

# PUBLICSECTOR

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tikanga

constitution

representation

justice

courts

taonga

crown

iwi

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We have a new Māori Health Authority



IPANZ Public Administration Prize

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**IPANZ PRESIDENT**  
LIZ MACPHERSON

Apologies. I have been reflecting recently on what it means to apologise as a public servant leader. Apologising for things that happen under your watch has always seemed very straightforward to me. As the leader of an organisation, you take the good with the bad. If you are prepared to take credit for the fantastic things your organisation delivers day in and day out under your leadership but without your direct involvement, you must also be prepared to own the mistakes, which again you may have had no direct involvement in. Own it, fix it, learn from it. Sometimes owning it, being accountable, means stepping away and allowing the organisation to fix and learn under a new leader.

But what if the wrong, the hurt, the error was made in the past, even the distant past, under a different leader? Is it fair to ask a current chief executive to explain, own, and apologise for the errors or omissions that occurred under someone else's watch?

While it may not feel fair, in my view, the answer is yes. Ultimately it comes down to being part of the long history of the Crown. As a public servant leader, when you take up the leadership of a public sector agency, you inherit the whakapapa of that organisation. Sometimes that whakapapa is long and convoluted – a lineage resulting from previous incarnations of organisations, from mergers or demergers. Regardless, as the leader of an organisation, you take on responsibility for the legacy you inherit – the good, the bad, and the shameful. Understanding the hurt caused and apologising for it is often the first step in owning, fixing, and learning from errors of the past. Only then can the organisation, and those affected, move on to create a new legacy.

## Contributions Please

*Public Sector* journal is always happy to receive contributions from readers.

If you're working on an interesting project in the public sector or have something relevant to say about a particular issue, think about sending us a short article on the subject.

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# THE CONSTITUTION IS A TAONGA

**Our constitution is unwritten. Tyson Hullena, a senior solicitor at Russell McVeagh, explores the benefits of our constitutional arrangement and how its interaction with Te Tiriti presents great opportunities for Aotearoa as a whole.**

The constitution of Aotearoa is in a constant state of flux. Our constitution has slowly and reactively changed to reflect societal preferences. Each reaction has added its own flavour, influencing the constitution in a different way.

The purpose of this article is to discuss and track how our constitution continues to change. This, in large part, is tied to how the government of the day has treated Te Tiriti o Waitangi. This has manifested in an increase in the number of statutes that include “Treaty clauses”, the extent to which Crown decision making has been subject to legal challenge, partnership with iwi over the management and protection of natural resources (including by legal personhood and co-governance) and, more recently, active consideration of tikanga Māori and how that might affect the legal rights of all people.

In exploring these ideas, I have had the benefit and pleasure of being able to discuss them with two of the prevailing minds on the matter – Sir Kenneth Keith and Justice Tā Joseph Williams. I am thankful to each of them for their insights and have attempted to record them in a way that reflects the depths of the conversations we had.

## Power and the state

Generally, a constitution is about public power – the power of the state to govern. It establishes and defines the major institutions of government and their key powers and regulates the way those powers are used.

A constitution is how we give a unique voice to our governance arrangements. In Aotearoa, the single underlying principle to the constitution is democracy – the Queen reigns, but the government rules, so long as it has the support of parliament.

There is no doubt that Te Tiriti o Waitangi has had the biggest impact on constitutional change in Aotearoa. At a high level, Te Tiriti recognised that there were two voices that could contribute to the constitutional arrangement of Aotearoa (although that is not how it was immediately interpreted or actioned). The evolution of the principles of Te Tiriti and their application continue to affect how Aotearoa is governed.

## Historical influences

A constitution was imposed on Aotearoa. Indeed, the country’s first constitution acts were passed in 1846 and 1852 by the British parliament.

Before colonisation, the idea that all citizens had rights against a sole, governing state was unfathomable. Iwi collectives (or nations, as Moana Jackson preferred) were each governed by an intricate set of principles based on relationships with and between people, the land, and the surrounding natural resources.

There is a considerable difference between the core values of a constitution originating in the United Kingdom compared with a constitution based on a Māori decision-making framework, such as tikanga Māori. Where preserving individual rights against the world at large might be a central theme of a constitution, tikanga would subordinate the individual to the collective and prioritise physical and spiritual aspects of the world, of which the collective is but one part.

## An “unwritten” constitution

Most other jurisdictions, such as the United States, have a written constitution. The New Zealand constitution is “unwritten” in the sense that it is not a singular, codified document.

## TE TIRITI O WAITANGI HAS HAD THE BIGGEST IMPACT ON CONSTITUTIONAL CHANGE IN AOTEAROA.

The main features of our constitution are found in several documents, including the Constitution Act 1986 and other statutes, UK statutes, constitutional conventions, court decisions, and Te Tiriti.

Our constitution is continuously changing, particularly through amendment to older key statutes, the creation of new statutes, or by court decisions. Those changes keep the constitution up



to date by reflecting the will of the majority (who elect members of parliament) and through challenges in the courts. If the constitution was written, key legislation and cases would need to be specified, making it harder to change.

There are contrasting views as to whether Aotearoa should adopt a written (and therefore, less flexible) constitution. On the whole, there are (in my view at least) more reasons for retaining our current, unwritten constitution. One reason is that it allows Aotearoa to more easily accommodate demographic and societal changes. That, in turn, helps to lessen the possibility of ideas (and ideologies) becoming entrenched (as in the United States, for example). For instance, if the constitution was written at a time where Te Tiriti was a “simple nullity” or when marriage was reserved for relationships between men and women only, then Aotearoa would be very different (and almost certainly less desirable).

### **Te Tiriti as a source of constitutional change in Aotearoa**

English law was only ever intended to be a starting point for New Zealand. The English Laws Act 1858 specified that the laws of England were only ever meant to apply “so far as applicable to the circumstances of New Zealand”. The same must be true for the constitution.

Aotearoa was slow to move away from its Westminster starting point. Today, nearly two centuries after it was first signed, Te Tiriti is now widely regarded as the founding document of Aotearoa. There have been other changes to our constitution, particularly around the inclusion of Māori, and more recently, tikanga in governance. These are some examples:

#### ***The Māori seats***

The creation of the Māori seats in parliament was an early step away from the traditional Westminster parliament. The New Zealand Constitution Act 1852 was responsible for this (at least in part) because it provided voting rights based on land ownership.

At the time, Māori land was held by the collective (whānau, hapū, and/or iwi), and there was increasing demand for land from the growing migrant population. The New Zealand Constitution Amendment Act was passed in 1857, enabling certificates of title to be granted to individual Māori, thereby undermining the Māori system of communal ownership. As a result, the colonial government and settlers owned more than 90 percent of the North Island by 1900.

The Māori Representation Act 1867 was passed in that context: the creation of individual title and the sale of land based on a foreign ownership regime (and values system). This resulted in the estrangement of Māori from the political system. So the Māori Representation Act was a useful way of placating the growing Māori political resistance at the time. Four Māori seats were created to represent approximately 56,000 Māori. The remaining population (approximately 171,000) enjoyed the representation of the remaining seventy-two seats.

The 1986 Royal Commission on the Electoral Commission considered Māori representation. The commission accepted the signing of Te Tiriti as the beginning of constitutional government in New Zealand and that it recognised the special position of Māori people. The Royal Commission noted that more could be done to recognise and protect the constitutional importance of Te Tiriti and Māori.

#### ***The foreshore and seabed***

In 2004, the Court of Appeal ruled that Māori could make claims to the foreshore and seabed in the Māori Land Court. Three days later, the government announced that it would explicitly extinguish any remaining Māori title without compensation, while recognising the right of Māori to claim more limited rights (by the Foreshore and Seabed Act 2004). The move was motivated by the backlash from the non-Māori electorate, who would not tolerate the private ownership of beaches.

The political battle surrounding the foreshore and seabed changed the political landscape in Aotearoa. The Māori vote, and Māori seats, were pushed to the fore. There is now genuine and hard-fought competition for the Māori vote. Māori issues are no longer matters for placation or mitigation. There is real competition and desire between most political parties to include pro-Māori policies. Unintentionally, the government reaction in 2004 motivated and unified the Māori voice. Had they not explicitly extinguished Māori title in the manner that they did, this change may not have occurred.

#### ***Te Tiriti settlement process and legal personhood***

The Waitangi Tribunal was established to investigate Māori claims that the Crown breached the principles of Te Tiriti or Crown duties. In particular, this includes the duty to act reasonably, honourably, and in good faith as a Treaty partner. Although tribunal findings aren't binding, they can help to build political pressure to encourage the Crown to take action and create publicity around breaches by the Crown.

There remains a strong political dimension to the Treaty settlement process. The democratic reality is that the majority of New Zealanders are not in favour of returning property rights to Māori.

## **UNINTENTIONALLY, THE GOVERNMENT REACTION IN 2004 MOTIVATED AND UNIFIED THE MĀORI VOICE.**

The quasi-public nature of iwi authorities and post-settlement governance entities recognises that iwi can have legal personalities. That is recognised at the conclusion of a Treaty settlement, where the settlement legislation creates an entity that represents the iwi and its decision-making power.

Settlement negotiators have worked hard to find ways to return natural resources to iwi, without exposing the Crown to the backlash of the majority (as was the case with the foreshore and seabed). The resulting settlements have changed the legal landscape in Aotearoa by providing innovative governance solutions that provide for the return of rights in natural resources.

For example, the Waikato River, the Whanganui River, and Te Urewera settlements prioritise the natural resources as though they are tūpuna. They subordinate the individual to focus on and preserve the health and wellbeing of the natural resource. Those settlements created an entirely new kind of governance arrangement between the Crown and iwi, whereby each party holds equal decision-making power in the co-management of the natural resource.

Legal personhood adds a third layer to the governance of natural resources – the natural resource is separately represented. Te Awa Tupua is a legal person with the same rights, powers, duties, and liabilities. Te Awa Tupua is recognised in law as “an indivisible and living whole, comprising the Whanganui River from the mountains to the sea, incorporating all its physical and metaphysical elements”.

Legal personhood, as a method of returning natural resources to iwi, signals a move away from a property-rights-based model. Instead, the focus is on principles. Decision making is focused on the health of the river and must recognise and provide for the intrinsic values that represent the essence of Te Awa Tupua.

### *Te Tiriti in legislation*

Te Tiriti and its principles are referenced in various pieces of legislation. The extent to which Te Tiriti has teeth depends on the surrounding wording. Where it is not specifically referenced, it is an interpretive aid and a relevant consideration – there is no separate right granted to Te Tiriti nor obligation flowing from it. That does not mean that where a statute is silent on Te Tiriti, that consideration of Te Tiriti is excluded. The court will not be constrained in its ability to respect the principles of Te Tiriti unless parliament makes that intention clear.

## TIKANGA IS UNDOUBTEDLY A PART OF THE COMMON LAW OF NEW ZEALAND.

Recently, there has been a trend to give more definition to the principles of Te Tiriti and away from more general, free-standing clauses. The question is no longer whether or not Te Tiriti has teeth, but how those teeth appropriately bite.

The State-Owned Enterprises Act 1986 is a good example of an early, free-standing Treaty clause in legislation: “[n]othing in this Act shall permit the Crown to act in a manner that is inconsistent with the principles of the Treaty of Waitangi”. That provision was at the centre of much litigation, negotiation, and further legislation.

In contrast, Section 12 of the Exclusive Economic Zone and Continental Shelf (Environmental Effects) Act 2012 sets out the specific ways the Act recognises and respects the Crown’s responsibility to give effect to the principles of Te Tiriti. Parliament has been decidedly more specific about the recognition of Te Tiriti obligations and principles in legislation generally.

### **Tikanga**

Tikanga is the first law of New Zealand. It varies between rohe and has continued to operate and evolve. Tikanga is undoubtedly a part of the common law of New Zealand.

The extent to which tikanga interacts with the common law is still being determined. The courts have recently considered whether tikanga might allow claims to be argued on behalf of an appellant after their death, whether the principles of tikanga must inform the development of tort law in New Zealand (including in the framing of a new tort), and whether the court can make a ruling based on tikanga as to whether one iwi has “primary” mana whenua over another.

The judiciary has been ahead of the game in educating judges about tikanga through annual workshops. There will be some apprehension in deciding on tikanga (the Ngāti Whātua Ōrākei decision is one such example), so it is important to equip the judiciary with a basic understanding. Pūkenga (experts) and counsel will be responsible for ensuring that tikanga is properly explained (and is done justice) before the courts.

Now that tikanga is being considered by the courts, it is time for mainstream New Zealand (including those supporting our decision makers) to up its game. If it isn’t already, tikanga will inevitably become integral to our constitution and governance framework for Aotearoa.

### **The uniqueness of Aotearoa**

Our ever-changing constitution makes Aotearoa unique when compared with other constitutions. Aotearoa has carved its own governance path, with the Westminster framework as its starting point. An unwritten constitution suits the flexible and reactive nature of our government. It is fit for purpose and has allowed for adaptive change of governance to remain in touch with societal needs.

Each of the above examples illustrates the greater acceptance of the changing role of Māori in governance. The Māori voice is now a fundamental part of our constitution. The collective voice is increasingly representative of Aotearoa as a whole.

The method by which change is sought has also evolved. While early changes arose on the back of protests and political activism, they now appear to be occurring in our courts or by the inclusion of Te Tiriti in legislation.

