

Summary Comments on Reform of the State Sector Act 1988

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Congratulations to the team led by Al Morrison and Michael Papesch for their hard work in pulling together the Discussion Document on state sector reform.

I will offer some preliminary remarks and then focus on various aspect of the proposed reforms.

Five preliminary remarks

1. First, it is over a generation since the passage of the State Sector Act 1988. Much has changed over the ensuing decades. The population has aged, urbanized further, and become much more diverse. There have been significant technological and environmental changes. Even greater changes are likely over the next few decades, not least due to the fourth industrial revolution (e.g. digitization, AI, robotics, etc.), with major implications for the role of the state and many aspects of public management, including human resource management and service delivery. Given this situation, there is a strong case for undertaking a thorough review of the State Sector Act, thinking critically and creatively about how it might be improved, and reflecting hard on how to ensure that our public sector institutions are well designed to meet the formidable challenges of the mid-21st century – geopolitical, economic, social, cultural, environmental, and technological. Hence, I welcome this review.
2. Second, at the launch of the Discussion Document on Tuesday, a number of people talked about the importance of ‘getting it right’. May I gently demur from this approach? In my view, there is no single, correct or ‘right’ way to organize the system of public administration or public management in a nation state. There are multiple goals, principles and values, and some of which will inevitably be in tension: hence there are policy trade-offs (e.g. centralization v decentralization, uniformity v diversity, competition v cooperation, etc.). Not every goal can be simultaneously realized. My colleague at VUW, Dr Richard Norman, has written extensively on such matters.

Moreover, there are many possible paradigms, models, systems and processes. Each of them has advantages and disadvantages, costs and benefits. Hence, even if there were broad agreement on the overarching purpose, goals, principles and values that should guide the design and implementation of a system of public administration, there will be a variety of ways through which the agreed objectives might be realized.

3. Third, I agree with the main thrust of the reform, which, to quote p.33, ‘is to consolidate the Public Service as a permanent, unified institution, with a statutory purpose and a set of

statutory principles and values’ with the scope of the public service expanding ‘beyond departments to include other organizational forms – at least for the purpose, principles and values of the public service’. But while agreeing with the main thrust, I am mindful that the devil is in the detail.

4. Fourth, the proposed legislative changes to the State Sector Act are probably best regarded as a rebalancing exercise, rather than as a radical reconfiguration of the public sector, let alone a return to the pre-1988 model of public management. They involve somewhat greater central control and direction, via the SSC. Having said this, the magnitude of the changes will depend on exactly how the new Act is written, what specific reforms are introduced, and how they are implemented in practice. And on a number of key points the Discussion Document is relatively vague about what exactly is intended. This includes the possible provisions relating the Maori and the Treaty, and the leadership of the public sector – especially changes to the terms and conditions of employment. Hence, there is the potential for more significant change than might appear to be the case at first sight.
5. Fifth, a word on the process of reform: the State Sector Act embodies principles and processes of a constitutional nature, such as the procedures for appointing departmental CEs. Any changes to the Act, therefore, need to be undertaken with proper care and only after rigorous, open, evidence-informed debate. In this context we should not ignore the possible threats to long-standing constitutional conventions, such as the recent proposals of Hon Shane Jones (Minister for Regional Economic Development, Infrastructure, Forestry, etc.) to politicize the appointment of departmental CEs.

In the limited time available let me briefly comment on the following five matters:

1. The nature of the problem definition – that is, what is the problem or problems that need fixing?
2. The purpose, principles and values that should guide and inform any new legislation.
3. The management of people.
4. The leadership of the public sector.
5. Protecting long-term interests – or issues of stewardship.

The nature of the problem

The Discussion Document suggests that, overall, the NZ public service operates well. By international standards, it is relatively efficient, effective, responsive, and trusted, with low levels of corruption. I agree.

Nevertheless, the Document (especially Chapter 2: ‘The Case for Change’) identifies a number of distinct, but also overlapping, problems with the current State Sector Act. Let me note these and comment briefly on them.

