



PSA Submission:

**Independent Reporting Mechanism
(IRM) Progress Report: New Zealand
2014-2015**

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Introduction

1. The New Zealand Public Service Association Te Pūkenga Here Tikanga Mahi (the PSA) is the largest trade union in New Zealand with over 62,000 members. We are a democratic organisation representing members in the public service, the wider state sector (the district health boards, crown research institutes and other crown entities), state owned enterprises, local government, tertiary education institutions and non-governmental organisations working in the health, social services and community sectors.
2. The PSA has advocated for strong, innovative and effective public and community services since our establishment in 1913. People join the PSA to negotiate their terms of employment collectively, to have a voice within their workplace and to have an independent public voice on the quality of public and community services and how they're delivered.

Comments

Overall

3. Overall the PSA supports the analysis and recommendations of the Independent Reporting Mechanism (IRM) Progress Report: New Zealand 2014-2015.
4. Our concerns in 2014 with the draft action plan are largely upheld by the IRM Progress Report on the final action plan, and our comments from 2014 still apply to the next action plan:
 - a. the action plan needs to be based on new initiatives rather than existing initiatives, or at least build on or accelerates existing initiatives to progress towards open and accountable government
 - b. the initiatives in the action plan need to be directly relevant to achieving open and accountable government.
 - c. the National Integrity System Assessment provides the greatest opportunity for new actions.
5. Our comments on the Government's process to develop the Open Government Partnership (OGP) action plan, and on some of the recommendations above are provided below.

Process

6. The PSA acknowledges the Government's admission of the limited consultation to develop the current action plan, and its plans to commence consultation sooner and to develop ways and channels to improve its public consultation for the next action plan.
7. The PSA was one of a range of civil society organisations who believed that a strong participatory process was needed to develop the current action plan that modelled open government. We were very concerned that consultation occurred after the draft action plan was well developed and that there was little time to effectively consider the draft action plan.
8. The process to develop future action plans needs to be citizen driven and include non-government organisations from the early stages of development. Such a process will require adequate time and resources.

Recommendation 1

Reform official information laws by extending them to Parliamentary bodies and adopting the Law Commission’s recommendation to create an official information authority responsible for training, culture, advice, best practice guidance, and identifying necessary reforms.

9. The PSA supports this recommendation. We note that the Official Information Act 1982 (OIA) was reviewed by the Chief Ombudsman in 2015, and were pleased to see the recommendations to improve resourcing, staffing and guidance for departments to help to lessen perceived and real delays in responses to OIA requests.
10. We also look forward to the implementation of the recommendation to provide guidance to staff in ministerial offices, and would like to see a code of conduct for ministerial staff to help both them and other public servants to ensure that lines of responsibility are clear.
11. Resourcing is also a significant issue for the Office of the Ombudsman itself, and this must be addressed for the Office to fulfil its important monitoring role.
12. Ultimately, the PSA would like to see a shift to a proactive culture of disclosure which would help ensure New Zealand’s democracy remains strong.

Sources:

- <https://www.psa.org.nz/media/releases/oia-review-finds-more-support-needed-to-improve-results/>
- <https://www.psa.org.nz/media/news/public-information-and-the-oia/>

Recommendation 2

Create a set of robust and government-wide practices in collaboration with civil society concerning timely public consultation on new bills, regulation and policy; base them on international best practice; make them mandatory where feasible; and include an effective complaint resolution mechanism or Ombudsman.

13. The PSA supports this recommendation.

Recommendation 3

Commit to regular, standardized, technically independent “state of the nation” reporting on social policy and the environment.

14. The PSA supports this recommendation.

Recommendation 4

Develop an express and public cross-government policy formally permitting public servants and those receiving public funding to speak out on significant public issues without facing any form of retaliation.

15. The PSA particularly supports this recommendation. In our view, this recommendation encompasses two dimensions:
 - a. The constitutional responsibility of state servants to provide free and frank, politically neutral advice to the government of the day
 - b. The right of state servants as private citizens to participate in political activities.

16. New Zealand's constitutional framework includes two conventions relating to the public service which underpin open and accountable government - the provision of free and frank advice to government Ministers and political neutrality. State servants must be apolitical when carrying out their duties, functions and powers. It is a principle that underpins the continuing employment status of state servants and enables state servants to provide consistent services, including policy advice, for the government of the day.¹
17. However, there must be a proper balance between respect for State servants' freedoms of expression and association, and the public interest in having a politically neutral and effective state services. As a consequence of the statutory right of state servants to join and be active in organisations, including trade unions, it is likely that there will sometimes be, within defined limits, an expression of political views inside the workplace. State servants have the same rights of association as other members of the public; political expression and participation may be undertaken in the individual's own time.

