

PSA submission on Reform of the State Sector Act 1988: Directions and options for change

Introduction

“My job is to work for the New Zealand public. That means I am not just accountable to my employer, but to the people of New Zealand.” PSA member, October 2018

“As public servants we are united in our desire to help others and make NZ a better place to live and work in.” PSA member, October 2018

The State Sector Act 1988 (the Act) is of direct importance to the over 67, 500 members of the PSA working in public and community services in the core public service, crown entities including DHBs, local government and contracted community and for-profit providers. It sets the framework for the way the agencies they work in operate, the powers of their employers and their obligations as State servants. It impacts directly on the quality of their working lives, their ability to do a good job and to make a real difference for New Zealanders.

Today’s public service emerged in 1912 with the passing of the Public Service Act¹. It took less than a year for public servants to organise themselves, through their union the New Zealand Public Service Association (the PSA), to have both a voice within their workplace and an independent public voice on the quality of public and community services and how they’re delivered. The PSA’s independent voice has influenced each of the waves of public service reform over the past century.

PSA members contributed to this submission through over 400 individual responses to an online feedback form, face-to-face meetings and workshops at our inaugural Public Service Delegates Conference, held at the end of September. Quotations from PSA members contributed through these processes are included throughout this submission. Members of Te Rūnanga o Ngā Toa Āwhina, the Māori structure of the PSA also contributed through an online process, through

¹ 100 Years of Public Service: An historical account, Yska, State Services Commission



attending regional hui and through discussion at its recent biennial Hui Taumata. Their responses have shaped Te Rūnanga's submission on Chapter 4 of the discussion document, which should be read as a partner to this submission.

We would like to thank PSA members for their contribution to this submission and the State Services Commissioner and his officials for the many opportunities they have provided this year for engagement on issues relating to the proposed reforms.

We recommend taking more time to get it right

The PSA welcomed the announcement of the government's intention to review the State Sector Act and we are heartened that the reform proposals recognise the important role public services play in the quality of life of Aotearoa. Strong and well-funded public and community services are what make our towns and cities great places to live.

The State Sector Act is central to New Zealand's constitutional framework and to the Government's ability to improve the intergenerational wellbeing of all New Zealanders. In our view the limited nature of the current reform process is insufficient to allow for the public participation and policy development needed for reform of such an important piece of legislation. We had previously called for reform of the Act to be done through a Royal Commission process and earlier this year we wrote to the Minister raising our concern about the timeframes and process proposed and recommended the use of a white paper process.

The approach of having a short public consultation on a discussion document (the document), the scope of which has been shaped by existing chief executives and the Commission, means that this review is largely limited in scope to issues of concern to those who manage the system. There is no other independent or expert function governing the process. A broader focus on the public interest is needed.

Although much of what's proposed in the document is positive and necessary, we may have the new Act in place for 30 years. Cross-party support is important for sustainability, but the inclusion of

wider perspectives, and in particular that of the public interest, is also needed to help ensure the new Act is fit for purpose now and into the future.

Changing the Act is only one part of the wider reform process needed. Many commentators have pointed to the need for changes to culture and management systems and approaches. We are aware that a programme of wider reform does exist. We would like to see the legislative changes proposed in the document articulated more openly in the context of this wider reform process. Without this, it is difficult to assess how effective any legislative change will be. It also seems a missed opportunity not to at the same time consider complementary change to other important pieces of constitutional legislation.

Many of the changes proposed in the discussion document reflect that public management thinking has evolved since 1988. The model of employment and workplace relations embedded in the Act also needs to change to better reflect and support this. The review needs to allow scope and more time for consideration of this.

In summary, some aspects of the reforms proposed in the discussion document are well developed and others are at earlier stages and need more work and engagement with those affected. We recommend that the reform process is amended to allow time for this engagement.

PSA response to the discussion document Reform of the State Sector Act 1988: Directions and Options for Change.

Chapter 2: The case for change

“I got into this job, this career to help the public. This was probably one of the biggest drivers of my career goals, right from leaving high school. However, the longer I have worked in various agencies I see myself more and more as representing the agency I support, whether it’s a council or a DHB. This makes me feel alienated from my work and the people I support, and just another cog in a wheel. I hope that this review will make changes that help me feel I’m actually providing a service, and connected through work to the communities where I and my family live.” PSA member, October 2018

We agree with the discussion document that New Zealand’s public service performs very well by international standards in terms of both integrity and effectiveness. However, 91% of the State servants who responded to our online form agreed that “more change is needed to enable the public service to deliver better outcomes and services”. PSA members working in the State services want to deliver the advice, results and services that make for a better New Zealand. They want to work for organisations and in a system that supports them to do this.