This ability to change demonstrates the strength of the constitutional position in Aotearoa – we, as a country, are able to adapt and change to reflect the unique society that exists here. That flexibility underpins our identity as people of Aotearoa, and this sets us apart from anyone else. We can (and should) be proud of that. Our constitution is a taonga.

## THE MĀORI VOICE IS NOW A FUNDAMENTAL PART OF OUR CONSTITUTION.

The public service plays an important part in the development of our constitution by its role to help the government of the day pursue the long-term public interest and facilitate active citizenship. Acceptance of the role of Māori in governance did not happen by mistake. A well-informed public service was part of that change, recognising that Te Tiriti required more recognition than it was receiving.

That said, there is more change to come. A more tikanga-centric constitution is likely to be on the horizon. Now that the Māori voice is stronger than ever in governance arrangements across Aotearoa, only time will tell what that constitution will look like.

## GETTING TO THE TABLE: LIFTING THE VEIL ON BARRIERS TO ALLYSHIP

**Chikita Kodikal explains a hopeful new way of getting minority and marginalised communities to the table.**

“

Allyship has been instrumental in driving systemic improvements to organisational culture. In 2018, Hollywood got caught in the headlines, not for its glitz, glamour, or scandals but for news of a different kind: “Jessica Chastain got Octavia Spencer five times the pay.” Similar headlines were plastered in prominent news media outlets and prompted popular American chat shows to lift the veil off the (often) invisible and intersecting systemic forces that bar individuals from some communities to come to the table. True to the nature of modern-day media, these headlines got buried under new ones, but the discourse on allyship continued.



It has been rightly said that allyship is a verb, not a noun. Allyship is the continuous support offered by privileged groups who use their benefits to actively work for the inclusion of minority and marginalised communities in all areas of society, thereby inspiring systemic change. Popular social movements across the globe have highlighted the need for allies to act *with* minority and marginalised communities and not *for* them. The perils of performative allyship are grave, and its impact is counterintuitive to the essence of allyship. Undoubtedly, change within organisational culture and structures may bring anxiety to those who are required to navigate it. However, a key criterion for authentic allyship and inclusive leadership is the ability to commit to learning about minority and marginalised communities’ experiences while simultaneously unlearning racial biases and apathetic tendencies that affect them.

For most of us, opportunities to demonstrate allyship occur in the workplace. At an interpersonal level, employees

may choose to pass the mic to their peers who are either talked over or side-lined during meetings and check the wellbeing of co-workers or support staff, who often bear the brunt of office housework. However, this too requires a degree of “internal scoping” on the part of us all, which can be deeply uncomfortable. Leaving my public sector puns aside, allyship in combination with organisational power can be used to disrupt bias in everyday workplace practices, including recruiting, onboarding, and promoting. Furthermore, allyship can also be displayed by proactively building relationship currency with new and existing professionals from minority and marginalised communities through mentorship and sponsorship.

Despite organisations’ best efforts to devise allyship strategies and empower employees, solely building organisational capabilities may not be enough to conceptualise privilege and constructively address intersecting systems of inequality. We may also need to apply a nuanced lens to our understanding of systems and the way they are designed to effectively harness the power of our allies. This requires a concerted effort from us – as public servants and members of the public – to understand how smaller systems interact within larger ones and whether the synergies created from those interactions will help or harm those who are required to navigate these systems. Allyship cannot exist in a vacuum, neither at a systems level nor within our communities, but when it is allowed to work, it can be powerful for everyone.

Organisations play an integral role in creating inclusive and equitable environments for all their employees. If the optimum culture is created, an organisation can inspire employees to enact allyship and collaborate with employees from minority and marginalised communities to resolve structural barriers that hinder their performance within the workplace. Perhaps, one way to narrow the opportunity gap within an increasingly superdiverse community like Aotearoa New Zealand is to close the knowledge gap by stepping into the arena and having (and listening to) some courageous conversations. Another way may be to start by acknowledging that experiences of marginalisation in one system of inequality do not countermand positions of privilege in another. Regardless, the journey to becoming an ally is an ongoing one. When we recognise this, we may find more headlines like that of Chastain–Spencer in the media or, better yet, create more pathways for individuals from minority and marginalised communities to come to the table.

”

*IPANZ is delighted to hear the views of IPANZ New Professionals*



# GETTING THE RELATIONSHIP RIGHT: EFFECTIVE ENGAGEMENT WITH MINISTERS ACROSS THE POLITICAL/ ADMINISTRATIVE INTERFACE

What's the secret to building and maintaining great relationships with ministers? What can public servants do to effectively support ministers as they navigate both the political landscape and bureaucratic hurdles?

Liam Russell reports on the key takeaways from a recent panel discussion jointly hosted by IPANZ and the Australia and New Zealand School of Government (ANZSOG), where a former prime minister, a current minister, a chief executive, and a former prime minister's chief of staff reflected on the drivers of a good relationship – and shared their advice and insights on managing stresses and strains and building an enduring foundation of trust.



**Liam Russell**

*Facilitated by Sally Washington (ANZSOG Executive Director, Aotearoa), this panel featured:*

- Sir Bill English KNZM – former prime minister and minister of finance
- Carmel Sepuloni – Minister for Social Development and Employment, Minister for ACC, Minister for Disability Issues, and Minister for Arts, Culture and Heritage
- Wayne Eagleson – former chief of staff to prime ministers Sir John Key and Sir Bill English
- Peter Mersi – Chief Executive of the Inland Revenue Department (IRD).

*Professor Ken Smith AO (ANZSOG Dean and Chief Executive) and Dr Kay Booth (IPANZ Executive Director) delivered introductory and closing remarks.*

Any experienced professional will tell you that nothing is more true than that age-old saying – “great relationships are key”. For the public sector, no relationship is more pivotal than the relationship between official and minister.

**The minister–official relationship, like any other, is not without its challenges.**

Competing priorities and perspectives, power imbalances, turnover of ministers and officials alike, and the effects of political and other external factors can all create fractures in the relationship. Building a strong foundation of trust and mutual respect is crucial for mitigating the effect of these stresses and strains.

**Senior officials carry the weight of this relationship – but public servants at all levels contribute to its overall success.**

Senior officials may lead the agency's policy development and present the product, but every public servant plays a part in that journey from policy to delivery – and ultimately, in achieving the minister's goals.

**It's all about knowing (and remembering) the fundamentals.** Whether you're a new grad or a chief executive, a 30-year public service veteran or private sector alumnus, the same fundamentals apply.

**Some of these things may seem obvious.**

But even “old dogs” can learn new tricks, and we all benefit from a refresher every now and again. For those who are newer to the public sector or to working with ministers, these tips offer some useful tools to add to your kete.

**So how do you get the relationship right? What are the building blocks to success?**

**1. Don't expect your minister to understand everything immediately.**

Most ministers come into the job with little to no experience working in the public sector. They might not have been a minister (or even an MP) before. Most won't have a deep knowledge of the substance of their portfolio.

However, a new minister's unfamiliarity – with the agency, the sector, or even the machinery of government as a whole – can be a strength.

*New ministers bring a fresh perspective – they have new ideas and approaches, question assumptions and the status quo, and challenge officials to think differently.*

**2. Work together to establish good foundations.**

For officials, this means nailing the first meeting. Be flexible and available up-front. Go to where they are, literally and figuratively, when you introduce yourselves, your agency, and your mahi for the first time. Help your minister to learn who the people they need to know and work with are, and who is doing the mahi behind the scenes. Invite them into your space. Listen intently and learn about their background, their ideas, and their priorities – and most importantly, ask them how you can best support them.

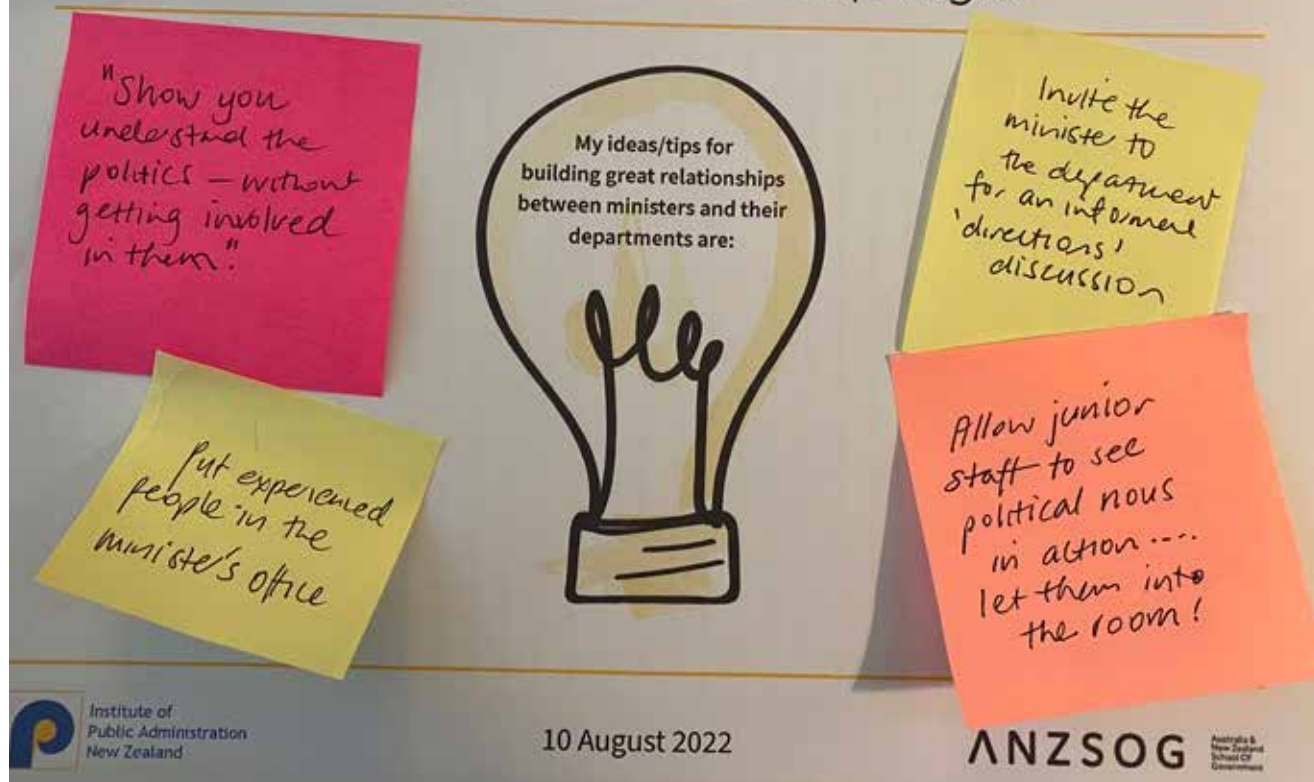
*Invite them to ask questions – about anything – and encourage them to be honest about what they don't know. There is no space for hubris if you want to work together effectively.*

A key to supporting a new minister is helping them to build a strong and experienced office. A UK Institute of Government report based on exit interviews with former ministers stressed the importance of a well-functioning ministerial office. Where ministers are less experienced, seconding experienced departmental staff as private secretaries – people with political nous, who know their agency and the machinery of government inside out – can help bring a minister up to speed and help them settle into the role.

**3. Understand the environment that your minister is operating in.**

# Ministers and Officials

## Getting the Relationship Right



Ministers work under intense pressure and scrutiny – from the opposition, the media, their constituents, and other stakeholders – and will all be ambitious to “make a difference” and to make a name for themselves. Officials need to understand the environment that their minister is operating in – including the political landscape – and how this may influence their decision making.

Political nous is a primary competency for all senior officials. This is integral to producing good, tailored advice. Officials at all levels should learn their minister’s interests, their place in the party and Cabinet hierarchy, and their ambitions and level of engagement with the portfolio. Look to speeches and manifestos for information on policy goals and intent.

“Public servants cannot, and should not, avoid politics ... It is vital that officials understand how to operate within a political system without operating politically.”

How can officials develop political astuteness? Senior officials can coach junior staff to help them develop their political nous. Help them to seek out opportunities to sit in on discussions where they can see political nous in action, and where they can enrich their understanding of the political/administrative interface. “Post-mortems” of meetings with ministers that went well – or poorly – are opportunities for junior staff to learn.

#### 4. Understand each other’s roles, responsibilities, and remit – and stick to them.

Ministers are responsible for deciding the “what” – the priorities, initiatives, and government policy related to their portfolio. Officials are responsible for developing the “why” and the “how” – working to bring shape to the minister’s ideas, to act on the minister’s priorities and objectives, and to implement the minister’s initiatives and agreed work programme.

Officials need to remain cognisant of their role as “policy-takers not policy-makers”. It is not their job to set the direction, regardless of their experience or expertise – but that doesn’t mean they can’t have influence.

Officials can (and should) advise when ideas might not work, provide evidence to support their assessment, and suggest alternative approaches. Delivering that advice, in a free, frank, and palatable way, is the key to having influence.

Political advisors are key players in the relationship between ministers and officials. The relationship works best when they act as a bridge, not a barrier. Things come unstuck when they attempt to overrule or block the advice of officials. Ministers should hear advice in parallel from officials and political advisors – and each should help their minister to understand what levers they can and cannot (or should not) pull to achieve

their objectives, whether those levers are political or policy based.

