

Impact Statement: State Sector Act Reform

General information

Purpose

The State Services Commission (SSC) is solely responsible for the analysis and advice in this impact statement. This analysis and advice has been produced to inform key policy decisions to be taken by Cabinet on the State Sector Act reform.

Key limitations or constraints on analysis

In January 2018, the Minister of State Services asked SSC to review the State Sector Act 1988. Subsequently, in May 2018, the Cabinet Government Administration and Expenditure Review Committee agreed to reform the State Sector Act 1988, with a view to its repeal and replacement with a new Public Service Act [GOV-18-MIN-0013.01 refers].

The State Sector Act 1988 sets out the framework for the operation of the New Zealand Public Service. The Act has no direct bearing on private businesses, organisations or citizens. As such, changes to the legislative framework would not introduce any new regulatory burden for private businesses, organisations or citizens but would change the regulatory environment within which publicly owned organisations operate.

The options discussed in this impact statement are not exhaustive. They are limited to those raised in public consultation last year and further policy work carried out since then.

There are limitations to how the impacts of the proposals in this statement can be assessed specifically or quantitatively. This is mainly because the reforms are intended to have an enabling effect on operations of the Public Service. They will provide the tools and instruments to bring about change in a managed way to meet current and future requirements. Therefore, the measurable impacts of these reforms will not be realised until the subsequent work programmes and plans enabled by this legislation have been prepared. These work programmes may also be subject to the regulatory impact assessment requirements.

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Contents

Impact Statement: State Sector Act Reform	1
General information	1
Contents	2
1. Introduction to the Reform	3
2. Purpose, Principles and Values of the Public Service	17
3. Scope of the Public Service	38
4. Providing Information to Support the Government System.....	49
5. Te Ao Tūmatanui	64
6. Employment in the Public Service.....	74
7. Diversity and Inclusion	86
8. Pay Equity	94
9. State Services Commissioners.....	101
10. Leadership of the Public Service.....	108
11. Senior Leadership	122
12. Flexible Organisational Arrangements within Departments.....	130
13. New Models for Cross-agency Working.....	138
14. A New Public Service Act.....	147
15. Implementation and Operation.....	153
16. Monitoring, evaluation and review	156
17. Summary of proposals.....	159

1. Introduction to the Reform

1.1 Background

The State Sector Act 1988, Public Finance Act 1989 and the Crown Entities Act 2004 form the basis of the current public management framework that governs the operation of the State services. The State Sector Act is the latest legislation governing the Public Service, and replaces the 1962 State Services Act, which replaced the 1912 Public Service Act before that. As a broad framework for operation, this legislation does not impact directly on citizens, businesses, or communities. This impact assessment relates only to the review of the State Sector Act. As such, it is one element of a broader reform of the public management framework currently underway (eg, a review of the Public Finance Act 1989 being undertaken by the Treasury). Ensuring that legislative instruments remain fit for purpose is an important part of good regulatory stewardship.

Reforms of the public sector

The State Sector Act 1988 was created more than 30 years ago as part of wider reform of the public sector in the late 1980s and '90s. These reforms sought to embed the theory of the marketplace and business-like management models in public organisations. They transformed the Public Service from a unified organisation with one employer into separate departments, each with their own chief executive acting as employer of departmental staff. Departments were treated as if they were separate firms in a private sector context. The core principles of the reforms were accountability, contractualism, managerialism and decentralisation. While many other jurisdictions adopted similar practices, New Zealand went further and faster than any other government.^{1 2 3 4 5 6 7 8}

The reforms led to the decoupling (including corporatisation and later privatisation) of many government trading functions, and the separation of service, regulatory and funding functions from departments into stand-alone agencies with their own governance and employees. The reforms enabled sharper focus, clearer accountability, and autonomy for chief executives.

¹ Boston, J., Martin, J., Pallot, J., and Walsh, P. (1996). *Public management: the New Zealand model*. Oxford University Press, Auckland.

² Gregory, R. (2006). Theoretical faith and practical works: de-autonomising and joining up in the New Zealand state sector. In: Christensen T. and Lægreid P. (eds) *Autonomy and regulation – coping with agencies in the modern state*. Edward Elgar, Cheltenham

³ Gorringe, P. (1994) Commitment perspectives on public sector governance. New Zealand Government, Wellington.

⁴ Jensen, K., Scott, R. J., Slocombe, L., Boyd, R., and Cowey, L. 2014. The management and organisational challenges of more joined-up government: New Zealand's Better Public Services reforms. State Sector Performance Hub, Working paper 2014-1. DOI: 10.13140/RG.2.1.3115.3680.

⁵ Schick, A. (1996). *The Spirit of reform: managing the New Zealand State Sector in a time of change*. State Services Commission of New Zealand, Wellington.

⁶ Scott, G. (2001). *Public Sector Management in New Zealand: lessons and challenges*. Australian National University, Wellington.

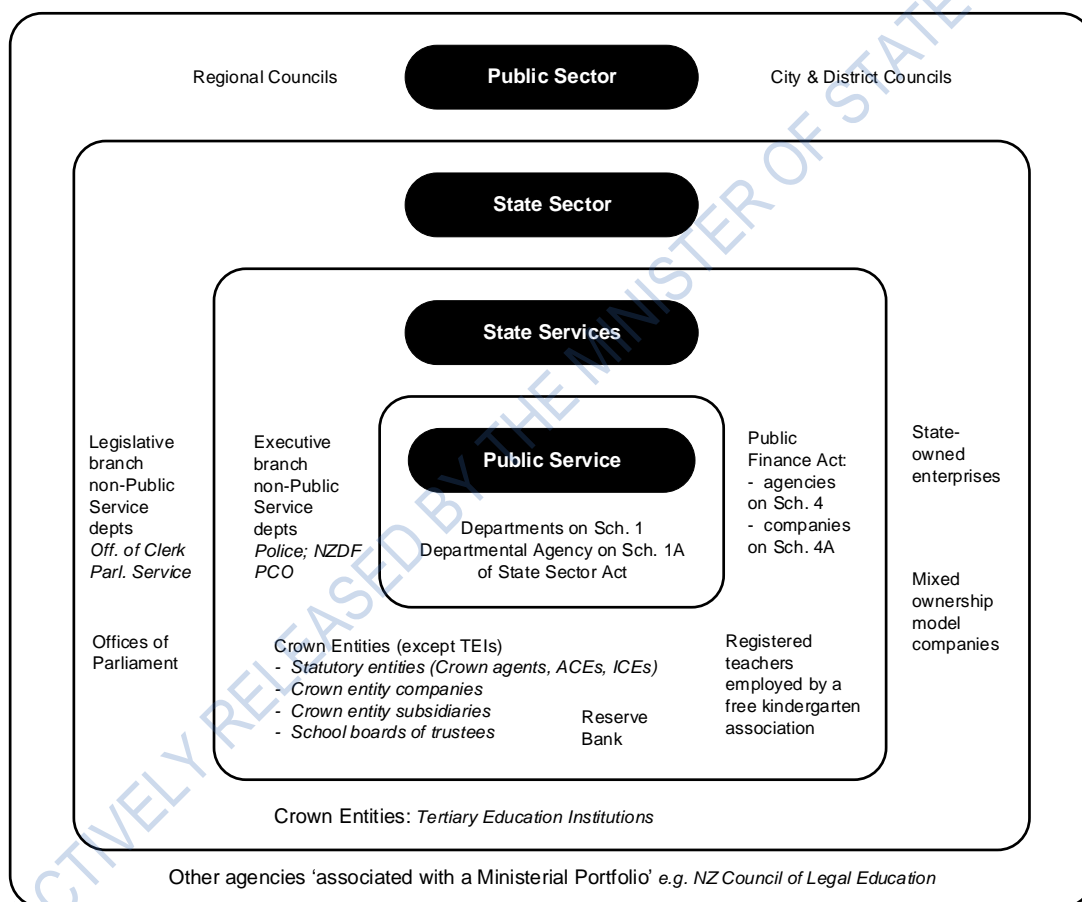
⁷ Pollitt, C., and Bouckaert, G. (2011). *Public Management Reform: a comparative analysis: new public management, governance and the neo-weberian state*. Oxford University Press, Oxford.

⁸ Vigoda, E. (2003). New public management. *Encyclopedia of public administration and public policy*, 2, 812-816.

Structure of the public sector

As well as separating the Public Service into smaller, functionally specialised departments (including purchase/provider splits), the reforms restructured New Zealand's public management system so that it distinguishes between entities that operate under lawful instruction from ministers (departments) and other entities that operate at 'arms-length' from ministerial control, such as Crown entities.

The State Sector Act defines the Public Service as those departments included in Schedule 1 of the Act. Schedule 1 includes all departments except for the New Zealand Police, the New Zealand Defence Force, and the Parliamentary Counsel Office. Many other government entities are outside this definition of 'Public Service' and come under terms such as 'the State services', the State sector', and 'the public sector'. As a result, the current description of the public management system provides for different groupings of government entities as set out in the diagram below:



This classification has been based on organisational form, which is generally based on the relationship with ministers. These definitions are unique to New Zealand and have varied in their use over time. For example, the main legislation of the Public Service has changed names from the Public Service Act 1912, to the State Services Act 1962, and then to the State Sector Act 1988.

Outcomes of the reforms

There is consensus that the reforms, including the creation of the State Sector Act 1988, were successful in enhancing the performance of government agencies. The Public Service

became more efficient in delivering outputs that were the responsibility of a single agency and more responsive to changes in direction by the elected government.^{9 10 11 12}

1.2 Problem

The reforms of the late 1980s solved the problems of the time to a considerable extent by increasing accountability, increasing transparency of resource allocation, and lessening the inertia generated by large departments that were dominated by a focus on input management.¹³ But the reforms also created new problems. Our public management system is fragmented and struggles to act cohesively to address cross-cutting problems. This is because the system incentivises separate agencies to be enterprising about their own resources, focused on the production of outputs, but not incentivised to connect with others or focused on achieving better outcomes.¹⁴

⁹ Schick, A. 2001. Reflections on the New Zealand Model. Based on a lecture at the New Zealand Treasury in August 2001. Accessed at: <https://treasury.govt.nz/sites/default/files/2008-02/schick-rnzm01.pdf>;

¹⁰ Boston, J., J. Martin, J. Pallot and P. Walsh. 1996. *Public Management: The New Zealand Model*. Auckland: Oxford University Press.

¹¹ Boston, J. and Eichbaum, C. 2007. 'State Sector Reform and Renewal in New Zealand: Lessons for Governance.' *The Repositioning of Public Governance*. Caiden, G. and Su, T. (ed). Taiwan: Best-Wise Publishing.

¹² Better Public Services. (2011). Better Public Services Advisory Group Report. State Services Commission: Wellington. Accessed at http://www.ssc.govt.nz/sites/all/files/bps-report-nov2011_0.pdf.