Our view is that a step-change is needed to address the fundamental tension created by the current Act which establishes individually managed and largely autonomous agencies in an external environment that demands new ways of working and innovation to address complex whole-of-society matters. The passing of a new Aotearoa Public Service Act, rather than an amendment to the existing Act, would signal this.

In any reform process, the problem definition – or the case for change – is key as this sets the focus and priority of the reform. While we agree with much of what’s said in Chapter 2, there are a number of issues not discussed and so not addressed by the proposed reforms but which are also part of the case for change.

1. *How to reflect New Zealanders' evolving expectations of government and democracy*

There needs to be clear and deep focus on the role of the public service in relation to citizens. The government of the day rightly expects the public service to deliver its objectives, but the public service is not simply a ministerial service. There's a growing sense that New Zealanders both want and expect public services to be responsive and accountable to them, and to be more fully engaged in how they are shaped and allocated. It is time to ensure the public service faces and responds to the public as well as Ministers.

2. *The lack of legislation defining the role and obligations of Ministers in relation to the Public Service and public servants.*

"Our customer is the public of New Zealand who have a right to the best possible service through the government. The government have a profound influence on the delivery of service, not just in the provision of legislation and distribution of funding, but through the comments they make and the way they influence the leadership of government organisations. Sometimes this can be negative and needs to be transparent." PSA member, October 2018

Over the last decades, the tenor of the relationship between parliamentarians and the public service seems to have changed. Providing clarity in the new act on the role and obligations of Ministers in relation to the Public Service and public servants could help to positively reset this relationship.

While there is guidance available to Ministers in the Cabinet Manual, its absence from the current Act and legislation means this has not been subject to public or Parliamentary debate, and the conversation created in the Act about public servants' responsibilities is in effect one-sided. We refer the Commission to the Canadian Code of Ethics and Values for the Public Sector² which provides that *"Ministers are also responsible for preserving public trust and confidence in the integrity of public sector organizations and for upholding the tradition and practice of a professional non-partisan federal public sector. Furthermore, ministers play a critical role in supporting public servants' responsibility to provide professional and frank advice"*.

² Government of Canada, 2011, <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>

3. *How to reflect changes in who delivers public services*

At the time the current Act was created the community and private sector were not large players in the delivery of public services. Community and private delivery is now an established part of public services, yet the discussion document does not acknowledge this. Deep engagement with the community sector is needed on this. It is worth exploring whether the new act could introduce a presumption in favour of service provision by public sector and not-for-profit entities, subject perhaps to a public interest test; and put in place mechanisms to increase the accountability, transparency and public control of public services, including those operated by private companies.

4. *The role of local government*

Consideration of the role of local government is excluded and this is not discussed in any depth. Aspects of the Local Government Act are currently up for review and it is a missed opportunity not to consider how these two pieces of legislation could interact with each other as part of this wider programme of reform.

5. *The framework of employment and workplace relations embedded in the Act needs to be reviewed and changed*

This is outside of the scope of what's currently proposed. Whether or not it's best for chief executives to remain the employer has not been put forward for discussion. This model is very much a product of the time the Act was passed and was consistent with the understanding at that time of the then emergent New Public Management approach. In terms of employment and workplace relations, this cemented in place now outdated 1980's unitarist approaches to management and "human resources" that saw efficiency as the goal and the imposition of strong vertical accountabilities from the chief executive as employer, this was reinforced by performance pay systems, developed in manufacturing and sales settings, as one of the best means for achieving this.

With the benefit of hindsight, it is obvious that this framework works against the spirit of service and public service identity at the heart of the kind of workplace cultures necessary for high integrity, responsive, innovative and citizen focused public services. There is now much better understanding of how workplaces actually work and the importance of

workplace practices and cultures where information and ideas flow up and across as well as from the top. Research and experience has strongly challenged any positive link between 1980's style top-down "efficiency" approaches and organisational performance in public sector settings.

