argued that 'The enduring legacy of colonisation together with systemic racism is a pretty lethal cocktail, and it's evident throughout all government departments in New Zealand' (Duff, 2019).

It is clear that government administration in Aotearoa has not been much enriched or even influenced by tikanga Māori, despite the efforts of many Māori officials over the years to make a difference by drawing upon their whakapapa and cultural values to enrich and often counter the bureaucratic context in which they carry out their work.

A wairua perspective
Wairua – commonly associated with spirit and spirituality – is an integral part of the Māori worldview, which holds that all things are interconnected and interdependent (Marsden, 2003). Although wairua is a significant aspect

the survey participants also considered that Māori culture and understanding of spirituality has influenced New Zealanders' commonly held values and beliefs.[1]

While wairua is difficult to comprehend or define, it can be known through the senses, and through people's experiences and practices and the meanings they ascribe to these. In this regard, Māori knowledgeable in wairua point to it being a phenomenon that permeates everyone and everything, has qualities similar to the source of all creation, seeks wholeness and balance, is an empowering, relational and connecting force, and is essential to life and wellbeing.

This conception of wairua contrasts with tikanga Weber and the New Public Management reforms, yet resonates with the increasing emphasis in public administration since the mid-1990s on public value, service, stewardship and citizenship. This growing momentum in

hurt others, to act in a way that enhances others' wellbeing, for example. All this is much more complicated and demanding than producing physical objects, whether they be motor vehicles, toothpaste or baked beans (Gregory, 1995).

New possibilities
The butterfly is often used as a symbol of transformation. When it emerges from its cocoon it is completely transformed from what it formerly was, a caterpillar. On the other hand, a snake changes its skin from time to time but its core structure remains intact; despite its new skin, it is still a snake. This analogy helps to clarify what the true essence of transformation is – it is substantive and fundamental change.

This article contends that insights from te ao Māori, especially the idea of wairua, can support a 'transformational' state sector agenda and contribute to the development of a more substantively, rather than cosmetically, humane New Zealand public bureaucracy. Puketapu also believed that wairua could play a significant role in transforming the public service and considered that 'Our bureaucratic training is often a liability' (Puketapu, 1982a, p.55). He hoped to persuade public officials 'that more exciting possibilities will occur for them if they spend time recognising their own personal wairua and those of other people'. Puketapu argued that 'Without an ability to work in tune with the soul of the community client, the most effective ideology for an organisation can be missed' (Puketapu, 1982b, pp.6–7).

A study of 'wairua in the public sector context' is currently underway (by one of the authors) as part of the doctoral programme at Victoria University of Wellington's School of Government. Initial interviews have been conducted with eight experts and practitioners of wairua or spirituality to help gain a better understanding of wairua in New Zealand's public sector. Without exception, participants declared that wairua could enhance state sector efficacy, primarily by bringing people to the centre of all administrative matters, improving connections and relationships among people, enhancing performance, productivity and outcomes, and creating systems that support people to make

choices that have ethical and moral integrity. For now, we briefly summarise how te ao Māori, and wairua in particular, could inform the 'spirit of service' that is sought by the architects of the forthcoming public service legislation.

First, the idea of connection is central to any understanding of wairua. Speaking at the 2018 New Zealand Cutting Edge conference – 'Its all about connection' – Tāmati Kruger observed that the worst kind of poverty and the cruellest thing for the human soul is being in a state of kahupō or spiritual blindness – a person having no identity, place and/or community

'managing for outcomes' became a catchcry during the 2000s for attempts, only partially successful, to establish an integrated public service (for example, see Lips, O'Neill and Eppel, 2011).

Second, to help achieve the first aspiration the state bureaucracy needs leaders and managers who can bring out the best in people, who are capable of identifying the unique potential, skills and attributes that each individual has and can help them unleash these. To do this, state sector leaders and managers would need to be creative, authentic, intuitive, empathetic, consistently fair and able to

> … wairua could enhance state sector efficacy, primarily by bringing people to the centre of all administrative matters, improving connections and relationships among people, enhancing performance, productivity and outcomes …

to which they belong or feel connected to. Brené Brown defines connection as 'the energy that exists between people when they feel seen, heard, and valued; when they can give and receive without judgment; and when they derive sustenance and strength from the relationship'.[2] In other words, people working in the system as well as the citizens they serve would feel heard, respected, valued, empowered and motivated, rather than – as is too often the case – unheard, devalued and diminished. Therefore, people-related skills and training must be seen to be just as vital as technical skills and experience. Such skills are arguably even more important in the modern age of bureaucracy, where communication between people (even those sitting in close proximity to one another) is more often than not mediated by computer screens. Moreover, governmental administration is invariably split, often arbitrarily, among a plethora of bureaucratic entities, frequently resulting in 'siloisation' and administrative disconnectedness. In New Zealand,

empower and inspire others to be the same. This, in itself, would go some way to addressing recent concerns about workplace bullying and other toxic behaviour in New Zealand public service departments (Devlin and Hunt, 2019). Furthermore, the kindness, empathy, compassion and aroha that Prime Minister Jacinda Ardern showed in response to the horrific attack on Muslims in Christchurch also demonstrated that, at least in exceptional circumstances, the emotions felt by its citizens can indeed be humanely expressed through the official channels of the modern state.

Third, a wairua-imbued bureaucracy would mean having fewer rules but more trust. As Wilkins points out, 'excellent companies have very few rules. That enables them to focus on what matters. They simplify their business to make sure *what they do works for their team and their clients*' (Wilkins, 2019, p.18, emphasis added). Instead of hard and fast rules, principles would be promoted to enable people to use their discretionary authority

to do the right thing in each situation, thereby enhancing mutual trust and reducing the likelihood of poor outcomes due to inflexible and/or outdated rules.

Fourth, rather than making presumptions from on high about what is good for others, public servants would first seek to understand the people they are serving and those people's realities. Policies and programmes would not be created in isolation from the citizens whom they are intended to affect, but would involve them in some meaningful way.

Finally, a state system with an authentic wairua orientation would mean that every

when applied together the divergence can be replaced by a synergy that dwarfs the scope of either acting alone. (Nianía, Bush and Epston, 2017, p.viii)

However, to achieve this sort of synergy requires, at the very least, respect for different worldviews and perspectives.

Conclusion

In the early years of the 19th century Te Aupōuri rangatira wāhine Meri Ngaroto uttered the words that have come to form one of the most well-known whakataukī[3] in Aotearoa New Zealand. She did so,

state sector programme, one that could be enhanced by a te ao Māori and wairua perspective. Letting go of the current Western-dominated approach and moving towards such a substantive system change requires courage, trust and the willingness to enter into a period of uncertainty, similar to a caterpillar when it enters its cocoon. The hope is that, like the caterpillar, once that period of darkness passes, it will emerge as something much greater than its former self.

There is little reason to expect, however, that the essential elements of tikanga Weber will become obsolete any time soon, as Puketapu also found. Nevertheless, New Zealand's governmental bureaucracy is not large by international standards, and has a demonstrated willingness to want to do better, in a country that is sea-bound with a relatively small population. So a bureaucratic system genuinely imbued with wairua, rather than it being a cosmetic façade, should be attainable. It would then be possible to rephrase Weber's 'special virtue': 'Bureaucracy develops the more perfectly it humanises, the more it accommodates in its official business all purely personal and emotional elements which may escape calculation but which facilitate good judgement and humane responses.'

It could be realised if there were a much greater openness to a new philosophical basis that authentically embraces a Māori worldview. Those who deny that this is either possible or desirable may ask themselves why they wish to perpetuate a Weberian zeitgeist that clearly does not work for large numbers of New Zealanders, both Māori and non-Māori.

> This growing momentum towards a more humanised bureaucracy suggests that it is timely to take up a truly transformational state sector programme, one that could be enhanced by a te ao Māori and wairua perspective.

situation or matter would take into account both a wairua and a more technical-specific perspective. Consideration of both perspectives and of the whole person could enhance the outcomes for those involved, as has been demonstrated by a model of care in the mental health sector, Tātaihono. The combination of a cultural therapist collaborating with a clinical psychiatrist has helped to identify the full range of issues that individuals present with, as well as effective means to advance their health and well being. As Sir Mason Durie notes,

The model of care that emerges from Tātaihono draws on two quite different worldviews – science and indigenous knowledge. Although the two are based on seemingly divergent philosophies,

using her own mana, to save the lives of a group of manuhiri at her marae. In that whakataukī she reminded her people that each individual is connected to their tupuna, as well as to generations yet to be born (see Quince, 2019). This whakataukī therefore, speaks of the importance of wairua, of understanding the interconnectedness of all people and things in this world and beyond it. Using the analogy of the harakeke (flax plant), this whakataukī also reaffirms the importance of nurturing the emerging emphasis in public administration on values, people and service – that which resonates with wairua.

This growing momentum towards a more humanised bureaucracy suggests that it is timely to take up a truly transformational

1 This was especially true for the younger participants, with 73% of Generation Z compared to 53% of baby boomers reporting that Māori culture and understanding of spirituality have influenced New Zealand values and beliefs.
2 https://www.goodreads.com/quotes/417390-i-define-connection-as-the-energy-that-exists-between-people.
3 Hutia te rito o te harakeke, Kei whea te kōmako e kō? Kō mai ki ahau; He aha te mea nui o te Ao? Māku e kō atu, he tāngata, he tāngata, he tāngata.