¹³ The core problem was the low productivity of the New Zealand economy. Given its role in the economy the reform of the public sector was also focused on the problem of how to lift productivity. See Scott, G. and Gorringe, P. 1988. Reform of the Core Public Sector: The New Zealand Experience. Paper to the Bicentennial Conference of the Royal Australian Institute of Public Administration, 27 October 1988. The Treasury: Wellington.

¹⁴ This general diagnosis has been echoed in reports by academics, independent reviews, and departments themselves, see in particular:

Boston, J. (1996). *Public management: the New Zealand model*. Oxford University Press, Oxford.

Jensen, K., Scott, R. J., Slocombe, L., Boyd, R., & Cowey, L. (2014) The management and organisational challenges of more joined-up government: New Zealand's Better Public Services reforms. State Sector Performance Hub, Working paper 2014-1. DOI: 10.13140/RG.2.1.3115.3680

Schick, A. (1996). *The Spirit of Reform: Managing the New Zealand State Sector in a Time of Change; a Report Prepared for the State Services Commission and the Treasury, New Zealand*. State Services Commission. State Services Commission of New Zealand (2001) Report of the Advisory Group on the Review of the Centre. Accessed at: <http://www.ssc.govt.nz/roc>.

State Services Commission of New Zealand, (2011). Better Public Services Advisory Group Report. Accessed at: HYPERLINK "http://www.ssc.govt.nz/bps-background-material" <http://www.ssc.govt.nz/bps-background-material>.

Treasury (2006) Review of Central Agencies' Role in Promoting and assuring State Sector Performance. Accessed at: <http://www.treasury.govt.nz/publications/informationreleases/exreviews/ca>

Over the past 30 years, the need for change has been highlighted by successive reviews and studies.^{15 16 17 18 19 20 21 22 23 24 25 26 27} These reviews have consistently identified challenges caused by these incentives to operate vertically rather than horizontally. These include (but are not limited to):

1. The narrowing of each department's focus to its own particular outputs has incentivised officials to focus on their own agency rather than instilling a larger sense of the wider Public Service with a unifying common mission.
2. Closely related services are provided by different departments and people find themselves having to interact with multiple agencies to get relevant information or to address a single problem. Whether starting a business or having a baby, New Zealanders find that government is not as joined-up as it could be.
3. It is hard for government to address complex social issues that span agency boundaries such as climate change, mental health and family violence. These require agencies to work together in a coordinated manner. Though the system has improved, sophisticated cross-agency collaboration is difficult to sustain in the current settings and continues to be slower than it needs to be.
4. Agencies differ significantly in terms of operating models, information and data systems and human resource management. For instance, treating departments as separate employers has resulted in a high level of variation in employee terms and conditions, which makes it difficult for people to move across the system. This reinforces public servants' identification with their department rather than as part of a unified service serving the interests of New Zealanders.

¹⁵ New Zealand Government (1991) Review of State Sector Reforms (Logan Report)

¹⁶ State Services Commission (2001) Ministerial Advisory Group on the Review of the Centre

¹⁷ State Services Commission (2011) Better Public Services Advisory Group Report

¹⁸ Lips, A. M. B., O'Neill, R. R., and Eppel, E. A. (2011). Cross-agency collaboration in New Zealand: An empirical study of information sharing practices, enablers and barriers in managing for shared social outcomes. *International Journal of Public Administration*, 34, 255–266.

¹⁹ Jensen, K., Scott, R. J., Slocombe, L., Boyd, R., and Cowey, L. 2014. The management and organisational challenges of more joined-up government: New Zealand's Better Public Services reforms. State Sector Performance Hub, Working paper 2014-1. DOI: 10.13140/RG.2.1.3115.3680

²⁰ O'Leary, R. (2014). *Collaborative governance in New Zealand: Important choices ahead*. Wellington, New Zealand: Fulbright New Zealand.

²¹ Orange, R. (2016). New public passion: Reflections from New Zealand on public service reform. Discussion Paper 08(01). UNDP Global Centre for Public Service Excellence. Singapore.

²² Scott, R. J., and Boyd, R. (2016a). *Collective impact in the Public Sector: the New Zealand Results approach*. State Sector Performance Hub. Working paper 2016-1. DOI: 10.13140/RG.2.1.2839.5929

²³ Scott, R. J., and Boyd, R. (2016b). *Case studies in collaborating for better public services*. State Sector Performance Hub. Working paper 2016-2. DOI: 10.13140/RG.2.1.3232.8081.

²⁴ Scott, R. J., and Boyd, R. (2016c). Results, targets and measures to drive collaboration: Lessons from the New Zealand Better Public Services reforms. In: Butcher, J. R., and Gilchrist D. J., (Eds.) *The three sector solution: Delivering public policy in collaboration with not-for-profits and business*. Australian National University Press, Canberra. 235-257

²⁵ Scott, R. J., and Boyd, R. (2017a) *Interagency Performance Targets: A Case Study of New Zealand's Results Programme*. IBM, Washington DC.

²⁶ Scott, R. J., and Boyd, R. (2017b). Joined-up for what? Response to Carey and Harris on joined-up governance practices. *The Australian Journal of Public Administration*.

²⁷

Scott R. J., and Bardach, E. (2018). A comparison of management adaptations for joined-up government: Lessons from New Zealand. *Australian Journal of Public Administration*. Doi:10.1111/1467-8500.12348

5. There is a culture of frequent structural changes and reorganisations resulting in productivity dips, loss of institutional memory, and consequent issues with the depth of experience which is available to address the problems of the day and provide governments with the best advice possible.
6. The system lacks a sufficiently strong “centre” by which to coordinate effort or guarantee adherence to the values and ethics underpinning the reputation of the Public Service and its constitutional role in serving successive governments loyally and impartially.

Reviews in 2001 and 2011 resulted in significant attempts to remedy these and other problems. The State Sector Act has been amended 13 times, building additional complexity and workarounds on top of the same basic foundation. This sequence of amendments has resulted in a patchwork of uneven provisions that are difficult to understand and apply and do not set out a clear or consistent vision for the Public Service.

Despite some progress being made by previous reforms, the step change needed to deliver meaningful results for New Zealand and New Zealanders has not been seen. The Public Service now operates in a fast changing and unpredictable context where major social, demographic and technology driven changes are reshaping the world as we know it. These ‘megatrends’ present new opportunities to seize as well as emerging issues and risks to address.

1.3 Attempts to address these problems

The Government wants agencies to operate more cohesively, so that public policy, spending and other government interventions are aligned to improving intergenerational wellbeing. However, the theoretical coherence underpinning the reforms that resulted in the ‘New Zealand model’ of the 1980s and 90s has meant that it is difficult to change the incentives embedded in the core legislative framework and associated guidance and practice.²⁸ It has been observed that ‘New Zealand’s public management reforms have almost certainly exacerbated the challenges of working across two or more agencies.’²⁹

There have been several attempts to introduce new incentives into the system so that agencies focus on the achievement of outcomes and join-up effort where this is needed, including:

- organising agencies around key and strategic result areas in the late 1990s
- the Managing for Outcomes programme in the early 2000s
- the Better Public Services results programme 2012-17.

These administrative changes worked for a while to join up the efforts of discrete agencies, but they were difficult to sustain in a system with strong incentives, hard-wired in legislation, for agencies to operate in silos. For example:

²⁸ The difficulties in countering the incentives created is a consistent feature of the literature and noted as early as 1996 by Schick.

²⁹ Boston, J. & Gill, D. 2011 ‘Working Across Organisational Boundaries: The Challenges for Accountability’. In Ryan, B. and Gill, D. (eds). Future State: Directions for Public Management in New Zealand. Wellington: Victoria University Press.

- Strategic Result Areas were introduced in 1993 to require agencies to demonstrate how their outputs contributed to the government's goals, which spanned agency boundaries. In 1997 the then Minister of State Services, Hon Jenny Shipley, observed that "Departments had to stop putting their territorial interests before collective interests".³⁰ The Strategic Result Areas process contributed to agencies understanding how the jigsaw of interventions fitted together, but fell short of compelling collective action. They were discontinued by the incoming government in 2000.
- The Managing for Outcomes initiative was introduced to encourage agencies to focus on the underlying value of their outputs through intervention logic. Because outcomes are typically influenced by more than one agency, the government introduced Managing for Shared Outcomes to encourage horizontal management between agencies.^{31 32} The initiative struggled to sustain momentum for several reasons, including problems with accountability. The reports created were delivered to Parliament and audited as part of a key accountability mechanism. Chief executives were effectively held accountable for the actions of other agencies in cross agency work, even if they had no control over these actions. Auditors looked for evidence of cause and effect – proven attribution of outputs to outcomes – which was often difficult to establish. These factors drove managers to be conservative and defensive in their ambitions for cross-agency outcomes.³³ Managing for Outcomes was never officially cancelled, but was referenced less frequently over time, and seemed to have disappeared entirely by 2005.
- The Better Public Services results programme was established to improve outcomes for New Zealanders in problem areas proven resistant to interventions in the past; but equally it was part of a state sector reform movement that set out to address some long-standing issues in New Zealand's public management system. In particular, service delivery is fragmented because the strongest incentives are for agencies to deliver the outputs they were funded to deliver, rather than to manage horizontally to achieve cross-cutting outcomes.³⁴ The programme was successful in encouraging cross-agency work and addressed some of the barriers to working horizontally. It arguably also promoted more collaborative behaviour through publication of successful inter-agency activities.³⁵ The programme was discontinued by the incoming government in 2018.

³⁰ Scott, G (2001) Public Sector Management in New Zealand

³¹ Baehler, K. (2003). 'Managing for outcomes': Accountability and thrust. *Australian Journal of Public Administration*, 62(4), 23-34.

³² State Services Commission. (2003). *Managing for outcomes: Guidance for departments*. New Zealand Government, Wellington

³³ State Services Commission (2011) *Better Public Services draft Issues Paper: Results*. Accessed at: <http://www.ssc.govt.nz/bps-background-material>.

³⁴ Scott R and Boyd R (2017) *Interagency Performance Targets A case study of New Zealand's Results programme*, IBM Centre for the business of government.

³⁵ Ibid

Collaboration to achieve outcomes has a compelling logic, and a significant body of literature suggests considerable potential for improved performance.^{36 37} But it is often difficult to establish and sustain collaboration because the structures and processes in our system don't support it and, as described above, are based on strong vertical accountabilities, creating incentives that maximise the focus for an individual agency or portfolio, often at the expense of what is best for the whole of government.³⁸ While cross-boundary operation is not explicitly constrained by the formal system, the barriers are implicit and embedded in a performance management framework underpinned by:

- a conception of organisations that is based on a production model and remains focused on controlling agency problems and managing outputs
- a positivist approach to funding, measurement and reporting derived from assumptions of (complete) contractibility and high measurability.³⁹

Taken together, the formal public management system, underpinned by legislation, has a normative effect that reinforces and rewards individual agency action. The non-legislative administrative reforms described above were laid over the existing, vertically aligned legislation in an attempt to introduce horizontal thinking and behaviour into the system. In every case, existing legislative provisions proved stronger and trumped administrative provisions, which have proved difficult to sustain over time.

