Public Service Legislation Bill

Submission by Institute of Public Administration New Zealand (IPANZ)

Summary

Major reviews and rewrites of core public service legislation occurs only rarely. This is as it should be. However, when such work is undertaken, it needs to be comprehensive and based on wide-ranging consultation with the New Zealand community as a whole. Only by doing this can there be confidence that the legislative provisions capture properly the full range of the public service's obligation to Ministers and its duty to citizens. The Public Service Legislation Bill now before Parliament is not the product of such a process and IPANZ is strongly of the view that it is the weaker as a consequence; a rare opportunity to undertake a comprehensive examination of the extent to which the contemporary public sector is fit-for-purpose has not been taken.

It is nevertheless this current draft upon which comments are now being sought, and IPANZ's views are set out below. Please note that IPANZ would welcome the opportunity to make an oral presentation to the Select Committee.

What we like

- The draft Bill reflects many of the points made by IPANZ and others in their submissions on the 2018 State Sector Review Discussion Paper.
- Many of the provisions contained in the draft are couched in language that is permissive rather than prescriptive.
- The symbolism of putting elements of hitherto implicit principle and practice into legislation thus signalling a momentum of change and sending a message that the *status quo ante* is no longer fit for purpose.
- Incorporation of the concept of 'fairness' into the values section [Section 14(1)(a)].
- The ability of the proposed new joint ventures to receive direct budget appropriations.
- The requirement that boards of Crown agents (such as DHBs, ACC, Kainga Ora etc) share responsibility, alongside public service chief executives, for ensuring that the principles of the public service are upheld.
- The provision requiring the Commissioner to provide a briefing at least once every three years on the quality of stewardship of the public service [Schedule 3, clause 15].
- The provisions governing access by political parties to public service agencies after a general election [Schedule 3, clauses 16-19].
- The principle of the provision for long-term insight briefings by CEs, noting in particular the requirement that these must be prepared independently from Ministers [Schedule 6, Clause 8].
- The 'Good employer requirements' and the 'Promoting diversity and inclusiveness' provisions in the draft Bill, as well as the provisions on pay equity [Sections 71-74, 80-83].
- The provisions on restricting circumstances for redundancy payments and for continuity of public service on the transfer of public servants [Sections 86-93].

What we don't like

- The short time allowed for submissions.
- The lack of evidence that a fully comprehensive examination has been undertaken of what we consider to be a key question, namely "What kind of public service does New Zealand need in the 21st century?"
- The restricted definition of the capability required to manage the Māori/Crown relationship.
- The proposal that the senior leadership of the Public Service Commission could be limited to one Commissioner and one Deputy [Section 45].
- The proposal that the maximum term of appointment of CEs should be five years [Schedule 7, Clause 2(1)].
- The proposals providing authority to the Public Service Commissioner to transfer chief executives through sidestepping the normal appointment processes [Schedule 7, Clause 6].
- The omission of any reference to relevant expertise and experience being necessary determinants of merit.
- The inference that new administrative and organisational structures will address problems that essentially stem from issues other than those of structures.
- The failure to place greater emphasis on the importance of stewardship.

What we'd like to see included

- An explicit reference to the critical constitutional role played by the Public Service in New Zealand's governance framework.
- A further principle be added, namely that the public service must Act *in accordance with the law*.
- Recognition of the responsibility of Ministers in their relationship with CEs and public servants not to act in such a way as to undermine the ability of the latter to act fully in accordance with the principles set out in the Bill, the spirit of service in particular.
- Acknowledgement that senior public service leadership requires deep technical and professional knowledge and experience as well as managerial skills.
- Acknowledgement of the inherent tension at times between public servants' accountability to Ministers on the one hand and their duty to New Zealand citizens on the other, together with guidance as to how this is to be managed through binding Codes of Conduct.