6. *The role of the central agencies*

The role of the central agencies (Treasury, the Commission and DPMC) is not discussed and yet they have a pivotal role to play in promoting a whole of Public Service culture across and within State Services agencies. They have the role of providing a unifying vision and purpose for the State Services. They can also assist with priority setting and planning by clarifying what it is the government wants to achieve and facilitating departments working together to achieve. It is interesting to note that when the Institute of Public Policy Research (IPPR) in the UK reviewed the way Whitehall works³ they recommended the establishment of a Civil Service Executive, loosely based on the State Services Commission. Among its possible functions they identified managing civil service wide processes and working with Ministers, Treasury officials, Permanent Secretaries and their senior officers to set departmental strategies and targets - including cross-cutting or interdepartmental strategies and targets⁴.

³ Lodge, Guy and Rogers, Ben, *Whitehall's Black Box: Accountability and performance in the senior civil service*, IPPR, 2006 p. 79

⁴ Barclay and Pilott, *The Chief Executive As Employer*, PSA, 2008

Chapter 3: The unifying purpose, principles and values of the New Zealand Public Service

“I believe that I am answerable to New Zealanders and not just to some small corporate entity. I like making a small difference which comes as part of being a public servant.” PSA member, October 2018

“We don't always have a sense that we're on the same team as our management, as central agencies, or better funded agencies. Staff of better funded agencies tend to treat us as their handmaidens.” PSA member, October 2018

We support the new act including provisions outlining the purpose, principles and values of the New Zealand Public Service. This has the effect of acknowledging the constitutional role of the Public Service, which is an important pillar of our democracy. While on balance we also support in principle the new act being enabling, rather than overly prescriptive, it is also important that the obligations it contains are clear and enforceable.

Since the passing of the State Sector Act, the dominant theory has been that private sector practices should lead the way in solving New Zealand's problems. This has pervaded the way the State services have operated and has eroded the essential “spirit of service”⁵. We agree that it's time to restore a more balanced approach that acknowledges the different and complementary strengths and roles contributed to effectiveness by management approaches developed in a private sector context, and public management approaches developed through deep experience of policy making and service design and delivery.

Purpose

“I have spent almost all of my working life in public service organisations, and the common thread has always been about serving the public. My roles and employers have been different, but all of them have been animated by the same spirit of providing quality services to everyone.” PSA member, October 2018

“I made a deliberate choice to move from being an activist outside to being a public servant. That included accepting the public service ethics and the role of a public servant. I expect to be working with other agencies to do work for the government and service Parliament, in the public interest.” PSA member, October 2018

⁵ P52, Rethinking the State Sector Act, PSA & NZ Fabians Society, 2014

We support the statement that the New Zealand Public Service exists to improve the intergenerational wellbeing of New Zealanders. The proposed statement of purpose describes the Public Service by listing its roles or functions. This makes it a challenge to incorporate other dimensions that are not roles or functions. We recommend that any statement of purpose also include reference to the position of the Public Service in New Zealand's constitutional framework. In terms of other important roles or functions, we recommend including:

- The Public Service's role in delivering on the Crown's obligations to its Te Tiriti ō Waitangi partner
- The Public Service's role of kaitiaki to our environment
- The Public Service's accountability to the public as well as Ministers and its role in serving the public interest.

In our view it is time, nearly 180 years since the signing of Te Tiriti ō Waitangi, for the new act to include alongside the statement of purpose a clear statement of kaupapa Māori including reference to appropriate Tikanga such as kaitiakitanga, manaakitanga and matatika.

Principles

"The erosion of the service wide values, ethos and training is one of my greatest concerns and disappointments. I still regard myself as a servant of 'The Crown' and the lack of understanding of this as a concept and an operating precept I believe reduces the public services and makes us both more vulnerable and belittles us..." PSA member, October 2018

We understand that the principles proposed are envisaged as applying to organisations. We support the bringing together of the principles currently contained in the State Sector Act and other legislation. We believe that these principles would be supported by the inclusion of "Partnership" which would help to give effect to the Crown's treaty obligations and also capture the need for partnership and engagement with the public and the public service workforce.