#### What can officials do to build trust with their minister?

- **“Start from a position of respect.”** Officials may not always agree with or even like their minister. Remember that ministers have been elected by the public, and they have a challenging role working in the service of the public – and their commitment and resilience deserves respect.
- **“Provide advice fearlessly and implement enthusiastically.”** It takes time to build trust. To help with this process, officials should show their minister that they are listening and helping them to achieve their priorities – cognisant of (but not unduly influenced by) the political landscape.

#### How can officials manage strains in the relationship?

- **Openness and transparency are key.** This involves more than just taking a “no surprises” approach. Keep the minister informed early and often as policy is developed and services delivered. Monitor and mitigate the risks. This will help to retain the minister’s confidence in the agency and its leadership, even when things go wrong.

“Don’t hold back any information ... bad news should travel faster than good.”

- **Work to have a great relationship with the minister's office.** When problems arise, you can collaborate quickly to resolve the issue. The agency's connection to the minister's office, and relationships with private secretaries and political advisors, are crucial and are a key part of the relationship with the minister.

#### What are some common mistakes – and can they be avoided?

- **Don't take everything literally.** Ministers are normal people – they absorb and process information at different rates, communicate in certain ways, and have good days and bad days.

That 5 a.m. conversation in the Koru Lounge about options for addressing a particular issue doesn't necessarily mean they are commissioning advice or demanding action – it may just be a tired brain exploring an idea or processing information from a briefing read the night before.

- **Don't try to be a "minister-whisperer".** The raised eyebrow or pursed lip while reading your briefing should not be construed as a comment on the quality of your advice. Subtle signals or off-the-cuff conversations should not be taken as indicative of a minister's decision.
- **Learn your minister's preferences – and tailor your engagement accordingly.** Every minister has different work styles. Ask them how they like to receive information – don't just make assumptions based on how previous ministers operated – and seek feedback on whether the content and format of your briefings are meeting

the minister's needs. Tailoring your language, tone, medium, and level of detail to suit your minister's individual style goes a long way. Remember that each minister is unique, so it may take some time to find the approach that works best.

- **Accept that you won't always agree.** Officials shouldn't take it personally if their advice is not accepted – ministers weigh up advice from a wide range of sources when making decisions, and they also have campaign promises and party manifesto commitments to abide by. Even high-quality, evidence-informed policy advice is still just advice – the decision to act on that advice is the prerogative of the minister.
- **Don't fear political advisors – work with them.** Political advisors and departmental officials both have important roles to play in supporting ministers. Work together at every step along the way – not doing so prevents the minister from getting the advice they need to make good decisions.

#### Training public servants is all well and good – but do ministers need training too?

Some commentators, such as Sally Washington from ANZSOG, have posed this question, noting that in some overseas jurisdictions, current and prospective ministers (MPs with potential) have access to formal training.

This panel said no to ministerial training – on the grounds that the relative "freshness" of a new minister is an advantage and that learning on the job is far more effective than any formal training could be.

It was noted, however, that ministers do get some induction support from central agencies on key aspects of their ministerial role, and that more experienced ministers sometimes mentor their junior colleagues. Officials and ministerial staff also help "train" ministers to perform their roles effectively and help them to learn the skills they need to be successful.

#### Summary

Ministers are normal people. The beauty of a democratic system is that ordinary people can be elected to make decisions for their country – however, they face extraordinary challenges in the process. When they come into the role, they are often unfamiliar with government, not used to working with the public service, and not well-versed in bureaucratic jargon and processes. They are reliant on advice and support from officials and ministerial staff to navigate the complex machine that is Aotearoa's government.

Trust, respect, openness, and transparency need to be at the heart of the minister-official relationship. Both parties need to be good listeners, learn each other's ways of working, understand the responsibilities and boundaries of each other's roles, and be adept at exercising situational awareness and political nous. These foundations allow ministers to make good decisions that benefit the public, which both ministers and officials serve. Without these foundations, the relationship will falter, and ultimately, fail.

*Liam Russell is a member of the IPANZ New Professionals leadership team.*

*The views and opinions expressed in this article are Liam's and do not necessarily reflect those of the author's employer or any other organisation, group, or individual.*



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# HELPING PUBLIC ORGANISATIONS TO GET IT RIGHT **A NEW INTEGRITY FRAMEWORK FOR THE PUBLIC SECTOR**



**John Ryan**

**Over the past couple of years, we've seen first-hand the importance of New Zealanders having trust and confidence in public organisations. That trust provides organisations with the social licence to operate. And at the heart of trust and confidence sits integrity. John Ryan, Controller and Auditor-General, wants to see organisations embed integrity into their processes, so he has published an integrity framework for the public sector.**

It is better that my office helps public organisations to get it right, rather than report on what's gone wrong (although I will still do that where required). I want to support a public sector that operates with integrity. New Zealand's public sector is one that we can be proud of with high integrity and high levels of public trust. However, integrity is not a destination; it requires constant vigilance, and we know that from time to time we have integrity failures.

When I considered the importance of integrity, I saw that there was a role for my office in providing guidance to public organisations. I see the framework

contributing to constructive conversations between governors, leaders, and staff about how integrity can be embedded and championed within their organisations. It can be used across the entire public sector, while also being flexible enough to address the unique challenges of some organisations.

## **What is in the framework?**

At its simplest, the framework aims to reduce any "integrity gap" between the way the organisation wants to operate and its actual practice.

## **INTEGRITY IS NOT A DESTINATION.**

The framework represents a whole-of-organisation approach that blends principles and processes. All the components of the framework are required and act to reinforce each other. But it's not a one-size-fits-all prescription. Public organisations need to put in the work to identify how the framework applies to their context.

The framework comprises three core components:

1. having the right infrastructure – comprising the building blocks of good values, ethical leadership, a code of conduct, policies and procedures, people processes, a culture of listening and speaking up, clear roles and responsibilities, measuring and reporting progress, assurance and accountability
2. applying integrity through ways of working – making an ongoing commitment, prioritising respectful workplace relationships, making it easy, building alignment, providing transparency, and being inclusive
3. ensuring that senior managers and governors establish, promote, monitor, and review the culture of integrity, continually looking for ways to do better.

While all the components are required, integrity starts with understanding your organisation's purpose and shared values. To operate with high integrity, public organisations need to ensure that the actions of their staff, their use of resources, and their spending are consistent with their values, purpose, and duties. This approach aligns with the framework established in the Public Service Act 2020. This reflects the behaviours expected in day-to-day activities, which underpin the integrity of the public service.

The purpose and values of an organisation then inform all the other elements of the framework. For example, once an organisation has clearly identified and articulated its purpose and values, the framework emphasises the need for those to be reflected throughout its code of conduct, its policies and procedures, and its people processes (from recruitment through to induction and performance assessment and promotion).

The framework also emphasises the importance of ethical leadership (or "tone from the top") and the need for strong listen-up and speak-up processes to ensure a feedback loop on the health of the organisation.

In short, creating a culture of integrity requires a coherent integrity system that is appropriately resourced, monitored, measured, and reported on. It starts with an organisation's purpose and values, which then inform all the other elements of the framework to embed integrity into everyday practice.

## **How did we create the framework?**

The framework was developed collaboratively and went through several stages of development. It began with looking at international integrity models and previous integrity-related reviews, including reviews of the New Zealand Defence Force, Civil Aviation Authority, and New Zealand Police. This material gave an initial impression of key integrity gaps and the opportunities for improvement.

We supplemented our research with case studies of organisations that have actively made integrity a focus of their work. One of those organisations was Dunedin City Council. A few months after Sue Bidrose started as the council's chief executive, a large fraud was uncovered, which had been going on for at least ten years. "We had to confront fixing that, fixing the impact that had on our community and the way the community saw the council," Sue said. While most staff operated with integrity, there was one person who was able to perpetrate the fraud because the council had not kept up to date with appropriate processes and had very limited checks and balances. When reflecting on this period, Sue noted that the council had a set of values that were "worthy, but dull" and no one remembered them. This case study contributed to many aspects of the framework, including what to do when faced with a crisis of integrity. The council's journey to regain the community's trust started

with a commitment to being open and transparent.

Following this research, we consulted with a wide range of specialists and stakeholders to gather their views on integrity. Interviews and workshops were held with senior leaders, people leaders, and frontline staff in central and local government. We also spoke with organisations that have a vested interest in integrity, such as the Joint Agency Integrity and Conduct forum, Transparency International New Zealand, the Serious Fraud Office, and Taituarā.

## CREATING A CULTURE OF INTEGRITY REQUIRES A COHERENT INTEGRITY SYSTEM.

The concepts in the framework aren't new but are brought together in a way that fits within a New Zealand context. One of the challenges in developing the framework was how we incorporate te ao Māori concepts. This framework incorporates insights from kaupapa Māori research and work that I commissioned on Māori perspectives on public accountability. The next phase of work on the framework and guidance is to further integrate te ao Māori into the framework and to provide guidance on demonstrating integrity to Māori. I welcome input and feedback on this aspect of the framework.

### Creating a culture of integrity together

Integrity is not easy. Each organisation needs to put integrity in its own context in relation to its vision and purpose. While

most people come to work to carry out their duties with integrity, we also know that individuals see situations differently – one person's gift may be seen by others as an inducement. The challenge is conveying what integrity looks like for public sector organisations and how public sector employees apply it in their day-to-day lives. A set of policies or rules can't cover every situation and judgment is required at every level. Such decisions are also made more difficult when operating with demanding deadlines or limited resources.

Everyone in an organisation has a role to play – no one person can create sustained change on their own. However, ethical leadership sets the tone from the top. Leaders can be influential by role modelling and regularly speaking about the behaviours they expect of themselves and others.

Being proactive is crucial. As well as having processes in place for safely raising concerns, leaders need to be engaged in risk assessment, in active listening, and in using available data and information to form a complete view of their organisation's integrity culture.

This is why each of the building blocks in the framework is accompanied by questions for public sector employees to think about. These questions ask them to consider what they have in place in their organisation that makes doing the right thing easy or hard and asks them to explore their role in doing the right thing.

### Where to from here?

My office is interested in how individuals

and organisations are using the framework. We'll be looking at how we fully integrate te ao Māori into the framework to provide further guidance where needed. This will be the focus of the next phase of work.

## INTEGRITY IS NOT EASY.

The framework and guidance are only one part of a wider multi-year work programme within my office. This includes good practice events, direct engagement on the framework with public sector leaders, and a programme of integrity audits focused initially on "tone from the top". We are also developing an audit methodology to assess the integrity culture more broadly in public organisations.

We want our framework to start a conversation about integrity and what's expected of public organisations. I am urging chief executives, leadership teams, and those charged with governance to consider the framework in the context of their organisations. I hope it will assist them to identify areas where they can build on their existing culture, emphasise the importance of ethical leadership, and improve on their internal controls and business practices where needed.

At the launch of the framework in June, Michael Macaulay, Professor of Public Administration at the School of Government, said, **"Let's keep talking about it – integrity is not something that you reach and then you stay at. It's something that needs to be constantly strived for."**

I couldn't agree more.

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## ENHANCING TE TAI AO

Te Papa Atawhai has presented its first ever Matariki Awards, celebrating staff who make an extraordinary contribution towards enhancing DOC's role as a Te Tiriti o Waitangi partner. Humble, courageous, and inclusive were words used to describe joint winners, Jeff Milham and Martin Rodd. Kathy Ombler went to meet them.



Jeff Milham



Martin Rodd

Te Papa Atawhai's Matariki Awards were introduced to recognise the first Matariki public holiday, says Huia Lloyd, Director, Kāhui Kaupapa Atawhai.

"The awards will be an annual celebration of staff who demonstrate attributes relevant to the nine stars in the Matariki cluster. They will recognise staff who work to enhance te taiao, the environment that's around us and sustains us, and the Purpose of Te Papa Atawhai – Papatūānuku Thrives. The awards will become one of the ways we recognise our people who enable mana whenua aspirations in their taiao spaces and will inspire others by sharing their stories."

Both Jeff and Martin were equally deserving, and the judging panel could not choose a single winner, says Huia.

### Facing challenges

Jeff Milham, operations manager for Tauranga District, has been with Te Papa Atawhai since 2009.

"When he became operations manager, in 2016, Jeff faced many systemic and antiquated challenges and walked into poor iwi relationships," says Huia.

"He has since nurtured genuine relationships with over thirty-five iwi, hapū and whānau. His personal journey, through study, waananga, noho marae, and taking on a kaikōrero role, has been an exemplar for all his staff.

### WE ARE PRIORITISING RELATIONSHIPS.

"The iwi from his region have also recognised this, acknowledging his learning journey and commitment by inviting him to speak on the paepae. This is an honoured invitation, not privileged to many."

Jeff says it was being challenged by Tauranga Moana hapū Pirirākau, who wanted an improved relationship with Te Papa Atawhai, that got him thinking about how to give effect to Te Tiriti through his role.

"My driving passion now is improving DOC's role as a Tiriti partner with whānau, hapū, and iwi – to understand, support, and enable mana whenua aspirations in their taiao spaces, in a co-decision-making environment."

***Kaua e rangiruatia te hāpai o te hoe; e kore tō tātou waka e ū ki uta.***

**Don't paddle out of unison, or our canoe will never reach the shore.**

"I find looking to whakataukī for direction is important, and this whakataukī embodies the new direction our Tauranga District has taken.