There are few explicit barriers to agency collaboration in existing legislation. However, the current legislation is not based on the ideas of a unified service or collaborative behaviour as the norm; rather it sends the opposite message. The review of the State Sector Act is not solely about removing barriers to collaboration, or even about introducing more enabling provisions for collaborative work (although there are aspects of both of these). Instead it is about resetting the balance of incentives in New Zealand's public management system towards a more unified Public Service system and an ethos that supports collaborative behaviour as accepted part of the norm. Any proposed changes will need to be able to counter the strong vertical incentives in current legislation and be sufficiently sustainable to improve intergenerational wellbeing in all four capitals of the Living Standards Framework.

1.4 Consultation

From 3 September to 12 October 2018, SSC gathered public feedback on proposals in the discussion document Reform of the State Sector Act 1988 – Directions and Options for Change. The proposals focused on:

- providing a wider range of options for organisational and workforce development
- unifying the Public Service around a common purpose, principles and values
- ensuring strong and capable leadership of the system.

³⁶ Carey, G., & Crammond, B. (2015). What works in joined-up government? An evidence synthesis. *International Journal of Public Administration*, 38(13-14), 1020-1029.

³⁷ Bryson, J. M., B.C. Crosby and M. M. Stone. 2015. 'Designing and Implementing Cross-Sector Collaborations: Needed and Challenging.' *Public Administration Review*. 75(5): 647-663.

³⁸ Boston, J. & Gill, D. 2011 'Working Across Organisational Boundaries: The Challenges for Accountability'. In Ryan, B. and Gill, D. (eds). *Future State: Directions for Public Management in New Zealand*. Wellington: Victoria University Press.

³⁹ Vitalis, H. & Butler, C (2019) *Organising for complex problems – beyond contracts, hierarchy and markets*. Paper prepared for presentation at the XXIII IRSPM Annual Conference 2019

More than 300 written submissions were received. Of these, 178 were from public servants; 42 from members of the public; 24 from Crown entities; 14 from non-government organisations (NGOs); 13 from academics; the Public Service Association (PSA) and three from PSA membership groups; five from non-PSA unions (the New Zealand Council of Trade Unions, New Zealand Post Primary Teachers Association, Association of Salaried Medical Specialists, New Zealand Te Riu Roa and the Tertiary Education Union); six from Māori groups; and 18 were 'other' submissions. Many of these submissions reflected a wide range of perspectives from different communities. A number of the submitters were from representative bodies with significant membership bases.

PSA members contributed to the PSA's submission through more than 400 individual responses to an online feedback form, face-to-face meetings and workshops at an inaugural Public Service Delegates Conference, held at the end of September. Quotations from PSA members who contributed through these processes were included throughout the PSA's submission. Members of Te Rūnanga o Ngā Toa Āwhina, the Māori structure of the PSA also contributed through an online process, attending regional hui and discussion at its recent biennial Hui Taumata.

The Council of Trade Unions (CTU) affiliates with members in the State sector comprise the PSA, the New Zealand Nurses Organisation, the Association of Salaried Medical Specialists, Midwifery Representation and Advisory Services, the New Zealand Education Institute Te Riu Roa, the New Zealand Post Primary Teachers Association, the Tertiary Education Union, the Independent Schools Education Association, the Tertiary Institutes Allied Staff Association, TUIA Union, E tū, and First Union. All of these unions have members working in the state sector and/or in public-funded services. The CTU has affiliates whose members were previously part of the public sector but are now working in State-Owned Enterprises.

Non-government organisations (NGOs) included the Institute of Public Administration New Zealand (IPANZ) and the Australia and New Zealand School of Government (ANZSOG). IPANZ also held a panel discussion and forum on the proposals. Representative NGOs that provided submissions and feedback included the New Zealand Law Society, the Institute of Internal Auditors NZ, the Institute of Directors, the Chartered Accountants Australia and New Zealand, CPA Australia, the Salvation Army, the NZ Society of Local Government Managers and the Local Government Think Tank.

SSC received submissions and feedback from specific professional government groups including Chief Finance Officers, Chief Legal Advisers' Forum, Heads of Communications, Heads of Human Resources, and the Department of Internal Affairs Government Chief Digital Officer, as well as the Government Women's Network, Diversity & Inclusion Network, and the Disabled Network at Ministry of Social Development.

Engaging with public servants requires a different approach of consulting other stakeholders because public servants are accustomed to engaging with policy in a way that reflects their role, rather than their personal view or individual employment interests. We therefore targeted public servants with lunchtime workshops rather than expecting large numbers of written submissions.

Throughout the consultation period SSC directly engaged with more than 1100 people in Auckland, Wellington, Whangarei, Hamilton, New Plymouth, Gisborne and Christchurch. Public servants, Crown entities representatives, members of the public and NGO staff attended these meetings. There were dedicated workshops for Māori and Pacific peoples.

The Commission undertook fortnightly targeted consultation during the development of the proposals, and as needed subsequently, with an academic reference group and with the

PSA; as well as two bespoke sessions convened by the CTU, with their affiliates (on a general introduction to the reform; and on the purpose, principles and values). In addition, SSC convened a senior Māori public servants' network and an external Māori reference group to test the direction of the emerging proposals.

Problem definition and focus of change

Twenty-six submissions responded to the question whether they agreed or disagreed with the problem definition and focus of the legislative change. Half the submissions were from public servants, two from members of the public, three from academics, two from unions, one each from Transparency International New Zealand, Australia and New Zealand School of Government (ANZSOG), the Institute of Internal Auditors NZ, and three other individuals. Most of the public servant submissions and those from members of the public and other individuals agreed, or generally agreed, with the problem definition and focus.

Fifteen submitters provided general feedback pertaining to the problem definition and need for law change.

There were 118 responses to the question whether we need to make law changes to improve our Public Service, including 83 from public servants and the PSA, and 21 from members of the public. Eighty submissions supported legislative change, including strong support from public servants and the PSA. Others supported law change in some areas, but also noted that non-legislative measures were needed.

Of the 25 submissions that included a response to the question whether to amend the State Sector Act or develop a new Act, 24 supported a new Act and one supported amending the current Act.

Stakeholder feedback is further summarised and addressed in the subsequent sections for each issue.

1.5 Objectives of the Reform

The expectations of public servants need to be reset to work as a unified Public Service, and to work across boundaries to deliver better outcomes and services for people. The proposed interventions assessed in this impact statement seek to:

- provide a more flexible set of options for organisational arrangements to support the Public Service in better responding to priorities and joining up more effectively
- provide a strong centre for the Public Service to coordinate action on common issues, support the movement of scarce capability across the system, and provide for leadership roles that have a focus across the system
- preserve the future Public Service as an attractive and inclusive place to work, and increase interoperability across the Public Service workforce
- establish the Public Service's role in: government formation, support for long-term stewardship, and support for the Crown in its commitment to its relationship with Māori
- clearly establish the principles and values of an apolitical Public Service and the behaviours expected of all public servants.

These interventions aim to achieve the following policy objectives:

- Provide the ability to effectively join up around citizens and to respond to cross-cutting issues.
- Generate alignment and interoperability across the Public Service.
- Establish behavioural and cultural foundations for a unified Public Service.

These policy objectives are not mutually exclusive and instead can act to support each other. For example, establishing “behavioural and cultural foundations for a unified Public Service” is expected to help “generate alignment and interoperability across the Public Service”, which in turn helps “provide the ability to effectively join up around citizens and to respond to cross-cutting issues”.

Achieving these policy objectives will help deliver the overall objectives of the reform:

1. Deliver better outcomes and better services.
2. Create a modern, agile and adaptive New Zealand Public Service.
3. Affirm the constitutional role of the Public Service in supporting New Zealand’s democratic form of government.

The following intervention logic diagram demonstrates how the proposals will deliver on the broad objectives of the reform.

PROACTIVELY RELEASED BY THE MINISTER OF STATE SERVICES

STATE SECTOR REFORMS: INTERVENTION LOGIC

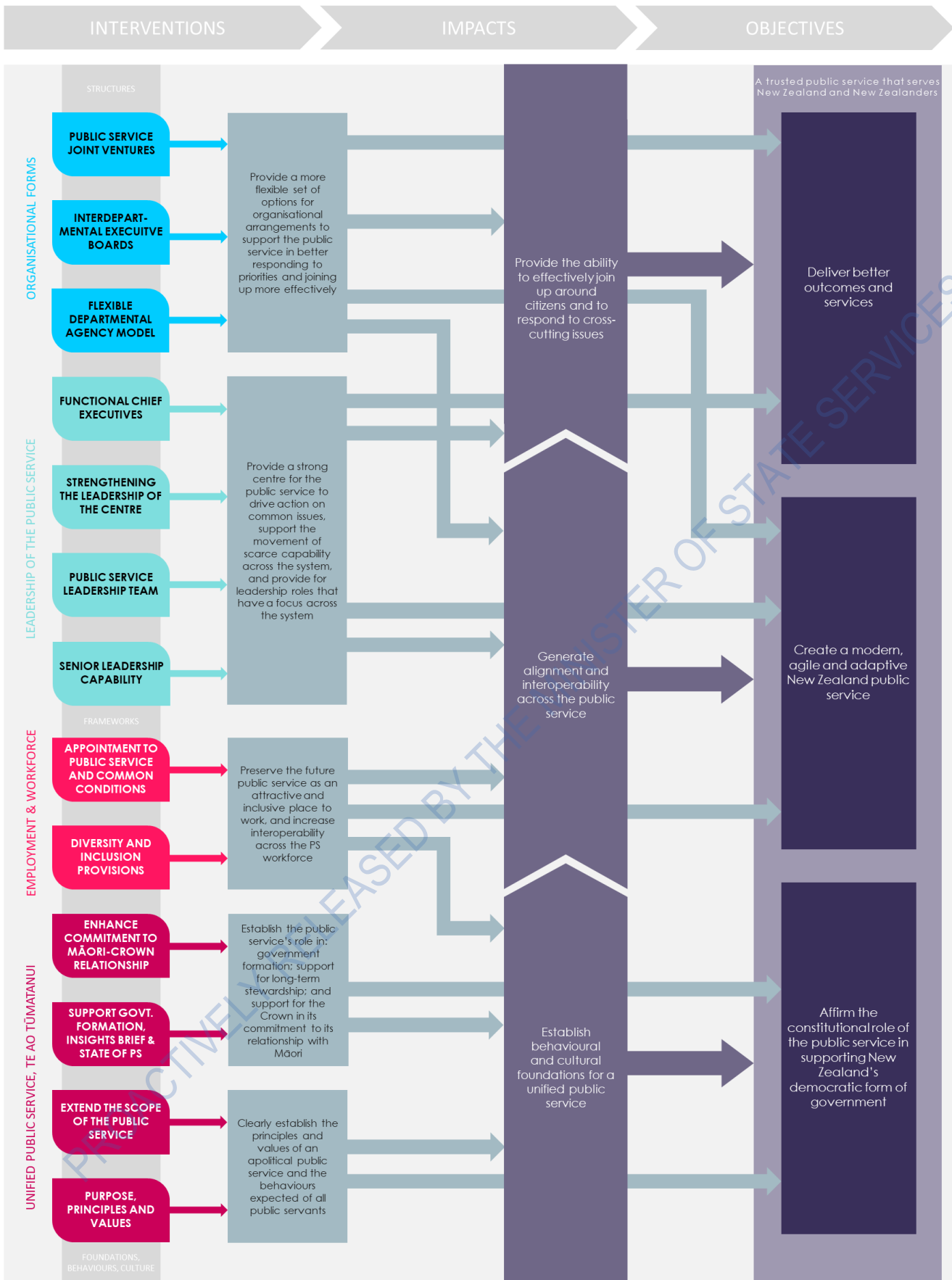


Figure 1. Intervention logic: how the reform proposals will deliver on the reform objectives