1. It is argued that while the State Sector Act is effective in enabling individual departments and agencies to ‘deliver goods and services that they have sole responsibility for’ (see Peter Hughes’ *Foreword*), it is less effective when departments and agencies need to collaborate to deliver multiple services or solve complex, cross-agency problems.

It is claimed that this weakness is more serious now than, say, 30 years ago because governments face more complex issues and more cross-agency problems than previously.

Comment:

- It is not clear that the nature of the policy problems facing NZ has fundamentally changed over recent decades. We have always had wicked policy problems and complex problems requiring multi-agency responses.
 - The Discussion Document notes that efforts over recent years have ‘greatly enhanced the ability of the Public Service to work in a joined up way’ (p.8). If so, then this highlights that inconvenient structures can be circumvented, if there is sufficient goodwill and competence.
 - Wicked, complex and cross-agency problems will always be difficult to solve or manage regardless of public sector systems and structures. It would be unfortunate to give the impression that various specific changes to public management can make a large difference.
 - Many policy problems require international cooperation, or the involvement of sub-national government; they are beyond the capacity of the public sector to solve alone.
 - There is always the problems of limited resources, vested interests and competing policy priorities.
2. The Discussion Document suggests that current structures are insufficiently flexible and agile. The public sector is too focused on the needs and interests of individual entities and not enough on the needs and interests of the system as a whole. Accountability mechanisms tend to reward the delivery of agency results rather than system outcomes.

It is noted that decentralization has resulted in wide variety of practices – conditions of employment, systems and processes – which has caused difficulties re. mergers and the flexible deployment of skills and people between departments, including secondments; also increased inter-agency competition for staff.

Comment: yes, but there will be barriers to flexibility and agility in any system, however well designed.

3. The Discussion Document suggests that current public sector arrangements give too little recognition to the principles of the Treaty of Waitangi and the values, needs and interests of Māori. Poor outcomes for Māori are seen, at least in part, as reflecting badly on the public service.

Comment: yes, but the main issues here are policy-related – and thus of a political nature. The way the public sector is managed can help address issues of ethnic inequality and help give better recognition to Treaty principles and Māori values, but it cannot resolve such issues on its own. This requires broader constitutional, policy, regulatory and governance reforms.

4. The Discussion Document notes concerns about the willingness of some departments to provide their ministers with free and frank advice, as well as concerns over ethical conduct and political neutrality.

Comment:

- Concerns about the quality of policy advice are long-standing, as are those relating specifically to the provision of free and frank advice.
 - The Discussion Document does not really address the seriousness or otherwise of the problems, their causes, or how the proposed changes will reduce them.
 - I have long been concerned about the incentive structure generated by the terms and conditions of employment of departmental CEs under the State Sector Act: fixed-term and relatively short-term contracts seem likely, other things being equal, to reinforce the presentist bias in democratic policy-making and reduce the willingness of public sector leaders to test and challenge the ideas of the politicians they serve. This begs the question, however, as to what changes to CEs terms and conditions of employment might be desirable. It is a pity that the Discussion Document is silent on such matters.
5. The Document notes concerns about capability deficits, especially deficits in leadership capability. It is argued that this is because, among other things, the State Services Commissioner lacks sufficient levers to shape the state services, including succession planning at senior levels, developing future CEs through influencing second-tier appointments or shifting people in the interests of career development.

Comment:

- The Discussion Document does not address a related capability issue, which some observers believe is important, namely the relative downgrading of deep policy expertise/technical competence in favour of generic management skills – reflected in recent CE reshuffle (with Andrew Kibblewhite going to Justice, Ray Smith to MPI and Andrew Bridgman to Defence). This is not to question the ability or wisdom of such people, but they lack deep expertise in their future areas of policy responsibility.
6. The chapter on the ‘Case for Change’ is relatively silent on various other problems, some, but not all, of which are discussed later in the Document and which provide grounds for various proposed legislative changes. These include:
 - The lack of a single legislative statement of the purpose, principles and values of the NZ public service.
 - The structure and leadership of the SSC – including the number of Commissioners, the term of their appointment, and the process of appointment.
 - The possible case for a return to a single employer model for departmental staff or at least some senior staff (e.g. those incorporated into the proposed Senior Leadership Service).
 - Whether the public service gives sufficient weight to long-term policy issues and the maintenance of long-term capability (stewardship).
 - An insufficient reliance on evidence-informed advice (Sir Peter Gluckman).