"We are prioritising relationships and supporting whānau, hapū, and iwi to realise their rangatiratanga and kaitiakitanga of te taiao so that we can paddle forward as true Tiriti partners."

The district has developed a strategy called Te Ara ki Mua / The Way Forward to reflect this change. "If our destination is an island filled with healthy lands, water, and species, then we need a strong waka, well-equipped kaimahi, or workers, and knowledgeable navigators to get us there. Te Papa Atawhai cannot paddle forward without the trust and knowledge of tangata whenua."

### HIS PERSONAL JOURNEY, INCLUDING A COMMITMENT TO LEARNING TE REO, HASN'T ALWAYS BEEN EASY.

Expanding native restoration programmes across the district, while at the same time enabling tangata whenua to train and participate in conservation, has been part of this new direction. Recent projects under Jobs for Nature funding have helped build environmental capacity and capability within iwi and hapū. These have been particularly rewarding for Jeff.

"While I have been blessed in my work and my personal journey of understanding te ao Māori and taiao, the most rewarding experiences have occurred recently when a huge number of kaimahi have started in new roles working for their own hapū or iwi.

"Seeing their powerful and emotional moments of reconnection has been special. The kaimahi have been able to reconnect to their whenua and people, protect sacred places in their rohe, and freely integrate mātauranga Māori into the monitoring, management, and kaitiakitanga of their whenua."

Jeff admits his personal journey, including a commitment to learning te reo, hasn't always been easy, requiring hours of study along with the courage to step well out of his comfort zone.



“My desire to learn te reo Māori and better understand te ao Māori ignited in 2015. It was at this point when I really began to understand how to give effect to Te Tiriti through my role, and it was a role that we as DOC were not doing well at that time.

“The learning has made a massive difference to my work and has helped me to drive the changes needed.”

Jeff says the journey has been profoundly rewarding. “I am constantly surrounded by te reo Māori, tikanga Māori, kaupapa Māori, and of course tāngata Māori. It has been life changing for me and my whānau. It has also been mind blowing to receive the level of support, encouragement, and aroha along the way – especially from tāngata whenua and close work mates.”

Jeff acknowledges Carlton Bidois (Pirirākau, Ngāti Ranginui) as being a huge influence and supporter throughout his journey.

“From the start, I recognised Jeff’s humility and courage,” says Carlton. “I knew early on Jeff was the right person to take on the challenge of not only a renewed Tiriti-based relationship with iwi and hapū but also a true Tiriti partnership between the department and Māori.

## IT HAS ALSO BEEN MIND BLOWING TO RECEIVE THE LEVEL OF SUPPORT, ENCOURAGEMENT, AND AROHA ALONG THE WAY.

“His leadership in that partnership has enabled the co-decision-making space, critical to the co-management and kaitiakitanga for our people and their aspirations for the conservation estate. I am proud to have been part of his rangatira journey.”

### Building alliances

The Matariki Award co-recipient Martin Rodd, Nelson-based Director, Partnerships, has a passion for connecting people to work and keeping them together to achieve collective vision, says Huia.

“Martin demonstrates leadership, vision, and passion in working with others to achieve conservation. He builds trusting relationships with people, and they sense his genuine ngākau, heartfelt intent. Martin inspires many people to look beyond their day-to-day work and realise that a larger vision is achievable.”

Key to Martin’s award has been his leadership in the establishment of major alliances, such as the Kotahitanga mō te Taiao Alliance, established in 2017. This reaches across Te Tau Ihu (the top of the South Island), encompassing seven iwi plus regional and local councils, DOC, and others, all working as one to achieve environmental gains.

Chris Hickford, DOC Partnerships Manager, co-nominated Martin for the Matariki Award. He said Martin’s idea was simple: to build a coalition of the willing and bring together collective expertise to work towards a shared vision for the region.

“To achieve this, Martin, who now co-chairs the Alliance, showed resilience and leadership in building and maintaining relationships, inspiring trust, and developing a strong sense of shared purpose across a diverse group.”

In pragmatic terms, the Alliance has delivered or influenced more than \$24 million of funding for projects in the upper South Island, including Jobs for Nature and Ngā Awa (DOC’s river restoration

programme). It has also attracted support from international partner The Nature Conservancy.

Alliance co-chair and Te Rūngunga o Ngāti Kuia general manager, David Johnston, says Martin promoted a very inclusive leadership style. “Martin’s ability to think big over the longer term and his action-oriented drive has helped us to work collaboratively and get things done.”

The Kotahitanga mō te Taiao model has set the foundation for similar alliances and partnerships around New Zealand, including Kotahitanga ki te Uru on the Tai Poutini West Coast, the Chatham Islands Regional Alliance, and Te Roopu Taiao in Te tai Rawhiti.

Chris Hickford says the strategic partnerships that Martin leads is all about pushing traditional and often self-imposed boundaries to realise new conservation opportunities.

“Many folk find this a challenging and sometimes uncomfortable space to think and work in, but Martin has a unique ability to successfully bring people together to facilitate this and to achieve collaborative results at a regional scale. He’s also built a strong team, style, and operating culture to enable us to successfully lead and deliver this work within DOC.”

Martin, who has been with DOC for twenty-seven years, credits an early exchange with philanthropists and conservationists Neil and Annette Plowman for his inspiration.

“As an area manager in 2010, I was hosting the couple in Abel Tasman National Park. In one remarkable conversation, my view of how we manage te taiao changed. When asked what we were seeking to achieve in the park, I was coached not to start my conversation with the constraints, but to start with the outcomes that we seek to achieve. This has stuck with me and drives how I think today.”

There was a similar light-bulb moment when it came to embracing mātauranga Māori and working alongside iwi.

“Inspired by my experience in the Abel Tasman, I arranged a hui with iwi and councils from across Te Tau Ihu to explore what it would look like if we were to work together to define the desired outcomes for Te Taiao.

“I got to slide two of my presentation when Hemi Toia, Te Rūngunga o Ngāti Rārua Chief Executive Officer, stopped me. He said: stop selling, we are in, but you need to think big. We need to be thinking across the entire Te Tau Ihu.”

## THE DIFFERENT LENS AND EXPERTISE THAT EACH ENTITY BRINGS TO THE TABLE IS AMAZING.

“From that moment, the Kotahitanga mō te Taiao Alliance concept was formed and, for me, the journey has been transformational for how we work across the landscape. The different lens and expertise that each entity brings to the table is amazing; when we weave these together through co-design, the outcomes are exceptional.”

**Whāia te iti kahurangi ki te tūohu koe me he maunga teitei.  
Seek the treasure you value most dearly: if you bow your head,  
let it be to a lofty mountain.**

# A NEW WAY OF THINKING

## CRITICAL TIRITI ANALYSIS



**Dominic O'Sullivan**



**Heather Came**

### Kirsten Rose talks to some people at the centre of an effective new method for analysing policy.

We are led to believe that the public sector is a bilingual domain where Te Tiriti o Waitangi obligations are embedded in policies and processes and where te reo Māori and tikanga Māori are celebrated.

A new research method is putting this to the test, and to date, many policy documents have been found wanting.

#### Introducing Critical Tiriti Analysis

In 2019, Associate Professor Heather Came, from AUT's Department of Public Health, and Professor Timothy McCreanor, of Massey University's Whāriki Research Centre, analysed policy documents against the articles of Te Tiriti o Waitangi and presented this information to the Waitangi Tribunal.

As academics, the natural next step was to publish their findings. The format, however, did not fit the traditional format of an academic publication.

It was when they did a peer review and further work on the research with fellow academic Professor Dominic O'Sullivan, from Charles Sturt University in Australia, that the duo realised they had been inadvertently working on a new methodology.

So, Came, O'Sullivan, and McCreanor delved deeper, eventually developing Critical Tiriti Analysis (CTA) – a methodology that could have considerable implications for policy analysis in the public sector.

"We realised that while we knew a lot about pulling apart policy, this wasn't something everyone else knew. So that's what we ended up writing – making our process clear," says Came.

### ITS EMPHASIS IS ON RELATIONSHIPS RATHER THAN PRE-DETERMINED PRINCIPLES.

"CTA is very much a living framework, and we continue to refine it and develop it. It was invented as a retrospective tool to critique Crown policy, but we're now beginning to play with ideas about

how it can be used prospectively, as that is what we've found organisations are eager for. Rather than pulling apart other people's work, they wanted to do better work, perhaps preventing themselves having to have a CTA of their own."

#### The five stages

The CTA involves reviewing policy documents against the Preamble and the Articles of Te Tiriti o Waitangi (the Māori text).

It is an analytical or evaluative tool for ascertaining how a policy aligns with Te Tiriti, and specifically, for finding evidence that Māori are participating in policy review or development in a way that is fair and effective.

The CTA has five phases:

- 1. Orientation** – asking high-level questions of how the policy represents Māori and how it refers to Te Tiriti (Māori version), the Treaty (English version), or Treaty principles.
- 2. Close reading** – reading the policy against the five elements of Te Tiriti: the Preamble, the three written articles, and the oral article of Te Tiriti.
- 3. Determination** – an informed desktop judgment of whether the policy is "silent", "poor", "fair", "good", or "excellent" in relation to each of the five elements of Te Tiriti.
- 4. Strengthening practice** – providing practical constructive suggestions to improve the policy analysed.
- 5. Māori final word** – an overall assessment of the policy's alignment with Te Tiriti.

"A key feature of the CTA is that it doesn't get involved in the Crown-invented Treaty principles. It's about what was actually negotiated. Its emphasis is on relationships rather than pre-determined principles, which allows for greater flexibility and responsiveness to specific circumstances; and I think that's one of the points of distinction," says O'Sullivan.

"It means that policy makers don't have to get too worried about which box a particular policy fits into. Rather, they get to think about what's fair and reasonable in a particular context as determined by substantive and meaningful Māori participation, te rangatiratanga, and citizenship."

#### Focus on strengthening practice

A CTA is a desktop activity of publicly available information, and often, it is not until the work is published or shared with an organisation that the organisation even knows a CTA has been completed.

For organisations that have had a CTA, the feedback may be challenging although the researchers maintain the process should be mana-enhancing.

"The purpose of the CTA is not to lay blame or put people down. It is about strengthening practice and establishing a community

of learning so that by publishing these critiques, people can go 'okay, these are five things I'm not going to do next time' or 'there are three ideas from this that are really solid that I'm going to pick up on'. So, it's about creating a culture of ongoing learning and strengthening that community of learning," says Came.

### The CTA in action

The health sector was an early adopter of the CTA methodology, and there have now been numerous CTAs completed across the sector, the most recent being an analysis of the Pae Ora (Healthy Futures) Bill, which was enacted in July creating Health New Zealand and the Māori Health Authority.

At the announcement of the Māori Health Authority Board in September 2021, Associate Minister of Health Peeni Henare described the new Māori Health Authority as a "game changer for our people ... It will give Māori a strong voice in a new system focused on improving the disproportionate health outcomes that have long affected our whānau."

The CTA of the Bill put this assertion to the test, ultimately finding a few flaws and suggesting it be reworked so that "Māori are not structurally the junior Tiriti partner".

### Leading by example

Another CTA revealed a dearth of Te Tiriti knowledge at the highest level of the public sector.

The article "A Critical Treaty Analysis of the recruitment and performance review processes of public sector chief executives in Aotearoa" published in the *Australian and New Zealand Journal of Public Health* (14 October 2021) found that while Māori made up 16 percent of the overall public service workforce in 2018, Māori were under-represented in senior leadership roles across the public sector. When the researchers conducted the CTA, they discovered they had to create a new category: silent.

"Before we wrote that paper, we didn't have the fifth category. There was poor, fair, good, and excellent. But none of these applied to the results we found. They just simply had nothing to say, so we had to add 'silent' as a category. It was appalling to think that when we recruit CEOs in the public sector, there is no requirement to ask them about Te Tiriti o Waitangi. There is no guarantee there will be Māori representation on the panels, and it was the same with the performance review processes. It was really significant," says Came.

## EVERY PUBLIC SERVANT SHOULD HAVE A BASELINE UNDERSTANDING OF TE TIRITI.

"We also did a review of around 116 public health policy documents a few years ago, selected across a ten-year period.

Overall, 106 did not even contain the word Māori. From a research perspective, there was next to no data to analyse, but that in itself is very powerful. If you say nothing at all in policy about Māori, you're not upholding Te Tiriti.

"I think every public servant should have a baseline understanding of Te Tiriti and some cultural and political competencies. This should be a requirement."

### Creating a community of learning

Over the past few years, Came, O'Sullivan, and colleagues and co-authors, such as Associate Professor Jacquie Kidd and Isla Emery-Whittington, have run workshops and open sessions nationwide for the public sector to learn more about Critical Tiriti Analysis and how to apply it in their practice.

Sessions to date have sold out within a week, and the team is also working with organisations to help embed the methodology within their organisations and implement it within policies.

## THE THING ABOUT TE TIRITI IS THAT IT IS ALWAYS EVOLVING.

"We're finding it's being used widely. It's been used to look at curriculum, it's been used as a research methodology by researchers doing primary research, it's been used to pull apart Crown policy, and to inform policy competencies, curriculum, raw data, legislation. A DHB has used it to inform its reporting and business cases, and we now have a professional registration body using CTA to robustly inform its professional competence requirements," says Came.

This, along with other prospective studies, are the subject of a new research paper for the group.