1.6 Approach to analysis

The analysis of options in this impact statement is informed by various reviews and public commentary over the past 30 years. These reviews and reports were used to identify the main challenges facing the Public Service and state sector, and options were developed that may address them. The options discussed in this impact statement are not exhaustive and are limited to those considered following feedback and further policy work since public consultation last year. The proposals in this impact statement sit within the following areas:

1. Purpose, Principles and Values of the Public Service
2. Scope of the Public Service
3. Providing Information to Support the Government System
4. Te Ao Tūmatanui
5. Employment in the Public Service
6. Diversity and Inclusion
7. Pay Equity
8. State Services Commissioners
9. Leadership of the Public Service
10. Senior Leadership
11. Flexibility Organisational Arrangements within Departments
12. New Models for Cross-agency Working
13. A New Public Service Act

Each section covers:

- the background to the issue
- the problem that has arisen
- what submitters said during consultation
- options to achieve the objectives
- an assessment of each option against a set of objectives and criteria
- the preferred option and impact of implementing that option.

The options are assessed against three policy objectives described in the intervention logic and reproduced below. Most options relate to these policy objectives, as illustrated in the intervention logic. However, there are some proposals that work directly to achieve the reform objectives – this is indicated where relevant. The effectiveness of each option in meeting that objective is compared against the status quo.

Policy objective	Reform objective
Provide the ability to effectively join up around citizens and respond to cross-cutting issues	This objective aims to deliver better outcomes and services , by joining up the Public Service to approach issues collaboratively and better design services to suit New Zealanders.
Generate alignment and interoperability across the Public Service	This objective aims to create a modern, agile and adaptive New Zealand Public Service , by allowing for flexibility and mobility in the Public Service, including the ability to move scarce capability across the system.

Establish behavioural and cultural foundations for a unified Public Service	This objective aims to affirm the constitutional role of the Public Service in supporting New Zealand’s democratic form of government , by creating a unifying ethos amongst the Public Service, bound by shared purpose and values.
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Not all policy objectives will be relevant to each proposal, but each proposal aims to achieve at least one of the policy objectives listed above. The options will also be assessed against the following criteria:

Criteria	Description of criteria
Clarity	The extent to which the proposals are clear, or clarify an existing area of law, and establish certainty for public servants and the public on how they will be applied.
Acceptability	The extent to which the proposals respond to views raised during consultation.
Sustainability	The extent to which the proposals will continue to operate to meet the policy objectives.
Feasibility	The extent to which the proposals can be implemented in practice, including whether any financial costs can be met.

The effectiveness of each option in meeting that criteria is compared against the status quo.

The proposals in this statement have varying scope within the State services. All proposals will apply to the Public Service as it currently stands (ie, core Public Service departments listed in Schedule 1 of the State Sector Act and the collaborative models proposed in sections 12 and 13 which operate within the Crown, between the core departments). Therefore, the term “public servants” in this statement refers to those who are employed by the core Public Service departments. Other proposals are intended to apply beyond the core Public Service departments to include Crown agents as well, and some to include all Crown entities. Figure 1 below outlines the intended reach of each proposal. The scope of each proposal is discussed further in each section.

Section 14 includes two options for implementing the proposals: amending the current State Sector Act, or creating a new Public Service Act. Most proposals can feasibly be implemented either way. However, including the purpose, principle and values of the Public Service (the proposals in section 2) in an amended State Sector Act (which suggests that it is not primarily about the Public Service) may be inappropriate.

STATE SECTOR REFORMS: APPLICATION OF LEGISLATIVE PROPOSALS

	Unified Public Service, Crown-Māori relationship							Employment & Workforce		Leadership of the Public Service		Organisational Forms	
	PURPOSE, PRINCIPLES AND VALUES	SCOPE OF THE PUBLIC SERVICE	CODE OF CONDUCT	ENHANCE COMMITMENT TO CROWN-MAORI RELATIONSHIP	SUPPORT GOVT. FORMATION, INSIGHTS BRIEF & STATE OF PUBLIC SERVICE	APPOINTMENT TO PUBLIC SERVICE AND COMMON CONDITIONS	DIVERSITY AND INCLUSION PROVISIONS	WORKFORCE POLICY STATEMENTS	FUNCTIONAL CHIEF EXECUTIVES	STRENGTHENING THE LEADERSHIP OF THE CENTRE	PUBLIC SERVICE LEADERSHIP TEAM	SENIOR LEADERSHIP SERVICE	ORGANISATIONAL FORMS
CORE GOVERNMENT DEPARTMENTS IN SCHEDULE 1 STATE SECTOR ACT													
PUBLIC SERVICE JOINT VENTURES FLEXIBLE DEPARTMENTAL AGENCY MODEL PUBLIC SERVICE EXECUTIVE BOARDS													
CROWN AGENTS									By invitation		By invitation	By invitation	
AUTONOMOUS CROWN ENTITIES INDEPENDENT CROWN ENTITIES												By invitation	
CROWN ENTITY COMPANIES SUBSIDIARIES OF CROWN ENTITIES PUBLIC FINANCE ACT 4A COMPANIES PARLIAMENTARY COUNSEL OFFICE PARLIAMENTARY SERVICE												By invitation	
<u>OTHER PUBLIC SECTOR</u> CROWN RESEARCH INSTITUTES & SUBSIDIARIES OTHER LEGISLATIVE BRANCHES: NZ DEFENCE FORCE, POLICE, RESERVE BANK SCHOOL BOARDS OF TRUSTEES PUBLIC FINANCE ACT SCHEDULE 4 ORGANISATIONS TERTIARY EDUCATION INSTITUTIONS & SUBSIDIARIES STATE OWNED ENTERPRISES MIXED OWNERSHIP MODEL COMPANIES OFFICE OF THE CLERK OFFICERS OF PARLIAMENT LOCAL GOVERNMENT													

Figure 2. Application of proposals to each type of organisation

2. Purpose, Principles and Values of the Public Service

2.1 Background

As discussed in section 1.1, New Zealand's public entities were changed to operate as a loose collection of separate entities. Despite this distinction and separation of entities, there are some common standards that form the bedrock of the Public Service. Whatever way they work, all departments need to maintain high standards of service and conduct, as failure in one department reflects on all and undermines the role of the Public Service in supporting executive government. All departments, and individual public servants, need to work in the way that retains New Zealanders' confidence and ensures the Public Service is seen as trustworthy.

There is no single legislative statement of the purpose, principles and values of the Public Service. Such statements do exist, for example in various sections of the State Sector Act, and in the State Services Code of Conduct issued by the State Services Commissioner (the Commissioner). They are also implied in other legislation, like the Official Information Act 1982, or matters of convention. However, we lack a single statement that can act as a point of identification and unity for the Public Service.

Purpose

Although the State Sector Act has a purpose section, it does not set out a purpose specifically for the Public Service. It focuses on actors within the public management system (the Commissioner, chief executives), and the functions, powers and responsibilities of those actors.

Principles

Neither is there a set of principles in the State Sector Act 1988, although principles of the Public Service have been introduced in some form or another as Public Service legislation has developed:

- The Public Service Act 1912 first established political neutrality and merit selection as principles for the Public Service.
- The 1962 State Sector Act expanded these principles by stating that the Public Service must be imbued with a spirit of service to the community.
- In 1988 the State Sector Act reinforced the existing principles but spread them throughout the legislation, making them difficult to read as a coherent set of unifying principles.
- The 2013 amendments to the State Sector Act affirmed stewardship and free and frank advice as principles for the Public Service (both of which had long histories as constitutional conventions) but failed to bring the various principles together in one clear statement.
- Alongside the principles found in the State Sector Act, other legislation such as the Official Information Act 1982 and the Ombudsmen Act 1975 has confirmed openness, with appropriate protections, as a key principle for Executive Government and the Public Service.

There are also differences in how these principles are given legislative effect, for example, some are duties on chief executives, some are responsibilities owed to ministers, while others are merely described in legislation, with no mention of a duty or responsibility.

The principles of the Public Service predate the 1988 Act, yet some public servants feel that the reforms of the 80s and 90s have eroded these principles, as the ethos of the legislation reflected a philosophy that did not place emphasis on social and cultural aspects of the Public Service.

Values

The State Sector Act is currently silent on the values of the Public Service. Other jurisdictions have included values in primary legislation.

However, the Commissioner does have a role to promote a spirit of service to the community and work with State services leaders to ensure that the State services maintains high standards of integrity and conduct, are led well, and trusted.⁴⁰

To this end, the Commissioner is able to issue *minimum* standards of integrity and conduct, that form the basis of investigations by the Commissioner and action by the employer.⁴¹ These standards can be applied to the Public Service, Crown entities (except tertiary education institutes and Crown Research Institutes, companies in Schedule 4A of the Public Finance Act 1989, the Parliamentary Counsel Office, and the Parliamentary service).⁴² The Commissioner may apply these standards to agencies with any variations the Commissioner thinks appropriate.⁴³ This provision has allowed standards to be applied flexibly.

