Notes to accompany presentation to the 2019 Annual General Meeting of the New Zealand Institute of Public Administration (IPANZ)

"The 2019 Public Service Reset – tweak or transformation?"

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Tena koutou katoa

It is a very great pleasure and privilege to be invited to make a contribution to this year's Annual General Meeting. One of the highlights of my time with the School of Government – and I commenced my employment in 2003 – has been the opportunity to work with the Institute, including for a number of years as the Chair of the Journal Advisory Committee when we transitioned through to the new format.

The title for my presentation this evening was finalised before the Minister of State Services released the suite of Cabinet Papers relating to what I refer to as the Public Service 'reset'? We now know more, but the reality is that we will not be in a position to judge the extent to which the changes foreshadowed will be transformational, at least until we have seen the Bill that the Minister intends to bring to the House, and perhaps not even then. As the papers released make clear, a not insignificant part of what is proposed goes to cultural change – and that can take time.

In preparing for this evening's event I went back and reviewed some of the key documents that mark defining points in the history of Public Administration in Aotearoa/New Zealand, and more particularly the major statutory changes. Assuming that a Public Service Bill is to be introduced it will be the fourth major legislative chapter in the statutory story.

The first chapter is the Public Service Act 1912 which was informed by report of the Hunt Commission of Inquiry. This ended patronage, introduced merit appointments and political neutrality, and control of a unitary system by a Commission. Departments of State were headed up by Permanent Secretaries. One can detect in this statute the influence of Westminster principles and values. It is, in many respects the child (or perhaps that should be grandchild) of Northcote and Trevelyan.

The second chapter is the State Services Act 1962, this time informed by the McCarthy Royal Commission. From this, among other things, we get a multi-member Commission. Permanency continues and the government of the day declines to involve Ministers in the selection/appointment process for Departmental Heads.

The State Sector Act 1988 is not preceded by a Royal Commission, but if there is a progenitor in terms of doctrine, and we can find that in the pages of the 1987 Treasury Briefing to the Incoming Government, 'Government Management'. Permanency is a casualty of the Act, as is a multi-member Commission (eventually), and the Act reaches back to the recommendations of the McCarthy Commission report to provide that appointments – to what are now Chief Executive roles – are to be made by the Cabinet on the recommendation of the State Services Commission. Much has been written on the State Sector Act, and a good deal of that by individuals much more knowledgeable than I would claim to be. But it is, in my assessment, an Act that is in many respects at war with itself. It evokes a 'spirit of service' while at the same time establishing institutional arrangements (and incentive systems and structures) that assume anything but. The guiding assumption is one of self-maximising behaviour by bureaucratic actors willing to exploit the information imbalances (or asymmetries) that exist between them and their political principals. These theoretical or ideological premises were already in evidence in the State-Owned Enterprises

Act 1985. And they would inform other pieces of legislation – including the Reserve Bank Act 1989, although in the case of that legislation the opportunism to be curbed – a democratic distemper if you like – was an affliction of political actors.

'Westminster was not working in Wellington' was the refrain at the time. There was, at least on the part of some, a belief in Westminster virtues. While the Opposition at the time of the introduction of the State Sector Bill foreshadowed the politicisation of the upper ranks of the Public Service – this did not occur. At least not in the sense of partisan appointments. Chief Executives exercised an exclusive prerogative when it came to the employment of those under their control (albeit with devolved bargaining arrangements and a statute that was common to both the private and the public sectors) and the implicit convention of officials providing free and frank advice survived. Those with the benefit of experience and wisdom could see that the new Act presaged a move towards a balkanised set of departments and agencies in the State Sector – strong vertical accountability but within silos bereft of any scaffolding that would allow for cross-departmental or whole of government capacity and capability where that might (and would, as we now know, increasingly be) required. Provision for a whole of government Senior Executive Service was made in the Act at the urging of the State Services Commissioner in an effort to maintain some degree of horizontal integration (and a sense of a unified service). That would be allowed to whither on the vine – the provision was simply not complied with - and was eventually removed from the Act.