This section of the new act should also include a balancing statement that public servants have the same civil and employment rights as other New Zealanders and that, in supporting the principle of political neutrality, public service employers have an obligation not to overstep these rights. This obligation could be further supported by the act enabling the Commissioner to agree with the PSA a "charter of rights" for public servants. An initial draft of such a charter is attached as appendix 1 to

inform further discussion of this proposal with the Commission. We would want to engage fully with our membership in the development of a final charter.

Over the last two decades, the PSA has become increasingly concerned that the interpretation and application of the political neutrality obligation by public service employers has led many public servants to feel over-constrained and vulnerable about being politically active in a personal capacity. These incidents have a chilling effect on public servants exercising their fundamental rights and freedoms outlined in the New Zealand Bill of Rights Act 1990.

There is an increasing sense that being involved in politics conflicts with having a public service job and can endanger their employment. The Commission will be aware that there have been incidents where some managers make it clear that speaking up on issues or even merely joining in a demonstration in public servants' own time is inappropriate and should be avoided. Public servants are an important reservoir of knowledge and understanding and care about many important issues. It is a great loss to the country if they feel unable to speak up and contribute in the democratic processes of the country⁶.

Values

"I consider that I work for the public of New Zealand. Sometimes I am uncomfortable with a process or procedure that may be implemented in my agency if I can see that it benefits the agency rather than the customer." PSA member, October 2018

We understand that the values proposed are envisaged as a set of professional ethical standards governing the behaviour of public servants. Feedback from some PSA members is that the proposed list of values speaks more strongly to public servants' Crown facing role, rather than to their role in serving the public. Some have commented that public servants should behave not only with respect towards New Zealanders but also with compassion, fairness and kindness. This indicates a desire from some public servants to see more "heart", or more explicit provision for manaaki in the values expressed in the new act.

The scope of the New Zealand Public Service

⁶ Nicky Hagar, Public Servants and Politics seminar, PSA, 2014



“I wish I could be a public servant, and I am perceived to be one by members of the public, but technically I am not as I work for (crown entity). I strongly agree with the proposal to make the Public service cover most Crown Entities.” PSA member, October 2018

“I don't actually view myself as a public servant, well not in the traditional sense of what a servant is, anyway. I do not see myself as the type of servant that works long hours doing hard labour for minimal pay to make my master's house run well so they can live a life of leisure. I think the word servant is very very outdated. I see myself as a professional who chooses to work for the government to try and make our country a better place. Not a servant at all.” PSA member, October 2018

We agree with the statements in the discussion document that the needs of New Zealanders for public services do not fit within the current organisational boundaries provided for by the State Sector Act and the Crown Entities Act. Many PSA members working for Crown entities would welcome being recognised as being part of the Public Service.

In terms of what the proposed extension of the boundaries of the Public Service would mean in practice, it makes sense to us that the statement of purpose and the clause on the Crown Māori relationship would apply to all organisations delivering public and community services. In terms of the application of the proposed principles and values to the current State Services, we support this, although there are a number of issues to be worked through. In particular, many public servants work in professional roles with professional codes or sets of ethics, and further work and consultation is needed on the interaction between these codes and political neutrality requirements.

Chapter 4: Responding to the needs and aspirations of Māori

“It’s one of our country’s founding principles that should be intertwined into the fabric of our society. It makes sense to have this as part of the core public service.” PSA member, October 2018

“We are not delivering for Māori enough. If we were there would not be such a big gap between Māori and non-Māori in many variables.” PSA member, October 2018

This chapter reads as if it comes out of a conversation that is in its early stages. This conversation needs more time and the proposals relating to the Crown Māori relationship should be bolder. The new act may be with us for the next 30 years. The Treaty is at the core of our constitution and establishes the relationship between Māori and the Crown, and the Public Service is one of the ways that the Crown gives effect to its obligations to its Treaty partner.

While we understand the pragmatic political reasons for proposing not to include reference to the Treaty in the new act we do not accept that this should overcome the obligation to do so. The new act should also acknowledge that the Crown Māori relationship is a living partnership and provide for how this partnership is expressed in order to evolve.

The clause in the new act needs to go beyond the public service being merely “responsive to Māori needs and aspirations”, to chief executives having an obligation to have regard and consideration for agencies’ roles and responsibilities as a Treaty partner in all of their business that affects, impacts on or involves Māori. In some situations, this will involve taking proactive steps to protect, to uphold the rights, interests and aspirations of the Crown’s Treaty partner.