Preface

The Public Service Legislation Bill was introduced into Parliament on 18 November 2019 and had its first reading on 21 November. It is now before a Select Committee. It was introduced as being an omnibus bill, to repeal the State Sector Act 1988 and to make a small number of related amendments to the Public Finance Act 1989. It purports to provide a modern legislative framework for achieving a more adaptive and collaborative Public Service by expanding the types of agencies that comprise the Public Service, a Public Service which is to be unified by a common purpose, ethos, and strengthened leadership arrangements. Submissions on the draft Bill have been called for with a due date of 31 January 2020.

The Institute of Public Administration of New Zealand (IPANZ) considers itself to be fully qualified to provide the Select Committee with its views on the basis of its having an extensive history of contributing to discussions of public sector governance in New Zealand and its having a long-established role as a representative of the professional public service. In support of this, it should be noted that IPANZ's objectives are (a) to promote improvements in public policy and in administration and management in the public sector in New Zealand and (b) to increase public understanding of the work undertaken in the public sector. In pursuit of these objectives, IPANZ works actively to promote the maintenance of high standards of conduct and performance in the public sector. By contrast, the Institute has stated from its establishment that the promotion of the interests of public servants in such matters as remuneration and conditions of service is not within the scope of its objectives.

In accordance with this mandate, IPANZ made a submission on the 2018 State Sector Review Discussion Paper, and the comments that follow below take into account that previous submission.

As part of the process of preparing this submission, IPANZ provided an opportunity for its members to put forward their views on a number of key issues in the draft Bill and these views have been reflected in this submission.

We would also note that IPANZ is very disappointed at the short time provided for consultation on the draft Bill, the more so because of the Christmas/New Year holiday period that falls into the middle of that period.

Introductory Comment

IPANZ is pleased to note that many of the comments it put forward in its earlier submission, as well as many made by other submitters, have been reflected in the draft Bill that is now before the Select Committee. IPANZ believes the current draft is the better for having taken on board these comments and suggestions. We are particularly pleased to note that many of the provisions contained in the draft are couched in language that is permissive rather than prescriptive; this was one of our main concerns when considering the Discussion Paper.

However, given the effort required to implement new legislation of any form, we see the Bill in its current form represents a missed opportunity to introduce real significant change into the public sector. Consultation has been limited and community-wide input (eg by way of a Royal Commission or publication of a Green Paper) was not sought. A consequence is that the Bill potentially focuses unduly on internal structural issues rather than on the delivery of policy outcomes and services to citizens. Accordingly, IPANZ considers that there are several areas in which the draft Bill could be further improved and we refer to these below.

We would also observe that although the Bill has been described as introducing "the most significant changes to the New Zealand Public Service since the State Sector Act of 1988"[1], the explanatory note accompanying the Bill makes it clear that the purpose of the draft legislation is primarily to provide a framework for a more adaptive and collaborative public service. That is of course a worthy objective, but we would note that analysis of the Bill's provisions suggests that many are in fact little more than a legal codification of existing practices or provide a legal environment for practices that could indeed have been introduced under current legislation. Given that legislation to effect major change to the Public Service is introduced only rarely, IPANZ would have liked to have seen evidence of a more comprehensive examination of what we consider to perhaps be the key question, namely "What kind of public service does New Zealand need in the 21st century?" New Zealand's public service is an often overlooked *taonga* providing the underpinnings for the country's political, economic and social success. Such continued success cannot, however, be taken for granted; constant vigilance is required to ensure that these underpinnings are not eroded by actions whether unintended or deliberate.

[1]Hon Chris Hipkins, Minister of State Services, 26 June 2019

Moreover, IPANZ is not convinced that the perceived problems that have prompted the development of the draft Bill can be 'fixed' through legislation. In our view, they stem as much from increased politicisation of the public service, too high staff turnover in many agencies (including at CE and Tier 2 levels), an over-emphasis on managerial competence over technical and professional knowledge as the key component of leadership, and a focus on short-term outputs as opposed to longer-term outcomes. We believe that the key to improving overall public sector performance is to address issues such as these. On the other hand, we acknowledge the importance that the symbolism of putting elements of current implicit principle and practice into legislation can have to signal a momentum of change and to send a message that the *status quo ante* is no longer fit for purpose.