"The prospective use of the CTA will be very important and we are looking to establish a website whereby we can start to build a community of learning," says Came.

The researchers are positive about the uptake of the CTA within the public sector and its power to transform policy development.

"The thing about Te Tiriti is that it is always evolving and there is more to learn. The Waitangi Tribunal keeps coming up with new evidence and new insights of how to apply Te Tiriti better," says Came.

"The CTA offers a way to analyse and inform policies. Certainly, people across the public sector are starting to have a go, and from what I can ascertain, they're finding it quite useful as a way of thinking about what Te Tiriti actually means, and could mean, in terms of not just analysing existing policy but in developing new policy."

To find out more about CTA, contact Heather at [heather.came@aut.ac.nz](mailto:heather.came@aut.ac.nz)

Critical Tiriti Analysis of the Pae Ora (Healthy Futures) Bill	Silent	Poor	Fair	Good	Excellent
Māori are lead or equal partners			<b>X</b>		
Equitable Māori leadership in setting priorities, resourcing, implementation and evaluation		<b>X</b>			
Evidence of inclusion of Māori values influencing and holding authority		<b>X</b>			
Māori exercising their equitable citizenship				<b>X</b>	
Acknowledge wairuatanga, rongoā and tikanga	<b>X</b>				



## TE AKA WHAI ORA CHIEF EXECUTIVE RIANA MANUEL

New Zealand now has two new service delivery agencies, Te Aka Whai Ora – Māori Health Authority and Te Whatu Ora – Health New Zealand, jointly responsible for running the newly reformed health system. Jacqui Gibson catches up with Te Aka Whai Ora chief executive, Riana Manuel, to find out where she's at and what she hopes the agencies will achieve.



**Riana Manuel**

For Riana, the success of the new health reforms is personal. Riana was appointed chief executive of Te Aka Whai Ora in February this year, after clocking up thirty years in the country's health sector.

"I've been part of the health system most of my life," says Riana of Ngāti Pukenga, Ngāti Maru, and Ngāti Kahungunu descent from her dad's side and Pākehā descent from her mum, who's from the South Waikato township of Ātiāmuri.

"And, if I'm honest, only now do I feel really excited about what's to come and what's ahead of us. Never before have I seen such a strong intention for partnership and positive change."

Aged fifteen, Riana started doing odd jobs at her family's Coromandel rest home and private hospital before following in her mum's footsteps and training at Waikato Institute of Technology to become a registered nurse.

"When I started nursing in the early '90s, the government was implementing the reforms that created the district health boards tasked with bringing services closer to communities. There was an awareness of Te Tiriti that led to the setting up of the Māori health directorates. But there was definitely no talk of partnership."

### A new world of partnership

Things are very different today, says Riana, whose career spans roles including clinical nurse director, frontline COVID vaccinator, general manager, and chief executive of Te Korowai Hauora o Hauraki, an iwi-led Māori health provider, and Hauraki Primary Health Organisation.

## NEVER BEFORE HAVE I SEEN SUCH A STRONG INTENTION FOR PARTNERSHIP AND POSITIVE CHANGE.

Today, iwi are significant players in both the health sector and the wider economy. At the same time, more and more Kiwis recognise the status of tangata whenua and Te Tiriti in New Zealand society, particularly the younger generation coming through, she says.

"To me, the time is right for partnership. In my life, I've watched my people die younger than they should have; we have missed out on opportunities and, as a result of colonisation, we tend to be over-represented in all the wrong statistics. When these reforms were announced, I just thought: Ka pai, New Zealand. Ka pai, Aotearoa. You did it. You made a choice to come together. And I salute that choice – I'm convinced it's what we need to do to move forward as a country."

But what exactly does partnership look like when applied to the New Zealand health system? How will it work in practice? And when can the public expect a remodelled health system to deliver equitable health services to Māori?

Riana believes achieving the latter goal will take five, maybe, ten years to achieve.

### Agencies as partners

The immediate task, she says, is to nail down how the two new service delivery agencies, Te Aka Whai Ora and Te Whatu Ora, should come together as partners to run the health system and achieve mutual goals.

As agency leaders, Riana and Te Whatu Ora chief executive, Fepulea'i Margie Apa, have set up shop at a shared head office in South Auckland, formed two teams, and started to define the organisational and operational structures they need to transform the health system.

They've drafted an interim strategy, "Pae Tata", setting out the path for health system reform. It is currently with ministers, and they will jointly release it for public consultation shortly.

"We're very clear on how we want to co-lead," says Riana. "We have a mantra: there's nothing about us, without us."

On a day-to-day basis, this means the pair meet ministers, government leaders, their two boards, and stakeholders as a duo. They sit in on each other's team meetings and spend time together every day talking through the issues, sharing insights, and nailing out solutions. They even share an apartment in Wellington.

They're also on the same page when it comes to identifying the barriers to good health outcomes for Māori.

"The problems are pretty clearly laid out in the research, in the data, and in the lived experience of Māori communities. COVID made them even clearer," says Riana.

“COVID showed us a one-size-fits-all health system led by the centre just doesn’t work for many Māori – or many Pacific, rural, and disabled people for that matter. What worked was a targeted, community-led approach.”

In Riana’s hometown region of Hauraki, for example, local health professionals boosted immunisation rates from 60 to more than 90 percent by door knocking, setting up pop-up immunisation clinics at schools and marae, talking to people to address fear and misinformation, and handing out clear, easy-to-read information, along with vaccinations.

“If you think about who did the lion’s share of community immunisation during COVID, it was our kaupapa Māori providers. Their efforts bonded us as a nation. Many people saw for the first time the amazing resource they had right there in their community. In my role, that’s what I want to build on.”

#### Getting the right resources

Riana is keen to properly resource the sector, as well as free them up to focus on frontline services by reducing the administrative burden of overly complex government contracts.

### WHEN THESE REFORMS WERE ANNOUNCED, I JUST THOUGHT: KA PAI, NEW ZEALAND. KA PAI, AOTEAROA.

Over time, she’d like to boost the Māori workforce across the entire health sector, increase access to online health care, and improve the health literacy and skills of iwi, hapū, and whānau so it’s easier to proactively manage health care from home.

Riana explains: “The evidence tells us Māori men aged between twenty and forty living on the East Coast of New Zealand have a high risk of a serious cardiovascular event, at times resulting in early death. It also tells us many young men don’t even know they’re symptomatic at the time. Well, imagine if we could target that group and get them to monitor their own risk factors using tools like an electronic cuff that measures blood pressure. It’s really just the start of what’s possible when we take a more targeted, community-led approach.”

Right now, Riana says her immediate priority is to properly set up Te Aka Whai Ora and bed-in her partnership with Te Whatu Ora.

At the same time, she and her team of ninety-five staff have started drafting a roadmap for sector transformation, they are Zooming weekly with the sector’s 155 kaupapa Māori health providers, and they communicate regularly with health and government colleagues through channels such as online webinar.

Communicating regularly with the sector and taking them on the transformation journey is crucial in the months and years ahead, says Riana.

“Do I think we have all the answers right now? Definitely not,” she says. “But do I think we have a unique

opportunity in front of us; one that only comes around every twenty to thirty years? Absolutely.”

#### Including all people

Riana says her ultimate vision is to help turn the existing health system into one that embodies New Zealand’s Te Tiriti partnership, achieves equity, adds to people’s wellbeing, while addressing their health needs, and is inclusive of everyone.

### GOOD PEOPLE FROM DIFFERENT CULTURES CAN ACHIEVE INCREDIBLE THINGS TOGETHER.

She cites Taima Campbell, New Zealand’s first Māori director of nursing, the late Te Puea Hērangi, Waikato leader and Kingitanga proponent, and Shelley Campbell, chief executive of Waikato Bay of Plenty Cancer Society, as some of the leaders she most admires.

There are others too.

“I was lucky enough to grow up in a little village of eight families surrounded by many inspiring leaders. My nannies, koroua, and mum and dad, for example. My parents showed me what leadership and true partnership were all about. Mum, a Pākehā, and Dad, who’s Māori, were married in the 1970s at a time when mixed marriage was really frowned upon.

“But through warmth, compromise, good communication, and working out their common values and shared interests, they raised a family, served their community, and demonstrated – to me, especially – how good people from different cultures can achieve incredible things together. Look, I believe we’ve moved a long way as a nation since the 1970s and the attitudes that defined us back then. My parents’ relationship is my inspiration today and a great example of what we can achieve through genuine partnership in this country.”

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# COLLABORATION:

## REFLECTIONS ON THE IPANZ WEBINAR SERIES

**Bill Ryan, Adjunct Professor, School of Government, Victoria University of Wellington, reflects on the outcomes from the IPANZ webinar series on collaboration.**

Each webinar canvassed the following three questions:

- What has the public service done so far to better enable collaborative work?
- What can be done next to further reduce barriers to collaborative work?
- What are the difficult issues for the public service and how can these complex trade-offs be addressed?

### Some welcome discussion

The IPANZ webinars held during May and focusing on moving collaboration forward were welcome.

But what did we get? Compared with what an equivalent group might have said, say, five or ten years ago, we got evidence of accelerated learning and thinking. For example, recognition that some previously ignored matters now need resolution; acknowledgment that local-level experiments need to precede and lead central, system-focused developments; understanding that a culture of permission and senior manager support for experimentation, risk, failure and success is critical. All good. But, also, there was lingering suspicion that while there may be solid learning and good intentions, they're not being converted into everyday practice.

### Agreement on the problems

*Collaboration is not always easy, but it is crucial, and barriers can be overcome.*

The speakers were unanimous on the problem, the solution, and the difficulties with collaboration. As one put it:

We don't serve New Zealanders well without collaboration. Some of the problems that we face can only be dealt with through collaboration ... People don't neatly coincide with government departments ... it sounds so obvious, it should be easy, but it's hard ... It may be the only path to success, but it takes a whole lot of additional effort.

Nevertheless, as another added, "you've got to give it a go, you won't always get it right, but don't let that stop you from keeping going, keeping learning". However, collaboration is

not something to be done "simply because ministers want it" or "because it's the latest fashion". "There has to be a purpose ... [and] ... you need to know what it is", that is, actually achieving desired outcomes when standard ways of operating don't work.

## SOME OF THE PROBLEMS THAT WE FACE CAN ONLY BE DEALT WITH THROUGH COLLABORATION.

Initial discussion focused on "hardwiring". It covered the structural work that's been done around collaboration, such as the Public Service Act 2020, organisational forms like executive boards and joint ventures, and Te Kawa Mataaho guidance documents such as the Toolkit for Shared Problems, which is all good but only goes so far. One point was that "collaboration ... requires the devolution of control, budgets, and decision-rights". Other speakers also highlighted the importance of "a dedicated resource that's protected over time, so it doesn't get wiped out", plus "multi-year baselines".

### Culture and practice before structure, experiments before systemisation, and the importance of permission

Most of the discussion, however, leaned towards prioritising practice and culture over structure and systems. The impact of barriers like siloed budgets, for example, were always an issue. Said one: "When I'm motivated, barriers don't usually stop me." Another agreed: "When there's a will there's a way. System blockers like the appropriation system – they're not showstoppers. They don't encourage [collaboration], but they don't prevent it either." In fact: "Agencies with the greatest restrictions have the greatest will ... to find their way around them." But often-used tools such as restructuring can create obstacles. As several speakers noted, collaborations are built on relationships and so need continuity and the trust that comes with working together over time. "The churn of restructuring? Think of what you've done to commitment, trust, and networks. You've just broken a whole lot of links."

If recognition that culture and practice are as important as structure was pleasing, even more was that experiments should precede systemisation. "Hardwiring should follow and support developments at the frontline rather than trying to commence [a new collaboration] ... only do the [structure] stuff when you know you have a good thing going ... when you've reached some sort of limit and you want to power it up." From the same angle: "Form follows function, and you need to work out what you're doing and who you're doing it with before you worry about structure." This kind of talk signals a welcome shift away from central agencies thinking they must lead everything – that they should design it first in the centre, then put it out for enactment. Instead, the intention seems to be to learn from what is being done locally and to build on it. This should please regional managers who are pushing ahead and making it happen with or without system support "and sometimes despite it". It is them who are leading, and it was good to hear that acknowledged.

But if solutions are at the community level, how is permission given to allow those solutions to feed in. The issue of "giving permission" arose explicitly. In complex cases where "business as usual does not enable the desired outcomes", staff must feel they "have permission" to "bend the rules" – not to break them, but to "do what it takes". With so many vertical, single-purpose services, what's needed is a holistic, horizontal approach to serving clients with many interconnected needs, to mix 'n' match services, to customise delivery so needs are actually met.

### Windows of opportunity

For these initiatives to work, more senior managers need to act as "guardian angels". Doing so demands encouraging, supporting, and protecting staff who are experimenting with new ways and new combinations. It's a twenty-first century form of leading – "creating a space, opening up the possibilities, resetting and resetting, an agile rather than a waterfall way of working ... A very different way of managing from the vertical, output-based approach ... It's a horizontal way ... Not Gantt-chart territory". At least two chief executives felt that senior managers are



generally slow to take up this role. “I would like my people to take more risk than they think I want.” The obstacle, said another, may be because “the system doesn’t reward that way of working at all. What does the Leadership Capability Profile have to say on this sort of stuff?” Creating a culture of permission inside agencies is likely to be an important trigger for genuine collaboration.