We refer you to the submission of Te Rūnanga o Ngā Toa Awhina, the Māori structure of the PSA, which is the PSA’s formal response to this chapter of the discussion document.

Chapter 5: People

“I have met so many wonderful Kiwis who have a strong public service ethic and we want to do the best job we can. Public sector management should be encouraged to seek solutions from within their teams before contracting 'consultants'. Rather than consultants, how about facilitators to help build or strengthen the relationship between senior management and their teams...” PSA member, October 2018

It's time for a refreshed approach to employment arrangements in the State services that establish state services agencies as exemplar employers. There is a pressing need for an employment relations framework that helps facilitate whole-of-government practices and systems thinking; provides fair, secure and equitable pay and conditions to public servants; supports career development; eliminates price advantage through low-wages in contracted-out services; provides space for the collective voice of public servants to be heard through their union; and promotes the spirit of service among those delivering public services.

The PSA seeks employment arrangements that support exemplary workplaces and underpin exceptional service delivery. The PSA's [Transforming our Workplaces](#) agenda⁷ and its partner [Ngā Kaupapa](#) - creating a better working life for Māori - set out what a great workplace looks like. We are also party to the CTU led work with the SSC on the State as an exemplar employer.

State services employers have a number of existing obligations under the good employer provisions of the State Sector Act (s56). In our view these provisions have not created exemplar employment practice. The PSA's object in reforming public service employment arrangements would not be to return to the pre-1988 situation. Not only would this be unrealistic, it would also lose some of the benefits of the reforms for employees, such as a more direct relationship between employers and employees.

The employment arrangements provided for by the Act need updating to remain relevant and fit for purpose. This includes adjustment to enable and support the more collaborative and joined up public service envisaged by the reforms and also in response to other changing circumstances and trends that will impact on the nature of the workforce and the nature of work.

⁷ <http://www.psa.org.nz/CampaignsAndIssues/Transformingtheworkplace.aspx>

More time needs to be taken to review the model of employment and workplace relations embedded in the Act. The PSA would expect to be involved as a partner in this further review and in codesigning any new model.

Supporting system mobility and careers

“It would be great if staff could move between government agencies with ease, even on a secondment for a different government department or crown entity then back to their substantive role. Our goal is the same.” PSA member, October 2018

We agree that a more coherent and systems approach is needed to conditions and pay to better support mobility and careers across the public service. The discussion document assumes that agency chief executives remain the employers of public servants but does not say how the fragmentation this generates will be overcome. Providing a means for creating more consistent terms and conditions, and other approaches to workforce, will take us some but not all of the way towards this.

In our view making the Commissioner the employer of public servants, with the ability to delegate key aspects of the employment relationship to chief executives, would assist in ensuring more consistent terms and conditions while supporting career development and the establishment of new organisational forms.

The discussion document envisages greater mobility of public servants around the system - between agencies and other organisational forms - and yet makes no reference to or provision for employment security or continuity or portability of conditions or working arrangements for the people working in this future state. We received many comments from PSA members concerned that this more fluid future state might not support the development of much needed deep technical and specialist skills and careers. Many are also concerned that they could lose any choice in work location or the agency they work for. Such changes should be only by agreement.

When public servants are employed by the chief executives of individual agencies, movement and the employment relationship become complex. The current Act provides for what happens when functions are transferred between departments but makes no provision for the transfer of

employees. It does, however, restrict public servants' access to redundancy compensation in some genuine redundancy situations as a proxy for this. We have heard that options are being considered including public servants being somehow appointed to the Public Service but employed by individual agency chief executives. It is not clear to us how this would work given current employment law, or how fairness, including adequate levels of choice about matters such as work nature and location could be maintained for public servants in such an arrangement. Again, more time is needed to work this through.

The discussion document proposes that the existing State Sector Act provisions on Government Workforce Policy would be amended to enable the Commissioner to negotiate common terms and conditions for functions or professions across existing departments. This part of the Act would require significant amendment to allow this to happen in a way that does not remove the civil and employment rights of public servants to individually or collectively negotiate their terms and conditions of employment, including the right to take industrial action. If the Commissioner is to have this ability, we would recommend that it is not restricted to the ability to negotiate terms for particular functions or professions.

