



Public Service Legislation Bill

Submission of Te Rūnanga o Ngā Toa Āwhina o Te Pūkenga Here Tikanga Mahi - The New Zealand Public Service Association (PSA)

Who we are

1. Over 75,000 people are members of **Te Pūkenga Here Tikanga Mahi, the Public Service Association (PSA)**. Our 12,000 Māori members form [Te Rūnanga o Ngā Toa Āwhina](#) and are working in the Public Service, the wider State services, District Health Boards, Local Government and contracted Community Public Services in all parts of Aotearoa. Founded in 1913, the PSA is the largest trade union in New Zealand and is an affiliate of Te Kauae Kaimahi, The New Zealand Council of Trade Unions.
2. We thank the Governance and Administration Committee for the opportunity of making a submission on this Bill. This submission has been prepared by Māori delegates who work within the Public Service sector. If there is an opportunity, we would like to speak in support of this submission to the Select Committee.
3. In preparation for this submission, we have widely consulted our membership over an extensive period. While we have surveyed our entire membership for a general view of state sector reform, we have also surveyed our Māori membership in particular, regarding the Māori-Crown relationship and Te Tiriti o Waitangi.¹ Our Māori delegates have been engaging on this kaupapa over the last 18 months. In August 2018, SSC officials attended Hui Taumata, our biennial Māori delegate meeting to discuss how state sector reform would affect Māori. In September 2018, the State Services Commissioner attended the Public Service Delegates Conference. Te Rūnanga delegates attended the consultation hui of the Public Service Māori Leaders Network. In August 2019, SSC officials attended our Public Service Sector hui, and state sector reform was a topic of a workshop. Throughout this period, our membership have been kept updated with emails and journal articles where they have been given opportunity to give feedback. These avenues have helped shape our submission.
4. We note that Te Rūnanga delegates prepared a submission to the State Services Commission in October 2018 on the consultation document “Reform of the State Sector Act 1988: directions and options for change”.²

¹ Survey quotes are used extensively in this submission, shown in italics.

² [Submission on Reform of the State Sector Act](#).

Introduction

5. Te Rūnanga o Ngā Toa Āwhina and The Public Service Association – Te Pūkenga Here Tikanga Mahi (PSA) broadly supports State sector reform. We particularly support that the Bill recognises the role of the Public Service to support the Crown in its commitment to its relationships with Māori under Te Tiriti o Waitangi. We at PSA are proud to note that Te Rūnanga o Ngā Toa Āwhina joined the Waitangi Tribunal kaupapa inquiry into employment issues affecting Māori women (the [Mana Wahine](#) Inquiry).
6. This submission should be read in partnership with the submission of the wider PSA. This submission covers those aspects of the Bill that are specifically relevant to our Māori membership. We have suggested some amendments to the wording that we believe will enhance the legislation, with the aim of providing better public services to Māori.³

Background

7. The Public Service in its current form is failing Māori. This is abundantly clear as Māori are over-represented in all negative social statistics. As Judge Andrew Becroft, the Children’s Commissioner, has recently noted: *“The enduring legacy of colonisation together with systemic racism is a pretty lethal cocktail, and it’s evident throughout all government departments... I think we are courageous enough as a nation to confront that reality and address it.”*⁴
8. Improving outcomes for Māori is the collective responsibility of the public service. We need a public service that delivers for Māori. We believe this requires the public service to formally commit to work to improve the Māori Crown relationship in order to drive meaningful change.

Purposes of the Act

9. Clause 3 refers to the “Purposes of this Act”. We recommend the insertion of another purpose, being:

3(f) - to recognise the public service’s role in supporting the Crown in its relationships with Māori under the Treaty of Waitangi (te Tiriti o Waitangi).

While this matter is further delineated in Part 1, Subpart 3 (clauses 12 and 13), we believe it should be introduced here, as a demonstration of the Crown’s commitment to improving the public service’s responsiveness to Māori.

³ Amendments in legislation are denoted in bold lettering, and are reiterated in the conclusion of this document.

⁴ Duff, M. <https://www.stuff.co.nz/national/114346832/mori-four-times-more-likely-to-have-children-removed-study> 19 July, 2019

10. Our members have made it clear that they see Te Tiriti as essential to their work. By weaving the intention of the Treaty throughout the public service, we can enhance the relationship between Māori and the Crown and work together to improve policy, design and delivery of service to achieve better outcomes for Māori and all New Zealanders. Feedback from our members:

- *“Te Tiriti principles must form a common basis for the way we do things in this country”*
- *“There should be a really strong requirement in the Bill relating to the Treaty. E.g. ‘the government will not do anything inconsistent with the principles of the Treaty’.”*
- *“I believe that a clear and honest commitment to the Treaty of Waitangi is an important step in establishing lasting connections between the public service and Māori staff.”*