## WHAT’S NEEDED IS A HOLISTIC, HORIZONTAL APPROACH TO SERVING CLIENTS.

A significant, interconnected point is not just “permission to experiment” but also permission to “push the boundaries”. “There’s untapped potential in these relationships, in what we can do together [in partnership]. We should be clear about where the boundaries are, but we should be open to extending them ... exploring together ... pushing those boundaries out so that we’re giving up more control.” To do so, “you’ll [need to] take some risk, some personal risk”. For example: “Be prepared to share information. This can be a little uncomfortable at times ... if it’s not been tested internally, or with ministers.” Remarks like these, coming as they do from chief executives and backed by the spirit of the Public Service Act 2020, should be taken by all public officials as a window of opportunity. They signal clearly intended directions of change, and there should be no reason for holding back.

### Getting away from a single-agency mindset

Motivation as a driver was mentioned frequently, including how best to turn around agencies that are half-hearted or reluctant to collaborate. Often, it’s because the joint activity is perceived by those agencies as peripheral to their primary interest. In these circumstances, “Your collaborator probably doesn’t care as much about this joint thing you’re working on than they do about what they have to do the rest of the day in their own department”. So, pragmatically, “You have to be sensitive to what the parties need, as well as the overall kaupapa”, which usually involves appealing to the organisational self-interest and incentivise them to engage. As an alternative, if motivation by one or more participants is low, then new collaborations can “avoid the convoy problem of moving at the pace of the slowest by building a coalition of the willing”. They can have a variable approach to collaboration; that is, “have a core membership [who do collaborate fully] ... but where others can come and go”.

Another constraint is the “tension between agency accountability and collaborative accountability”. The speakers agreed “it is a balance”, and that, given the single-agency bias in our system, it is proving difficult to “put collective accountability on the same footing

as agency accountability”. In response, there are now groups of chief executives who have joint sessions, which is leading to greater trust and more willingness to jointly own the new initiatives. In short, the constraint remains, but “it is shifting in practice. It will always be a challenge ... but this model shifts the balance.”

### Areas where significant progress is yet to be made

These webinars indicate that important and useful developments in collaboration are progressing. But it was clear to this observer that some areas still need much work.

#### *Collaborative roles and capabilities needed*

There is a relative lack of “guardian angels”. It is certainly true that many more senior managers need to acquire those skills, but the guardian angel role is only one factor for effective collaboration. The other factors that show up in research are an “A-ha!” moment, enactment of the public entrepreneur and fellow traveller roles, an active client, and a commitment to learning by doing. One guardian angel does not collaboration make. To a greater or lesser extent, all these factors need to be present – remembering too that the roles are enacted by a shifting cast of individuals. For example, someone who acts as the original public entrepreneur may, over time, become the guardian angel; a fellow traveller in one initiative may be the public entrepreneur in another; or a fellow traveller may act as a guardian angel when introducing an otherwise unfamiliar senior manager into the community or network. Definitely, more senior managers need to take up the guardian angel role, but the other factors also need to be activated. All of them are important in generating effective and appropriate collaborative practices, not just the guardian angel role.

#### *From talking to acting – loosening up*

Perhaps the biggest elephant in the room – touched on only obliquely despite several audience questions – is whether the intentions are translating into action, through senior managers, down through managers in the regions, to the frontline. Is all this thinking and talking about collaboration reflected in everyday planning, implementation, and delivery?

## IT’S BECAUSE THE JOINT ACTIVITY IS PERCEIVED BY THOSE AGENCIES AS PERIPHERAL TO THEIR PRIMARY INTEREST.

Some managers are often forced to do their work under the radar. Their major complaint is that often their innovations and experiments are stopped “higher up”. Sometimes there are

good reasons, but mostly, they experience “Wellington” and “senior managers” as a barrier, except for a handful of already existing guardian-angel types.

It is not a matter of getting the collaboration message through to them, they are already there. The priority is getting higher-level managers to loosen up and lean into the twenty-first century. As one speaker said at the end of the third webinar: “There’s agreement on what needs to happen ... It’s like we know enough; we just have to get on and do it. The fact that it’s not always happening – there’s good work going on [in some places] but we need to make it mainstream.” The IPANZ webinars tell us there are hopes and intentions at the most senior level. My experience is that many regional and frontline managers are already doing it. The blockage seems to be somewhere in-between, so the culture and practice work ahead needs to be focused there. In that respect, whatever next comes out of the current Productivity Commission review, A Fair Chance for All, will make an interesting read.

### The overall takeaways

The ways forward for joint working, certainly for the next couple of years, are to focus on practice and culture. This includes an overriding client outcome orientation that will also serve to blunt the barrier of organisational self-interest. Others are:

- Having true localisation and devolution including decision-rights and budget-holding
- Ensuring key frontline staff know they have permission
- Encouraging senior managers to practise permission and enablement
- Allowing central agencies to respond to and help fix system barriers confronted at the frontline by providing workarounds and doing the same to facilitate emerging opportunities
- Giving practice its head; the theory to come later.

## THE PRIORITY IS GETTING HIGHER-LEVEL MANAGERS TO LOOSEN UP.

In other words, it’s a matter of sorting out structures and tidying up processes only when these new forms of practice have become part of the everyday culture of Aotearoa’s public sector – when experimentation in this new world of design, implementation, and delivery has shown what works. We know this. The trick is to put it all into practice.

# SPEAKING UP FOR NEW ZEALAND WHISTLEBLOWERS



**Margaret Mabbett and Greg Nicholls of Te Kawa Mataaho Public Service Commission explain a new piece of legislation that is intended to give more protection to whistleblowers.**

New Zealanders hold government and business in high regard for honesty and integrity. Serious wrongdoing, when it does occur, can undermine the confidence of the public in the organisation and the trust of employees in their colleagues.

The people who work within an organisation are often in the best position to detect wrongdoing. But not all wrongdoing gets reported. The biggest hurdles for insiders to report wrongdoing are that they don't know how it will be handled and they're afraid of retaliation.

## Major shortcomings in protections

New Zealand was one of the first countries to introduce a dedicated law to protect whistleblowers – the Protected Disclosures Act 2000. It was an important step in recognising the importance of whistleblowing and providing protections for those who do.

But it has not been as effective as it should have been. The treatment of whistleblowers in the Ministry of Transport fraud case, when a number of staff tried to draw attention to the criminal behaviour of a senior manager, is just one example. Those who blew the whistle actually became the victims and lost their jobs.

These have been the main problems with the 2000 legislation:

- Organisations and disclosers were often confused about when to use the Act – contractors did not realise, for example, that the term “employee” covered them.
- Disclosers were unclear about how to make a disclosure internally (and some organisations were unclear about how to respond to them).
- It was hard for disclosers to navigate the system of gates and hurdles that controlled reporting concerns externally.
- Disclosers feared “speaking up” because they lacked confidence in the protections available to them.

## Protected Disclosures (Protection of Whistleblowers) Act 2022

Te Kawa Mataaho Public Service Commission issued a public consultation paper in 2018 on possible changes to the 2000 Act. The process that followed has led to the recent passing of the Protected Disclosures (Protection of Whistleblowers) Act 2022, which came into force on 1 July 2022. It:

- extends the definition of serious wrongdoing to cover private sector use of public funds and authority and to cover behaviour that is a serious risk to the health and safety of any individual
- enables people to report serious wrongdoing directly to an appropriate authority (a trusted external party who can be approached if the discloser is not confident about making a

disclosure within their own organisation) at any time, while clarifying the ability of the appropriate authority to decline or refer the disclosure to another agency

- strengthens protections for disclosers by:
  - specifying what a receiver of a disclosure should do, including requirements for protecting the identity of the discloser and where the discloser needs to be consulted
  - clarifying the protections available to those who volunteer supporting information for a disclosure
  - enabling disclosers to make a complaint to the Privacy Commissioner if confidentiality requirements are breached
  - clarifying that protecting a discloser is a conclusive reason not to release identifying information under the Official Information Act and the Local Government Official Information and Meetings Act
- clarifies internal procedures for public sector organisations and requires them to state how they will provide support to disclosers
- clarifies the potential forms of adverse conduct disclosers may face.

**THE BIGGEST HURDLES FOR  
INSIDERS TO REPORT WRONGDOING  
ARE THAT THEY DON'T KNOW HOW  
IT WILL BE HANDLED AND THEY'RE  
AFRAID  
OF RETALIATION.**

## Key elements of the Act

A discloser is someone who has or had an employment-type relationship with the organisation (including secondees, contractors, board members, and volunteers) and therefore needs protection because the organisation or the individual who is the subject of their disclosure is in a position to retaliate. They are protected by the Act – whether or not they refer to it – if they believe that there is or has been serious wrongdoing by or in that organisation and their disclosure is made to the organisation or an appropriate authority and is not in bad faith.

Serious wrongdoing includes an act, omission, or course of conduct that is:

- An offence
- A serious risk to public health, or public safety, or the health or safety of any individual, or to the environment



- A serious risk to the maintenance of the law including the prevention, investigation, and detection of offences or the right to a fair trial
- An unlawful, corrupt, or irregular use of public funds or public resources
- Oppressive, unlawfully discriminatory, or grossly negligent or that is gross mismanagement by a public sector employee or a person performing a function or duty or exercising a power on behalf of the public sector.

These apply to both the public and private sectors, but the last two do not include the use of private sector funds, resources, or powers.

The main protections under the Act are confidentiality and an obligation by the organisation not to retaliate or treat the person less favourably. Avenues for redress if the organisation breaches these protections are through wider privacy, employment, and human rights law.

The extension of the definition of serious misconduct to a “serious risk to the health or safety of any individual” arose from a concern raised during the select committee process that staff witnessing, for example, neglect of vulnerable people in care, might not feel that this met the “serious wrongdoing” threshold until actual harm resulted.

## THE MAIN PROTECTIONS UNDER THE ACT ARE CONFIDENTIALITY AND AN OBLIGATION BY THE ORGANISATION NOT TO RETALIATE.

Some commentators have claimed that this inclusion means that bullying and harassment complaints will be treated as serious misconduct under the Act. But bullying and harassment could be and were already sometimes raised as serious wrongdoing under “oppressive conduct” in the 2000 Act. The review process found that bullying and harassment are sometimes used to cover up more serious wrongdoing. Any benefit from discouraging disclosures that were more properly personal grievances would be outweighed by the risk of putting off disclosers whose concerns ran deeper. The new Act therefore provides the receiver with the opportunity to decline a disclosure if the matter would be better dealt with through a different process.

### What organisations now need to do

All public sector organisations were required by the 2000 Act to have internal procedures. The 2022 Act is more specific about their content, including requiring public sector organisations to spell out how they will provide practical assistance to disclosers. As a result,

all public sector organisations should review and update their procedures to align with the new Act.

A major change in the 2022 Act is the ability of a discloser to go direct to an appropriate authority if they are not confident about disclosing within their own organisation. All public sector organisations are also appropriate authorities and need to be prepared to receive more protected disclosures in that role now that disclosers can go direct to them.

## THE STANDARDS SET OUT THE NEED TO PROMOTE A SPEAKING UP CULTURE.

Private sector organisations are not required to establish internal procedures but are covered by the other provisions of the Act, including the guidance section on what the receiver of a disclosure should do.

### Speaking up

A key message to agencies has been the importance of building a culture where people feel confident of speaking up, about anything, not just about serious wrongdoing. Agencies need to recognise that employees raise concerns because of loyalty and interest in the health of their organisation.

Te Kawa Mataaho Public Service Commission issued “Speaking Up model standards” in 2017 and has recently updated them to reflect the new Act. The standards set out the need to promote a speaking up culture and operate good processes including timely investigations. People who speak up need to be supported. Their confidentiality should be maintained, and they should be protected from reprisal whether or not their disclosure meets the “protected disclosure” criteria.

Building a culture of speaking up in agencies and the enhanced provisions in the Act should mean that people feel more confident in reporting wrongdoing and are supported when they do. This will help avoid failures like the Ministry of Transport case. It will enhance the confidence of the public in the organisation and the trust of employees in their colleagues.

### More information

Go to the Te Kawa Mataaho website for a copy of the Protected Disclosures (Protection of Whistleblowers) Act 2022 and the “Speaking Up model standards” at [www.publicservice.govt.nz](http://www.publicservice.govt.nz).

The Ombudsman has a key role in providing information and guidance on the Act as well as supporting disclosers.



# NEW ZEALAND'S BUDGETING IS FALLING OFF THE PACE

## - WE NEED A PARLIAMENTARY BUDGET OFFICE!

**Derek Gill was the Open Budget reviewer for New Zealand in 2021. He takes a look at the outcomes of the Open Budget Survey, which have troubling results for New Zealand, and suggests how to improve New Zealand's budgeting oversight.**



**Derek Gill**

### Falling off the pace

New Zealand has lost the top score for Budget Transparency in the latest international Open Budget Survey (OBS). While some of the drop is temporary or can be turned around easily, the survey raises bigger questions about what New Zealand needs to do next to raise the bar on fiscal transparency.

The latest OBS was released on 1 June 2022. The big news is that New Zealand,

which has been ranked first (or first equal) since the survey's inception, is now ranked fourth behind newcomer Georgia, as well as being behind traditional rivals South Africa and Sweden. The United States dropped out of the top ten group altogether. These overall country results are shown in Figure 1.