Care must also be taken to ensure both public servants and their employers are not put at too great a distance from decision making about the terms and conditions that govern their working arrangements and experience of work. They must have genuine access to collective bargaining and genuine opportunities for collective voice within the organisations they work for.

We support the proposal to give the Commissioner the same role in respect of pay equity negotiations as s/he has in relation to collective bargaining.

In summary, whatever mechanisms and arrangements are put in place will need to achieve a fair balance between meeting the needs of the system for flexibility, and the needs, rights and aspirations of people working in public services. More time needs to be taken to co-design with us the system level levers, legislative and otherwise, that will achieve the outcomes sought.

Achieving inclusive workplaces as diverse as our communities

"It's very hard sometimes, especially when your culture is often compromised." PSA member, 2018

Chapter 5 proposes including in the Act a duty for the Commissioner and chief executives to promote diversity and inclusion within their departments. We support the aim of achieving diverse workplaces that reflect, and so can better understand and serve our communities. However, there is no benefit from diversity unless workplaces are genuinely inclusive. Significant change will be needed to make this happen.

Inclusion is defined in Chapter 5 as meaning *"ensuring that employees feel valued, supported and respected in the workplace."* Genuine inclusion is not only feeling safe and valued at work but means employers taking proactive, practical steps to ensure all employees are genuinely able to be involved, participate and contribute at work. It means people genuinely have equal employment opportunities.

It is not clear to us how including a duty of supporting diversity and inclusion will have any more effect than the current requirements of the Commissioner and chief executives in the Act regarding Equal Employment Opportunities.

Section 58 of the Act enables the Commissioner to promote, develop, and monitor equal employment opportunities programmes and policies for the Public Service. The Act defines an equal employment opportunities programme as *"a programme that is aimed at the identification and elimination of all aspects of policies, procedures, and other institutional barriers that cause or perpetuate, or tend to cause or perpetuate, inequality in respect to the employment of any persons or group of persons."*

S56 of the Act requires chief executives to operate personnel policies consistent with being a good employer, which is defined as *"an employer who operates a personnel policy containing provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment, including provisions requiring—*

- (a) good and safe working conditions; and*
- (b) an equal employment opportunities programme; and*

(c) the impartial selection of suitably qualified persons for appointment (except in the case of ministerial staff); and

(d) recognition of—

(i) the aims and aspirations of the Maori people; and

(ii) the employment requirements of the Maori people; and

(iii) the need for greater involvement of the Maori people in the Public Service; and

(e) opportunities for the enhancement of the abilities of individual employees; and

(f) recognition of the aims and aspirations and employment requirements, and the cultural differences, of ethnic or minority groups; and

(g) recognition of the employment requirements of women; and

(h) recognition of the employment requirements of persons with disabilities

These provisions aim to achieve the same end as the proposed duty to support diversity and inclusion. And yet after 30 years they have not achieved this. The Commission has no current guidance or standards around EEO and while some dimensions of workforce composition have been reported on in the Commission’s annual Human Resources Capability Survey, a number have been neither monitored nor reported on. The first attempt at disability prevalence reporting was last year. To our knowledge there has been no regular or occasional monitoring or reporting on agencies “equal opportunities programmes” and indeed many agencies have had no such programme for many years. Many agencies have replaced these with aspirational, well-meaning but largely ineffective diversity policies. We are not aware of any deep attempts by agencies, or the Commission, to evaluate the impact of personnel policies on different groups of public servants.

The PSA has advocated for changes to conditions and working arrangements to better meet the working requirements of Māori public servants⁸ (such as leave for hura kōhatu, recognition of Te Reo, kawa and tikanga expertise, recognition of whāngai as tamariki etc), women public servants (such as access to flexible working, including on return from parental leave, leave and support for those experiencing domestic violence etc) and public servants with disabilities. These proposed changes have not been welcomed but rather actively rejected by most public service employers, despite their statutory obligation to run personnel policies that provide for these kinds of matters.

⁸ <https://www.psa.org.nz/about-us/te-runanga/nga-kaupapa/>

The public service pay gap remains greater than that in the wider economy and attempts to understand ethnic pay gaps are in only the early stages.

In our view, inclusion cannot be achieved without active programmes to ensure equal employment opportunities. Any obligations in the new Act around this need to have clear avenues for enforcement and each agency must have an obligation to report regularly and publicly on EEO measures.