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Transforming the Welfare State
## Jonathan Boston

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Jonathan Boston is a Professor of Public Policy in the School of Government at Victoria University of Wellington.

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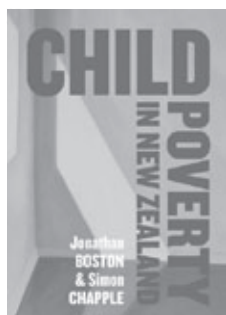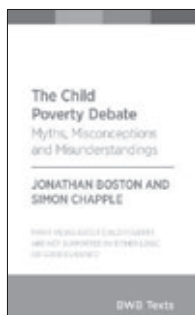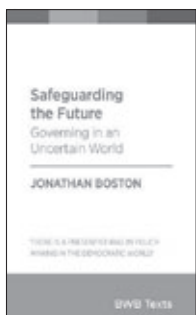
Machinery of Government Reforms in New Zealand continuous improvement or hyper-innovation?

Abstract

This article assesses the reasons for frequent national-level administrative reforms in New Zealand and reflects on their potential consequences. It explores three potential reasons: the particularities of Wellington as a highly conducive place for ideas to be shared between decision makers and academics; the characteristics of New Zealand institutions; and the effects of innovations themselves as drivers of disappointment and more innovation. The article reflects on reforms as drivers of continuous and incremental improvements as opposed to a hyper-innovative, politically driven administrative system. It concludes by stressing the importance of incorporating experiences 'from the bottom' in reform processes, and reliance on reflective mechanisms capable of creating opportunities for incremental, piecemeal and often 'inelegant' administrative adjustments.

Keywords administrative reforms, New Zealand, hyper-innovation, State Sector Act, incrementalism

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New Zealand is internationally known as a place where machinery of government reforms have always gone faster and further (Pollitt and Bouckaert, 2011). Its vibrant and radical government restructuring culture has been recognised by internal and external observers. Far from one-off phenomena, machinery of government changes appear as a continuous theme across parties in government (Boston et al., 1996; Lodge and Gill, 2014). International attention towards New Zealand arguably peaked following the late 1980s and early 1990s reforms that represented the high tide of transaction cost economics that influenced New Public Management (NPM) reforms. Since then, machinery of government changes have continued apace, leading, in turn, to considerable academic interest in 'post-NPM' changes in the early 2000s and subsequently.

The ongoing tinkering with the machinery of government presents a number of questions. For one, why is New Zealand such an ongoing poster child for the latest paradigm in administrative

reforms? Second, why is New Zealand witnessing a frequent churn in machinery of government changes? According to Yui and Gregory (2018), New Zealand witnessed approximately 259 departmental restructurings between the 1960s and 1997. In contrast, Davis and colleagues noted that there were 247 restructurings in Australia (involving 127 creations and 120 abolitions), 96 in Canada (46 creations and 50 abolitions) and 100 in the United Kingdom (55 creations and 45 abolitions) (Davis et al., 1999). This article assesses the reasons for this New Zealand trend of frequent administrative reforms and reflects on the potential consequences of a 'hyper-innovative' governmental environment. Particular interest is paid to the 2019 reforms directed at so-called Crown

Wellington as a highly conducive place for ideas to be shared between decision makers and academics. The second points to the characteristics of New Zealand institutions. It is associated with the 'incomplete' proportional representation system and the hidden majoritarian wiring of the now consensual system. Third, the effect of innovations themselves as drivers of disappointment and more innovation is explored. Finally, the article reflects on reforms as drivers of 'continuous improvement' as opposed to a hyper-innovative, politically driven administrative system. It concludes by making some recommendations for continuous improvement to materialise in the New Zealand case.

implies the verticalisation and centralisation of accountability, while operational activities are to be integrated horizontally within departments or units. This marks a move away from NPM, with its emphasis on 'disaggregation'.

This particular theme of 're-integration' is clearly evident in the proposed New Zealand reforms. The published information emphasises the need to 'break down the silos of the current system and create an environment based on collective responsibility and co-ordinated action that delivers great outcomes to New Zealand' (State Services Commission, 2018a, p.1). Additionally, by requiring written consent for the appointment of executives to statutory Crown entities and standardising their job titles, appointment terms and pay bands, vertical lines of accountability are considerably strengthened. Finally, the new organisational forms of public service executive boards, public service joint ventures, executive agencies and statutory officers provide for functional horizontal integration. The idea of 'joined-up citizen-facing services' that would allow departments to 'work together horizontally, when faced with issues that cut across departmental boundaries' is also explicitly mentioned by the SSC reform proposal documents, further confirming the alignment with commonly accepted post-NPM conceptualisations (ibid.).

A close look at the proposed 2019 reforms shows a close connection to what has widely become known as post-New Public Management

entities. Crown entities have been one of the main targets of this frequent tinkering with the machinery of government. Since their creation as semi-autonomous government agencies in 1989, there have been revisions of their mandates and governance structure in order to reduce 'fragmentation' (State Services Commission, 2019). In February 2018 the State Services Commission (SSC) proposed a new package of changes in order to amend the Crown Entities Act. These recent reforms are even broader than the former and include revisions to the State Sector Act 1988 and the Public Finance Act 1989. These changes, approved by Cabinet and announced by the minister of state services on 26 June 2019, have been portrayed as a major reform of New Zealand public services.

Using the 2019 reforms as a case study, the article explores three potential reasons for New Zealand's high rate of administrative reforms. The first is linked to the power of networks, ideas 'bandwagons' and the particularities of

An idea whose time has come?

A close look at the proposed 2019 reforms shows a close connection to what has widely become known as post-New Public Management. The label suggests overall a move beyond the central pillars of NPM, namely an emphasis on greater codification (i.e. less discretion) and a greater reluctance to emulate 'business' practices in government. More specifically, four main characteristics of post-NPM can be distinguished: a reorganisation of accountability lines and operational activities; the extent of political control; the relationship between citizens and the public sector; and the nature of 'public service bargains'.

First, in terms of organisation, post-NPM seems to refer to the '(re-) centralization of the vertical dimensions and functional integration of the horizontal dimension' (Reiter and Klenk, 2018, p.8; Andersson and Liff, 2012, pp.837–8; Egeberg and Trondal, 2016, pp.85–6; Zafra-Gómez, Rodriguez-Bolívar and Alcaide Munoz, 2012, pp.714–15). Therefore, it

A second theme relates to political control over public sector organisations. NPM was said to have reduced opportunities for central political direction, thereby aggravating coordination problems (Althaus and Vakil, 2013) while, however, not exempting politicians from taking the 'blame flak' in case of policy failure. In terms of post-NPM, a central theme therefore has been the idea of politicians reclaiming direct control over autonomous departments, suggesting a movement towards a 're-politicization of public service delivery' (Reiter and Klenk, 2018, p.10).

The vertical lines of accountability to be established between Crown entities and the SSC are a strong indication of this 're-politicisation' trend in current New Zealand reforms. The standardisation of public service principles and values on matters of integrity and proper conduct, as

well as the expansion of SSC investigatory and inquiry capacities on these issues, point further to the recreation of direct political control over subordinated organisations. The reform documents have a strong flavour of reassertion of political control: the proposal is to 'expand the definition of the Public Service to a range of Crown entities' either by the 'appointment or removal of board members or the ability of Ministers to direct government agencies to "have regard" to Government policy' (State Services Commission, 2018b).

A further central part of standard post-NPM classification exercises refers to the relationship between the public sector and citizens. Here the main change relates to a shift away from the NPM view that regards citizens as 'consumers' or 'clients' towards a perspective that emphasises democratic citizenship, especially in terms of enhanced participation rights. Post-NPM also points to a shift away from an emphasis on outputs towards outcomes and inputs (Christensen and Lægreid, 2011, p.141). Elements of these themes are also present in the current reform proposal documents. There is a strong emphasis on ethical behaviour and conduct monitoring by the SSC. In addition, it is proposed to strengthen the participation of Māori in leadership positions. While the first clearly refers to fair and standardised procedures of government monitoring (process-based legitimacy), the second emphasises the importance of a representative bureaucracy for the achievement of better outcomes, which points to the importance of inputs for the legitimacy of government.

The fourth and final characteristic of post-NPM relates to changes in the 'public service bargain', the 'explicit or implicit agreements between public servants and those they serve' (Hood and Lodge, 2006, p.6). Public service bargains involve how rewards are allocated, the types of competencies required from civil servants and the nature of their loyalty. A move away from NPM towards post-NPM would be signalled by a move away from individualised performance pay regimes, a move towards an emphasis on collaborative and 'boundary-spanning competencies', and a strengthening of 'whole-of-government' loyalty

Table 1: Summary of the extent to which 2019 proposed reforms reflect post-NPM trends

REFORM / Post-NPM	Crown enity reforms	Four new organisational models	Improved Crown/Māori relationship	Senior leaders service (SLS)	Long-term insights briefings
Re-centralisation and functional intergration	✔	✔		✔	
Re-politicisation of the public service	✔				
From outputs to process-based accountability	✔	✔			✔
Valorisation of boundary-spanning and cultural competencies			✔	✔	

understandings. In an earlier study of New Zealand machinery of government changes, Lodge and Gill (2011, p.151) observed, for instance, that the emphasis on individualised performance pay rewards had been moving towards team-based incentives. While not explicitly mentioned, the end of performance pay was announced by the New Zealand minister of state services, Chris Hipkins (Hipkins, 2018). Similarly, the proposed organisational reforms are focused on the idea of 'joined-up' government and collaboration skills are to play a more prominent role, in particular with the introduction of the senior leaders service. Finally, the strong focus on developing a unified system for the enforcement of conduct and ethical principles points to a departure from the discretionary space of loyalty arrangements towards stronger consideration of rules and ethics.