The Act also allows the Commissioner to provide any additional advice and guidance related to integrity and conduct.⁴⁴

2.2 Problem or opportunity

Although public consultation on these proposals suggests that the purpose, principles and values are largely known and supported by public servants, and that trust in government remains relatively high in New Zealand, there is some cause for concern.⁴⁵

First, successive reviews of the New Zealand public management system have concluded that Public Service entities are not always working closely together when needed and would benefit from seeing themselves as working for one team. Social psychology and behavioural economic research has consistently found that identifying with a group influences the

⁴⁰ State Sector Act 1988, s4A

⁴¹ State Sector Act 1988, s57

⁴² Section 57(1)

⁴³ Section 57(3)

⁴⁴ Section 57(4)

⁴⁵See consultation section below. Trust in government is evident in: Organisation for Economic Cooperation and Development. (2017). *Government at a Glance 2017*. OECD.

behaviour of its members.^{46 47 48 49} Individuals are more likely to cooperate with people from within the group that they see as being on their “team”.^{50 51 52 53 54 55 56 57 58}

However, officials report that more public servants identify as part of their profession (e.g. nurses, lawyers) or their department (e.g. Ministry of Health, Ministry of Justice) than with the Public Service as a whole. This means that they are less likely to cooperate with other departments^{59 60 61} and more likely to adopt a competitive approach. Public Service identification could instead be seen as a common thread that helps unify people from different backgrounds – professional, demographic (age, cultural, ethnic, socio-economic etc).

Furthermore, while the constitutional role of the Public Service is crucial to the Public Service supporting the system of government, public servants have told us they do not always feel (or behave) like they are part of a unified system that helps New Zealanders, nor do they understand their constitutional role in supporting New Zealand’s system of government.

Second, while New Zealand has a strong tradition of upholding the foundational principles of the Public Service through practice and convention, some recent developments point to a need for change:

⁴⁶ Abrams, D. and Hogg, M. A. (1990). An introduction to the social identity approach. *Social identity theory: Constructive and critical advances*, 1-9.

⁴⁷ Akerlof, G. A. and Kranton, R. E. (2010). *Identity Economics: How Identities Shape Our Work, Wages, and Well Being*. Woodstock: Princeton University Press.

⁴⁸ Haslam, A. S. (2001). *Psychology in Organisations*. London, SAGE Publications.

⁴⁹ Hogg, M. A. and Turner, J. C. (1985). Interpersonal attraction, social identification and psychological group formation. *European journal of social psychology*, 15(1), 51-66.

⁵⁰ Allen, V. L, Wilder, D. A., and Atkinson, M. L. (1983). Multiple group membership and social identity. In: Sarbin, T. R. and Scheibe, K. E. (Eds.), *Studies in social identity* (p 92-115). New York: Praeger.

⁵¹ Ashforth, B. E. and Johnson, S. A. (2014). Which hat to wear. In: Hogg, M. A., & Terry, D. J. (Eds). *Social identity processes in organizational contexts* (p 31-47). Psychology Press.

⁵² Ashforth, B. E. and Mael, F. (1989). Social identity theory and the organization. *Academy of management review*, 14(1), 20-39.

⁵³ Brewer, M. B., & Kramer, R. M. (1986). Choice behavior in social dilemmas: Effects of social identity, group size, and decision framing. *Journal of personality and social psychology*, 50(3), 543.

⁵⁴ Brewer, M. B., & Silver, M. D. (2000). Group distinctiveness, social identification, and collective mobilization. *Self, identity, and social movements*, 13, 153-171.

⁵⁵ Chen, Y., & Li, S. X. (2009). Group identity and social preferences. *American Economic Review*, 99(1), 431-57.

⁵⁶ Kramer, R. M., & Brewer, M. B. (1984). Effects of group identity on resource use in a simulated commons dilemma. *Journal of personality and social psychology*, 46(5), 1044.

⁵⁷ Roccas, S. and Brewer M. B. (2002). Social identity complexity. *Personality and Social Psychology Review* 6: 88 – 10.

⁵⁸ Scott RJ. (2018). Identity and public administration: group membership and the influence of behavioural norms on public servants. World Congress of Political Science, Brisbane.

⁵⁹ Freidson, E. 2001. *Professionalism: The third logic*. Chicago: University of Chicago Press.

⁶⁰ Hoff, T. J. (1999). The social organization of physician-managers in a changing HMO. *Work and Occupations*, 26, 324 –351.

⁶¹ Scott RJ (2019). Social identity and Public Service motivation. International research society of public management conference, Wellington.

- Recent New Zealand research has revealed that some public servants believe that the practice of providing free and frank advice to ministers has declined in recent years.⁶²
- While New Zealand is generally regarded as a relatively “open” government, the Open Government Partnership reports that its recent progress has been less than in many other jurisdictions.⁶³
- Unlike other jurisdictions,⁶⁴ New Zealand has not articulated any values of the Public Service, only minimum standards, which does not speak to the aspirations of public servants to do their best for New Zealanders, nor represent the ideals of service.⁶⁵

This reform of the State Sector Act provides an opportunity to safeguard and support the principles of the Public Service, and to unite Public Service employees with a common purpose, and indicate they are all acting with a spirit of service to drive better services and outcomes for New Zealanders.

2.3 Consultation

The discussion document proposed a new Public Service Act, which would include provisions outlining the purpose, principles and values of the Public Service to ensure they form an enduring foundation for the Public Service and clarify the expectations that society places on it.

There were 598 responses to this proposal. Respondents included members of the public (49), public servants (281), PSA (13), non-PSA Unions (23), Māori (four – including hui), other NGOs (36), Academics (53), Crown Entities (35) and other (30). Most submitters (about 80%) supported the purpose, principles and values being embedded in law with the details in requirements and guidance issued by the Commissioner. Many submitters agreed that embedding the purpose, principles and values in law would give recognition to their importance and provide for consistent activities, cohesion, and a unifying culture across the expanded Public Service.

The proposed **purpose** was:

The New Zealand Public Service exists to improve the intergenerational wellbeing of New Zealanders, including by –

- *Delivering results and services for citizens*
 - *Organise, provide and purchase services*
 - *Design and operate regulatory systems*
 - *Anticipate and manage future risks and opportunities*
- *Serving the Government of the day and successive governments effectively and efficiently*

⁶² Eichbaum, C and R. Shaw, 11 December 2017, “Research suggests advice no longer ‘free and frank’”.

Accessed at: <https://www.vic.toria.ac.nz/sog/about/news/research-suggests-public-service-advice-no-longer-free-and-frank>

⁶³ (2018) Rule of Law Index. World Justice Project.

https://worldjusticeproject.org/sites/default/files/documents/WJP-ROLI-2018-June-Online-Edition_0.pdf

⁶⁴ See the Australian Public Service Act 1999 s10, the Canadian Values and Ethics Code for the Public Sector, and the UK Civil Service Code

⁶⁵ See the importance of socialisation, trust and shared values for improving the ability of people to work together (ie due to these factors being effective in efficiently mediating transactions) in:

Ouchi, W. G 1980. ‘Markets, Bureaucracies and Clans.’ *Administrative Science Quarterly*. 25: 129-141.

- *Provide advice that supports Executive Government to make decisions*
- *Implement Government policies*
- *Undertake the administrative functions of Government*
- *Supporting continuity of democratic government*
 - *Serving government with professionalism and political impartiality*
 - *Maintaining public trust and confidence in good government*
 - *Upholding the rule of law*
 - *Assisting the orderly transition between one government and its successor.*

There was mixed response to the proposed purpose, and it was widely regarded as too long, complicated and wordy. Some said the purpose needs to be more future focused,,,, bolder and more aspirational.

The proposed **principles** were:

- Political neutrality.
- Free and frank advice.
- Merit selection.
- Openness.
- Stewardship.

There was strong support for these principles. Most submitters believed that incorporation into the Act gives recognition to their importance and ensures successive governments give due consideration to them. Of those submissions that commented on whether there should be a duty on chief executives to uphold the principles, all were in support.

The proposed **values** were:

- Impartial
- Accountable
- Ethical
- Respectful
- Committed to service

There was strong support for including a statement of values in a new Public Service Act. Others commented that the values evolve over time, and this makes them unsuitable for primary legislation.

There was no agreement on what the values of the Public Service are. Many submitters felt that the proposed values were out of step with contemporary New Zealand society and did not reflect Te Ao Māori. Instead, there were calls that these values should be developed collaboratively with the Public Service.

Submitters also unpicked the notion put forward in the discussion document that public servants are imbued with a spirit of service to the community. They described the spirit of service as something already present in public servants, and a reason they joined the public sector. Many said this motivation to serve New Zealanders should be explicitly acknowledged in legislation.

Some submissions suggested that the Code of Conduct has had a chilling effect on public servant behaviours. This was particularly noted in cases where public servants felt unable to engage in political expression in their private lives, or felt a tension between their employment as public servants and their professional obligations as members of registered

professions. One remedy, suggested in the PSA's submission and supported by the CTU and the NZ Educational Institute, was to balance the Code of Conduct with a "Charter" that clarified both the rights and responsibilities of public servants. The Commissioner would be required to consult with public servants to create such a charter, to be signed by public servants at the time of their employment.

2.4 Options

The options in this section focus on drawing together a common purpose, principles and values for a unified Public Service. It is not expected that these proposals alone will unite the Public Service and support collaboration between departments. These are but a few proposals of many that aim to achieve this outcome. These proposals, like many in this impact statement, will be enabling, rather than solutions to the problem. As explained in section 1.3, the proposals seek to re-set the balance of incentives in New Zealand's public management system towards a more unified Public Service system and an ethos that supports collaborative behaviour as part of the norm.

It is expected that drawing together a common purpose, principles and values for a unified Public Service will, over time, achieve two aims:

- Public servants will feel like they are part of a unified service, and not just part of their individual agency. As discussed in section 2.2, if a group identifies more as a team, they are more likely to cooperate with one another, which may in turn help the Public Service effectively join up around citizens, respond to cross-cutting issues, and so deliver better outcomes and services.
- Agencies and individuals in the Public Service will be acting in accordance with the purpose, principles and values of the Public Service.

Purpose

Feedback from consultation and further engagement with New Zealand academics and constitutional experts has led to the development of a new purpose statement:

The Purpose of the New Zealand Public Service shall be to support constitutional and democratic government; enable current and successive governments to develop and implement their policies; deliver high quality, efficient Public Services; safeguard the long-term public interest; and enable active citizenship.

The options to implement this purpose statement for the Public Service are:

- Option 1 (status quo): no purpose statement for the Public Service.
- Option 2: articulate the new purpose statement in non-legislative form.
- Option 3 (preferred option): codify the new purpose statement in a new Public Service Act.

These options are discussed and analysed below.

Option 1 (status quo): no purpose statement

Although the State Sector Act has a purpose statement,⁶⁶ there is no common, uniting purpose statement for the Public Service and therefore no clear statement about its role.

⁶⁶ Section 1A

Under the status quo, there is the continued risk of the Public Service remaining ununified, with departments and professions supporting themselves rather than cooperating. At its worst, this could result in uncoordinated, confusing or patchy services that cut across each other, and are not designed with the public in mind.