As one reflects on the period since its formation in 1936 – and this is very clearly in evidence when one examines the Report of the McCarthy Commission and the excellent history of the New Zealand Institute of Public Administration authored by John R Martin – the Institute has been a very significant source of influence. Indeed, since its formation, with the exception of the State Sector Act (and that is a 'special case'), the status of the Institute in matters of legislative change was very much one of a respected and valued partner. Moreover, from its outset the Institute has been at the forefront in what we today term "thought leadership". In researching for this evening's conversation, I dipped into the Victoria University Library archives and accessed the first issue of the New Zealand Journal of Public Administration – the Journal of the New Zealand Institute. It would be well worth IPANZ scanning a copy of that first issue with its formal statement affirming the arrival of the new journal from then Prime Minister Michael Joseph Savage, and welcome remarks from the Public Service Commissioners of the time, and placing it on its home page.

I mentioned that the State Sector Act was a 'special case', and these remarks are no more apposite than to the circumstances under which the policy was developed and announced. Policy development was undertaken in a highly secretive and almost furtive manner, with a handful of trusted officials involved, meetings held away from the Beehive (so as not to attract interest or suspicion, Cabinet briefed by way of oral items and – when it came to a Cabinet Paper with policy recommendation – copies of each Cabinet Paper (with the possible exception of one for the PM and one for the Cabinet Office) collected afterwards by the responsible Minister, Stan Rodger, and shredded. The introduction of the Bill into the Parliament came as a complete shock. Moreover, given that the PSA and other State Unions had, in good faith, entered into discussions regarding changes to public sector bargaining arrangements, it is not too strong to characterise the actions of the time as expedient to the

point of being grossly disingenuous and even duplicitous. Moreover, so far as I can tell no one has 'told the story' behind the development of the policy advice that went to Cabinet and the drafting of the legislation. Someone should.

No one is suggesting that the process used for the development of the State Sector Act should be used as a benchmark (unless the benchmark seeks to emulate the of unbridled power). But issues of process, and specifically opportunities on the part of the community to engage in authentic and meaningful consultations regarding legislation of this kind are relevant. Indeed, in the most recent issue of Public Sector IPAMZ President Jo Cribb comments as follows:

> "After a short period of consultation last year, where many struggled to find time to provide comment on the high-level document, all has gone quiet. A small group of academics has been engaged to test the policy thinking. All are capable, thoughtful thinkers about the public management system. All are European, older men. All, I am sure, would say that there are a wide variety of experts who have not been included in the design of our future state sector – those, for example, who are reliant on health services or who struggle to access services. They have also become experts in the strengths and weaknesses of the current system and have aspirations for it. What the public service works on will change, but how we operate and behave will also need to change if we are going to"

In the interests of disclosure, I have to admit to being one of the group of academics that was invited to 'test' the policy thinking. Begrudgingly I accept that I am indeed an older male. The substantive point that Jo Cribb is making is a sound one – namely that true consultation is one that provides opportunities for all voices to be heard, and that proactively seeks to engage with those typically excluded from conversations about these matters. My role is neither to explain not to defend the consultation processes that the SSC and the Ministers have used on this occasion. I would only note that there will be further opportunities to engage – whether formal or informal – including after the legislation is referred to a Select Committee. One hopes this process allows all those who might wish to be heard on the legislation to be so heard, and that the Select Committee hearings are not confined to Wellington and to submissions emanating from within 'the Beltway'. I would make one further comment regarding the Public Sector editorial and that it that it would be erroneous to assume that the advice from those invited to 'test' the policy thinking is reflected in the decisions that Cabinet has now made. In a number of important respects that is <u>not</u> the case.

I commented earlier that a great deal has been written about the State Sector Act, including its strengths and its limitations. Suffice to say that there are entries on both sides of the ledger. Of course, the State Sector Act (and other pieces of legislation) were the New Zealand variant of the New Public Management, and one sees in a large number of jurisdictions marked differences when it comes to those variants. It is inarguable that reform was required at this time. But it is arguable both whether this particular model was the appropriate one. Some look back at the passage pf the Act as the Public Administration variant of the 'golden weather'. And – as with other variants it did have the effect of 'letting the managers manage'. But simply dispensing with much of the pre-reform Public Service Manual – an exercise that was also completed at this time – probably did as much to liberate those managers as the black letter changes of statutory reform.