- A reluctance by some government departments and agencies to admit failure and mistakes.
- A reluctance by some government departments and agencies to release information (quickly) under OIA.
- Poor enforcement/weak regulatory stewardship.

In short, the chapter on the 'Case for Change' could have been rather more comprehensive, and given greater attention to the available evidence on what appears to be working tolerably well and what does not.

More generally, it would have been helpful if the Discussion Document had included a table or diagram which specified: a) the nature of the problems that need addressing; b) the evidence base relating to these problems (where available); c) the proposed solution(s); d) the intervention logic for the proposed solution(s), including possible risks.

Purpose statement

I see merit in a new Public Service Act (or whatever it is called) including a clear statement of purpose and a list of principles and core values.

The proposed statement in the Discussion Document (see Box on p.12) is rather long. I can see value in having a shorter, sharper overarching statement, followed by several subsections.

The purpose of the public service might be well encapsulated in the following words: *“to serve the (long-term) public interest by supporting constitutional and democratic government and enabling successive governments to develop and implement their policies”*.

The inclusion of principles and values raises various questions. 1) What is the difference between a principle and a value? 2) What should be the list of principles? 3) What should be the list of values? 4) Are there any principles or values missing from the proposed lists?

Proposed principles:

- Political neutrality (non-partisanship)
- Free and frank advice (more of a function)
- Merit selection
- Openness
- Stewardship (prudent use of resources)

Proposed values:

- Impartial
- Accountable
- Behave with integrity
- Respectful
- Committed to service

Note that a principle can be defined as “a fundamental truth or proposition that serves as the foundation for a system of belief or behaviour or for a chain of reasoning; focus on organizational

modus operandi”; while values can be defined as “principles or standards of behaviour; focus more on individuals than organizations”. Based on this distinction, I think the suggested principles and values are probably in the correct ‘boxes’. Against this, the list of proposed values is relatively short and leaves out several values that many people would regard as fundamental to the operation of the public sector. One of these is fairness. This value is critical, not just in relation to how public sector organizations treat their staff and contractors, but also with respect to the treatment of citizens. Another value, which was mentioned by the Minister for State Services at the launch of the Discussion Document, is the value of compassion. This value is particularly important in the social and health sectors. It is linked to fairness, but embraces additional elements including empathy, kindness and good neighbourliness.

There are of course many other values that might be deemed relevant for inclusion. Amongst these are: efficiency, cost-effectiveness, competence (including cultural competence), inclusivity, responsiveness, accessibility, being innovative, resilience, and so forth.

With regard to principles, there are some additional principles that might be worthy of inclusion in a new Act. These include:

- A commitment to democratic and constitutional government, including proper consultation with citizens.
- A commitment to the rule of law, including principles of natural justice.
- A commitment to the principles of the Treaty of Waitangi.

People

Workforce provisions to encourage agility, capability, adaptability, etc.

On p.26 the Discussion Document states: “We propose that the Commissioner, in consultation with chief executives and functional and professional leads, will have the ability to negotiate, directly or through delegation, common terms and conditions for functions or professions across existing NZ Public Service departments. This can occur by way of amendment to the existing State Sector Act provisions on Government Workforce Policy (SSA S.55A – S.55D) and would enable:

- The introduction of standard job titles, sizing and pay bands. Placement within bands would remain a decision of the employing chief executive.
- Other conditions of employment including leave entitlements.

This proposal raises various important issues that need proper analysis and debate:

1. What is envisaged with respect to the scope and scale of the move towards common terms and conditions? This is not clear from the Discussion Document; it could be large-scale, with major implications, or a relatively modest change.
2. Who is likely to be included and excluded – and what is the likely impact of exclusions on the goal of the exercise?
3. What are the risks involved – would the new regime be a stable state or would it produce feedbacks that will push it towards a very different equilibrium?
4. Does a single employer approach have merit (i.e. for specific parts or all of the core public sector) or should we retain the multi-employer model, albeit with greater central steering?