Table 1 highlights how key reform proposals seem to relate closely to ideas associated with post-NPM. In doing so, the proposed reforms seem to reflect an 'idea whose time has come', not just in reflecting ideas enjoying international currency in academic and practitioner discourse but also in responding to NPM, namely its emphasis on a highly disaggregated public sector, individualised reward incentives, and narrowly defined organisational outputs.

The wider literature on innovation highlights the existence of an institutional environment in which organisations are capable of sharing advanced knowledge – where knowledge 'is free to flow' (Bekkers, Edelenbos and Steijn, 2011, p.3). One explanation for the close connection between wider academic and practitioner discussion regarding post-NPM and their utilisation in New Zealand reform discussions is the existence of closely-knit networks that characterise Wellington, and the ties between government and academia. Across decades, numbers of academics have been directly involved in advising New Zealand governments, and, in turn, governments have been responsive to their ideas. The 2019 reform proposals are no different, as evidenced in the numerous academic submissions to the public consultation surrounding them. This close connection might offer a wider explanation as to why New Zealand machinery of government discussions are so often regarded as 'poster children' for the latest administrative reform doctrines.

At the same time, it should also be noted that ideas regarding post-NPM have been around since the mid-2000s, if not earlier. They emerged in almost immediate response to administrative reforms and New Zealand was regarded, prior to the Key and English administrations, as the leading example of post-NPM already (especially in the context of the Crown Entity Act 2004: see Lodge and Gill, 2011). In that sense, post-NPM has 'returned from the grave' and its time has certainly come in the context of party political change in New Zealand government.

Institutional environment

While party political change and immediate reaction to negative or disappointment effects point to explanations as to the nature of the current machinery of government reform proposals, such an account cannot explain why machinery of government reforms are such a constant feature in New Zealand politics. One traditional suspect that might account for the continued fascination with machinery of government debates are national institutions. According to this view, reforms are a consequence of the characteristics of a country's politico-administrative environment, including

system did usher in a multiparty parliament, changing the electoral system has increasingly been seen to be only one of the several elements required for effectively addressing the high speed of executive and parliamentary decision making in New Zealand (Boston and Eichbaum, 2014, p.376).

Continued features that encourage far-reaching and speedy decision making by the New Zealand political centre include New Zealand's unitary state nature and its unicameralism. Furthermore, New Zealand counts only six entrenched laws or clauses (that can only be changed by vote by an extra large majority of more than 75% of

expand and consolidate controls (Dunleavy, 1991; Norman and Gill, 2011; Yui and Gregory, 2018).

According to this view, therefore, the latest round of reform proposals is a consequence of the characteristics of New Zealand's politico-administrative environment, including its unicameral legislative structure, the centralised decision-making process, and continued traces of majoritarian politics.

Fiascos and disappointment

Progress in public management is neither linear nor based on cumulative knowledge. Rather, change in public management is usually reactive to disappointment and failures in existing arrangements. The cumulation of negative consequences and disappointment effects leads to growing opposition and endorsement of alternative reform ideas. In other words, despite all the glossy documents and promises of a bright new administrative future, the inevitable disappointment effects and blame games will unavoidably give way to the next round of administrative reform proposals. As shown by Moran, the era of hyper-innovation that characterised the UK between 1970 and 1990 (with intensive privatisation, economic and regulatory reforms) was also an era that increasingly invited policy fiasco. In his words, '[f]iasco is both a reflection of hyper-innovation and a force driving the state to even greater frenzies of hyper-innovation' (Moran, 2003, p.156). According to Moran, examples of British governance-generated policy fiascos included the BSE (mad cow disease) outbreak, rail privatisation, the 1995 Barings Bank collapse and the Millennium Dome. In New Zealand, hyper-innovation might lead to fiascos that will constantly motivate more reforms, with the leaky buildings saga and the Pike River disaster being cases in point.

So, can the point be made that New Zealand is caught up in its very own elite-generated frenzy of machinery of government-related hyper-innovation? Unsurprisingly, a disappointment-based account is, at first sight at least, not evident in the SSC documents concerning the current reforms. Instead, the theme is one of reform reinforcement. It is noted that since the NPM reforms of the late 1980s

> What is required, however, is a move beyond an emphasis on reform 'purity' that is quickly implemented. Maybe it is time to also rely on incremental changes, those that emerge from experience 'from the bottom' rather than from the whiteboards of central government agencies.

elements such as the legislative structure, the extent of political centralisation, consensus requirements of decision-making processes and administrative culture.

New Zealand has traditionally been placed among the most centralised and majoritarian countries in the world (Pollitt and Bouckaert, 2011, p.55). Both features are said to account for the extent and speed of political reforms, including administrative reforms, as 'losers' are unlikely to find political venues to veto or frustrate proposals. After the 1996 electoral reforms that replaced 'first past the post' with a mixed-member proportional (MMP) electoral system, one would assume that New Zealand's propensity to launch extensive reforms had been reduced. However, there continue to be, especially in comparative terms, considerable majoritarian features. Although the new

the House of Representatives or more than 50% at a referendum), and the constitutional system in New Zealand does not require any legislative changes for administrative reforms to take place (Boston et al., 1996). Third, following a recommendation of the McCarthy Commission in 1962, the State Services Commission was required to focus on efficient management (in addition to personnel issues) and to continually review the machinery of government (ibid.). Administrative reforms are, therefore, part of the SSC's mandate, which might provide an additional incentive for their constant activity in this realm. In addition, an entrenched 'managerialist culture' across the New Zealand public administration (at least since the 1980s) might be seen as further encouraging continued machinery of government tinkering as part of wider 'bureau shaping' behaviours that seek to

New Zealand has consistently moved from a state of perceived fragmentation towards more centralisation or combination of tasks and departmental roles (Yui and Gregory, 2018). Second, in one of their pre-consultation documents the SSC argues that amendments to the State Sector Act in 2013 did not fundamentally change the system, and justifies current reforms on the basis that the directions of change originally hoped for did not materialise:

> the improvements made to the State Sector Act 1988 through the 2013 amendments did not fundamentally change the system. Since then, we have not achieved the direction of change that was hoped for, and the barriers to a unified public service system approach are more evident than ever. (State Services Commission, 2018a, p.2)

Nevertheless, it is plausible to at least suggest that the contemporary reform proposals are reactive to the perceived 'excesses' of the NPM past, such as in emphasising joining up over the side effects of disaggregation, the concern with the negative consequences of performance pay, and the re-emphasis on codified conduct rules.

Conclusion: continuous improvement or hyper-innovation?

As noted, New Zealand has attracted considerable attention for its continued machinery of government-related changes. One reason for this is that New Zealand is continuously associated with 'pure reform' leadership in the sense not just of leading the world in administrative reform activity, but also of applying 'pure' reform proposals. The 2019 reforms are a case in point in that they reflect post-NPM-related changes. Why, however, New Zealand continues to embrace machinery of government reforms has received far less attention. In this short piece we can only point to three (interdependent) factors: the close ties between practice and academia in reform discussions in a political system that remains highly centralised and, despite proportional representation, majoritarian. These features provide for the opportunity for continued machinery of government reforms. The motive for continued machinery of government changes lies in the side effects and consequences of previous administrative reforms. In that sense, New Zealand could be argued to be caught up in its own policy frenzy of hyper-innovation in which actors 'overcorrect' (at least in terms of doctrinal argumentation)

in view of perceived shortcomings and failures of existing arrangements.

However, there are ways out of such a seemingly inevitable cycle of hyper-innovation. For one, there is considerable reflective capacity in the New Zealand system, one that is supported by the close interactions between practice and academia. Spaces for an open exchange over accumulated experiences do exist and could be further integrated into reform discussions. What is required, however, is a move beyond an emphasis on reform 'purity' that is quickly implemented. Maybe it is time to also rely on incremental changes, those that emerge from experience 'from the bottom' rather than from the whiteboards of central government agencies. This is not to say that such feedback mechanisms do not already exist, but they should be seen to encourage piecemeal, often 'inelegant' adjustments to existing arrangements. Such an incremental path will support the building of reflective capacity across the public sector and is more likely to embed ongoing reform than a constant search for new 'paradigms'.

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Simon Chapple

From Mandarin to Valet Public Service?

State sector reform and problems of managerialism in the New Zealand public service

Abstract

Managerialism – the notion that the primary skills required to manage any specific organisation are a generic set of managerial skills – is now widespread in the New Zealand public service. Managerialism was enabled by the 1988 State Sector Act, especially that part establishing the fixed-term contracts and appointments of chief executives. The consequences have been a decline in departmental expertise and a public service which acts as a secretariat for the government of the day. Thus, New Zealand has shifted from a mandarin to a valet public service. Managerialism is identified by top appointees who lack specialist skills and sector experience, short employment durations, and the manner in which the State Services Commission has managed the reform process thus far.