Turning now to the material on the present reform process that has been released, the kind of conversation that one can have in the context of an AGM is not such as to do justice to the depth and complexity of the issues. By my own assessment what I see is a curate's egg, and what follows is necessarily selective.

In the interests of accuracy and balance, from my vantage point there is much in what is proposed that is sound, timely and worthy of support.

A recurring theme, both in the raft of evaluations and commentaries generated since the passage of the State Sector Act and in the papers released by the Minister is what some have referred to as a the 'balkanisation' of public service departments that has occurred. In part this reflects the normative weight of the theories of the day – because one could not have policy advice coming from the same organisation that was responsible for programme delivery (because the policy would be contaminated and compromised by the interests of those invested in the programmes) the two arms were separated. 'Agencification' (one of the more 'clunky' terms of the time) meant that ministries could provide purchase and monitoring advice, and agencies could do the delivery – sometimes. But I do hear the refrain, 'surely sound policy requires the insights of those responsible for delivery on the ground (and client citizens)?' Indeed.

But of more influence than fragmentation (or as it I now known, the creation of 'silos') was the dominating force of vertical lines of accountability within these silos – with Ministerial 'principals' tasking administrative 'agents' with portfolio and agency specific responsibility for the efficient and effective production of outputs in furtherance of desired Ministerial outcomes. There was nothing accidental or unintended in this – it is exactly what the architects of the Act were looking for. Sadly, it was an institutional remedy for a much earlier time. In a context in which wicked and messy problems required joined up or 'whole of government' capacity and capability the 'phone was off the hook' when it came to inter- or cross-departmental forms of joint action (at least in a formal sense). Review, after review after review noted this weakness in the design of the Act – a weakness that was reflected in a compromised capacity on the part of the Public Service to respond in a joined-up manner – whether that was in policy development or delivery. Successive governments – and the central agencies – attempted, and with some success, to manage and mitigate this weakness. And so, we had the 'Premier House' meetings of Ministers and Chief Executives as a collective group; and we have the developments of clusters of departments working under a lead department, reporting to Ministerial groupings with a lead Minister (remember the SRA). And we had Better Public Services. The problem was less with the design of these 'soft' institutional arrangements than it was with the fact that they became associated with a government and were perceived – rightly or wrongly (and I veer towards the latter) as 'politicised'. We ended up with 'serial' solutions, none of them enduring. And this is where the current proposals presage an enduring solution, albeit to a perennial problem. The proposed Inter-departmental Executive Boards, Public Service Joint Ventures, a more flexible Departmental Agency model, and Functional Chief Executives (which we already have in place in some areas) constitute a timely and appropriate response. But most importantly the intention is to codify these options in statute, thereby – one would hope – putting an end to the parade of serial solutions I referred to earlier. These do, of course,

involve a greater measure of power at the centre – it may not be appropriate to conceive of the relationship between departmental structures and central agencies as being of a zero-sum kind (one would hope it might be a positive sum outcome for both) but this is about a significantly greater degree of decision-making authority, and coordinating capacity existing and being exercised at the centre. I return to that below.

Equally the fact that the new statute seeks to advance in a material and meaningful sense the relationship between the Crown and Māori in the context of Public Administration and Governance is a very positive move. The papers released by the Minister note that he has

> "considered three options to include a reference to the Māori/Crown relationship and Te Tiriti/the Treaty in the new Act. All three options aim to strengthen this Government's commitment to the Māori/Crown relationship and improving Māori outcomes"

The Minister comes down in favour of "[a] prominent stand-alone clause that refers to the Māori/Crown relationship and also refers to Te Tiriti/the Treaty"

Recognising the status of Te Tiriti/the Treaty in this way is welcome (if we are not, in the foreseeable future to have a single codified Constitution, then recognising the Treaty in one of our key Constitutional statutes is a step forward). Moreover, it is about partnership, and it is about outcomes. It is some since 'closing the gaps' was such a prominent part of the public discourse. If improving Māori outcomes is the contemporary substitute and it is to be given the force of legislation in a statute that forms part of the Constitution of Aotearoa//New Zealand, this is a welcome development.