Leadership

There are various important matters in this section of the Discussion Document:

1. The Document recognizes that ‘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’ (p.30).

Comment: some might say the reverse. What is the evidence base?

2. The proposal to establish a Senior Leaders Service (SLS):

Comment: it is not clear from the Document whether there will be a single employer of those included in the SLS and, if not, how the new Service will operate.

Also, how are we to ensure that the SLS does not suffer the same fate as the previous Senior Executive Service (SES)?

3. Collective accountability of CEs

It is proposed that the new Public Service Act would include an overarching reference to the collective responsibility and accountability of CEs; CEs would be responsible for the health of the Public Service overall, with them having a duty to act in the collective interests of the Public Service; a reference to collective responsibility and accountability would also be included in CE’s conditions of employment.

Comment: I can see the logic behind these proposals but they raise various questions:

1) Who will be the arbiter in interpreting the collective interests of the Public Service? At any one time, there are multiple collective interests (as well as multiple departmental and sector interests). These various interests are often in tension; they can readily be interpreted and prioritized differently.

2) What will be the mechanisms for enforcement? That is, how will CE’s be held to account for their contribution to the collective interests of the public service? What sanctions will there be?

4. Functional and professional leaders

Functional – Chief Digital Officer, Chief Data Steward, Government procurement, Government property, Occupational safety and health
Professions – legal, policy, finance, human resources, communications

Comment: what is proposed seems sensible.

5. Structure and role of the SSC

I am pleased that the Discussion Document explicitly addresses the role and structure of the State Services Commission/Public Service Commission and the Commissioner.

I agree with the proposal that the Commissioner have a specific responsibility in the government formation process along the lines of that which has been in place since 1996.

The broadening of the Commissioner's powers in relation to matters of ethics and integrity also makes sense.

On the question of whether there should be a multi-member Public Service Commission, a single Commissioner or some hybrid approach, on balance I prefer Option 3, namely a Commission with several members, including a Chief Commissioner, a Deputy Commissioner, and one or two Commissioners – potentially one of who could be the Chief Executive of the Commission. I think a multi-member Commission will be all the more important if the proposed Public Service Act includes a significant increase in the decision-rights of the Commissioner.

As to the term of appointment, I can see merit in a single term of 7 years.

Whatever model is adopted, the appointment process for the Chief Commissioner, Deputy Commissioner and any other Commissioners should involve consultations with the leaders of all the political parties represented in Parliament.

Protecting long-term interests

In my view, there is a good case for strengthening the incentives for the public sector to be forward looking and to exercise proper stewardship of the resources and capabilities that it has responsibility for. The idea of sector level long-term insights briefings is worth considering, with such briefings being prepared mid-way through the normal electoral cycle. I presume there might be 4-5 of these briefings, covering, for instance, economic issues, environmental or natural resource issues, social issues, justice sector issues, and issues of international relations and security.

There would, in my view, need to be some legislative guidance regarding the contents of such briefings – e.g. relating to their timeframe, the identification of key trends, the assessment of risks and vulnerability, as well as emerging opportunities, the analysis of relevant creeping problems or so-burner problems, and so forth.

Potentially such briefings could be tabled in Parliament and subjected to parliamentary scrutiny.

But I have some reservations about the proposal:

1. Multiple sectoral reports run the risk of duplication – it may be better to have a single, integrated, sector-wide briefing coordinated by DPMC.
2. It is not clear how strategic such briefings would be.
3. An economic sector briefing would potentially duplicate the Treasury's Long-Term Fiscal Statement.
4. There is a risk that a three-yearly cycle of reports will generate *pro forma* briefings, with little new material and little impact on policy thinking.

There are alternative ways to encourage future-focused thinking and protect long-term interests:

1. One of these would be the creation of a dedicated foresight unit (e.g. in DPMC)
2. Another would be a legislative requirement for a periodic whole of government long-term report (e.g. at least every six years).

What's missing?

The Discussion Document is relatively silent about the role of citizens in the design and delivery of public services. This includes the important themes of co-production, co-creation, co-design, co-governance, etc.