IPANZ would also note that one of the Bill's professed aims is to reduce barriers to improved collective public sector performance. In part it might achieve this goal, but we also have concerns that with its emphasis on new formal administrative structures, it may inadvertently put in place new impediments.

IPANZ is disappointed that the draft Bill does not include any explicit reference to the critical constitutional role played by the Public Service in New Zealand's governance framework. We see a difference between stating that the public service supports constitutional government (Clause 9) and a statement about the place the public service has in New Zealand's constitutional arrangements, particularly through its political neutrality.

New Zealand has no single written document as its constitution. We acknowledge that a number of key pieces of legislation taken collectively amount to a constitution, but in large part these are not entrenched. Moreover, New Zealand has a unicameral Parliament. Taken together, these elements leave open a possibility that a future government could misuse the powers available to it. In the New Zealand context this is perhaps unlikely, particularly in an MMP environment, but it is nevertheless a risk.

An independent and politically non-partisan public service is consequently a very important constitutional check and balance. The requirement that State servants must be apolitical when carrying out their duties, functions and powers is an established constitutional convention in New Zealand. It is a principle that underpins the continuing employment status of State servants and enables State servants to provide consistent services (including policy development) for the government of the day. Accordingly, we urge that further consideration be given to an appropriate reference in the draft Bill. This might be accomplished by way of a short clause not dissimilar in format to Clause 11 ("Spirit of Service").

Finally, we note too that as the Impact Statement points out, the proposed new Bill will not affect directly the large majority of organisations in the wider state sector and those working for those bodies. This statement is perhaps a little misleading, as it is very unlikely that those involved in delivering services to citizens will be unaffected by the organisational changes this Bill potentially introduces. For most citizens, however, the impact of the new legislation will be felt only as a consequence of the success or otherwise of new collaborative working systems that might be introduced as a consequence of its passage.

Discussion

In the following, IPANZ provides comments on a number of issues following, more or less, the order in which they are covered in the draft Bill.

Purpose [Section 9]

The phrasing in the draft Bill is couched in higher-level language than that in the Discussion Document but more or less covers the same ground. IPANZ is broadly supportive of the approach adopted. We suggest, however, that consideration be given to changing the word "facilitates" in the last line to "enables".

Principles [Section 10]

IPANZ continues to support the principles as set out. We note, however, that the draft Bill does not directly address the point made in the Discussion Document that the "Public Service needs to address inherent barriers to merit…". Nevertheless, we acknowledge that Clause 71 indirectly covers much of the same ground, making it clear that the public sector's 'good employer' obligations require a range of considerations to be taken into account. While it could have been helpful to juxtapose such elements closer to the statement of the principle of 'merit selection', it is probably sufficient that they are listed specifically in the Bill.

'Openness' in the discussion paper has been replaced with 'open government', without including a specific reference to 'transparency'. This is regrettable. IPANZ continues to strongly hold the view that transparency is a fundamentally important principle, a position that the Chief Ombudsman has also frequently endorsed. In particular, transparency is a critical element of trustworthiness and political legitimacy, and does not necessarily result from Ministerial accountability. Citizens must have confidence in the decision-making process and this requires a periodic light to be shone on to that process. We suggest, therefore, that Clause (1)(d) be amended to read "to foster a culture of open government and transparency".

Public servants are creatures of statutes, with which they often require citizens to comply. There is an element of coercion in this. Accordingly, we continue to believe that *Act in accordance with the law* is a useful additional principle to include. It may seem self-evident, but there are other elements in the draft Bill which some might argue are similarly self-evident. The key point is that understanding the rule of law is vital for managing the boundary between the role of the public servant and Minister, and its significance is given no prominence in the draft Bill.

Spirit of Service [Section 11]

This separate section is an expansion of the suggestion in the Discussion Paper that 'Committed to Service' might be a Public Service value. IPANZ has no problem with this being translated into a section of its own. We would, however, observe that a 'spirit of service' is not a value that is unique to the public sector.