While not in the same league the Minister's decision to include in the legislation provision for long-term insights briefings is welcome. My colleague Jonathan Boston has highlighted the problems attendant upon what he describes as a 'presentist' bias inherent in our institutions and the prevailing governance culture. The report – "Foresight, insight, and oversight. Enhancing long-term governance through better parliamentary scrutiny" – a collaboration between Victoria University of Wellington's Institute for Governance and Policy Studies and the Office of the Clerk of the House of Representatives – provides an excellent elaboration of the issues. The decision of the Minister to include a legislative provision which will require briefings to be tabled in Parliament will enable government departments to provide their best advice, through the legislative branch, to the wider New Zealand community. There will be an 'art' to the task of providing that advice without commenting on the policies of the government of the day, but that will no doubt be mastered.

Finally, and once again emphasising that this contribution to a conversation is by necessity both selective and less granular than a detailed assessment might provide, there is the matter of principles and values. In large part these have, at best, been implicit in statues (but much more explicit and indeed codified in documents such as the Cabinet Manual). The Minister has decided that there is a case for both formally articulating principles and values and taking the step of changing their status from convention to formal statute. Just what that will mean in terms of the nexus between enabling provisions and culture and behaviour remains to be seen. There may be some who will seek to disparage this as a form of 'virtue

signalling' but these 'virtues' are central to a 'constitutional' public service that is as expert as it is non-partisan.

The 'principles' of the public service as identified by the Minister (and as will be codified in the new Act) are:

- Political neutrality
- Free and frank advice to ministers
- Merit-based appointment
- Open Government
- Stewardship

They may well be qualities associated with a 'constitutional' public service but their status is that of conventions.

I noted earlier that when one looks back at the statutory arrangements relating to Public Administration the Institute has, since its inception, been a partner in the process of developing policy and shaping institutional arrangements. It has, from its inception been a 'thought leader'. I recent times IPANZ has lent its assistance to people like me (and at this juncture I note that my work in this area has been with my friend and colleague, Professor Richard Shaw) in undertaking research. Most recently that took the form of a survey of individuals on the IPANZ database relating to the influence of political staff, and some additional issues. That survey was completed in 2017 and the results have been reported back at a number of IPANZ events and through academic and 'op-ed' styled publications. The 2017 research – which elicited 640 responses – replicated research undertaken in 2005 (at that point with the assistance of the SSC and the Leadership Development Centre).

In 2017 we used some additional questions to 'take the pulse' of the public service (540 of our respondents classified themselves as public servants' on aspects of political neutrality and the provision of free and frank advice to Ministers. In one question we asked our respondents to indicate the extent of their agreement or disagreement with the statement:

Public servants in 2017 are less likely to provide a minister with comprehensive & free & frank advice

In excess of 53% indicated a measure of agreement, compared to approximately 25% who indicated a measure of disagreement. The question then provided an opportunity for respondents to comment. All of this material is available through the IPANZ web site. Suffice to say that the picture that was painted by many was of a public service that had acquiesced into a state of hyper responsiveness. Issues of leadership – both at the centre and at departmental level – were raised. At the time of the release of the material the response combined defensiveness and denial. But times change. We now see the Minister in one of the Cabinet papers commenting on research that has shown a diminution in the capacity (or willingness) of the public service to furnish Ministers with free and frank advice and noting 'the need for vigilance'.

History tells us that the Public Service at its best is capable of being both responsive and responsible. It also tells us that the art is not in any compromise as between the two as it is in keeping both in line of sight. I take no comfort from the fact that I have experienced, within the context of working in a Ministerial Office in the early 2000s, a major government ministry effectively withdrawing its support for a key government policy initiative – a situation which resulted in a Cabinet paper having to be drafted in the Minister's Office. On the other hand, the predations of hyper responsiveness are just as concerning as the predations of departmental obstruction in the name of 'institutional scepticism'.