Spirit of Service and Public Service Values

11. Clause 11 refers to “Spirit of service to community”. We strongly support the inclusion of this clause. We note the recent journal article “Weber vs Wairua” about wairuatanga in the public service. The writers therein suggest that the goals of the proposed Bill “could be facilitated in significant part by instilling in government agencies an understanding of the Māori idea of wairua, in pursuit of a more humane and effective bureaucracy, for the benefit of all people, Māori and non-Māori.”⁵ The writers further note that “Wairua could enhance state efficacy, primarily by bringing people to the centre of all administrative matters, improving connections and relationships among people, enhancing performance, productivity and outcomes, and creating systems that support people to make choices that have ethical and moral integrity.”⁶

12. Part 1, Subpart 4 refers to Public Service values. We strongly support this inclusion. PSA and Te Rūnanga o Ngā Toa Āwhina are proud of [Ngā Kaupapa](#), which is a framework for Māori by Māori that encapsulates the essence of Te Ao Māori within our union. This demonstrates our commitment to Te Tiriti o Waitangi and being effective in responding to the needs and aspirations of Māori. These traditional Māori concepts of Kotahitanga, Rangatiratanga, Kaitiakitanga, Manaakitanga, Wairuatanga, Whakahiato Umanga, Whanaungātanga and Whakamana are have been welcomed by both our Māori and non-Māori membership. We would welcome an articulation of the values that incorporates and reflects the deep resonance with public servants of Tikanga Māori concepts.

Māori-Crown relationship and Good Employer requirements

13. Subpart 3 refers to the Crown’s relationship with Māori. We note that clause 12 is an improvement on the current Act, which mentions Māori only in the good employer requirements. Under clause 12, the various leaders in the public service are responsible for developing and maintaining the capability of the public service to engage with Māori and to understand Māori perspectives. However, in our view, this section does not adequately provide for the responsibility of chief executives as agents of the Crown to give practical effect to the Crown’s treaty obligations in their employment relationship with Māori staff working in their respective agencies.

⁵ Gregory , R. and Maynard, K, 2019. Weber vs Wairua. Policy Quarterly, Vol 15, Issue 4, page 35.

⁶ Ibid, page 39

14. During the public consultation for State Sector Reform during September and October 2018, there was an opportunity to explore a prominent treaty clause:

“We propose that the Act include a prominent stand-alone clause that is clear about the expectations of the public service in relation to the Treaty partner and contains guidance to support the public sector in building its capability. In doing so, the clause could set out provisions relating to:

- *Engagement, participation and partnership with Māori: proactive, informed and collaborative approaches that are mutually beneficial and strengthen the relationship*
- *Delivering services and results: services that are responsive to, accessible to, and work for Māori and whanau, and well-informed decisions and interventions that improve results*
- *Workforce composition and capability: a workforce that values, reflects and understands the communities it serves, is valued for its cultural competence, and empowers Māori to succeed as Māori in the public service*
- *Leadership and culture: collective accountability for a culturally competent Public Service that delivers with and for Māori, and is committed to support Māori in leadership and decision-making roles”⁷*

We understand that there was considerable public support for these proposals. Only 12 of the 345 responses to the 2018 public consultation opposed these proposals. These 12 responses provided little detail and all objections were in individual submissions. It is therefore very disappointing that the proposed bill is not more explicit in codifying the responsibilities of the Commissioner and other public service leaders. We understand that there is a broad level of obligation within the Bill; however, we believe it is insufficient.

15. One of our members explained this well:

“As a nation, NZ is still maturing. We have got a long way to go, but we have come a heck of a long way already. The world is going through this currently. However, our Treaty partnership needs to be more effectively communicated as a whole of government approach. Yes, there are serious historical and contemporary breaches of the Treaty. However, my view is that the current young generations are more open and embracing of NZ’s diverse communities, whether it be culturally or by sexual orientation. The treaty partnership for me is a platform of embracing diversity. We do need to communicate more about the positive benefits that have occurred through this partnership. We are not out of the woods yet, and we may never be. But in my opinion, there are a lot more tolerant people in our nation, and they are also embracing of a treaty partnership. Interest is growing.”

16. We understand that there are external system-wide non-legislative levers that aim to support the legislation, build capability and improve Māori outcomes. These include the Māori Crown relations portfolio, Te Puni Kokiri monitoring functions and the Maihi Karauna te reo strategy. However, these are recent developments. They may be deemed fashionable today but could prove unpopular tomorrow. While we support these non-legislative levers, we see the need for stronger legislation that is explicit in its expectations to deliver better public service outcomes for Māori.