However, we have a concern that this concept might be expected to carry untoward weight. One of the underlying themes of the draft Bill is toward the development of a more unified Public Service. In this regard, we would note that there were many elements contributing to the pre-1988 unified Public Service. While we have no wish to see a return to a system such as this (it would be unlikely to be fit-for-purpose in today's world), we nevertheless make the point to stress that there were many components contributing to providing the glue of unity.

Related to this is an inference that public servants might increasingly identify themselves as being part of 'the Public Service' rather than being part of a particular agency. We are cautious about this expectation. While it is likely that a large majority of public servants will acknowledge that public service is a major driver in their having taken up employment in the public sector, they are unlikely to feel any personal connection to the Public Service Commissioner or to any of the central agencies. A spirit of public service does not lead seamlessly to identification as being part of the Public Service. Human nature being what it is, loyalties will continue to be much more focused on extended whanau, comprising immediate work-teams and those who are engaged with routinely and regularly. It is most likely that the way that performance measures are formulated and fiscal oversight is managed will have a greater influence on meeting these objectives of the Bill than will the structural approaches to co-ordination emphasised in the draft legislation.

Crown's relationships with Māori

IPANZ agrees that any new public service legislation must include an appropriate contemporary expression of the Māori/Crown relationship. However, the current draft appears to be little more than a statement of the minimum to be expected from the *status quo*, although IPANZ acknowledges the fact that insertion of these provisions into new legislation represents recognition of the changes in Māori/Crown relations that have occurred since the passage of the 1988 Act. It does not, however, adequately reflect those changes, changes that are perhaps exemplified in agreements that the Whanganui River and Te Urewera be given the rights of legal persons. It is likely that further new ground in the Māori/Crown relationship will continue to be broken in future years and core public service legislation must reflect this likelihood.

The corollary to be drawn is that the provisions in the draft Bill on the Māori/Crown relationship are not transformational or represent a 'step change'. IPANZ has considered whether the concept of 'partnership' (rather than 'relationship') should be embodied in the Bill. On balance, however, we concluded that while this principle has been reaffirmed by the courts and the Waitangi Tribunal, this current piece of legislation is probably not the one to embody it in contemporary law, given that its significance goes well beyond the public service alone. Moreover, IPANZ does not have the resources to research and fully understand the full implications and possible consequences of using the term 'partnership' rather than 'relationship'.

But the current draft text can be improved. In particular, IPANZ considers the current wording of Section 12 which limits the role of the public service to 'supporting' the Crown in its relationship with Māori under Te Tiriti and developing a capability to 'engage' with Māori and to 'understand' their perspectives to be too narrow. We believe that there should be specific provision to encourage and facilitate the incorporation of Māori values and perspectives into public policy development and service delivery. The role of the Crown in the relationship is not just to administer the *status quo*, but also to ensure that its treaty partner has access to and can derive benefit from overall societal change and progress.

In this context, the draft Bill does not touch on anything beyond the development and maintenance of public service staff capabilities. It does not seek, for example, to define what kind of outcomes for Māori the public service should be striving towards. It implies that having more Māori public service leaders and more Māori staff is a sufficient expression of the Māori/Crown relationship. IPANZ does not agree. Māori staff should not be asked to disproportionately carry the burden of the Māori/Crown relationship. Beyond the obligation of policy advisors to follow the evidence, and uphold the principles of the Treaty as articulated by the Courts and Waitangi Tribunal, the challenge of being able to engage with people and communities about the things that affect them should not be the responsibility only of public servants from those communities.

Furthermore, capability is not a concept anchored solely in staff; broader organisational capabilities are just as important. We need policies and practices that ensure that policy decisions, service delivery, engagement and governance will meet the needs of Māori (and indeed other elements of our diverse communities[2]). Leadership and direction are essential.