### OPEN GOVERNMENT IS CRITICAL TO REINFORCING THE LEGITIMACY AND CREDIBILITY OF THE BUDGET PROCESS.

The Open Budget Survey is truly international covering 120 countries.

The OBS is part of the International Budget Partnership's Open Budget Initiative, a

global programme to promote public access to budget information and the adoption of inclusive and accountable budget systems. First launched in 2006 and conducted biennially, the OBS 2021 is its eighth round.

### Democracy is under threat around the world

The 2021 survey comes at a time when accountable and inclusive public budgeting is more urgent than ever. Democracy is under threat in developed and developing countries alike on a scale last seen in the 1930s. The pandemic has led to the first rise in global extreme poverty in a generation, and debt and inequality within countries is generally increasing. Open government is critical to reinforcing the legitimacy and credibility of the budget process.

**Figure 1 – New Zealand has lost the top score for Budget Transparency**



Source: <https://internationalbudget.org/open-budget-survey>

The survey provides a rigorous review under three pillars: transparency, participation, and oversight.

Table 1 shows the scores of the top four countries (in blue) along with the next eight top performers. What is clear is that different countries do better on particular pillars. On public participation, for example, South Korea ranks top, the UK second, and New Zealand third, while South Africa and Sweden fall down the list to thirty-sixth and fifty-second place respectively. On oversight, again South Korea scores top, and Sweden comes second while New Zealand comes in at twelfth. Across the three pillars, New Zealand is a consistent performer but is not best of breed in any one domain. As a result, much can be learnt from the practices of other jurisdictions about how New Zealand can be more transparent and accountable.

Somewhat surprisingly, the pandemic did not undo hard-fought gains in transparent and accountable budgeting practices worldwide. Most countries were able to maintain, and in some cases build on, earlier gains in their annual budget processes, thanks to increased digitalisation of information and the institutionalisation of accountability practices. The average transparency score has increased more than 20 percent since 2008. Eastern Europe and Central Asia, East Asia and the Pacific, Latin America and the Caribbean, and Sub-Saharan Africa have made significant strides in transparency.

New Zealand's transparency score dropped slightly partly because it does not have a

citizens' budget – a decision was made to drop the Budget Basics series in the 2020 Budget. The Budget Basics series has since been reinstated, but much more could be done to make it more useful and more interesting and attractive to Kiwis.

## THE PANDEMIC DID NOT UNDO HARD-FOUGHT GAINS IN TRANSPARENT AND ACCOUNTABLE BUDGETING PRACTICES.

To enable higher quality public (and independent expert) scrutiny of government public spending and revenues, more granular open-source data needs to be published. Publishing monthly fiscal data in linked open-data format would enable independent analysis and commentary and more effective scrutiny. It would also build on the limited commitments made in previous open government plans to disclose data sets on Crown expenditure in an open-data format.

### Public participation is the weakest link

Public participation is based on how much the executive, the legislature, and the national audit office provide opportunities for the public to engage during different cycles of the budget process.

Public engagement in budget decision making is the weakest link in countries' accountability systems across the survey. Budgets remain a primarily

elite conversation with few avenues for ordinary people to engage and have a say. Only eight countries worldwide have formal channels to engage under-served communities.

### Budget oversight – limited legislative scrutiny

Budget oversight examines the role played by formal oversight institutions such as the legislature and the national audit office (in New Zealand, the Office of the Auditor-General) in the budget process and the extent to which they are able to provide robust oversight of the budget.

Across the world, budget oversight by legislators and national auditors is limited, and there are serious gaps in checks and balances in the management of public funds. Legislative oversight has declined due to a variety of factors, such as political unrest, the pandemic, and executive overreach. Executives in some countries have found ways to undermine audit institutions while staying within the boundaries of the law.

## NEW ZEALAND HAS BEEN SLOW TO ADOPT AN INDEPENDENT FISCAL INSTITUTION.

New Zealand scores reasonably highly on this but is only ranked twelfth in the survey. In part, that reflects the constitutional arrangements in Westminster systems, which lack a sharp distinction between the executive and the legislature.

**Table 1 – The three pillars of open budgets**

Country	Participation	Transparency	Oversight
Georgia	44	87	74
South Africa	19	86	81
Sweden	15	85	85
New Zealand	48	85	80
Mexico	22	82	63
Norway	24	81	87
Brazil	15	80	78
Australia	37	79	63
Dominican Republic	22	77	63
Italy	11	75	78
South Korea	59	74	87
United Kingdom	54	74	67

Most countries increased transparency while New Zealand dropped slightly

In presidential systems such as the United States, there is a clear separation of powers. The president gets financial advice from the Treasury and the Office of Management and Budget. The legislature has its own financial advisors – the Congressional Budget Office – a non-partisan independent institution. Typically, the president's budget is declared “dead on arrival” when it appears in Congress, and both the Senate and the House of Representatives independently start with a clean slate and work on a new version of the proposed budget.

By contrast, approval of the budget is a confidence matter under the Westminster system. That means that while parliament needs to approve the budget, in practice, this is just a formality. The government has the numbers to pass the budget. Indeed, if parliament were to change a proposed appropriation by \$1,000, then that would trigger a vote of no confidence that may result in the government falling and a new general election being called. The contrast with the separation of powers in the United States could not be more marked!

For the first time under MMP, the current government has a majority in the house. So that means it has the numbers to push

through its agenda in select committees and on the floor of the house.

### Budget oversight – New Zealand lacks an independent fiscal institution budget office

New Zealand has been slow to adopt an independent fiscal institution. The Treasury has a well-developed proposal for a Parliamentary Budget Office (PBO). Treasury consulted on establishing a PBO, and the functions of such an institution were agreed by Cabinet in 2019. However, the proposal did not have the support of the opposition, which stymied the proposal as it requires cross-party support to proceed as an Office of Parliament. However, with changes in opposition leadership, the political situation has changed, and cross-party support is now available.

Creating a PBO would significantly strengthen New Zealand's fiscal constitution. This would provide for independent evaluation and commentary on New Zealand's fiscal-policy performance, improve parliamentary scrutiny of public finances and fiscal policy, and provide for independent costings of political party policies to better inform public debate.

### New Zealand has come a long way, but we still have a lot to learn and do

New Zealand has been a world leader in public financial management for over two decades. The latest OBS survey should serve as a wake-up call. Other countries have made significant gains as shown in Figure 2 while New Zealand has slipped back. Public financial management is a race without a finish line. We need to learn from others if we are to continuously improve. The Open Government Partnership process is underway, which allows citizens and civil society organisations to engage in setting the agenda for the improvements required. Let's hope that opportunity is taken with the new plan under development.

## NEW ZEALAND HAS BEEN A WORLD LEADER IN PUBLIC FINANCIAL MANAGEMENT FOR OVER TWO DECADES.

Mean reversion is a common pattern in data. Without the impetus from the creation of a PBO and greater open data, we are on the road to mediocrity in budgeting.

Figure 2 – Some countries recorded big gains in the Open Budget Survey





## POIPOIA TE KĀKANO KIA PUAWAI - THE POWER OF SUPPORT

**Rawinia Thompson (Ngāti Kahungunu, Rongomaiwahine) is the recipient of the 2021 IPANZ Public Administration Prize awarded to the top student in PUBL 311 Emerging Perspectives in Public Management at Victoria University of Wellington School of Government. She began her career in the public service in 2017 in an administrative role at the Ministry of Education. After working full-time and resuming studying part-time for just over two years, she graduated in early 2021 with a degree in public policy and political science. She is now a Senior Policy Analyst at Manatū Hauora, Ministry of Health.**

**Rawinia shares some reflections on her study and her experience in the public service so far.**

When asked why people work in the public service, most will say something like “to help people” or “to make a difference”. I’ve certainly found that to be true of colleagues I’ve worked alongside over the past few years. I often say that improving outcomes for people, whānau, and communities, particularly for Māori, is what gets me out of bed in the morning.

We all know that there is much work to do in boosting Māori cultural competency and growing Māori leadership in the public service. While it’s not yet perfect, I’m grateful to be a Māori public servant, especially in the newly reformed health system at this time. Te Aka Whai Ora, the Māori Health Authority, has been established. Colleagues are engaging with Te Tiriti principles of tino rangatiratanga, partnership, active protection, equity, and options, articulated by the Waitangi Tribunal through its WAI 2575 inquiry. The idea of “by Māori, for Māori” decision making and service delivery is being supported. Māori conceptions of holistic wellbeing are being promoted across government. Te reo Māori,



*Rawinia (second from left) at her graduation, with her whānau*

even at the most basic level, is being spoken daily. My name is rarely, if ever, mispronounced.

### **Beyond Orewa**

I recall in my earlier days of study having to walk out halfway through a public policy tutorial. The discussion topic was the Orewa speech delivered by Don Brash. For readers who are not familiar with the speech, it framed Te Tiriti as outdated and racially divisive and called for “one rule for all”. While intelligent discussion should be encouraged in academic settings, the comments I heard about “Māori privilege” that day were ill-informed, ignorant, and deeply upsetting. I share this story as a comparator to show how far general consciousness in this area has progressed in the past few years. After this and other similar experiences, I was really hesitant to walk into the office in my first government job, but I’ve generally felt culturally safe at work (and very much embraced at Manatū Hauora).

**THAT IMPROVING OUTCOMES  
FOR PEOPLE, WHĀNAU, AND  
COMMUNITIES, PARTICULARLY FOR  
MĀORI, IS WHAT GETS ME OUT OF  
BED IN THE MORNING.**

### **Building the toolkit**

To further reflect on study, I really appreciate having the foundational knowledge and skills that I picked up in the policy major – such as machinery of government, intervention logic, and options analysis. These are all core skills and competencies to have in the toolkit for a policy person. (I like to think that although I’m a complete policy nerd I’m quite cool and fun as well!) My political science major also helps me to understand and accept the political environment we work in.

There were also some key learnings from the public management course I received my IPANZ award for. Firstly, I must mihi to Professor Michael Macaulay, who brought both impeccable academic and professional credentials, as well as a slightly eccentric yet humorous demeanour to teaching the course. Michael challenged us to take our critical thinking to the next level. We explored concepts of good governance, leadership, public value, strategy, and change. We also had the opportunity to practise some hard skills, like using risk analysis frameworks, stakeholder mapping, and preparing (fictional) advice to a public service chief executive on a strategy for solving a real-world problem. I found the learnings in this course highly applicable to my work.

**THE ONE LEARNING THAT HAS  
BEEN COMPLETELY BORN OUT BY  
EXPERIENCE IS IN BARRIERS TO  
CROSS-AGENCY COLLABORATION.**

### **Applying the theory**

As readers will know, the gap between theory and practice can be significant when faced with the realities of working in a constrained environment. Ministerial expectations, tight timeframes, conflicting views from diverse stakeholders, lack of political will, and limited resources can make it difficult to achieve what we as public servants might otherwise wish to do. The one learning that has been completely born out by experience is in barriers to cross-agency collaboration to solve shared problems. (At times, this can be almost impossible.) While no university course can fully prepare you for what happens in the real world, I feel that my study provided me with both a theoretical and practical basis for understanding and dealing with some of these challenges.

I must mihi to two of my previous managers for supporting me to study while working. Thank you both so much Hilary Penman and Phillipa Campbell – I wouldn’t be where I am today without your support and encouragement.

It’s an incredible privilege to be in a position to inform ministerial and Cabinet decision making. I’ve had amazing opportunities to work on developing and implementing budget initiatives, leading a government bill through the legislative process, and developing policy proposals for new legislation. At times policy work feels overwhelming and crisis-inducing, but it is also humbling to know that our work might, hopefully, have a positive impact on our people, whānau, and communities.

### **A view to the future**

Looking forward, I’m hopeful that we’ll continue to see te reo, tikanga, and te ao Māori come to life within the public service, as well as new ways of working with our Tiriti partners and other communities. I’ll always advocate for good policy stewardship and a long-term, future-focused view of problems and opportunities and hope that whichever government emerges after the general election next year will take advice of that nature.

**AT TIMES POLICY WORK  
FEELS OVERWHELMING AND  
CRISIS-INDUCING, BUT IT IS  
ALSO HUMBLING.**

Finally, I always take every opportunity I can to acknowledge my beloved whānau for being my korowai of support in my mahi and life. My mum, Leah, has worked in a supermarket my whole life and has shown me what hard work looks like (and gives me a hard time for working from home). My dad, Mark, has worked for the Ministry of Social Development for over thirty-one years – the real spirit of service. My little sister, Regan, has a degree in Indigenous development and is soon finishing a full-immersion te reo Māori course, and this November, she will be joining the policy graduate cohort at Manatū Aorere, Ministry of Foreign Affairs and Trade. Mauri ora, whānau!

# RISK IS NOT A FOUR-LETTER WORD!

## IT'S A WAY TO EMBRACE UNCERTAINTY AND ENABLE SUCCESS



**David Nalder**

**Managing risk sounds chronically dull to many. David Nalder, who's spent thirty years helping organisations understand and manage risk effectively, sees it differently. He views "risk" as an inherent part of success, management, performance, and decision making.**

There are few things that are better at bringing down the mood in a room than a focused discussion on risk. Typically risk management is approached as a way of identifying as many things as possible that could go wrong, some pseudo-maths to calculate how likely they are to happen

and the impact of them if they do happen, recording this in a risk register, and then mostly ignoring the results until governance reporting time rolls around again.