It is to be hoped that the culture that characterises the New Zealand Public Service – as it has always been when at its best – will be assisted by the formal articulation and codification of a statement of purpose and a set of principles and values to guide the Public Service.

At the risk of repetition these observations are selective, but thus far they have been supportive of the general tenor of the Cabinet decisions.

I now want to turn to two areas where, in my assessment, the decisions taken- or the options preferred – are at variance with what is required.

The first of these relates to the tenure of Chief Executives. These matters are addressed – albeit in a somewhat cursory manner – in Paper 5 – Leadership of the Public Service.

Recall that the State Sector Act dispensed with permanence for those heading up public service departments (hence 'permanent heads') and introduced instead a system of fixed term contracts, initially accompanied by Chief Executive Performance Agreements (CEPAs) to allow Ministerial 'principals' to play a role in the assessment of their administrative 'agents'. These changes were foreshadowed in the NZ treasury's 1987 Briefing to the Incoming Government where the Treasury noted the influence of tenure on (departmental 'head') performance:

> Even more important than appointment procedures in establishing the accountability of departmental heads to their Ministers may be procedures for termination of those appointments. Tenure can also provide strong incentives for performance. Unlimited tenure can reduce the incentives on a permanent head to innovate and adjust operations to meet the changing needs of the department's clients. Limited tenure on the other hand can impose strong incentives to perform and achieve results within a certain period by the increased contestability of the position of departmental head. Balanced against this, tenure that was too insecure might encourage an unduly risk averse approach to be adopted, and create problems recruiting people to the position.
> At present departmental heads may remain in office until retirement. Since many appointments are made of people in their forties, this may mean for fifteen years or more. Clearly someone who was suitable at the time of appointment might not remain so for that length of time. We consider that incentives to perform would be enhanced if appointments were made for more limited periods, and the title of 'permanent head' were abolished. One possibility would be employment on renewable five-year contracts. This would provide sufficient time for an appointee to achieve results, but not be so long that motivation could dull. Such a term would also have the advantage of ensuring that contract expirations did not normally coincide with elections, thus reducing the likelihood of

> wholesale purges by incoming Governments. Fuller safeguards against this could be achieved by having contracts for four to six years when termination dates would otherwise coincide with elections. Such contracts may however need to make provision for early termination in the event of unsatisfactory performance or a breakdown in the working relationship.

The logic of the argument is clear. But more importantly so too is the Treasury's preference. And Treasury's preference would be the preference of the government of the day. Permanency would go and five-year fixed contracts for Chief Executives would be instituted. Toi be fair, Treasury did note that moving in this direction might presage a more risk-averse approach.

To the extent that there is a perception that the Public Service is no longer providing Ministers with free and frank advice to the extent that it once did – and as already noted research suggests that this is the case, then I would contend that tenure, or more to the point a lack thereof, is a key driver. To be clear, the 1988 reforms were about shifting the dial more towards responsive than responsible competence. There should be no surprise about this. The incentive structures were designed to drive behaviour in this way. Moreover those familiar with the 'changing of the guard' in Wellington circles point to a pattern of behaviour in which incoming CEs would typically commission a 'first principles' review of their department and agency, invariably find that significant changes were necessary, profess that changes would be made without any diminution in capacity and capability, and proceed to make changes that did both. More egregiously at times an incoming CE would make changes because a Minister found the advice emanating from part of a department or agency to be 'too' free and frank. If you don't like the advice, then remove the source. Ownership interests or stewardship considerations were completely absent. (It is interesting to note, but outside the context of this present discussion, that in Canada decisions relating to 'machinery of government' reside, not with Ministers but with central agencies.)