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Managerialism is an ideology of management which has spread worldwide across the private and the public sectors. It is one of several core components of the loosely defined New Public Management model, which has been very influential in New Zealand (see Boston, 2016). Indeed, New Zealand is generally agreed to have adopted a relatively strong version of the New Public Management model, a move which was followed by few other countries.

According to managerialist ideology, the role of a manager is to organise generic inputs to produce generic outputs. Perhaps the core belief of managerialist ideology is that the tasks of coordinating organisations share strong and important generic aspects. Running a museum is pretty much the same as running a hospital, or a Ministry of Defence, or an economic agency. Hence, the task of enhancing performance of all organisations can be driven by the application of generic management notions (Klikauer, 2015, pp.1104, 1107). These generic skills are embodied in a class of people. To such a class, experience, knowledge and skills relevant to the core area of any specific organisation are nugatory, or at least secondary.

The implication of the generic skills view of coordination is that the need for managers in a particular job to possess a great deal of specific knowledge – be that knowledge technical, organisational, societal or institutional – is very limited. The consequence is that high job turnover, and low amounts of job-specific organisational expertise, of managers is not perceived as a significant problem.

Because managers often lack such forms of experience, knowledge and skills, their comparative advantages in practice lie in controlling all forms of information flows passing up and down through the hierarchy. Those who have experience, knowledge and skills are a threat to be downgraded and isolated from other information and from decision making where necessary, and eliminated where possible. Managerialism is also often

This article argues that managerialism has become the dominant ideology at the top of the New Zealand public service, and that this was enabled to a substantial degree by the 1988 State Sector Act. The consequence has been the creation of a variety of significant problems. Managerialism has contributed to creating an environment where the quality of long-term decision making is poor (on this issue in a parliamentary context see Boston, Bagnall and Barry, 2019), where the public service is increasingly functioning as a secretariat for the government of the day rather than providing expert-informed free and frank advice, and where public policy advice has become increasingly politicised in nature. The article argues that managerialism has been critically enabled by one important deliberate change ushered in by the State Sector Act.

Intriguingly, the above paragraph proposes that there has been a discernible trend in recent history *towards* public leaders with long experience and deep knowledge of a particular role or function which, sensibly, now needs to be balanced out by more mobility and flexibility. Many would argue that the historical trend post-1988 has been in a diametrically opposed direction. The short version of the same document also suggests that a commitment to a permanent restructuring mindset is desirable: 'What if we could rearrange our Public Services like building blocks? Imagine how quickly and easily we could shift our people and resources to cope with changing times and needs.'

Just, indeed, imagine! This article takes the opposite view. Public services are not, even as a metaphor, generic building blocks for the commission to reconfigure at will in response to always imperfectly perceived changed times and needs. If such a vision were implemented it would likely worsen, rather than solve, the managerialism which has led to the problems identified above.

> This shift to fixed-term contracts … [has] had serious adverse consequences in terms of undermining both free and frank advice and … department[s] having a strategic policy view independent of the government of the day.

The State Sector Act 1988 changed the constitutional balance between the public sector and the executive

In comparison with other developed countries, New Zealand is recognised as having a very powerful executive branch. There are relatively weak formal checks and balances on the executive provided by the legislature or the judiciary, or by local government, which has limited powers and is legally subordinate to central government.

In these circumstances some of the necessary constraints on the powerful executive branch are thought – in theory at least – to be provided by several different supporting government institutions. The first important constraint on the executive is via the democratic will of the people, expressed over a relatively short three-year electoral term. A second major constraint is high legislated levels of transparency imposed upon the executive by the Official Information Act 1982 and the Public Finance Act 1989. The last constraint is one which is directly related to the topic of this article: a major constitutional constraint on executive power in New Zealand is the quality and professionalism of senior public

associated with unrelenting corporate restructuring, as this is one of the generic skills many managers come to possess. Managerialism, of course, thrives best in an environment where outputs and outcomes are multiple, costly to observe and considerably lag behind changes in inputs and organisational forms. Under these circumstances, accountability for decisions is notably weak. A manager acquires a reputation as an efficient 'change manager' for his or her restructuring – altering the coordination of inputs – regardless of whether the change has borne genuine fruit. As long as that person cleaves to the received wisdoms of the managerial class, they can move on to the next such project or organisation with no fear of owning much in the way of negative consequence on their cv.

However, the problem of managerialism is not acknowledged at any point in the State Services Commission's discussion document provided as background to inform the ongoing process of state sector reform which commenced in 2018; indeed, the opposite. The document envisages a bigger dose of the same problematic medicine:

> The performance of agencies does need a core of leaders with long experience and deep knowledge in a particular role or function. However, our judgement is that to date the pendulum has swung too far in that direction and greater mobility and flexible deployment is needed for the development of system leaders. (State Services Commission, 2018, p.30)

servants, including the auditor-general, the ombudsman and the state services commissioner, as well as their agencies.

Key features of the public service reforms surrounding the 1988 State Sector Act were the delegation of managerial powers to the chief executives of government departments and a redefinition of the relationship between ministers and departments. The state services commissioner was given responsibilities for making these arrangements work. Of particular importance were the protection of ministerial decision-making rights, and the professional independence of policy advice and management of the department.

In ensuring that these arrangements were not undermined by inappropriate politicisation, attention was given to the arrangements for selecting and appointing chief executives. In the 1988 act and prior legislation there were apparent safeguards against the politicisation of the management of the public service. A major shift, however, was embodied in section 38(1) of the State Sector Act. Here the act changed the employment relationship from permanent employment of chief executives to a situation where chief executives were given a maximum employment contract of five years (in practice, contracts have ranged between three and five years, with total maximum tenure typically being eight years). The rationale for employing chief executives on radically different terms from most of their staff is somewhat opaque.

There are two places for possible political pressures in this appointments process. Prior to any search for candidates, ministers confer with the state services commissioner about the skills required for each chief executive position. The commissioner then hires on the basis of criteria developed not for the long term but by (and for) the minister of the day. At the other end of the process, having made a recommendation for a chief executive, there is a further political hoop for the commission to jump through: before being signed off by the governor-general, the state services commissioner's decision then goes through Cabinet for approval.

There is further scope for political pressures following appointment. Once chief executives are in place, ministers are

Table 1: Employment durations in current job of state sector chief executives, as at 07/08/2019, N=34, years

Mean	Median	Minimum	Maximum
2.2	1.9	0.1	7.2

Source: State Services Commission, 2019

Table 2: Employment durations in current job of state sector senior leadership teams, N=202 (excluding chief executives), years

Mean	Median	Minimum	Maximum
2.3	1.9	0.1	13.0

consulted on their performance expectations at the start of the performance year, and at the end of the annual cycle give their feedback to the commission.

Over the years and exploiting these parts of the 1988 act, ministers have arguably slowly acquired more influence over chief executive appointments, and hence directions of public sector agencies, without any public discussion of the constitutional implications of such changes.

That greater political influence resulted from the shift to fixed-term chief executive contracts is perhaps not, in retrospect, surprising. Academics Christopher Hood and Michael Jackson were drawing the same, and in this case predictive, conclusions decades ago:

> Emphasis on term contracts for public managers weakens the impact of experience and independent advice on public policy making. … such a system can produce the conditions for 'groupthink' … a term-contract approach … is not likely to create the qualities of independence and dissent that are needed to provide antidotes to groupthink. (Hood and Jackson, 1992, p.121)

Reappointment is another route to politicisation. In the last few decades most governments have lasted several terms; the last three completed governments have lasted three terms. This pattern means chief executives know that there is a good chance that their term will expire, and reappointment become a prospect, under the executive wing of the government of the day.

At the same time, the independent power of departmental chief executives vis-à-vis ministers has been undermined by other consequences of managerialism. As

they nimbly flit from agency to agency and job to job on their path upwards, chief executives no longer have the mana – the wisdom, knowledge and experience garnered by a long career within the agency they ultimately run – to resist the ministerial power.

To illustrate the explicit recognition of this constitutional power shift towards the executive, it is worth paying attention to a speech by Jonathan Coleman, at the time minister of state services (Coleman, 2013). As a representative of the executive, Coleman presented the New Zealand practice of having the minister sign off the 'person specification' to guide a chief executive appointment as a major improvement to the Westminster model because it increased ministerial influence in the senior appointment process. In his speech Coleman also extolled the virtues, from an executive perspective, of the fixed-term employment contracts for chief executives: it gets them to perform and implement directions set by ministers. Lastly, and without apparent irony, Coleman commented favourably on the political neutrality of the New Zealand public service.

This shift to fixed-term contracts, and the playing out of its implications over time, have had serious adverse consequences in terms of undermining both free and frank advice and the notion of a department having a strategic policy view independent of the government of the day. The result has been a transformation of the public service from a body with a circumscribed but important degree of independence into a secretariat for the government of the day. Indeed, largely because of this change in the nature of the employment relationship at the top, the last three decades have, arguably, seen a transition from a mandarin to a valet public service.