While it is probably not an area that can be legislated for, IPANZ would also note that a key risk to be addressed is that of conscious and unconscious bias. There needs to be confidence that similar weight is given to Māori views and perspectives in policy formulation and service delivery as on other sources; there needs to be confidence that these views are not diminished because they may reflect a different world view. Thus, definitions of 'national interest' need to be carefully examined to ensure that they are indeed in the national interest, and not just reflective of an overall less inclusive mind-set. Accountability of CEs (and others) in this context is essential.

[2]It is essential that the needs and views of diverse communities are recognised and reflected in all public sector processes, including consultation and engagement, policy advice, service delivery, governance and appointments.

Public Service values

IPANZ is pleased to note that as was advocated in our submission on the Discussion Document, the concept of 'fairness' has been incorporated into the values [Section 14(1)(a)]. We are conscious of the fact that such a concept may have a number of meanings, but this ambiguity may allow wider application than would otherwise be the case.

Political operating environment

The purpose, principles and values set out in the draft Bill provide key elements of a sound framework for the operations of the Public Service. Nevertheless, they provide a set of necessary conditions, not sufficient ones. In particular, successful development and implementation of public policy requires a partnership between Government and its Ministers on the one hand, and public servants on the other. Thus, IPANZ believes that just as obligations and responsibilities of public servants towards Ministers are set out in the draft legislation, so should there be some formal acknowledgement of reciprocal obligations in the key documents which guide and govern the relationships.

We are very much aware of cases in recent years where, for example, Ministers have refused to receive advice provided by departments as part of the 'free and frank' principles. While we reaffirm IPANZ's continued strong support of the constitutional principle that Ministers retain the absolute right to decide whether or not they will act on the advice provided, we do not support any suggestion that they should be able to refuse to receive legitimate communications from their agencies. Absence of such a reciprocal obligation runs the risk of undermining the ability of CEs and their staff to act fully in accordance with the principles set out in the Bill, as well as making public servants complicit in the political agendas of Ministers. Ministers too need to act with a spirit of service.

We recommend, therefore, that strong consideration be given to strengthening the provisions relating to Ministers' relationship with the public service along the following lines:

In its working relationship with the Public Sector, [the Government and its] Ministers will:

- *create an environment in which free, frank and comprehensive advice is encouraged and respected;*
- *provide clear guidance about policy directions and outcome priorities;*
- *participate effectively in accountability processes; and*
- *treat people in the Public Sector in a professional manner.*

A statement such as this could be inserted in the Cabinet Manual (and, indeed, in part that is already the case), but IPANZ considers that the importance of the issue is such that it would be worth considering whether such a requirement might indeed be included in the Bill.

Joint operational agreements [Part 2]

IPANZ remains of the view that the current legislative framework provides significant opportunity for improved modes of inter-agency cooperation, but these have not been utilised to optimum effect. Behavioural change and constructive attitudes are much more central drivers of change than new legislation, as is the provision of appropriate incentives. The latter need to be couched in terms that include an emphasis on horizontal and cross-agency behaviours and the public sector collective interest, rather than focusing solely on vertical (ie intra-agency) accountabilities. Nevertheless, the new provisions,

which are much more permissive than prescriptive may prove beneficial if only to stimulate new thinking about non-traditional approaches to address the complex issues of the day. We are, however, a little concerned about the risk of over-engineering and thus reducing future flexibility. A proposed measure that we believe could be of considerable benefit is the provision allowing for the possibility of joint bodies being able to administer directly a financial appropriation.

A possible gap in these draft provisions relates to the potential need to bring elements of local body administrations into these new joint bodies to address the complex issues that they will be set up to address. Expectations of citizen participation (of an increasingly diverse population) in public sector governance suggests that there needs to be meaningful engagement between central and local governments. It is not clear how the draft Bill will support this. We suggest, therefore, that consideration be given to some appropriate permissive language to be included in the draft legislation to facilitate such joint engagement as and when it is perceived to be necessary. Consideration could perhaps be given to add to Subpart 2 of Part 2 provision for the establishment of some kind of formal mechanism linking central and local governments. Related to this, in may also be necessary also to provide for the Commissioner (Section 42) to have some kind of formal role facilitating the relationship between the two levels of government.