The issue is not one of bemoaning the loss of permanency and returning to Permanent Secretaries, as much as it is one of finding a balance. If appointments are not to be permanent then a term needs to be found that allows for a CE to internalise the culture and mission of a department or agency and lead it (and that may require change). The problem is that we have moved to a system where incentive systems reward change for changes sake. And we have moved to a system where there is no incentive for the CE to be – as is required from time to time – the 'policy pebble in the shoe' and, in the name of free and frank advice provide advice that may challenge or, in other respects, be somewhat disruptive of ministerial preferences. As with so much of what is proposed the issue is, in part, about culture. But we can learn from other jurisdictions. The following extract published by the Australian online resource, *The Mandarin*, is instructive in this regard:

> "Terry Moran, former secretary of both the [Commonwealth Department of Prime Minister and Cabinet](three and a half years) and the Victorian Department of Premier and Cabinet (eight years), thinks the real issue is not what the upper limit of secretary tenure should be, but what the minimum amount of time is that he or she should be in the job.
> Reforms in recent decades have pushed secretaries towards having to more closely manage the interface between the minister and the department. This has bred a tribe of generalist secretaries, says Moran, who are more heavily steeped in corporate skills than

> their forebears. The flipside of this is that a new secretary often comes in from outside the department and must familiarise themselves with the minutiae of its work.
> It takes most of the standard five year posting — perhaps three or four years — to really master the brief, he argues. A secretary who is good at their job should remain in place a few years longer than that.
> **"If a secretary is just a sheep dog rounding up public servants, they can do that effectively fairly soon," says Moran. "But if you believe as I do in a strategic leadership role, if they come in from outside, five years is not long enough.**
> "There's still a prevailing perception you should move people on after five years. It's the answer to the wrong question. It's misplaced." (https://www.themandarin.com.au/71017-secretary-tenure-whats-the-right-amount-of-time-in-the-top-job/ emphasis added)"

Perhaps this advice might have been given some weight by those drafting the Cabinet papers for the Minister's consideration and sign off. Regrettably relatively little space is devoted to the issue, and in the section that addresses the issue the Minister adopts a somewhat contradictory tone – firstly in acknowledging that there is a perception that the present system is not working (and indicating why that might be the case), noting that he did consider change, but then asserting – without evidence to support the assertion – that "the system of appointment has worked well" and that "New Zealand is recognised internationally as having a politically neutral public service executive". It is far from clear that extending tenure would have any effect on the latter, and – if the system has worked so well, why the widespread view, as reflected in feedback from stakeholders, that it has not, and is not?

The relevant section from the Cabinet paper is reproduced in full:

> "Feedback from stakeholders during consultation included a perception that the re-appointment process is open to political influence because, to be reappointed, a chief executive is incentivised to be responsive to what the Minister wants, rather than providing alternative advice that may be in the best long-term interests of the public that the chief executive serves. I considered options such as appointing chief executives for a longer term and removing the reappointment provisions. But the system of appointment and re-appointment of public service chief executives has worked well, and New Zealand is recognised internationally as having a politically neutral public service executive. I have therefore decided not to change the existing tenure provisions."

It is to be hoped that if the position of the Minister remains the same and is reflected in the Bill that is introduced into the House that the 'stakeholder' views may have some influence with the Select Committee tasked with its consideration.

The second area concerns the make-up of the putative Public Service Commission itself. Recall that one of the consequences of the passage of the State Sector Act was a move from multiple Commissioners to a single Commissioner.

The State Sector Act 1962 provided that:

> (2) Except for the purposes of section 29 of this Act, the Commission shall consist of not more than four persons who shall be appointed by the Governor-General in Council on the recommendation of the Prime Minister.

And

> (3) One Commissioner shall be appointed by the Governor-General in Council as the Chairman of the Commission, and shall be the permanent head of the Office of the State Services Commission. Another Commissioner shall be appointed by the Commission as the Deputy Chairman of the Commission and shall have power to act in place of the Chairman in the event of the incapacity of the Chairman by reason **of** illness or absence or any other cause.

Initially the State Sector Act provided for up to four Commissioners, but a State Sector Amendment Act (No.2) in December 1989 vested all powers in a single Commissioner, the State Services Commissioner, assisted by a Deputy.