Source:

- Submission to the Constitution Review Panel by the Public Service Association: Te Pukenga Here Tikanga Mahi, 31 July 2013, <https://www.psa.org.nz/dmsdocument/165>

Responsibility of state servants to provide free and frank, politically neutral advice to the government of the day

18. There is now reasonable evidence that since the 1980s, there has been an appreciable diminution in the willingness of public servants to provide free and frank advice to Ministers and an increasing sensitivity to pleasing Ministers. For example, blunt advice is offered less easily, softer language is preferred, written advice tends to be less controversial or innovative, more innovative thinking or sensitive issues are tested verbally, and draft advice can be tested with Ministers before being finalised.
19. The health of our system of government will suffer if the public service becomes politicised - if the public service tells ministers only what they want to hear, or if advice is absent from the written record making it more difficult for the public to access and scrutinise.
20. A solution could be the development of a standalone Code of Conduct or Guidance for Relationships between Ministers and public servants, to complement the Cabinet Manual. It should be simple and principles based, and developed in consultation with public servants and their unions. It should be interpreted jointly by the State Services Commissioner (acting statutorily independently) and by the Prime Minister. Such a document could be the basis for training and for new public servants and new Ministers to understand the nature of the responsibilities when they take up office.
21. Ultimately though, the provision of free and frank advice requires a cultural change in the leadership of the public service, led by both chief executives and Ministers. This type of leadership requires a formal and explicit acknowledgement that our system of government values free and frank advice as an objective.

Sources:

- Dr Matthew Palmer, *Politics and Public Sector Employees: What's gone wrong with the relationship between ministers and public servants – why it matters, and what needs to be done to fix it*, Address to "In the Thick of It", PSA lunchtime seminar series, 12 November 2014,

¹ <http://www.ssc.govt.nz/political-neutrality-guidance> accessed on 4 July 2013.

Wellington, <https://www.psa.org.nz/assets/PDFs/Politics-and-Public-Sector-Employees-Address-to-PSA-Nov-2014.pdf>.

- Dr Matthew Palmer, “Rebuilding a Quality Public Service”, in Public Service Association: Te Pukenga Here Tikanga Mahi and New Zealand Fabian Society, *Rethinking the State Sector Act: Views from the PSA and New Zealand Fabian Society’s 2013 Seminar Series*, February 2014.

Right of state servants as private citizens to participate in political activities

22. Another concerning trend is the “chilling effect” on public servants as citizens, observed since the 1980s. The “chilling effect” discourages public servants, including scientists, academics and other professionals, from political participation as a private citizen in their own time. For example, speaking at a public meeting, attending a public march, writing a letter to the editor, or joining a political party, trade union or civil society group.
23. This has come about as a result of a conservative interpretation and application of the Public Service Code of Conduct by state service employers, and recent concerted attacks on individual public servants through social media.
24. Contracting out has not prevented the state trying to control the right of workers in those organisations to speak out. Research by Grey and Sedgwick, Victoria University of Wellington in 2013, found that 15% of survey respondents agreed that their funding agreement with the government restricted their organisation’s capacity to make public comment on government policy and research.
25. A 2014 survey of its members by the New Zealand Scientists Association on the proposed Code of Public Engagement, found that nearly 40% of the survey respondents agreed that they had been prevented from making a public comment on a controversial issue by management policy or by fear of losing research funding.
26. The risk is that New Zealand loses the plurality of knowledgeable and informed voices of public servants, critical to open and well-informed decision-making by government.
27. A solution could be the development of a Charter of Political Rights for all public servants that clearly defines and promotes their right to contribute their expertise to public policy debate and political activity, balanced with their constitutional responsibilities to be politically neutral and provide free and frank advice to the government of the day.

Sources:

- <http://teu.ac.nz/2016/02/funding-influencing-research/>
- Dr Nicola Gaston and Dr Sandra Grey, *Whether public funding is shutting down the voices of scientists, NGOs, health and other experts*, Victoria University of Wellington, Address to “In the Thick of It”, PSA lunchtime seminar series, 3 December 2014, Wellington, <https://www.psa.org.nz/media/news/in-the-thick-of-it-nicola-gaston-and-sandra-grey/>
- New Zealand Scientists Association, Survey on the proposed Code of Public Engagement, 1 November 2014, <http://www.scientists.org.nz/blog/2014/survey-on-the-proposed-code-of-public-engagement>.
- Nicky Hager, *Why it’s important that public sector workers have the right to be politically active – but why many think they can’t be*, Address to “In the Thick of It”, PSA lunchtime seminar series, 28 October 2014, Wellington, <https://www.psa.org.nz/media/news/in-the-thick-of-it-nicky-hager/>

- Dr Sandra Grey and Dr Charles Sedgwick, *Fears, Constraints and Contracts: the democratic reality for New Zealand's community and voluntary sector*, Victoria University of Wellington, March 2013.

Recommendation 5

Strengthen the transparency of political party funding from donations and Parliamentary revenues.

28. The PSA supports this recommendation.