Increased flexibility of the form that public sector agencies may employ is in principle to be welcomed, but IPANZ believes that this flexibility needs to be tempered with caution. It is very clear that addressing a range of today's complex issues requires a range of knowledge and experience, not all of which is to be found in a single agency. In these instances new management and administrative frameworks are likely to be helpful, but we believe that new formal structures should be established only rarely, and where careful analysis suggests that they are essential. Fundamentally, establishment of any new operational body is an administrative restructuring. Extensive experience both in New Zealand and overseas demonstrates that restructuring always takes longer than expected, is inevitably disruptive to routine day-to-day business as internal and external relationships are broken and need to be re-established, and only rarely achieves many of the benefits originally foreseen. There is little reason to expect that experience with these new arrangements will be significantly different.

As an overarching comment, we regret the narrow focus in the Bill on structure and function rather than on capability. This may bring increased rigidity to the public service instead of the flexibility that increasingly complex cross-sectoral issues might require. Likely consequences include delayed recognition of major shifts, inadequate responses because of an inability to question embedded received wisdoms stemming from entrenched structures and collective leadership capabilities, as well as a poor understanding of risk and an inability to recognise and manage uncertainty.

Public Service Commissioner

IPANZ is pleased to note the provision that the Prime Minister must consult with the leader of all parties represented in the House of Representatives before a recommendation to appointment as Public Service Commissioner is made [Section 40(2)].

IPANZ does not, however, support the inference in the Bill that the decision-making of the Commissioner as set out in the Bill should be exercised by the Commissioner and just one Deputy. The public service is too diverse, in the make-up of its staff, in function, in geographical location and in its relationships and engagement within and without the public sector for any single person to be confident that all relevant aspects on any issue have been taken into account. 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; and (c) the fact that the Commissioner has considerable powers to act independently makes it imperative

that there be an appropriate potential check on the exercise of those powers. Decisions made by the Commissioner must be exemplars of the principles and values of the public service.

IPANZ accordingly strongly believes that, as a minimum, two Deputy Commissioners must be provided for by statute (ie prescriptive rather than permissive as in Section 45). Indeed, it would not be averse to provision being made for an even larger Commission, perhaps consisting of five Commissioners. Just as diversity is essential in the wider public service, so should there be diversity among Commissioners. Such diversity should span professional and operational capabilities as well as the more usual expectations of diversity. The quality of decision-making should thereby be improved, without necessarily impacting on its timeliness.

IPANZ supports the provision requiring the Commissioner to provide a briefing at least once every three years on the quality of stewardship of the public service [Schedule 3, clause 15]. IPANZ believes that the main purpose of such a briefing must be on identifying the risks to such stewardship. As a point of detail, given that the concept of 'stewardship' is essentially a forward-looking one, we are puzzled by the word 'were' in line 2 of Clause 15(3)(b) of Schedule 3 – we would prefer "will be" or "are likely to be".

IPANZ also supports the provisions governing access by political parties to public service agencies after a general election. This codifies good practice and makes it clear as to what information may be provided and how it may be accessed [Schedule 3, clauses 16-19].

Public Service Chief Executives

IPANZ has a number of concerns relating to the provisions in the draft Bill covering CEs. As an overarching comment, we would note that CEs have at least two nominal core roles – that of being the overall manager of the agency in question and, in most cases, of being the chief policy advisor to the Government in the areas in which that agency is engaged. In other words, the Secretary of the Treasury should be the Government's chief economic advisor, the Secretary of Foreign Affairs and Trade, the Government's chief foreign policy advisor, and so on. There is very often an inherent tension between these two roles, and different appointees in different times will need to manage this tension by giving different weights to the two aspects in order to find a balance appropriate to the demands of the day. The corollary is that while managerial competence must be a necessary prerequisite of appointment to a CE role, it is not a sufficient one. Technical and professional competence are also essential elements. Management is not leadership; leadership also requires the demonstration of deep technical and professional knowledge, sufficient to command the respect of all in the agency and leaders' peers. Feedback from IPANZ members strongly emphasises the critical importance of having of what one member has termed 'domain knowledge' in agency leadership positions.