In simple terms one can understand the move to a single Commissioner both as being consistent with the zeitgeist of the times – a principal, or even multiple principals – might find recourse to a single agent more efficacious. Moreover, it is fair to assert, as commentators like Alan Henderson have, that the State Sector Act represented a move away from 'Commissioner control' to 'departmentalism'. Couched in this binary (and rather blunt manner) it is equally fair to comment that what we are seeing in a putative Public Service Act is a reversal of that direction of travel. We are seeing a move away from a system of balkanised silos to a system that is horizontally integrated. Moreover, the drivers of integration – on a whole of system and a whole of government basis, will be found at the centre. It will be the State Services Commission that will be at the 'hub' of the new arrangements. That being the case – and the competencies of individuals are immaterial to this argument – it makes sense to widen and deepen capacity and capability at the centre. Put another way there is a strong case to be made for a multi-member Commission (which, it has to be noted, is a quite different proposition from a 'return' to the pre 1988 arrangements).

These matters were considered by the Minister, and to quote at length from the relevant Cabinet paper:

> "43 In re-writing the State Sector Act 1988 I now need to reconsider the role of the State Services Commissioner and the composition of the Commission to ensure that it supports an evolving public service. The Commissioner needs the right level of support to deliver the Head of Service leadership role now expected. In doing this I want to retain strong, decisive leadership of the State sector through an independent Commissioner, and a single point of accountability for Ministers and single employer of chief executives. Proposals to achieve this are set out below, and in Annex 1.
> *Broadening the leadership of the Commission*
>
> 44 To broaden the leadership of the Commission, I propose three options:
>
> 44.1 Option 1: Return to a multi-member Commission model that operated from 1946 to 1988. In this model functions and powers are vested in the Department known as the Public Service Commission and exercised under a board or committee. The Chief Commissioner becomes the chair of the Commission with a deliberative vote (and a casting vote if necessary). There are up to four other Commissioners, including one

deputy chair.

44.2 Option 2: Retain a single Commissioner and a statutory Deputy Public Service Commissioner, with the option to add another statutory Deputy Commissioner when required.

44.3 Option 3: As for option 2, but also appoint up to two additional Deputy Commissioners, without statutory authority but able to exercise all the Commissioner's functions and powers under delegation (creating a total of one Commissioner and four Deputy Commissioners).

Option analysis

45 Option 1: A multi-member Commission would vest all functions and powers in the Commission as a department. Decision-making would be by Committee based on a consensus approach to decision-making. This approach would mean a return to meetings, quorums, deliberative and casting votes (by the Chair), with a real risk of indecisive, time-consuming decision making. Rather than try to bring all the required expertise into the centre, I consider it would be more effective to harness the wider expertise through all chief executives operating as a system-wide leadership team.

46 Option 2 retains and strengthens the existing model. There is a risk that a range of functions and powers of the state, could be concentrated narrowly under a single point of responsibility. But existing checks will remain, including that the Commissioner remains answerable to appropriate Ministers and to Cabinet on a daily basis; they can be removed from office; can be subject to judicial review; are subject to select committee review; and subject to scrutiny and commentary by the media, academics, interest groups and the public. The benefits of this option are:

46.1 strong decisive leadership (in this context) emerges more readily from an individual than a committee with a consensus approach to decision making

46.2 the independence of the role is maintained whilst also providing the Commissioner with sufficient 'sounding boards' and internal checks and balances needed to avoid a concentration of power

46.3 Ministers would still have a clear, single reference point of who is responsible to them – a single point of accountability

46.4 chief executives would continue to have a single point employer relationship.

47 Option 3 is an expansion of option 2, increasing to five the total number of Deputy Commissioners by four. While this would increase support for the leadership role of the Commissioner and bring a wider set of perspectives to decisions made, it is not clear what the additional non-statutory Deputy Commissioners would be responsible for, and calls into question the benefit derived from the increased cost. The option may undermine proposals in this

> paper to strengthen system leadership by chief executives.
>
> 48 On balance, I recommend option 2."