⁷ Reform of the State Sector Act 1988 – Directions and Options for Change. Longform Discussion document for public feedback. September 2018. P.19

17. In our view, clause 12 does not adequately provide for the responsibility of chief executives as agents of the Crown to give practical effect to the Crown’s treaty obligations in their employment relationship with Māori working in their agencies. Merely referring to the good employer requirements in clause 71(2)(d), which is 30 years old and has achieved little for Māori staff, is entirely inadequate. Treaty obligations require a commitment to ongoing relationships and engagement. A standing advisory committee enabled by clause 48, with representation from Māori leaders within the public service and the Māori structures of the unions of Māori working in public services, could provide a suitable framework for this engagement. In line with this, we recommend the following amendments:

12(2)(b)(ii) – in the case of chief executives and public service boards that employ staff, to apply employment policies and practices that reflect the Crown’s treaty relationship with Māori working in their agencies including operating an employment policy that meets the requirements of section 71(2)(d).”

Amend clause 48 to require the establishment of a standing advisory committee, Māori to assist the Commissioner with the responsibilities in clause 12, with representation from Māori leaders within the public service and the Māori structures of the unions of Māori working in public services.

18. We note that clause 59 refers to the Commissioner and chief executives developing and implementing a strategy for senior leadership and management capability in the public service. We also note that clause 12(2)(b)(i) notes that the clause 59 leadership strategy needs to take into account the good employer clause 71(2)(d) around recognition of the aims, aspirations and employment requirements of Māori, and the need for greater Māori involvement in the public service. The links between the three clauses are rather confusing, because while clause 12 refers to clauses 59 and 71, those clauses do not refer back to each other. It should be made abundantly clear that the clause 59 Commissioner’s leadership strategy takes into account the good employer requirements to Māori. As such, we recommend the following addendum (in bold) to clause 59(1):

59(1) – The Commissioner must develop and implement a strategy for the development of senior leadership and management capability in the public service (the leadership strategy) and do so in consultation with public service leaders. The Commissioner is responsible for recognising the matters listed in clause 71(2)(d) when developing the leadership strategy.

19. We asked our membership about how leadership in the Public Service can support better outcomes for Māori, and here are some of the solutions provided:

- *Increase the number of Māori at the top echelons of the organisations (not just token Māori positions). Stop importing overseas expertise to crucial decision-making roles. Make it compulsory for all level 1-3 leaders to attend cultural change courses*
- *Recognise and remunerate te reo Māori capability*
- *Socialise and normalise the use of Māori in the workplace, e.g. mihi at formal occasions, saying Kia ora. Once leaders become comfortable with the reo, they can begin to work on their understanding concepts like manaakitanga and whanaungatanga so that compromises/concessions are equally weighted.*
- *Deliberately provide leadership courses for Māori public servants*
- *Leaders should have measurable deliverables and outcomes related to Te Ao Māori*
- *Role model a more holistic approach. Create solutions which fit around Māori. Not the other way around.*

- *Leaders need to be role models who lead by example. This means they need to embrace kaupapa Māori outcomes in best practice whatever the service may be. Leaders need to also support reasonable implementation of integrated models of practice that embrace Māori culture.*
 - *Include Māori in decision-making by being inclusive by default, not as an afterthought.*
20. If the legislation will not be explicit in codifying these responsibilities, surely we can expect to see the leadership strategy under clause 59 doing so.
21. We note that under clause 13, the chief executives must report to the Commissioner on their respective agencies work to improve the Crown’s relationship to Māori. Effectively the leadership strategy under clause 59 could include monitoring mechanisms and measures, so that there is uniformity in reporting. While clause 13 does not make it clear, we would expect such reports to be made public. SSC currently publish annually their Human Resource Capability report about Public Service Workforce information. It would make sense to publish this information as an appendix to that report. As such, we support the inclusion of this clause, as it demonstrates the accountability of the public service to Māori.
22. Clause 71(2)(d) refers to chief executives being the good employer of Māori, recognizing the aims, aspirations and employment requirements of Māori in the public service. It is effectively a reuse of section 56(2)(d) of the State Sector Act 1988. It is apparent to us that this portion has been a systemic failure of the current act. If it didn’t work for the last 30 years, then why are we repeating it, word for word? This is clearly due to a lack of monitoring.
23. This wording has been in place since 1988. How is a good employer of Māori defined? What are the aims and aspirations of Māori workers? What are the employment requirements of Māori in the public service? What does greater involvement of Māori in the public service look like? If these matters have not yet been defined, either within legislation or within public service policy, over the past 30 years, then how will the chief executives recognise them? Will different chief executives of different agencies recognise the good employer requirements differently? PSA and Te Rūnanga o Ngā Toa Āwhina would like to engage with the Commissioner on these definitions. We would also like to engage on a Public Service Māori recruitment strategy to meet the needs of clause 71(2)(d)(iii).
24. From feedback from our Māori members about their aims, aspirations and employment requirements, we believe that, to meet their obligations under clause 12(2)(b)(ii), public service agencies should be operating employment policies that involve the following:
- *Recognises and values the cultural leadership that Māori workers contribute to the “identity” of the Public Service of Aotearoa, in addition to their normal responsibilities of their work*
 - *Emphasises the skills, strengths and opportunities for Māori, including bilingualism*
 - *Transparent recruitment practices*
 - *Encourages a culture of respect*
 - *Recognises and addresses systemic disadvantage*
 - *Access to networks*
 - *Development of a coaching programme for Māori public servants, possibly with a tuakana/teina model*
 - *Provide leadership, career development and learning opportunities*
 - *Investment in the personal and professional development of individuals*
 - *Māori achieve professional success in the public sector as Māori*