Accordingly, IPANZ believes that relevant technical and professional knowledge and a track record of successful performance relevant to the work of the agency in question must be a prerequisite for appointment to the CE position of that agency. This could be referred to in legislation as part of the CE appointment provisions by way of an amendment to the language in Clause 3(6)(c) of Schedule 7 of the draft Bill so that it reads *"taking fully into account the principle of merit-based appointments deliberate…."*. We acknowledge that the provisions governing appointment of CEs must already implicitly be interpreted as being in alignment with the principles set out in Section 10, but we consider their reinforcement in this context to be worthwhile.

IPANZ considers that it is critically important that the appointment of CEs is undertaken independently from Ministers. There could, of course, arise occasions where a Minister may not feel able to work with a particular prospective CE candidate (perhaps due to previous interactions), but we would expect such occasions to be rare. Accordingly, we would prefer the word "must" in line 2 of Clause 3(2)(b) of Schedule

7 to be replaced by ”may” in order to preclude any possibility of any appointment being able to be forced onto the Commissioner.

IPANZ is not convinced that the term of appointment of CEs should be five years [Schedule 7, Clause 2(1)]. A five-year term has some merit, but on balance we believe that it should be at least seven years. A seven-year term would ensure that every appointment potentially spans at least two elections, thus reducing, to some extent at least, potential political pressure on incumbents. Longer appointments would also align with the draft Bill's emphasis on stewardship as CEs would have greater incentives to get this right since they would be accountable over a period in which the quality of their stewardship should become increasingly evident. Moreover, longer terms of appointment will enhance the retention of institutional knowledge, something that has been put at some risk over the past decade or two as staff tenure in many positions has become shorter.

We are undecided whether the principle that there should be a tacit limit for the tenure of the head of any single public sector agency should be retained as the norm (the current limit that has been in place since 1988 is eight years), or whether an open-ended term as is the case for other permanent public servants might be more appropriate. If a seven-year initial term is accepted, the tacit limit might be set at ten years.

IPANZ also does not favour the proposals for the transfer of chief executives [Schedule 7, Clause 6]. Clause 3 of Schedule 7 of the draft Bill states clearly that if a CE vacancy occurs “the Commissioner must notify the vacancy using the means that…will enable suitably qualified persons to apply for the position”. IPANZ fails to see why there should be exceptions to that requirement. There is nothing to stop the Commissioner from encouraging any current CE to apply for the new role if s/he so wishes, that person being or not being appointed in accordance with standard procedures. It is, however, very important that the processes of appointment to critical roles such as this are totally transparent and that Ministers and the public can be confident that the best person has indeed been appointed to the position. This is a particular concern if, as noted above, the decision-making power rests with one or, at most, two people.

More broadly, and this applies equally to all staff and not just to CEs, IPANZ favours measures that encourage more stability in the workforce, rather than frequent movement. It has been claimed that “interdepartmental staff mobility is widely recognised as a way of developing skills and competencies of the public service workforce”. IPANZ would argue that undue emphasis on this approach leads to shallow rather than deep understandings. Technical and professional knowledge is essential to underpin high-performing organisations, and this is not developed by frequent staff churn. Mobility can be positive, but need not necessarily be between different agencies. Many agencies, the bigger ones in particular, can provide opportunities for enhancing knowledge and experience, while at the same time deepening understanding of the agency's core businesses. In short, ‘domain knowledge’ is critical.