The principles of employment provisions in the current Act

“I have been concerned for some time with the focus of providing increased outputs at a budget price, public servants are doing more and achieving more but ... at the expense of running down the human capacity on the floor. You can see there is something wrong in New Zealand because of the many strikes. There needs to be a focus on society and quality services and not at the expense of employees.” PSA member, October 2018

Reform of the Act provides an opportunity to clarify the principles governing the employment of public servants. There is no discussion in the document of the principles of employment provision specified in the current Act (s56), despite the document acknowledging that terms and conditions of employment, opportunities for development and advancement, maintaining including, respectful and enabling work environments all matter for how well public servants are able to serve New Zealanders.

The two principles in s56 are that chief executives are required to be a “good employer” and that they must ensure all employees maintain proper standards of integrity, conduct, and concern for the public interest. A good employer is defined as operating a personnel policy containing “*provisions generally accepted as necessary for the fair and proper treatment of employees in all aspects of their employment*”. This is further defined by reference to a limited list of aspects of employment, including:

- Good and safe working conditions
- The impartial selection of suitably qualified persons for appointment (except in the case of ministerial staff); and
- As discussed in the previous section of this submission, aspects of equal employment opportunities for specified categories of employees.

In our view the new act should provide that the principle governing the employment of public servants is that Public Service organisations are required to be *exemplar* employers and it should specify each of the aspects of employment that this applies to. This could include requiring public service employers to ensure workplaces, working arrangements and conditions all meet this standard and that this is publicly reported on annually. The standard would be an implied or explicit term in every employment agreement in the state sector. This places a spotlight on workplace practices and in doing so goes beyond policies to throw light on the operation of workplace practices. The aspects of employment referred to could include:

- Fair and good common standards of terms and conditions of employment
- Health, safety and wellbeing
- Inclusion, as indicated by EEO measures
- Employment relations, including promoting independent individual voice, and collective voice through unions; and collective bargaining
- Career security and development
- Supporting the employment and personal civil rights of public servants
- Fair process and compliance with employment standards.

What being a “good” or “exemplar” employer means evolves over time – as reflection on what was included in the Act 30 years ago as being “good” employment practice shows. The definition in the new act of “exemplar” should enable the standards expected to evolve and develop over time to meet changed societal expectations. The Commissioner could be required to provide guidance to agencies about the application of this standard. The new act should provide clear pathways to enforce and ensure ongoing monitoring and evaluation of performance against this standard. The State sector as an exemplar employer project currently being discussed by the SSC and the CTU State sector unions, could inform the development of this idea.

Chapter 6: Organisational arrangements

“We work often with closely related areas such as IR, MoJ, Health, MFAT, Immigration etc. Anything to make this more seamless would be great. Clients often feel like they are duplicating effort to provide us documents etc that they've already given to a public servant.” PSA member, 2018

The PSA sees benefit in the new act enabling a more flexible set of organisational arrangements to achieve better outcomes for New Zealanders. The particular forms proposed in the document seem designed to overcome some of the current barriers to collaboration. It would be good to see the new act enabling innovation in form rather than simply codifying a new menu of organisational options.

It will be important that the employment arrangements provided for these options provide public servants with certainty about who their employer is, how they can resolve any employment issues and that the PSA is advised early in their development so that we can support our members and assist with the establishment process. It will also be important that the public servants working in these new organisational forms have genuine access to collective bargaining and collective voice through their union.

In the drive towards greater collaboration care must also be taken to avoid creating undue distance between policy and delivery functions, which created not insignificant issues for the public service through the 1990's. While Centrelink is used as an example of successful bringing together of service delivery functions, there has also been criticism of this model as creating too much distance between the commissioners and deliverers of these services in Australia and the negative effects of loss of agencies “skin in the game”⁹. We note that the Centrelink model is one where services have been largely privatised and there are significant risks to following this approach.

⁹ Grand Alibis: How Declining Public Sector Capability Affects Services for the Disadvantaged, Centre for Policy Development, 2015, <https://cpd.org.au/2015/12/grand-alibis-how-declining-public-sector-capability-affects-services-for-the-disadvantaged-report-december-2015/>

Chapter 7: Leadership

Chief executives

The PSA supports the management of public service senior leaders as system leadership group. It makes sense to build leadership capability across the system and this can support the conditions needed to deepen collaboration and stewardship. We are aware of commentary that legislation should not be needed to achieve this, although the benefit of doing this through legislation is that it will remain a focus throughout the life of the new act and the changes in Commissioner and chief executive role holders over that time.