- *Provide support options for Māori in leadership roles*
- *Establish bicultural structures that give staff the mana to create and adopt practices that reflect Māori cultural values*
- *Monitor the distribution of Māori remuneration in comparison to non-Māori*
- *Includes in its approach to employment relations genuine engagement on Ngā Kaupapa with Māori staff through their union the PSA. This includes the expansion through collective bargaining of terms and conditions and working arrangements that support Māori cultural values*

The role of the Deputy Public Service Commissioner (Māori)

25. We recommend amending clause 45 to allow for the appointment of a statutory Deputy Commissioner Māori to provide visible leadership on public service outcomes for Māori. We note that some agencies have expressed concern that delegating this responsibility to a Deputy Commissioner could undermine the importance of that role. However, this would not diminish the Commissioner’s responsibilities to Māori under clause 12. This would instead complement the current capability and leadership and give an enhanced focus to the Māori-Crown relationship and our need to provide better public services to Māori. This reminds us of the whakatauki: “Ina te mahi, he rangatira” - By their work, a chief will be known.
26. Feedback from our membership indicates support for Māori in such leadership positions:
- Māori leadership ensures better outcomes for Māori, primarily because Māori sitting in leadership positions are able to influence fundamental decisions by way of providing a professional context that takes into account the cultural importance of being responsive to Māori needs.
 - Māori in higher leadership roles who are grounded in tikanga me te reo Māori can decolonise situations, policies and systems to inform their decision making.

Conclusion

*Hutia te rito o te harakeke
Kei whea te kōmako e kō?
Ka rere ki uta, ka rere ki tai
Kī mai ki au,
He aha te mea nui i te ao?
Māku e kī atu,
He tāngata, he tāngata, he tāngata!*

*If you pluck out the centre shoot of the flax
Where will the bellbird sing?
It will fly inland, it will fly seaward
If you ask me,
What is the most important thing in the world?
I will reply,
It is people, it is people, it is people!*

27. Te Rūnanga o Ngā Toa Āwhina would like to thank the Governance and Administration Committee for the opportunity to make a submission on this Bill. We would like to appear before the committee.
28. We are in broad support of the Bill but we have made a number of recommendations throughout this submission. In numerical order by clause, they are:
- Insertion of new sub-section **3(f) - to recognise the public service’s role in supporting the Crown in its relationships with Māori under the Treaty of Waitangi (te Tiriti o Waitangi).**
 - 12(2)(b)(ii) – in the case of chief executives and public service boards that employ staff, **to apply employment policies and practices that reflect the Crown’s treaty relationship with Māori working in their agencies including** operating an employment policy that meets the requirements of section 71(2)(d).”
 - We recommend amending clause 45 to **allow for the appointment of a statutory Deputy Commissioner Māori to provide visible leadership on public service outcomes for Māori.**
 - Amend clause 48 to **require the establishment of a standing advisory committee, Māori to assist the Commissioner with the responsibilities in clause 12, with representation from Māori leaders within the public service and the Māori structures of the unions of Māori working in public services.**
 - 59(1) – The Commissioner must develop and implement a strategy for the development of senior leadership and management capability in the public service (the leadership strategy) and do so in consultation with public service leaders. **The Commissioner is responsible for recognising the matters listed in clause 71(2)(d) when developing the leadership strategy.**
29. Again, we would like to reiterate the importance of recognizing Māori Crown partnership under the Treaty. As one of our members put it, *“Policies and processes around the Treaty of Waitangi must not be about them being a backbone of the organisation but about one’s attitude to their practice around the treaty principles and bringing them to life through knowledge, behaviour and practice.”*
30. On behalf of our membership, PSA and Te Rūnanga o Ngā Toa Āwhina would like to engage with the Public Service Commissioner on all matters included herein. We are happy to share Ngā Kaupapa and have tikanga Māori values as public service values. We think it is appropriate to have members on a Māori advisory group to support the Public Service Commissioner in this work. We can see the value in helping define the aims and aspirations of Māori workers so that the good employer requirements can be meaningful to our members, to the public service, and to the people of Aotearoa New Zealand.

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