Option 2: articulate the new purpose statement in a non-legislative instrument

The purpose statement for the Public Service outlined above could be implemented through non-legislative means. This could take the form of workshops or guidance by the State Services Commission (or Commissioner) on the constitutional role of the Public Service. This would provide clarity to public servants on the role of the Public Service, and may help change the focus from departmentally-focused thinking and working to a common Public Service identity, and work to support holistic Public Services.⁶⁷

This option may result in a small financial impact, as greater resource will be required to communicate the purpose to the Public Service. This option also relies on the cooperation of the Commissioner and department chief executives to ensure the purpose statement is being relayed through the Public Service. The lack of legal force behind the purpose means it is susceptible to erosion over time.

Option 3 (preferred option): codify the new purpose statement in the new Public Service Act

This option would set out the purpose of the Public Service in a new Public Service Act (refer to section 14 of this impact statement)⁶⁸. This would provide clarity to public servants and the public on what the role of the Public Service is. As with Option 2, this could help change the focus from departmentally focused thinking and working to a common Public Service identity, and work to support holistic public services.

This option also supports the large majority of feedback in submissions that the purpose should be embedded in law and would prevent potential erosion of this purpose statement over time.

⁶⁷ There is evidence to show that purpose or mission statements can alter behavior of an organisation. See Weiss, J. A. and Piderit, S. K. (1999). The value of mission statements in public agencies. *Journal of Public Administration Research and Theory* 9:193–226.

⁶⁸ While most proposals in this Impact Statement can feasibly be implemented by either amending the State Sector Act, or creating a new Public Service Act, including the purpose, principle and values of the Public Service (the proposals in section 2) in an amended State Sector Act (which suggests that it is not primarily about the Public Service) may be inappropriate.

Table 1. Options to implement a purpose statement for the Public Service

Reform objectives			Criteria						
Deliver better outcomes and better services	Create a modern, agile and adaptive New Zealand Public Service	Affirm the constitutional role of the Public Service in supporting New Zealand's democratic form of government	Policy objectives			Acceptability	Clarity	Sustainability	Feasibility
	Provide the ability to effectively join up around citizens and to respond to cross-cutting issues	Generate alignment and interoperability across the Public Service	Establish behavioural and cultural foundations for a unified Public Service						
Option 1 (status quo): no purpose statement for the Public Service	0	0	0 There is no unifying purpose for the Public Service.	0 Few, if any submitters were against the proposal for a unifying purpose of the Public Service.	0 There is no clear statement about what the role of the Public Service is.	0 While the purpose of the Public Service is unwritten, there is a risk this purpose erodes, so that Public Service employees are no longer acting in accordance with their constitutional role.	0		
Option 2: articulate the new purpose statement in non-legislative form	0	0	++ This option establishes a unifying purpose for the Public Service.	+ Submitters supported the idea of a unifying purpose of the Public Service.	++ This option ensures that public servants and the public are clear about the role of the Public Service.	0 This option would be implemented through workshops or guidance and relies on the cooperation of the Commissioner and department chief executives to ensure the purpose statement is being relayed through the Public Service. The lack of legal force behind the purpose means it is susceptible to erosion over time.	0 This option may result in a small financial impact, as greater resource will be required to communicate the purpose to the Public Service. This cost would be met out of agencies' baselines.		
Option 3 (preferred option): codify the new purpose statement in a new Public Service Act	0	0	++ This option establishes a unifying purpose for the Public Service.	++ About 80% of 598 submissions on the purpose, principles and values supported putting them in legislation.	++ This option ensures that public servants and the public are clear about the role of the Public Service.	++ Putting the purpose in legislation prevents it from erosion over time, and a move back to vertical systems of public management.	0		

Key: ++ better than doing nothing/the status quo

+ somewhat better than doing nothing/the status quo

0 about the same as doing nothing/the status quo

- somewhat worse than doing nothing/the status quo

-- worse than doing nothing/the status quo

■ relevant objective or criteria

None of these options have significant financial implications. The purpose statement has the aim of upholding and unifying the Public Service. Over time this may have a financial benefit as public services are delivered in a way that best meet the needs of citizens, and public resources are managed with integrity.

Codifying the purpose statement Option 3) is the preferred option, as it ensures the purpose will be maintained over time, and more accurately responds to feedback during consultation that the purpose statement should be legislated.

Principles

Public trust and confidence in a nation's system of government is a core requirement of a free society. While this remains relatively high in New Zealand, it has declined in some of our closest comparator nations.^{69 70 71 72 73 74 75} New Zealand is currently one of the few countries with a politically neutral Public Service.⁷⁶ Once lost, public trust and confidence is difficult to restore.^{77 78 79 80}

This provides a strong justification for acting pre-emptively to protect the current constitutional conventions and codify a principles-based Public Service in legislation to prevent erosion of these conventions over time. Enshrining principles of the Public Service in legislation will help ensure that successive governments and generations of public servants do not forget about their key attributes, and that any decision to fundamentally alter New Zealand's system of government will require a deliberate decision to do so.

There was strong support during consultation for the principles of political neutrality, free and frank advice, merit-based appointment, stewardship and openness. One option to consolidate the principles would be to allow the Commissioner to issue the set of principles, similar to the current approach to the issuing of the Code of Conduct. However, there was a strong consensus from submissions that the principles should be enshrined in legislation to

⁶⁹ Webster, S. W. (2018). Anger and declining trust in government in the American electorate. *Political Behavior*, 40(4), 933-964.

⁷⁰ McGee, R. W. (2016). How much do Americans trust their government? An empirical study. *An Empirical Study (June 1, 2016)*.

⁷¹ Whiteley, P., Clarke, H. D., Sanders, D., & Stewart, M. (2016). Why do voters lose trust in governments? Public perceptions of government honesty and trustworthiness in Britain 2000–2013. *The British Journal of Politics and International Relations*, 18(1), 234-254.

⁷² Wirtz, B. W., & Birkmeyer, S. (2015). Open government: Origin, development, and conceptual perspectives. *International Journal of Public Administration*, 38(5), 381-396.

⁷³ Grimmelikhuijsen, S. (2012). Linking transparency, knowledge and citizen trust in government: An experiment. *International Review of Administrative Sciences*, 78(1), 50-73.

⁷⁴ Im, T., Cho, W., Porumbescu, G., & Park, J. (2012). Internet, trust in government, and citizen compliance. *Journal of Public Administration Research and Theory*, 24(3), 741-763.

⁷⁵ Foster, C., & Frieden, J. (2017). Crisis of trust: Socio-economic determinants of Europeans' confidence in government. *European Union Politics*, 18(4), 511-535.

⁷⁶ Pollit, C and G. Boukeart 2004. *Public Management Reform: A comparative analysis*. Oxford University Press, USA.

⁷⁷ Kettl, D. F. (2018). Earning trust in government. *Journal of Public Affairs Education*, 24(3), 295-299.

⁷⁸ Grimmelikhuijsen, S., Porumbescu, G., Hong, B., & Im, T. (2013). The effect of transparency on trust in government: A cross-national comparative experiment. *Public Administration Review*, 73(4), 575-586.

⁷⁹ Grimmelikhuijsen, S. G. (2012). *Transparency and trust. An experimental study of online disclosure and trust in government* (Doctoral dissertation, University Utrecht).

⁸⁰ Rose, R., Newton, K., Marien, S., Bollow, U., Bovens, M., Dekker, P., Kumlin, S., Mishler, W., Trüding, E.M., Uslaner, E.M. and van der Meer, T., 2013. *Political trust: Why context matters*. ECPR Press.

show their importance, for transparency, and to prevent them from being whittled away. Therefore, it is proposed that the principles are codified in a new Public Service Act with sufficient detail to ensure their meaning is understood.

It remains to consider how these principles will apply in effect. Many submitters thought that as well as applying to the general Public Service, there should be a corresponding duty on chief executives to uphold these principles.

This feedback has focused the options to:

- Option 1(status quo): principles exist in legislation but are unconsolidated.
- Option 2: principles are consolidated in a new Public Service Act, as a general convention on the Public Service.
- Option 3 (preferred option): principles are consolidated in a new Public Service Act, as both a general convention on the Public Service and a duty on chief executives to give effect to the principles.

It was also considered whether the principles could apply as a duty on all Public Service employees, as well as chief executives. However, as the principles can be interpreted in different ways, this option would allow situations to arise where a Public Service employee may have a different interpretation of a principle than management does, resulting in potential conflicts. For example, a Public Service employee may have a different view of what free and frank advice means than the chief executive does, in which case the employee's legal and employment duties would be inconsistent with each other. Therefore, this option was discounted.

The options considered are discussed and analysed below.

Option 1(status quo): principles exist in legislation but are unconsolidated

The status quo would mean there is no consolidated statement of core principles of the Public Service. While principles of the Public Service do exist, they are not well known, and are scattered through the legislation rather than consolidated in one place. Additionally, these principles are given effect through different means:

- Political neutrality is a general convention, but not a duty on any individuals.
- Free and frank advice, open government and stewardship are responsibilities owed to Ministers by chief executives.
- Merit-based appointment is a duty on chief executives independent of ministers.

Therefore, political neutrality is currently the only principle which appears to apply to Public Service employees. The remaining principles are only expressed as a duty on chief executives.

While all five principles already exist under the status quo, the lack of a consolidated principles section that is easy to find risks public servants becoming detached from the principles, which may no longer be upheld. This further risks the performance of the Public Service, with employees no longer acting within the constitutional framework. As mentioned in section 2.2, some believe that principles such as free and frank advice and openness are not being performed consistently throughout the Public Service.

This option risks a longer-term financial impact as services are less effective at achieving desired outcomes.

Option 2: principles are consolidated in a new Public Service Act,⁸¹ as a general convention on the Public Service

Under this option, the principles would be consolidated in a new Public Service Act and apply to everyone in the Public Service.

The Commissioner could produce guidance to the Public Service on how to work in accordance with the principles. This would have a small financial impact, as the SSC would need to put greater weight into influencing the system.

This option would connect the Public Service with the Public Service principles. It is anticipated that by consolidating these principles the Public Service will become more aware of them, which should result in the Public Service acting on those principles more frequently.

However, while the principles would apply to the whole Public Service under this option, there would be no accountability for seeing them fulfilled, and no incentive to ensure they are carried out.

Option 3 (preferred option): principles are consolidated in a new Public Service Act, as both a general convention on the Public Service and a duty on chief executives to give effect to the principles

This option is the same as option 2, but with the additional duty on chief executives of the Public Service to give effect to the principles outlined in section 2.3. There was strong support for this idea during consultation. Submitters thought this was a good way to ensure that someone is accountable should there be erosion of the principles over time.

Under this option, the principles of political neutrality, free and frank advice to ministers and merit-based appointments would be independent duties on chief executives, given they can be upheld independently of ministers. This would preserve the ability to serve successive Governments and ensure public trust and confidence in institutions.

The remaining principles, open government and stewardship, must be fulfilled in cooperation with ministers. In recognition of this need for cooperation, the corresponding duties would be to *foster a culture* of open government, and to *promote* stewardship. The key difference is that chief executives would be required to uphold these principles to the extent possible in the decisions that they take themselves or made by public servants in their department, and to promote these principles, but that the constitutional conventions relating to ministerial decision-making would not be constrained.