Figure 1: The annual chance of being in a restructured department doubles following the 1988 State Sector Act
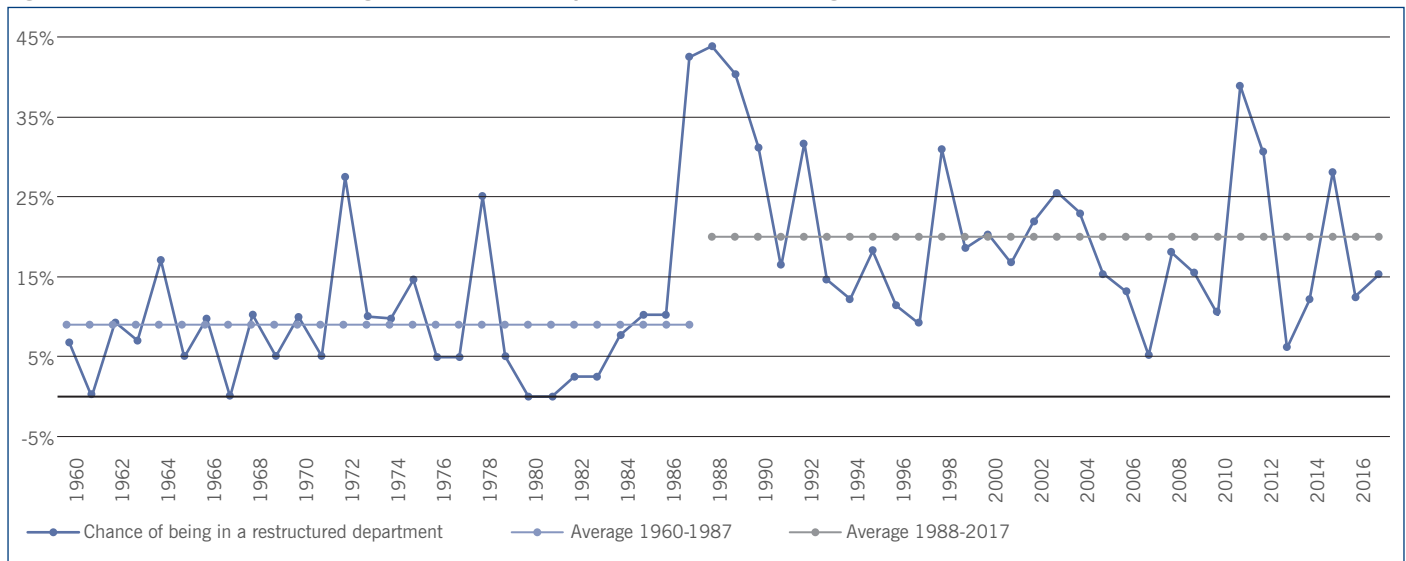
The system of fixed-term chief executive employment also delivers major power to shape the public service to the kingpin in the appointments process, the state services commissioner. With more than 30 departmental chief executives on the books, a commissioner will be involved in more than six appointments or reappointments per year on average (sometimes more), or one every eight weeks. If in the job for eight years, he or she will likely have appointed or reappointed every other chief executive bar him or herself.

Senior appointments, specialist expertise and managerialism

With the arrival of fixed-term chief executive appointments and the growth of ministerial influence over the process, a further pattern has been the significant number of senior appointments of people who, arguably, lack significant dimensions of sector- or institution-specific expertise. As already mentioned, this shift to inexperience has also contributed to a change in the balance of constitutional power between the public service and the executive branch.

The problem of the devaluation of deep sectoral or subject expertise, reasoned thought and informed policy advocacy in government is endemic. The devaluation of specialist expertise can be illustrated at the very top. The head of the government's largest economic agency, the Ministry of Business, Innovation and Employment, has a background not in public policy analysis and economics but in service delivery and human resources. The most recent previous secretary to the Treasury, who left the agency and New Zealand recently under a bit of a cloud, was appointed with an extremely modest knowledge of New Zealand society, institutions and culture. While past heads of the Treasury have had postgraduate qualifications in economics (typically a doctorate), his highest qualification in economics was an undergraduate degree. The new appointee, while bringing with her stronger economic qualifications, has virtually no knowledge of New Zealand's society, institutions and culture.

The person running Te Papa, our national museum, is not trained in museums and heritage, but previously ran a district health board in south Auckland. Not surprisingly, he has been restructuring, the third time in five years this has happened at Te Papa, partly by sacking people with long tenure and expertise. The role of the chief archivist, the custodian of another core part of our national memory, has been reduced to a third-tier management position in the Department of Internal Affairs. The current incumbent has a background in information technology, not archives.

The most recent experience of the person recently appointed to run the Ministry for Primary Industries – a role which requires advising government on complex policy issues dealing with interactions involving agriculture, science, economics and the environment – was running the Department of Corrections. The most recent appointment to run the Ministry of Justice, while a very experienced public servant, is not a qualified lawyer.

We have a chief statistician, who recently resigned because of the bungled 2018 census, who is not a statistician. We have a chief executive of LINZ who has no background in mapping or surveying. We have had a recent Ministry of Foreign Affairs and Trade chief executive who lacked both international relations and core public service experience. We have a chief executive at Defence with no background in foreign affairs or in the military. We have a chief executive of the Ministry for the Environment with no training in science or the environment.

In addition to numerous appointees lacking what might seem to some to be necessary specialist expertise, chief executives have had limited opportunity to acquire these institutional and subject-specific skills on the job. Table 1 shows that of the 34 departmental chief executives, the average chief executive has been in his or her job for only two years. If chief executive positions are complex ones with a high degree of specificity, requiring long learning curves on the job, this short mean job duration is highly problematic.

Perhaps, while not being present at the highest level of the organisation, the institutional experience is held among other members of state sector senior leadership teams? This possibility was addressed by collecting data on that group for examination. Two hundred and thirty senior managers from matching departmental senior leadership teams were

identified by name from the respective departmental websites. Between 7 and 12 August 2019, LinkedIn and the Google search engine were used, where possible, to identify the person's duration in the position. Twenty-eight senior managers' current job durations were unable to be identified in the data collection process; however, data are still available on 202 of them – just over 84%. What is striking in examining the patterns in the senior leadership data, as Table 2 shows, is how similar senior leadership teams are to their chief executives on average in their job durations. They have very low mean job durations, similarly about two years. Again, these people are likely to be in complex jobs with long learning curves.

Managerialism and restructuring
Managerialism is a major force behind the endless restructurings identified as a problem by my colleagues Masashi Yui and Bob Gregory (2018). Yui and Gregory show that between 1960 and 1987, as illustrated in Figure 1, on average 3.8 government departments were restructured a year. Following the introduction of the State Sector Act, the figure has risen to 8.1 departments annually on average between 1988 and 2017. The last decade has seen 6.5 departments restructured annually on average. It is noteworthy that internal restructurings are beyond the scope of Yui and Gregory's study, but it is almost certain that they too rose following the 1988 act.

Why so much restructuring? Lacking in specialist skills and institutional knowledge, generic managers have few tools in the kit, bar restructuring. Hence, restructuring becomes reflex. Restructuring kills valuable networks, eliminates core institutional knowledge and demoralises staff. In short, the ability to offer reasoned independent advice is eroded. Because of high interdepartmental turnover rates, often managers do not remain in their agency to allow the full fruits of their restructuring actions to be assessed. Even then, gains from restructuring are difficult to observe, making accountability a challenge.

The ad hoc restructurings identified here as a consequence of managerialism have resulted in a lack of long-tenured staff in most agencies, loss of institutional memory, and elimination of a clear pathway of promotion in one agency from hiring as a graduate to the top position. They have contributed to the systematic corrosion and devaluation of specialist advisory and delivery expertise at all levels of government.

The lack of expertise – in terms both of institutional knowledge and subject skills – among generic managers means they get little respect from their staff for having been there and done that, have little ability to provide knowledge leadership, and lack skills to perform necessary staff training and guidance. Expert knowledge on the part of staff in one's team becomes more a threat than an advantage, as it risks upsetting the minister's agenda, the kiss of death for the ambitious generalist.

Generic managers do not know the nuts and bolts of their organisations, and their strengths and weaknesses. Consequently, they too frequently manage ignorantly and upwards, not using information from lower down and tightly controlling information flowing down from further up the hierarchy, since this is one of their few points of systemic leverage. Public sector workers, while well motivated and satisfied, do not rate their managers' and organisations' performance highly, suggesting that reforms have not led to quality management and well-run organisations (Plimmer et al., 2017, p.28).

Managerialism also appears to encourage a focus on 'selling' and presentation rather than policy substance. Performance assessment becomes less about performance and more about spinning imperfectly observed outputs. Much resource has been devoted to such efforts inside agencies, including the considerable growth of departmental communications teams (Pennington,

2019). A brief consideration of current departmental annual reports and briefings to incoming ministers, full of photographs and glossy pages but light on genuine content, and comparing them with similar reports 30 years ago, illustrates this dimension of the problem. Further research on these issues would be interesting.