We support the inclusion of an overarching reference in the new act to the collective responsibility and accountability of chief executives for ensuring the health of the Public Service overall and a duty to act in the collective interests of the Public Service.

The term of chief executives is not discussed in the document. The PSA has a long-held concern about the effect of employing chief executives on fixed terms is on record. In our view this has worked against collective responsibility for the health of the system and has led to a pattern of regular restructuring of agencies as new chief executives seek to make their mark and institute their approaches to increasing organisational effectiveness. Combined with the quasi-contractual relationship with Ministers, this has also reinforced the vertical accountabilities and organisational silos the reforms aim to overcome.

The Public Service Commissioner and Deputy Commissioner

The PSA supports the change in designation from “State Services Commissioner” to “Public Service Commissioner” and the proposal that the Commissioner be the leader and head of the New Zealand Public Service. We support the proposal that the Commissioner be able to issue instructions on integrity and conduct matters. Consideration could be given to the Commissioner functions being supported by an advisory body including civil society and union representation.

We were pleased to see the proposals clarifying the role of the Commissioner in relation to government formation. This is particularly important given our evolving MMP environment and we support it.

Appointment of the Public Service Commissioner

On balance we do not support option 1: Enhanced status quo that emphasises leadership and independence and see benefit in both the concept in option 2 of a multi-member Commission to bring a more extensive body of skills and experience than a single Commissioner can have, and the checks and balances introduced by option 3. This could also enable the reflection of greater diversity in the leadership of the public service, for example there could be a Māori commissioner. We support the new act enabling the appointment of a chief executive of the State Services Commission.

Chapter 8: Capability of the Public Service to Service Successive Governments

We were pleased to hear of the work underway to consider options to ensure a medium to long-term view is taken within the public sector. This is an important aspect of stewardship. We agree that work on long term insights is needed and recommend that more time is taken to consider how the Public Service can provide better long-term insights for citizens. We note the provision in the Local Government Act for long term plans, which have driven improved long-term thinking at this level of government.

Contact information

For further information about this submission please contact:

Kirsten Windelov

PSA Policy Team

E: Kirsten.windelov@psa.org.nz

T: 04 816 5065

Draft PSA Charter of rights for public servants

Public servants have a responsibility to work within the constitutional framework provided by legislation and convention.

They also have the same full employment and civil rights as others living and working in New Zealand. This includes:

Employment

Including rights to:

- Good faith in all aspects of their employment environment and their employment relationship
- Equality of power in the employment relationship, including:
 - The right to freedom of association
 - Freedom from undue influence in relation to their union membership
 - The right to independent collective voice
 - The right to collective bargaining
 - The right to take legal strike action
- Voice at work. This includes:
 - The right to express their views to their employer and have those views duly considered in good faith
 - The right to participate in the making of decisions that have significant implications for themselves or their workplace
 - The right to inclusion – to contribute and have that contribution valued
- Fair process, including:
 - Natural justice in employment relationship problems
 - Protection from unfair dismissal
 - Protection from retaliation when making a genuine disclosure of serious wrongdoing
- Dignity at work. This includes:
 - Being treated with respect
 - Recognised and valued for the work they perform
 - Provided with opportunities for skill enhancement and career progression
 - Protection from bullying, harassment and unwarranted surveillance
 - Privacy of personal information held by their employer
- A workplace free from discrimination or harassment based on:
 - Race, colour, descent, national, social or ethnic origin
 - Sex, gender identify or sexual orientation
 - Age
 - Physical or mental disability
 - Marital status
 - Family or carer responsibilities
 - Pregnancy, potential pregnancy or breastfeeding
 - Religion or religious belief
 - Political opinion



- Irrelevant criminal record
 - Union membership or participation in union activities
- A safe and healthy working environment.
- Enjoyment and protection of minimum employment standards as set by legislation and their employment agreement

Civil

In their personal lives, the rights to:

- Vote and stand in general and local body elections
- Adopt and hold opinions
- Freedom of expression of those opinions
- Freedom to join or otherwise support political parties and other interest groups