IPANZ has been unable to come to a view on the merits (or otherwise) of the proposal to provide for the appointment of functional chief executives [Section 49]. While the draft Bill makes clear that what is intended is rather different from the current approach of appointing functional and professional leads (the draft provisions relating to the appointment of System Leaders would seem to encompass this latter current practice), it is not at all clear what is intended. Nevertheless, we infer that a functional chief executive is more akin to the concept of an Associate or Joint Secretary (Chief Executive). There may well be some merit in this, not least in that it may provide senior leadership opportunities to highly, but narrowly-skilled, individuals and thus utilise their skills and knowledge more effectively. Nevertheless, we are unclear how establishment of a new administrative entity under these provisions will differ from and/or improve upon the ability to establish new bodies under current legislation. In any event, IPANZ would have concerns that a proliferation of functional bodies carries with the risk of making more difficult the collaboration and cooperation that the draft Bill purports to promote.

As with the Public Service Commissioner, IPANZ supports in principle the proposals for long-term insight briefings [Schedule 6, Clause 8]. This provision should assist in improvements in longer-term policy planning and support improved stewardship, both elements currently often overridden by the exigencies

of the three-year electoral cycle. We support in particular the provision that long-term briefings must be prepared independently from Ministers.

However, we believe that the provision should state specifically that what is to be produced is to be a considered analysis or assessment of medium and long-term trends, risks, and opportunities, not just a provision of 'information' (which might add little to what is already known). The briefings must be more than a 'ticking the box' exercise. They must provide meaningful material conducive to independent analysis of both performance and readiness to address future risks and opportunities. Moreover, the wording in clause 8(2)(a) should be amended to read either "provide information into the public domain" or simply "provide information about …".

We disagree with the provision that these briefings should not express agreement or disagreement with any particular policy or policy options. While it is probably unlikely that any CE will produce a report directly criticising a policy of the current government, s/he must have the option to set out the risks or, conversely, opportunities not taken, as a consequence of any particular policy. An inability to do so runs across the principle of the obligation to provide free and frank advice. We suggest, therefore, that Clause 8(2)(b) be deleted.

Public service leadership team

As is the case in some other parts of the draft legislation, IPANZ is not convinced about the need to establish under legislation such a leadership team [Sections 57-58]. The very high-level purposes set out in Section 58 can all be achieved under the current legislation. On the other hand, while we believe that It should be self-evident to CEs that they have a collective responsibility to provide the strategic leadership the public service requires to achieve its constitutional role, including this in legislation may help to underline its critical importance. We are thus not opposed to the provision, but believe that its need is a sign of leadership failure.

Public service employees

IPANZ would again stress that while the provision (Section 70) that appointments to the public service must be based on the "person who is best suited to the position" is fully supported, it is strongly of the view that the outcome of each such decision-making process will be only as good as is the job description and person specification detailing that employment opportunity. The principles relating to Māori/Crown relationships, diversity in the workforce and the population, as well as the wider principles and values of the public service require broad interpretations of job descriptions and person specifications if the intent of the merit provision is to be properly implemented from the points of view of the individual, the agency as a whole and the general public. Ideally, announcement of every appointment should be accompanied with a clear exposition of why the successful candidate was clearly the best suited to that position.

IPANZ endorses the 'Good employer requirements' and the 'Promoting diversity and inclusiveness' provisions in the draft Bill, as it does the provisions on pay equity [Sections 71-74, 80-83].

In IPANZ's submission on the Discussion Document we voiced our concerns about the establishment of common terms and conditions across the public service. We stand by those views. We note that the draft Bill does not explicitly refer to that issue but we note that by virtue of the Commissioner's powers under Section 79(2) the Commissioner may direct that consistent terms and conditions be introduced in collective agreement negotiations. We hope that this power will in practice be used sparingly in order not to stifle innovation and to retain flexibility in a rapidly changing world where the emphasis is increasingly

on outcomes, not outputs. IPANZ views the provisions on potential workforce policies through a similar lens.

IPANZ supports in principle the provisions governing the transfer of employees between public service agencies. However, it considers that more than just 'consultation' with the employee under Section 85(3) would be desirable; the views of that employee must be taken into account before any decision on transfer is taken. The provisions on restricting circumstances for redundancy payments and for continuity of public service are supported [Sections 86-93].