The 2018 state sector reform process as an illustration of the managerialist problem
Not surprisingly, many serious problems in the public service have been reflected in the current state sector reform process as it has

> The result has been a transformation of the public service from a body with a circumscribed but important degree of independence into a secretariat for the government of the day.

manifested itself so far. The public service is not in great shape to deliver high-quality policy advice to facilitate a considered and intellectually rigorous programme for reform. The central state agencies of Treasury, the State Services Commission and the Department of the Prime Minister and Cabinet, those historically primarily responsible for coordination and for driving the public service intellectually, have experienced extremely high staff turnover rates since the beginning of the millennium, under each of the last four state services commissioners. Table 3 shows that in all four regimes turnover rates in all three central agencies have been significantly higher than in the state sector as a whole. In particular, long-standing high turnover rates have been a feature of the State Services Commission, the lead agency for state sector reform.

If skills are largely generic and specific skills rapidly acquired, high turnover is unproblematic. However, reforming the institutions of government and their interactions and engaging in strategic restructuring is a unique opportunity, where the availability and utilisation of those with intellectual wheels and deep

Table 3: Gross staff turnover rates by central agency and by state services commissioner, annual percentages, 2001–18

Commissioner	Public service	Treasury	State Services Commission	DPMC
Wintringham, 2001–04	18.2	22.8	31.4	20.0
Prebble, 2005–08	20.8	23.0	33.3	22.4
Rennie, 2009–16	16.7	23.3	37.4	18.7
Hughes, 2017–18	17.0	28.1	31.8	23.6

Table 4: Declining stakeholder satisfaction with Treasury, selected indicators, 2015 and 2017

	2015	2017
Overall satisfaction with how Treasury interacts	63%	53%
Overall trust in Treasury	68%	61%
Staff were well informed	75%	66%
Overall confidence staff do a good job	77%	68%
Satisfaction with Treasury leadership role	48%	34%
Treasury challenges thinking on critical issues	58%	48%

Source: Treasury, 2017

institutional knowledge is likely to be critical to the success of the project.

Additionally, staff turnover has direct and indirect costs, of between 90% and 200% of gross salary (Hom et al., 2017). There are the costs of bringing a new person up to speed in an organisation, including on-the-job learning, training and extra management time. Furthermore, the morale of and engagement by those who don't leave may decline. Then there are the considerable costs of lost built-up skills, routines and networks of those who leave.

Considering capacity to drive high-quality reform in another of the central agencies, there have been several recent trenchant criticisms of Treasury's capacity. One commentator has recently concluded that within Treasury 'technical expertise has declined, … technical expertise is no longer highly respected in Treasury, and … some teams in Treasury do not view analytical and quantitative skills as being important in policy work' (Crampton, 2018). Indicators of stakeholder satisfaction with Treasury, which were already weak in 2015, have declined further in 2017 (see Table 4). The deterioration in stakeholder satisfaction has occurred despite Treasury staffing increasing significantly by 17% from 232 policy analysts in 2015 to 272

policy analysts in 2017 (State Services Commission (n.d.)).

In an environment of limited analytical capacity, the 'once in a generation' reform opportunity has been led by the state services commissioner. While a very experienced public servant, having worked across a range of departments, the current commissioner's employment has largely been in agencies where the primary role was service delivery, with policy secondary (Health, Social Development and Education). His career success has most notably involved successfully managing departments mired in public controversy out of controversy, away from critical public and political attention. Unsurprisingly, given how rare such opportunities are and where the commissioner has worked, he has little background in leading analytically complex, central agency-driven structural reform. The commissioner has not yet developed a wide reputation for overcoming these limitations by surrounding himself with and listening to challenging, ideas-driven people.

The current senior leadership team at the State Services Commission is very much built in the mould of their leader. Of the eight people on it, five (including the

deputy state services commissioner and the following other deputy commissioners: system and agency performance; workforce and talent management; Office of the Head of State Services; corporate services) worked for the commissioner at some point during his time as chief executive of the Ministry of Social Development between 2001 and 2011. Equally, 25%, or six (Corrections, Education Review Office, Education, Primary Industries, Social Development, Social Investment Agency) out of 24, permanent or acting chief executive appointees of the current commissioner had previously worked for him at the Ministry of Social Development. Such patterns of senior appointments raise serious questions about systemic commitments to diversity.

There is little specialist expertise to drive reform at the top of the commission. Only one of the commission's senior leadership team has experience in a central agency other than the commission, and then as a legal officer not as a policy analyst, and none seems to have worked as a policy analyst at the commission.

The original project leader of the reform process was a previous deputy commissioner, with no central agency experience prior to his appointment. After several months running the once-in-a-generation policy project, he left to help oversee aspects of the Provincial Growth Fund. Project leadership was delegated to another ex-Ministry of Social Development employee under the commissioner's reign there, on short-term secondment from New Zealand Customs. Following this person's return to his seconding agency, responsibility for leading the reform project was handed to a third person, a brand new deputy commissioner. This person had no central agency policy experience before her appointment.

It is therefore unsurprising that the policy documents arising out of such a generic environment, replete with high staff churn and with leadership lacking relevant experience, proved to be so limited in terms of problem definition, grasp of the evolution of the historical institutions, and analytical depth and nuance (see Chapple, Boston and Petrie, 2018 for a discussion).

Conclusion

Managerialism seems to be widespread in the New Zealand public service, playing a significant role in transforming the public service from constrained independence with a focus on free and frank advice into, arguably, something approximating a secretariat, suitable for short-term policy implementation for the executive of the government of the day. As one public sector recruitment consultant summarised to me the message she was getting from the public service in terms of their staff needs in 2015: 'the government wants doers, not thinkers'.

A key legislative change driving the managerialist ideology has been identified here as the shift to fixed-term employment contracts for chief executives in the 1988 act. This change enabled the associated increasing politicisation of the appointments process and the decline of a truly public service into a secretariat. The system took time to change in this direction, as those at senior levels who had internalised the norms of the old system gradually retired. Short-term contracts at the top of the pyramid have eventually bred short-termism as an organisational goal. Always keeping the minister of the day happy has become the core priority. The state sector reform initiatives from 2018 have failed to acknowledge, let alone address, this major problem.

The old public service staff training model of 'build, not buy' has been nearly universally abandoned for the buy-and-churn managerialist option, with the tone being set at the top. Indeed, buy-and-churn is positively celebrated with happy adjectives like 'nimble', 'fleet-footed' and 'responsive'. In perusing material from the commission, it seems that the official view is that more buy-and-churn and more generic management is desirable.

Those in the public service who privately have concerns about the dominant managerialist ideology (and there will be some) – almost by definition those with more independent, creative and imaginative minds – keep their heads down and collect their pay, as expression of their voice will not be career-enhancing, or exit the public sector pool. Groupthink is reinforced.

Even if eliminating the worst of managerialism becomes a focus for change, it will not readily be rooted out of the public service for years, since its minions, embodying the managerialist norms, are firmly ensconced *in situ* among serried ranks of senior and middle management.

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IGPS Newsletter

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Simon Chapple, IGPS newsletter editorial, June 2019

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Bridgette Toy-Cronin

Justice Customers
consumer language in New Zealand justice

Abstract

This article examines the use of the term 'customer' in the justice system. It recognises that while the use of the term is designed to encourage ministry staff to focus on citizens' needs, deploying a consumerist concept creates several fundamental problems in the context of the courts: it creates the impression that courts are a private rather than a public good; risks undermining neutrality and independence in the courts; and disguises and misrepresents the true nature of the interaction between the courts and citizens. The article concludes by suggesting a new way to meet the aims of 'customer service' while also protecting the independence and neutrality of the courts, by adopting manaakitanga and kaitiakitanga as guiding principles.

Keywords justice, court users, citizen, customer, manaakitanga, kaitiakitanga

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Under the leadership of former chief executive Andrew Bridgman, the Ministry of Justice began referring to users of the court system as 'customers'. This drew the ire of now chief justice of New Zealand Helen Winkelmann in her 2014 Ethel Benjamin address:

> There is a new language that is used in connection with courts; people who come before the courts are called customers, judges and lawyers are referred to as stakeholders, District Court centres are referred to as franchises. We are now to understand that we are part of a market for justice services and our product is being 'marketised'. (Winkelmann, 2014, p.232)

The ministry was not dissuaded. It has defended its use of the term and further integrated the concept, introducing a 'Customer Charter' in March 2019. The

language has also been adopted by Associate Minister of Justice and for Courts Aupito William Sio. For example, when commenting on new legislation, he said it would help courts and tribunals to provide 'better customer protection and redress' (Sio, 2018).

This article examines the use of the term 'customer' in the justice system, asking what it seeks to achieve and what is problematic about the idea of justice customers. It concludes by suggesting a new way to meet the aims of 'customer service' while also protecting the independence and neutrality of the courts.

Origins and utility of justice 'customers'

The idea of a customer in the public service is by no means unique to the Ministry of Justice. It is part of a much wider New Public Management trend

> The use of consumerist language in the public service was thought to redress the imbalance of power between the provider of the service and those to whom the service was provided …

that dates back to the 1980s. Such New Public Management-inspired public sector reform in New Zealand and abroad included 'a more extensive reliance on market mechanisms – contracting out, commercialisation, corporatisation, and privatisation' (Boston et al., 1996, p.16). The use of consumerist language in the public service was thought to redress the imbalance of power between the provider of the service and those to whom the service was provided (Potter, 1988, p.150). This change did not go unnoticed, with many academics critiquing the citizen-consumer concept as it is applied to various areas of the public service (see, for example, Alford, 2002; Clarke et al., 2007). Despite such critiques, its use has taken hold across the public service, defended on the grounds of its utility in refocusing the goals of public sector agencies. Recast as a consumer of a service, the public is conceptualised as

having power through the choice of using or not using a product or service. In this light, the public cannot be dismissed as an interruption and inconvenience. Instead, they are the central purpose of the service and customer satisfaction becomes a key performance measure. It is not merely window dressing but a way to change how frontline staff interact with 'customers'.