One can be forgiven for suggesting that the drafting of this part of the Cabinet paper – and acknowledging that, at the end of the day, it is the Minister's paper and it goes to Cabinet as such – is artful inasmuch as we are presented with three options, two of which – at best – can be characterised as 'strawmen'.

Option one is clearly positioned as a return to the past and raises the prospect of collective decision-making by a Board with diffuse and bureaucratic arrangements.

Options three evokes the prospect of a Commission of five members (one more than we have ever had in Aotearoa/New Zealand) and then bemoans a lack of clarity as to what additional members would do, but concludes that any benefit would be outweighed by the costs.

Which only leaves Option 2 which is, unsurprisingly, the Ministers preferred option – in effect the status quo ante, but with the possibility of the appointment of a second Deputy Commissioner, and a detailed elaboration of the benefits of this option in the paper.

It needs to be repeated – less it be mis-interpreted or represented – that the issues here go to institutional design and not to the endowments of existing personnel.

It may indeed be possible to separate the responsibilities that the State Services Commissioner has as the Chief Executive of the State Services Commission and to reallocate these responsibilities to a Deputy Commissioner, thereby 'freeing up' more time for 'system leadership'. But the question is both the capacity of one individual to provide the leadership required and whether, given the importance of the functions to be discharged in the context of sound and legitimate governance, whether reliance on one person's assessment is appropriate.

But regrettably there is no detailed elaboration of the benefits that are alluded to in relation to Option 3 in the paper - increased support for the leadership role of the Commissioner and the bringing of a wider set of perspectives to decisions made.

One can envisage a fourth Option that might have been crafted along the following lines:

> Option 4 is an expansion of option 2, increasing the total number of Deputy Commissioners to no more than three. This would increase support for the leadership role of the Commissioner and bring a wider set of perspectives to decisions made. The specific allocation of responsibilities for Deputy Commissioner would be a matter for the Commissioner to determine in accordance with the priorities for the Commission at any given time.

I note that in its submission the Institute too favours Option 3, and the justification provided is not such as to be bettered by anything that I might add:

> With respect to the appointment of the Public Service Commission, we favour Option 3, but with the addition to it of the suggestion in Option 1 that consultation with the Leader of each party in the House of Representatives be undertaken before a recommendation is made to the Governor-General for appointment to the Commission. Our view is based on the fact that while the Commissioner may well be *primus inter pares* we believe that (a) no single person has a monopoly of knowledge or wisdom; (b) decision-making will benefit from being drawn from a diversity of views, experience, social and other backgrounds; (c) the fact that the Commissioner is not answerable to the Minister makes it imperative that there be an appropriate potential check on the exercise of the considerable power that the Commissioner is able to wield; and (d) it is desirable that, as an independent officer, the Commissioner has cross-party support in Parliament.

Conclusion

What we have in the current suite of Cabinet decisions is indeed the curate's egg. The codification of values and principles suggests that Westminster is still alive and well in a significant part of the Public Administration space. Widening and deepening the Treaty partnership – particularly if the focus is on outcomes – is welcome. So too are the new vehicles that will seek to facilitate much greater cross-agency or departmental forms of activity in particular policy domains. Good governance is network governance, and that should start within the institutions of the State (but not stop there).

The failure to address Chief Executive tenure is a concern. But of at least equal concern is the failure to take the opportunity to model what is being sought across the State Sector in the structure of the State Sector Commission. The risk is that what is presently proposed might be seen as a zero-sum game with power being redirected from departments and CEs back into the centre. Provision for additional deputy Commissioners and the development of a culture in which a wider set of perspective is brought to the work of the Commission would, in my assessment, result instead in a positive sum game.

One of the strengths of our legislative process – when at its best – is that Select Committees do listen to stakeholders, and do recommend, as necessary, changes to Bills under consideration. Moreover, multiple parties in government provide for multiple points of engagement. And plenty of scope for 'thought leadership' – and, it is to be hoped, for Kaitiatitanga.