The reasons for open government and stewardship being qualified in this way are:

- Public trust and confidence in our system of Government is supported by ensuring that government is open, and provides for transparency, participation, and accountability. However, individual decisions on how, for example, the public is consulted on a policy proposal, remain the proper right of the Government, unless provided in other legislation.
- While successive governments and the public have a strong interest in stewardship of the Public Service, the Government is ultimately responsible for public assets and

⁸¹ Options 2 and 3 are only be feasible in a new Public Service Act - see also to sections 1 and 14 of this document for rationale.

interests. As an example, the Public Service cannot keep legislation up-to-date without agreement from the Government to update it. However, it should be noted that some regulations are maintained by departments, and they would be expected to uphold the principle of stewardship for these or any other assets or interests over which they have decision-making authority.

Under this option, there would be a general convention on the Public Service to act by these principles, and a legal duty on chief executives to give effect to the principles. This option therefore gives more weight to the obligation to act by the principles than Option 2 does. Work will be needed, with the Parliamentary Counsel Office, to ensure that drafting does not introduce improper or unwarranted legal jeopardy on to chief executives or the Crown in applying these principles.

Applying duties to chief executives to uphold these principles provides an incentive for chief executives to ensure the principles are well understood in their departments. This may result in less financial cost than Option 2, as principles would be communicated by chief executives to their departments and would reduce the need for a central communication campaign.

PROACTIVELY RELEASED BY THE MINISTER OF STATE SERVICES

Table 2. Options for implementing the principles of the Public Service

Reform objectives			Criteria				
Deliver better outcomes and better services	Create a modern, agile and adaptive New Zealand Public Service	Affirm the constitutional role of the Public Service in supporting New Zealand's democratic form of government	Policy objectives			Criteria	
			Establish behavioural and cultural foundations for a unified Public Service	Acceptability	Clarity	Sustainability	Feasibility
Option 1 (status quo): principles are scattered given effect in same way as currently are	0	0	0	0	0	0	0
			While principles for the Public Service currently exist, they are not well known, as they are scattered through the legislation.	Few, if any submitters were against the proposal for consolidating the principles of the Public Service.	While the principles of the Public Service are currently in legislation, they are widely unknown among the Public Service and the public.		
Option 2: principles are consolidated in a new Public Service Act, as a general convention on the Public Service	0	0	-	+	++	0	0
			While the principles will be consolidated under this option, there would be no accountability for seeing them fulfilled, which means there is no incentive to ensure they are carried out.	About 80% of 598 submissions on the purpose, principles and values supported putting them in legislation.	This option would make clear what the principles of the Public Service are by consolidating them in legislation. This clarity will help ensure public servants are acting by these principles.		Producing guidance on how to work in accordance with the principles would have a small financial impact, as the SSC would need to put greater weight into influencing the system.
Option 3 (preferred option): principles are consolidated in a new Public Service Act, as both a general convention on the Public Service and a duty on chief executives to give effect to the principles.	0	0	++	++	++	0	0
			The principles will be consolidated under this option, and chief executives will be responsible for seeing their departments fulfill these principles.	Those submissions that commented on whether there should be a duty on chief executives to uphold these principles all supported the proposal.	This option would make clear what the principles of the Public Service are by consolidating them in legislation. This clarity will help ensure public servants are acting by these principles.		This may result in less financial cost than Option 2, as principles would be communicated by chief executives to their departments and would reduce the need for a central communication campaign.

Key: ++ better than doing nothing/the status quo

+ somewhat better than doing nothing/the status quo

0 about the same as doing nothing/the status quo

- somewhat worse than doing nothing/the status quo

-- worse than doing nothing/the status quo

■ relevant objective or criteria

Option 3 is the preferred option, as it ensures that public servants are aware of the principles of the Public Service, while giving these principles greater legal effect by holding chief executives accountable for ensuring that they are upheld.

Clarifying the principles of the Public Service is expected to result in public servants having a greater understanding of how they should act. This may lead to a decrease in the frequency of unethical conduct, or conduct that brings the Public Service into disrepute, and potentially a corresponding reduction in the number of inquiries in to the action of public servants.

Values, rights and responsibilities

A Code of Conduct is used in the Public Service to specify minimum standards of behaviour. Other jurisdictions have benefited from a more complete behavioural framework that includes shared values, and a charter agreed with public servants that clarifies both their rights and responsibilities.

Due to feedback from consultation, further options have been considered to help maximise the behaviours and integrity of the Public Service. To supplement the current minimum standards (the Code of Conduct), the SSC proposes provisions that recognise the core values of the Public Service, affirm the rights and responsibilities of public servants, and acknowledge that the spirit of service is a character already present in public servants (rather than something needed to imbue them with).

Feedback from consultation suggests that the Code of Conduct may have had a chilling effect on public servants. The Code of Conduct specifies minimum standards of conduct, and indicates what a public servant must or must not do. There has not previously been a corresponding statement of what public servants can do. This may have led to some agencies and public servants adopting a more cautious approach to standards of conduct than intended, especially with rights of political expression. The proposal uses the phrase “Charter of Rights and Responsibilities” to describe the instrument for balancing what a public servant can, cannot, must, and must not do. Such a charter, or similar guidance on the rights and responsibilities of public servants, would not be intended to restrict any rights held by an individual under other legislation, such as the Human Rights Act or Bill of Rights Act.

Options for legislative treatment of Public Service values and the rights and responsibilities of public servants are set out below. Regardless of the approach taken, the intent of drafting shall be that any instruments about conduct and behaviour may be combined and issued together, to avoid confusion and aid clarity for public servants.

The options to implement values and affirm public servants’ rights and responsibilities are now:

- Option 1 (status quo): Commissioner could issue values and guidance on rights and responsibilities, under the existing mandate to issue standards and guidance on conduct.
- Option 2: explicitly allow Commissioner to issue values following consultation, and guidance on rights and responsibilities.
- Option 3: provide for the codification of Public Service values and rights and responsibilities of public servants in secondary legislation.

- Option 4: codify the values in primary legislation, provide a statement affirming the rights of public servants, and explicitly provide for the Commissioner to issue guidance on rights and responsibilities.

These are discussed further below.

Option 1 (status quo): Commissioner could issue values and guidance on rights and responsibilities, under the existing mandate to issue standards and guidance on conduct

There are currently no values issued for the Public Service, only *minimum* standards (ie, a Code of Conduct) and guidelines. Minimum standards provide a bar for which behaviour must not sink below, rather than values to aspire to.

While the values of the Public Service are unwritten, there is a risk that they are eroded, so that public servants are no longer acting in accordance with their constitutional role.

The Commissioner could use their existing power to issue advice and guidance to issue values and guidance on public servants' rights and responsibilities. As the feedback from consultation showed, there is no agreement on what these values should be, so issued directly by the Commissioner may not reflect what public servants understand the values to be. Literature on organisational values suggests that these should describe the values held by the group, rather than prescribe values that should be held.^{82 83 84} This suggests that values should be developed with those individuals being described.

Option 2: explicitly allow Commissioner to issue values following consultation, and guidance on rights and responsibilities

This option clarifies the Commissioner's statutory power to issue standards and guidance for the conduct of public servants, to explicitly include the power to issue values of the Public Service and guidance on the rights and responsibilities of public servants. The legislation would expressly provide that before setting the values, the Commissioner should undertake consultation, including with other leaders of parties of the House of Representatives. The same consultation duty could apply for guidance on rights and responsibilities.

As with Option 1, the values and charter would sit outside legislation. This is analogous to the current approach to issuing the Code of Conduct under section 57 of the State Sector Act 1990.

Values

Much of the benefit of this option would come from running an inclusive process to agree on the values through consultation, which responds to feedback that more time and discussion is needed. This would provide an opportunity to run an extensive consultation process, and for revised values to be potentially expressed from the perspective of Te Ao Māori, through a process involving Māori and targeted consultation. This consultation process would ensure "ownership" by the Public Service, an idea that was emphasised during consultation.

Requiring cross-party consultation reflects the importance of having the support of all

⁸² Xenikou, A. (2014). The cognitive and affective components of organisational identification: The role of perceived support values and charismatic leadership. *Applied Psychology*, 63(4), 567-588.

⁸³ Gable, R. K., & Wolf, M. B. (2012). *Instrument development in the affective domain: Measuring attitudes and values in corporate and school settings* (Vol. 36). Springer Science & Business Media.

⁸⁴ Guiso, L., Sapienza, P., & Zingales, L. (2015). The value of corporate culture. *Journal of Financial Economics*, 117(1), 60-76.

political parties in Parliament. Cross-party support is the best way to ensure long-term support by successive governments for these values.

Because these values would be consulted on with public servants and political leaders of the House, they are likely to be stable for some time. However, if these values do change with time, as predicted by some during consultation, this option allows the Commissioner to change the values following consultation, to ensure they are in line with what public servants view as Public Service value.

Despite the fact that this process aims for broad agreement to the values, there is a risk that by merely placing the values in guidelines, they are prone to erosion and political influence.

Rights and responsibilities

This option would also amend the Commissioner's existing powers to issue a Code of Conduct, to also give the Commissioner the power to issue standards and guidance which may include guidance on the rights and responsibilities of public servants.

Any guidance on the rights and responsibilities of public servants issued by the Commissioner would have to address public servants' freedom of political expression in their private lives, and their professional obligations as members of registered professions – areas which have been raised specifically as being difficult for public servants to navigate given tensions with responsibilities such as acting with political neutrality in discharging their duties as officials.

This option has potential financial implications for the SSC if an extensive (and potentially repeated) consultative process on values, rights and responsibilities is undertaken. However, these costs can be mitigated, and may result in a more efficient process, by bringing the Code of Conduct, values and guidance on rights and responsibilities together in a more cohesive way. As the Code of Conduct, values and guidance on rights and responsibilities would be produced under the same power, the process could be consolidated and draw together the products in a cohesive package with one implementation process.

Option 3: provide for the codification of Public Service values and rights and responsibilities of public servants in secondary legislation

This option allows the Commissioner to prepare a statement of values and a statement of rights and responsibilities for Ministers to recommend to the Governor-General for promulgation through an Order in Council. These would then be subject to review by the Regulations Review Committee, reinforcing the importance of support by Parliament.

Values

As with Option 2, an extensive consultation process would be undertaken on the Public Service values to ensure public servants get an opportunity to have their say, and to respond to feedback that the proposed values did not speak to contemporary New Zealand.

Changes to these values could also be made through Order in Council, which would mean the values are still flexible to an extent, and changeable if needed, but also still prone to erosion and political influence.

Rights

As with Option 2, the statement of public servant's rights and responsibilities would address their freedom of political expression in their private lives, and their professional obligations as members of registered professions.