Andrew Bridgman applied this now familiar rationale to defend the ministry's use of the term. While acknowledging that the ministry had taken some 'flak' for calling people in contact with the ministry 'customers', he said:

It was as if talking about customers somehow took away from what was important about the courts. In fact, the reverse is true – the customer is our reason for being. And reframing our thinking about this has been very helpful in cutting through the complexity and focusing on our priorities. (Ministry of Justice, 2016, p.2)

The term is, therefore, a way to change the nature of the relationship between the ministry and those who are now regarded as 'customers', focusing on the people in contact with the ministry as 'our reason for being'. This, however, begs two questions: who is a customer of the Ministry of Justice?; and why did the use of the term create 'flak' for the ministry?

Who is a justice customer?

The answer to this question can be gleaned by reviewing how the term is used in the ministry's public communications: news updates, brochures and its annual report. I reviewed ministry publications from 2016

to 2018 and searched for 'customer' and related terms, and then coded for context. Most frequently, a 'customer' is not a defined member of any group; rather, the term is used generally to talk about making the ministry more individual or public focused:

Providing great service to the public every day. We deliver justice services for New Zealanders every day. … We'll continue to work on a number of initiatives to improve the customer experience. This includes gaining a better understanding of our customers to enable us to design services that better meet their needs and deliver access to justice. (Ministry of Justice, 2018, p.26)

Making sure New Zealand's justice system is customer focused is critical. (Ministry of Justice, 2017b, p.2)

The precinct will embody much of what we are trying to achieve in our drive to modernise courts and provide customer-focused service. (Ministry of Justice, 2016, p.3)

When 'customer' is used more specifically, it is applied to many different groups of the lay public. For instance, civil parties, bereaved family members where cases are referred to the coroner's service, members of the public watching a case, victims or complainants and their supporters, supporters of a criminal defendant or civil parties, criminal and civil debtors are all described as 'consumers' (see, for example, Ministry of Justice, 2019). Equally, Tenancy Tribunal claimants and respondents become 'tenancy customers': 'Improving the user experience of our tenancy customers … customers can now keep track of their application via an online portal' (Ministry of Justice, 2018, p.13).

It is not clear whether such customers include representatives of organisations: for example, whether Housing New Zealand is a 'tenancy customer'. This is of some importance given that many parties to court proceedings are not people but companies, trusts, and other government departments (Toy-Cronin et al., 2017, p.89). Two groups who are expressly included as 'customers', even though they fall outside the natural meaning of the

term, are jurors and criminal defendants. For example, in a discussion of the 2017 Court User Survey in *Justice Matters*, it was said that the study 'interviewed 2,044 customers in eight court sites' (Ministry of Justice, 2017c). Criminal defendants made up 28% of the members of the public surveyed in that study (Ministry of Justice, 2017a). Communications about another survey, this time on juror satisfaction, also cast jurors as customers: '2017 Juror Satisfaction Survey shows customer satisfaction remains very high' (Ministry of Justice, @justicenzgovt, 15 March 2018).

Lay court users (even if their job includes representing a government agency in court, such as some Housing New Zealand employees) are distinguished from judges, the police, lawyers and ministry employees, who are together called 'stakeholders':

> The effectiveness of courts is affected by many stakeholders with specific and independent roles. They include judges, Police prosecutors, defence counsel, Crown solicitors, victim advisors, court staff, security officers, Corrections officers, and probation officers who all work in the court system. (Ministry of Justice, 2018, p.4)

The usage of 'customer', therefore, seems intended to encompass all 'people who use our services', regardless of their role or their status as a representative of an entity, as long as they are not in the 'stakeholder' group. In this way, the ministry is shifting from the previous situation of 'too much focus on the stakeholders in the system rather than the people who are relying on the system to resolve their issue' (Ministry of Justice, 2018, p.4).

What, then, is problematic about this? Is it not simply, as Andrew Bridgman suggested, 'cutting through complexity' to focus on 'our reason for being'?

Why does it matter?

While the desire to cut through complexity is understandable, doing so by deploying a consumerist concept creates several fundamental problems: it suggests that courts are a private rather than public good; it risks undermining neutrality and independence in the courts; and it disguises and misrepresents the true nature of the interaction between the courts and citizens.

Courts are a public good, not a service to a customer

The use of the term 'customer' constructs a very particular type of relationship, one drawn from commercial relationships where a customer is a purchaser of a good or service (Needham, 2009, p.100). The provider–customer relationship is between two entities: the ministry on the one hand and the lay person (in their own capacity or as a representative of an entity) on the other. The focus is placed

> ... deploying a consumerist concept creates several fundamental problems: it suggests that courts are a private rather than public good; it risks undermining neutrality and independence in the courts ...

on the relationship between these two parties, suggesting that the courts are a service provided to the citizenry like any other: the library, the hospital, the mechanic. There is a broader critique of New Public Management that all public services have a collective benefit that is not recognised when they are reduced to a provider–customer relationship: 'Citizens, as customers, are seen as only having their individual interest in getting the best deal they can, rather than services being seen as rooted in collective citizenship' (Harris and White, 2018).

Even if we accept that New Public Management thinking is appropriate for some public services (a matter that continues to be contested), in the context of the courts this conception is 'demonstrably untenable' ('*R (on the application of UNISON) v Lord Chancellor,*' [2017] UKSC 51, pp.20 para [66]–[67]). The existence of courts is, Lord Reed explained, fundamental to the rule of law. Courts are responsible for interpreting and enforcing the laws made by our elected leaders, including upholding the law's requirements against the government itself, while also developing the law as believed necessary as society changes. The value of the courts' decisions therefore goes well beyond the individuals concerned, due to the fact that courts determine principles of general application. Such general applicability of principle means that the 'courts play a central role in public governance structures' (Farrow, 2014, p.23). Even where courts do not perform this particular role in an individual case, their availability to people and businesses is of fundamental importance:

> People and businesses need to know, on the one hand, that they will be able to enforce their rights if they have to do so, and, on the other hand, that if they fail to meet their obligations, there is likely to be a remedy against them. ('*R (on the application of UNISON) v Lord Chancellor,*' p.[71])

Courts are, therefore, a different sort of public service to others, in that they are fundamental to our system of government. While the courts' function includes dispute resolution to enforce private rights between individual parties, it goes well beyond this. Courts create societal rules and promote compliance with them; they scrutinise and limit state power; they provide the ordering for our capitalist economy (Genn, 2010, p.16). The courts are a public good with a constitutional role for everyone's benefit. To suggest otherwise is dangerous to the stability of our democracy, as Lord Thomas of Cwmgiedd says:

> If we conceive of the justice system as no more than a service provider, we

plant the seeds for … privatisation. … Its danger lies equally in the fact that it might facilitate the false belief that the justice system is in the same category of public services as education and the health service. It is not. It is in the same category as Parliament and the Executive. It forms part of the institutional framework which safeguards the rule of law and underpins democracy (Thomas, 2017, p.118).

Introducing language that reconceives the justice system as promoting only private benefits chips away at one of the pillars of our system of government. While this may be regarded by some as a matter of high principle, it is on such matters that,

Judicial independence is key as [the Judges] role is to hold everyone – including the government (one of the ministry's best customers) – to the rule of law.

as Lord Thomas suggests, we should stand like a rock (ibid., p.132).

Drive for satisfaction undermines neutrality and independence
The use of the language of consumerism also has an effect within the operation of the courts. Courts must, as a fundamental principle, be both neutral and independent; these are core principles of natural justice. Reconceiving 'the people who use our services' as 'customers' constructs a particular relationship which threatens both these principles. This is because the emphasis in a customer relationship is on customer satisfaction. The service provider needs to meet the needs of the customer and interact with them in such a way that they will go away with a positive view of the experience. As Andrew Bridgman said in one communication, 'Our customers are key to every step we take. Simon and Garfunkel's "Keep the customer satisfied"

is a song title that resonates with what we're about at the Ministry of Justice' (Ministry of Justice, 2016, p.2). A drive for customer satisfaction, however, creates two pernicious effects in the court system: it creates preferred customers, and it encourages the ministry to see itself as the curator of the 'customer experience'.

Creates preference customers in a system that must be neutral
Our court system is an adversarial one. True, there are some examples where the court staff will interact with people who are not adversaries: for example, an applicant for legal aid or completing a requested police check. But many ministry interactions are with 'customers' who are in an adversarial relationship with another 'customer'. When the two customers' interests conflict, as they often will in an adversarial setting, whose will be preferred? The Customer Charter perhaps anticipates this problem by saying 'we are fair and impartial'. However, examples of how the customer satisfaction mindset plays out on the ground suggest that this may be harder to achieve in practice.