This approach stems from the various standards and frameworks that provide the theory and guidance for risk management. My experience is that theory works well in theory, but not often in practice. One-size-fits-all international standards and global "best practice" methodologies don't consider how organisations actually work and make decisions.

Many of the organisations I have worked with, particularly in the public sector, have approaches to risk that look good on paper but struggle to make a difference in a multi-layered authorising environment, with ambiguous priority setting, fast-paced decision making, and time-poor leaders.

If your organisation answered yes to any of the above, you likely have a problem. Why this matters is that these are symptoms of a risk management approach that is disjointed from day-to-day management, accountability, and decision making. If risk does not directly link to the discussion of

the moment and the resulting decisions made, then it is not making a difference.

**TYPICALLY RISK MANAGEMENT IS APPROACHED AS A WAY OF IDENTIFYING AS MANY THINGS AS POSSIBLE THAT COULD GO WRONG.**

### Language and human nature

Traditional risk approaches are often rigid, and they forget how people think and work. Language is everything! Language around risk is often loaded with jargon where common usage words take on specific meanings and is off-putting to the average person just trying to do their job.

People feel uncomfortable with talk of things that could go wrong (especially in areas they are accountable for). People naturally focus on commitments made, on success, and on what needs to go right to achieve this. This feels like core business. Words like "risk" turn people off while words like "success" encourage focus and effort.

Yet "risk" and "success" are essentially the same thing, with one worded in the negative and one in the positive. They both reflect uncertainty about the future, which needs to be managed well for the organisation (and them) to deliver to its purpose and mandate.

People come to work wanting to do a good job and wanting to succeed – both organisationally and individually. They make many decisions a day and implicitly understand the risks (and opportunities) when making those decisions. Good approaches to risk management understand this and empower people to make good decisions, with confidence, based on good information and clarity around their decision-making rights.

### How you know if you have a problem with your risk strategy

*(Characteristics of ineffective approaches to risk management)*

You have a full-time risk manager whose job is to manage risk	
Risk is a separate agenda item at governance and management meetings	
Periodic (typically quarterly) meetings consider a top-10 risk report	
Risks are identified on a bottom-up basis, by middle management in a "risk workshop", and by individual business area or a programme basis	
Risks are worded solely in the negative (that is, what could go wrong or what has already gone wrong)	
Risks are mathematically scored on their likelihood and impact and presented on a 5x5 heatmap	
The size of the risk register increases over time	
Risks are grouped and reported by business unit, following the organisational structure and reporting lines	
Many of the risks are in fact live issues	



Essentially, the following two statements say the same things:

1. If we fail to engage with mana whenua, then we will breach our Te Tiriti obligations.
2. Effective and genuine partnership with mana whenua will enhance our relationships and decision making.

Which discussion would you prefer to have?

### From risk to uncertainty

Risk is neither good nor bad – it is just a fact of life that reflects uncertainty about the future. Without uncertainty, there would be little incentive or opportunity to do things differently. Embracing uncertainty means focusing on positive opportunities that may emerge from this uncertainty (as well as managing the potential downsides).

Valuable conversations occur when organisations ask these questions about uncertainty:

- What matters to us?
- What could go right (opportunities) and how can we ensure this happens?
- What could go wrong (threats) and how can we prevent this from happening or respond appropriately if it does?
- What has happened (issues) and how do we learn from this?

### Management, risk, and resilience

Organisational governance, leadership, decision making, operating model design, day-to-day management, operational delivery, risk management, and business

continuity management are often approached as discrete activities. They are not.

## RISK IS NEITHER GOOD NOR BAD – IT IS JUST A FACT OF LIFE.

Risk management and resilience are just subsets of management. All focus on success and uncertainty – they just look at things through different lenses.

An effective risk approach empowers and enables people to address the questions above in a consistent, informed, and joined-up way. Good approaches support the person to make decisions and operate in a way that's most aligned to the organisation's purpose and commitments.

Things like policies, procedures, internal controls, accountability frameworks, risk appetite statements, and delegations of authority sound dull and constraining. Done poorly (which many are), they are seen as static restrictive documents that people infrequently read and frequently resent.

Done well, they are empowering, providing clarity and confidence to all around the autonomy they have and parameters in which they can act.

### Integrating risk into your operating model and ways of working

It continues to surprise me how many organisations do not have a simple way of describing why they exist, what they do, who does it, and how they operate. "Operating model" is another term that

is used often but means different things to different people. There are many ways to describe an operating model, but the important thing is that there is one (and this need not be more than one page) so that everyone understands where they fit into the big picture and how they contribute to it.

Where operating models do exist, few outside the top table have seen it, understand it, and use it to align their activity and decision making. How can an organisation truly manage uncertainty (risk and opportunity) effectively if there is no shared way of describing how it works?

A simple operating model allows:

- everyone in the organisation to understand the role they play and where they fit into the jigsaw puzzle
- uncertainty (risk and opportunity) to be considered across all aspects of the operating model (and the decision at hand)
- decisions to be prioritised and assessed – asking questions like "How does this investment (time, money, people, resources) deliver value and enhance or strengthen how we operate?"
- mechanisms to manage uncertainty to be built into the operating model and core ways of working.

Without an operating model view, there is a tendency for entities to think along organisational structure lines, often operating as a federation of siloed sub-entities, connected primarily by a common letterhead. This makes it hard to identify and manage risk at an entity-wide level.

### Showing the link from strategy to execution

Effective risk management therefore enables a clear and transparent understanding and link between purpose, commitment, uncertainty, activity, and performance, on a top-down basis as shown on the left.

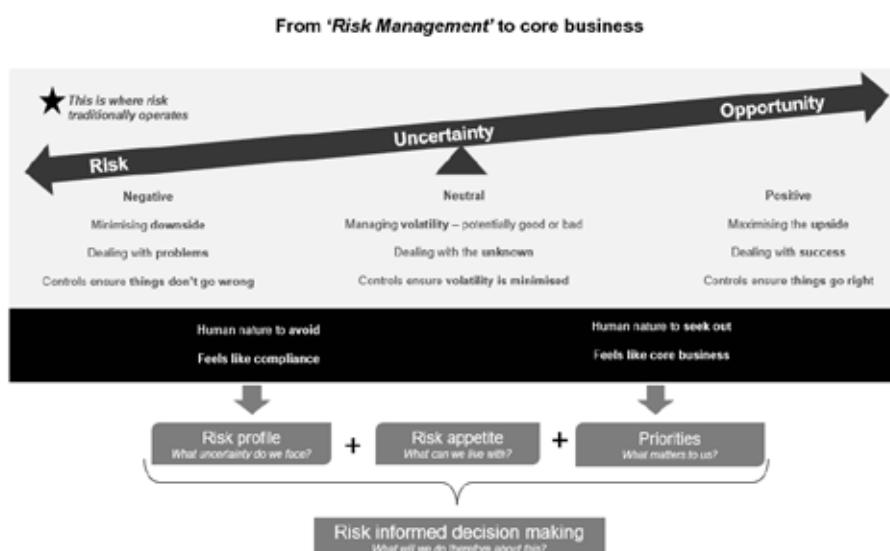
### Risk and assurance

Half the job is understanding risk; the other half is managing it effectively and being confident that what is expected is done.

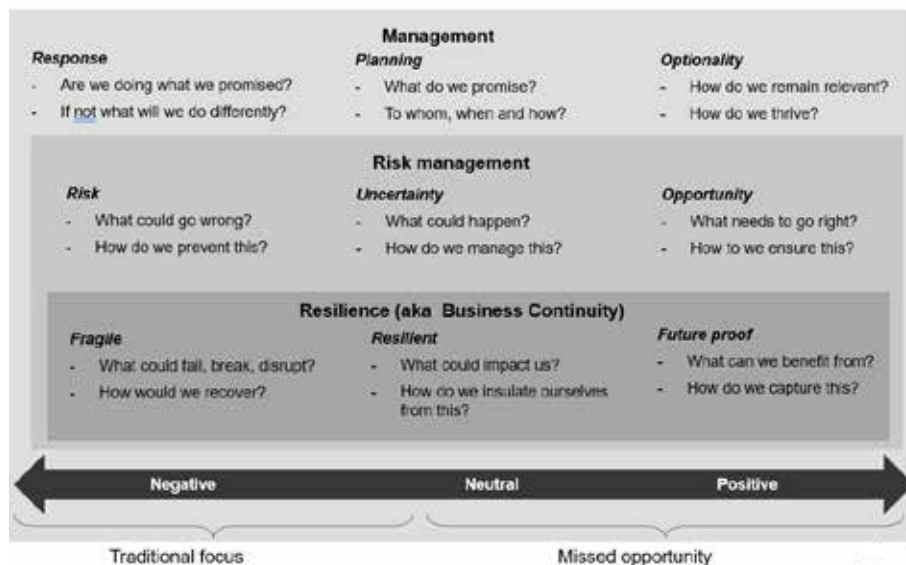
There are various ways to do this. Confidence (assurance) that risks are effectively managed can come from:

1. Doing it yourself: directly determining (and/or doing) what needs to be done. Typically though, these are split across multiple functions with titles such as Planning or Operations.

## Embracing the whole spectrum of uncertainty



## Management, risk and resilience



2. Checking yourself: given that risk and success are essentially mirror images of each other, you will already have many lead and lag indicators that you are monitoring as a core part of your accountability documents and periodic performance reporting. The trick is to link these so that monitoring how you are going enables you to monitor risk – both the threats and opportunities.
3. Asking others to check for you: for example, through peer reviews, investigations, continuous improvement, quality assurance, internal audits, and similar.
4. Being checked by others: for example, through oversight from your monitoring agency, regulators, auditors, and so on.

### Risk and performance

When risk management is thought of in terms of purpose, commitments, uncertainty, success, initiative, and achievement, then risk monitoring starts to look very much like performance monitoring.

The most effective approaches I have seen are where there is a simple one page executive dashboard that focuses discussion on the most important things that need attention. Directly linking success to indicators of success provides a view on how well risks associated with success are being managed.

A well-formed set of performance indicators, linked to things that matter to you and the outcomes you are held to, combining good lead and lag measures, is actually the best way of measuring how

well risks are being managed. Be wary of over-engineering this, with whole industries based on building KRAs, KPIs, KRIs, KCIs linked to SPEs, and SOIs. This is just JGM! (jargon gone mad).

## RISK MONITORING STARTS TO LOOK VERY MUCH LIKE PERFORMANCE MONITORING.

### What good looks like

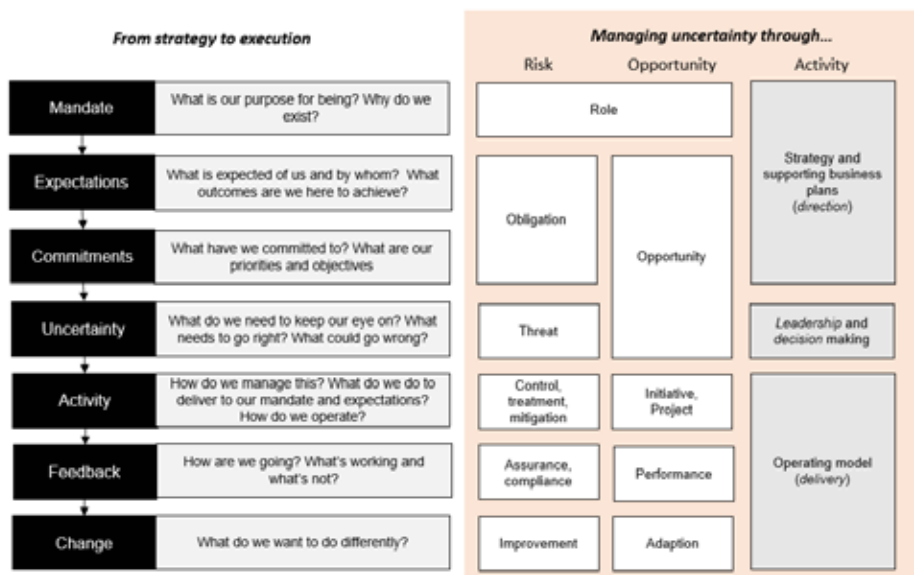
Bringing this all together, effective risk management demonstrates a few common characteristics:

- There is little use of the word “risk” as opposed to more meaningful words such as purpose, commitments, success, accountability, governance, uncertainty, opportunity, decision, activity, and performance.
- Risks are defined in terms of uncertainty so that equal emphasis is on upside opportunities as well as downside threats.
- Risks are linked explicitly to management, oversight, and decision making.
- A simple, visual, top-down approach is used to describe risks in a way that makes this information relevant and accessible.
- Risk (uncertainty) is identified across all aspects of your operating model.
- Your core management reporting approaches provide transparency and confidence in how success is achieved and uncertainty is managed.
- Risk reporting therefore is aligned with (and becomes part of) organisational performance reporting.
- Risk management is integrated into management, so these are not approached as disjointed and discrete activities.

Risk is not a four-letter word. Risk and success are flip sides of the same thing. Risk management is therefore effectively managing uncertainty associated with what you’ve committed to and how you work.

This sounds to me like core business.

If you want to know more about the ideas expressed here, you can contact David at [efficusltd@gmail.com](mailto:efficusltd@gmail.com) or on +64 21 380 889.





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