An example comes from research conducted about litigants in person. The case involved a bailiff (a court staff member who is responsible for executing orders: for example, forcibly taking possession of property) and two adversarial parties. An order had been made by the court in favour of a plaintiff – a large organisation which often brought proceedings. The order allowed the plaintiff to take possession of the property of an individual defendant – a person who was inexperienced with the system and from a low socio-economic background. The defendant still had a right to apply to stop the order taking effect as

the period to do so had not elapsed. The bailiff, however, went ahead with enforcing the order, telling those who expressed misgivings that the plaintiff 'had a right to customer service' (Toy-Cronin, 2015, p.209). When customer satisfaction becomes the metric for performance the pressure is on staff to meet their customers' needs. The best customers – those who use the business most frequently and are the most loyal, such as the plaintiff in this case – then require an extra level of service, undermining neutrality between parties.

This risk of creating preference customers is also identified in international research. In a review of the term 'customer' in the United Kingdom criminal justice system, Needham found that there 'is a hierarchy of users': 'It was clear that "law-abiding citizens", particularly victims and witnesses, would be the priority customers of the service' (Needham, 2009, pp.107, 112). Again, such hierarchies undermine the principle of neutrality.

The customer focus threat to neutrality is also seen in ministry communications. Some people, who would otherwise be 'customers', are reframed as outside the definition. For example, people watching court proceedings are separated into two categories, 'troublemakers' and 'customers': 'Other changes proposed, like extending the powers of court security officers, to remove or deny entry or detain troublemakers, will also improve our customers' experience' (Ministry of Justice, 2017b, p.6). While 'customer' might look like it cuts through complexity, the creation of preferences is quite consistent with running a business but at odds with a core principle in our system of government.

The ministry as the curator of the 'customer experience'
A positive customer experience, as a review of marketing textbooks make clear, relies on all parts of the organisation working together. If one part of the organisation is not 'on message', the efforts of the rest of the organisation are thwarted. For the ministry's staff to be able to provide timely service to the customer, the judiciary (who deliver the judgments that parties seek from the court) are a key component of the organisation. Except, of course, they actually are not part of the organisation

at all. The separation of judges from the ministry is of fundamental importance. Judicial independence is key as their role is to hold everyone – including the government (one of the ministry's best customers) – to the rule of law. This fact puts the ministry staff in the conflicted situation of being both responsible for delivering a timely and satisfactory service to 'our' customers and unable to control all the elements that enable that to occur (according to their own metrics).

This tension was recognised in research on the pace of litigation in the High Court (Toy-Cronin et al., 2017). Court staff expressed concern about the pace of cases being too slow and creating difficulties for a party to a case: 'we don't want it to take over and be drawn out over a long period of time because it's not fair on a person who is either owed this money or owes this money'. Judges will, however, commonly adjourn a case for a variety of reasons: for example, so a party can seek advice, gather more evidence or negotiate a settlement. Some of the court staff interviewed for the study revealed that they were unhappy about such adjournments as it meant the conclusion of the case was delayed. Court staff comments included that when 'judges granted adjournments they felt "let down", "disheartened" and "unsupported", or more simply: "we don't really like adjournments"' (Toy-Cronin et al., 2017, p.100). While the court staff were very aware of and careful about the separation of powers, this push to create 'customer' satisfaction creates pressure for staff to try and manage the customer experience. This in turn risks pressure on the independence of the judiciary.

Disguises the nature of the interaction between citizens and the courts

The concept of a customer, at its heart, imports the idea of choice. The purpose of good customer service is to attract and keep customers to secure a competitive advantage. Consumerist language recasts everyone as 'enterprising, active, choice-making consumers' who are 'in control of their own lives through a series of rational transactions' (Harris and White, 2018). This is a depiction at odds with the experience of most people in contact with the ministry. Certainly for

criminal defendants, the idea is devoid of meaning. As Patricia Williams observed when discussing sentencing 'choices': 'The vocabulary of allowance and option seems meaningless in the context of an imprisoned defendant dealing with a judge whose power is absolute' (Williams, 1991, p.33). Even for those under less direct coercion, the idea that they have chosen to be in contact with the ministry is a wholly inaccurate depiction, particularly for those who are most vulnerable, such as criminal defendants, legal aid applicants, victims of crime, and family court litigants. In using the language of choice, of selecting to become a 'customer' of the ministry, the discourse is transformed from 'one of public obligation and consensus into one of privatized economy. The positioning renders invisible the force of the state' (ibid., pp.33–4).

Calling jurors 'customers' not only disguises the fact that jurors have no choice but to attend court; it also fundamentally mislabels the role that jurors perform. Jurors are not recipients of a service but are in fact providers of a service, that of fact finder in a trial. The state has to provide the infrastructure for this to be achieved in a way that is as equitable and pleasant as possible, but to consider them 'customers' is to fundamentally misunderstand their role in the court system. Jurors are not there to be served by the state but are independent from the state; their purpose is a limit on state power. To suggest they are customers of the state undermines one of their key reasons for being.

A different way to cut through the complexity – manaakitanga and kaitiakitanga

The arguments against the use of

consumerist language in the ministry are not mere 'flak'; they are in aid of protecting our system of government. That is not to suggest, however, that there is no place for trying to improve the public's interaction with the ministry. Citizens come into contact with the ministry for a wide range of reasons, often without any choice in the matter and often at times of great stress. The ministry's ethos of trying to improve the quality of these interactions is an admirable one. However, rather than borrowing from capitalism to solve the problem, let us instead look to te ao Māori. The values of manaakitanga and kaitiakitanga could provide an equally powerful framework to encourage focus on the citizen, but with fewer risks to our democratic structures.

> … there are persuasive, principled reasons why using consumerist language in our justice system may cause profound harm to its strength and independence and therefore the strength of our system of government.

Manaakitanga is what Hirini Moko Mead refers to as a 'guiding principle for everyone' (Mead, 2016, p.32). It refers to the obligations of 'nurturing relationships, looking after people, and being very careful about how others are treated. … It cannot be stressed enough that manaakitanga is always important no matter what the circumstances might be' (ibid., p.33). This could be a more, or at least equally, powerful guiding value to 'cut through the complexity' and ensure that frontline staff treat people coming into contact with the ministry with dignity and respect. It achieves the same orientation towards thinking about the needs and perspectives of the lay public, but without the attendant risks.

Similarly, kaitiakitanga, a distinct but related concept (Jones, 2016, pp.71–3), could guide interactions. Kaitiakitanga is most commonly understood in terms of human obligations of guardianship to the

environment, but it has broader meaning as well. Spiller and colleagues argue that organisations can be strengthened through practising kaitiakitanga:

> humans are stewards endowed with a mandate to use the agency of their mana (spiritual power, authority, and sovereignty) to create mauri ora (conscious well-being) for humans and ecosystems – and this commitment extends to organizations. (Spiller et al., 2011, p.223)

They argue that adopting this value can help organisations be more 'relevant, responsive and relational' (ibid., p.224). If Ministry of Justice staff are recast as kaitiaki, they are tasked with using their mana to create mauri ora for all those they come into contact with in the system. Furthermore, they could be guided by obligations of stewardship for the system they are entrusted with. This requires deep understanding of that system and the value it offers; knowledge of the importance of judicial independence, of equal treatment before the law, of fair process. Adopting these values as guiding principles, rather than a consumer focus, would therefore not only encourage positive relationships with the citizens who come into contact with the ministry, but also protect the importance of the courts in our democratic system. These principles can be adopted

into statements of organisational values and into citizen – rather than 'customer' – charters.

A possible critique of borrowing from te ao Māori would be Moana Jackson's concern that adopting Māori principles into a Pākehā justice system (and one that evidence overwhelmingly shows is systemically discriminatory towards Māori) only serves to maintain a paradigm that exercises control over the colonised, making it harder to fundamentally decolonise the country (Jackson, 1995, p.34). That is a possible risk and one that needs consideration. The benefits, however, are significant. It will not be enough to tell the ministry to stop using consumerist ideas; an alternative that achieves their legitimate aims of being responsive and respectful must be found. Manaakitanga and kaitiakitanga seem to answer many of the problems that the consumerist language creates while doing the work of encouraging staff to relate respectfully to the citizens who are in contact with the system. The citizens who come into contact with the system are not cast as rational utility maximisers but are instead recognised as people who are connected to others. An approach based on manaakitanga and kaitiakitanga does not hide the coercive nature of the system but rather makes no comment on it. It directs the frontline staff to treat everyone with care and respect but it does not create incentives for the ministry

to try and control or influence the separate judiciary, who are separate for reasons that are fundamental to the rule of law. It creates no hierarchy between people as it requires acknowledgement of each person's mauri, regardless of their particular role.

Conclusion

Lawyers and judges crying foul over an innovation to deliver a better service to the public can be all too readily dismissed as petty or protectionist. Their discontent might even be read as evidence of success. In this case, however, there are persuasive, principled reasons why using consumerist language in our justice system may cause profound harm to its strength and independence and therefore the strength of our system of government. The focus on respectful, helpful interactions with the citizens who come into contact with the ministry is an admirable one and should be pursued. However, looking to Māori values will provide a better way to 'cut through the complexity' than risking turning one of the pillars of the rule of law into just another service.

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