Like Option 2, this option has potential financial implications for the SSC if an extensive (and potentially repeated) consultative process on values, rights and responsibilities is undertaken. However, these costs can be mitigated, and may result in a more efficient process, by bringing statements of values, rights and responsibilities together in a more cohesive way. As they would be produced under the same power, the process could be consolidated and draw together the products in a cohesive package with one implementation process. Unlike Option 2, the Code of Conduct could not sit within this cohesive package, as it comes under the Commissioner's separate power to issue minimum standards and guidance.

Option 4: codify the values in primary legislation, provide a statement affirming the rights of public servants, and explicitly provide for the Commissioner to issue guidance on rights and responsibilities

Values

This option involves codifying a set of values in a new Public Service Act, affirming the existing rights and responsibilities of public servants in primary legislation, and supporting this affirmation by clarifying that the Commissioner may issue guidance on rights and responsibilities. The components of this option were preferred by the majority of submitters who provided comment, and would protect the values and rights from erosion and political influence.

As there has not yet been sufficient agreement on a collection of values, there would need to be further, targeted consultation with public servants on the Public Service values. Agreement on these values would need to be reached before the Bill is introduced to the House, so this option cannot cater for the extensive consultation that could be undertaken under options 2 or 3.

Rights and responsibilities

The Act would affirm that public servants have the same rights as all other citizens, including under the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Like Option 2, this option would also amend the Commissioner's existing powers to issue a Code of Conduct, to also give the Commissioner the power to issue guidance on the rights and responsibilities of public servants. As with options 2 and 3, any guidance on the rights and responsibilities of public servants issued by the Commissioner would have to address public servants' freedom of political expression in their private lives, and their professional obligations as members of registered professions.

This option includes a small financial cost to the SSC if guidance on the rights and responsibilities are issued. This would be met out of baselines.

Table 3. Options for implementing values of the Public Service

Reform objectives				Criteria			
Deliver better outcomes and better services	Create a modern, agile and adaptive New Zealand Public Service	Affirm the constitutional role of the Public Service in supporting New Zealand's democratic form of government		Acceptability	Clarity	Sustainability	Feasibility
Policy objectives			Establish behavioural and cultural foundations for a unified Public Service				
Provide the ability to effectively join up around citizens and to respond to cross-cutting issues	Generate alignment and interoperability across the Public Service						
Option 1 (status quo): Commissioner could issue a set of values and guidance on rights and responsibilities, under the existing mandate to issue standards and guidance on conduct	0	0	0 The values of the Public Service are currently unwritten, and there is not yet agreement on what these values are.	0 Submitters supported having a set of unifying Public Service values.	0 It is currently unclear what the values, rights and responsibilities of the Public Service are.	0 While the values of the Public Service are unwritten, there is a risk that they are eroded, so that Public Service employees are no longer acting in accordance with their constitutional role.	0
Option 2: explicitly allow Commissioner to issue a set of values following consultation, and guidance on rights and responsibilities	0	0	++ Following extensive consultation, the Commissioner would issue a set of common values of the Public Service, agreed by the parties of the House of Representatives. This would reinforce positive behaviors and culture relating to these values in the Public Service.	++ This option responds to submitter feedback that the values should be decided through a consultative process. It also responds to calls for a Charter of Rights.	++ This option would make clear what the values, rights and responsibilities of the Public Service are. However this will provide less certainty for public servants around the values, rights and responsibilities than if these were set out in legislation (either primary or secondary) as they may be subject to more frequent change.	0 Because these values will be consulted on with public servants and political leaders of the House, they are likely to be stable for some time. However, if these values do change with time as predicted by some during consultation, this option allows the Commissioner to change the values following consultation, to ensure they are in line with what public servants view as Public Service value. There does remain a risk with this option that the values, rights and responsibilities could be eroded or open to political influence.	0 This option has potential financial implications for the SSC if an extensive (and potentially repeated) consultative process on values, rights and responsibilities is undertaken. These costs will be met from SSC baselines.
Option 3: provide for the codification of Public Service values and rights and responsibilities of public servants in secondary legislation	0	0	+++ This option allows the Commissioner to prepare a statement of values and guidance on rights and responsibilities following extensive consultation, for Ministers to recommend to the Governor-General for	- This option responds to submitter feedback that the values should be decided through a consultative process. It also responds to calls for a Charter of Rights. However, this option involves the values,	+++ This option would make clear what the values, rights and responsibilities of the Public Service are.	0 Because these values, rights and responsibilities will be consulted on with public servants and political leaders of the House, they are likely to be stable for some time. However, changes to these values,	0 This option has potential financial implications for the SSC if an extensive (and potentially repeated) consultative process on values, rights

			promulgation through an Order in Council. These would then be subject to review by the Regulations Review Committee, reinforcing the importance of the support of Parliament. This would reinforce positive behaviors and culture relating to the values, and provide greater clarity for public servants around appropriate behaviors in regard to political expression and professional obligations.	and statements about the rights of public servants, being approved by Ministers. It is inappropriate for the rights of any group of individuals to be determined by Ministers, as this should be a matter for Parliament. Likewise, Public Service values are an expression of intrinsic motivation and should not be open to politicisation.		rights and responsibilities could be made through Order in Council, which would mean they are still flexible to an extent and changeable if needed, but also still prone to erosion and political influence.	and responsibilities is undertaken.
Option 4: codify the values in primary legislation, provide a statement affirming the rights of public servants, and explicitly provide for the Commissioner to issue guidance on rights and responsibilities	0	0	++ This option involves the codification of values, and affirmation of the rights and responsibilities for the Public Service in primary legislation, following targeted consultation, with the option for the Commissioner to offer guidance on the rights and responsibilities of public servants. This would reinforce positive behaviors and culture relating to the values, and provide greater clarity for public servants around appropriate behaviors in regard to political expression and professional obligations.	+ There was strong support for including a statement of values in a new Public Service Act. This option also allows further targeted consultation to respond to submissions that the values should be developed collaboratively. However, the consultation process under this option would not be as extensive as under options 2 and 3. Public Service This option also responds to the call for a Charter of Rights, and explicitly recognises these rights in legislation.	++ This option would make clear what the values, rights and responsibilities of the Public Service are.	0 Public Service values were identified by submitters as being likely to change over time. While this option may have the support of the House, it risks being unsustainable, as codifying the values prevents them from being updated as they change. However, this option does protect the values and charter from erosion, and political influence, meaning they are less likely to be forgotten, or changed with a new government.	0 This option includes a small financial cost to SSC if guidance on the rights and responsibilities are issued. This will be met out of baselines.

Key: ++ better than doing nothing/the status quo

+ somewhat better than doing nothing/the status quo

0 about the same as doing nothing/the status quo

- somewhat worse than doing nothing/the status quo

-- worse than doing nothing/the status quo

■ relevant objective or criteria

2.6 Conclusions and impact

The SSC concludes that the best options are to:

- codify the new purpose in a new Public Service Act
- codify the foundational principles of the Public Service (as agreed during consultation) in a new Public Service Act
- codify the values in a new Public Service Act
- include a statement affirming the rights of public servants in a new Public Service Act
- explicitly provide for the Commissioner to issue guidance on rights and responsibilities of public servants.

The scope of the purpose and principles of the Public Service would apply to all core government departments –i.e., the current scope of the Public Service. Section 3 proposes extending the scope of the Public Service to include Crown agents. If this change is implemented, the purpose and principles outlined above would also apply to Crown agents.

The values and guidance on rights and responsibilities described above would apply to all Crown entities, as well as the core government departments. This is appropriate as Crown entities are included within the Commissioner's mandate in setting minimum standards, advice and guidance to the State services.

While it is difficult to specifically assess the impacts of these proposals, there are several general impacts which are envisaged from articulating the purpose, principles and values of the Public Service. These could help to:

- secure the role of the Public Service within New Zealand's constitutional framework
- shape how the Public Service undertakes its role
- make clear how the Public Service is expected to contribute to New Zealand's constitutional framework, and set out the behaviours needed to achieve this
- raise understanding of the purpose, principles and values of the Public Service
- lead to more effective conversations about the contribution of the Public Service and what it does.

It is anticipated that when implemented, the proposals in this section will help achieve all the objectives of the review; focusing public servants on the need for improved services, on the need for agility and innovation to that end, and on the vital importance of the integrity and professionalism of the Public Service in New Zealand's democracy.

Costs

Some costs will arise in carrying out a consultation process to develop values for the Public Service. These costs will be nominal, depend on timing of when such processes will be run, and will be covered within SSC baselines. The costs may be reduced by choosing an option that allows the values, charter and Code of Conduct to be a cohesive package, rather than multiple products.

Risks

In articulating the purpose of the Public Service in a new Public Service Act, there is the potential for some flexibility and agility to be lost. However, the purpose of the Public Service does not change frequently, if at all, so this is an unlikely risk. This risk does not exist for the principles, as they already exist in legislation, nor the values which will not be placed in primary legislation.

Expressing duties in legislation may also give rise to the risk of tortious action for breach of statutory duty. However, it is assessed as unlikely that a claimant would be able to establish the elements necessary for such an action, and therefore unlikely that the Courts would find the duties currently proposed as giving rise to a remedy of damages for such a breach.

Including values in legislation creates a risk that the values could be used as a basis for legal action against the Public Service or public servants. The Victorian Public Administration Act and the New South Wales Government Sector Employment Act both address this issue by including provisions that disallow any civil cause of action in relation to Public Service values, and explicitly state that the values do affect the rights or liabilities for any public official or public sector body. If values are codified, it is proposed that a similar clause be included in legislation to safeguard public servants and the Public Service from any possible unintended legal consequences relating to the values.

PROACTIVELY RELEASED BY THE MINISTER OF PUBLIC SERVICES

3. Scope of the Public Service

3.1 Background

As explained in section 1.1, the current public management system is complex. Legal distinctions between different organisations (at varying degrees of control from ministers) are designed from a public management rather than public user perspective. These distinctions are often not evident to members of the public who view these different agencies, whether Public Service departments or Crown entities, as publicly funded services that are controlled and delivered by government. The current “Public Service” includes only Public Service departments within the Crown.

3.2 Problem or opportunity

The current definitions cause problems because there is uncertainty for some within the public sector, as along with the general public, about who is part of the Public Service and who is not, and with what effect.

Specific problems caused by this uncertainty of scope are:

- The scope of the Public Service is out of line with what the public thinks of as the core Public Service, who the public expects to engage with in the Public Service, and which agencies they hold ministers accountable for.
- The narrow boundary of the Public Service causes fragmentation between the core Public Service and the State services, which is detrimental to the unifying ethos and values that should lie at the foundation of Public Service. While some “state servants” feel they identify more as “public servants”, there are others that feel they should not be cooperating with departments of the Crown because Crown entities are not part of the “Public Service”.

3.3 Consultation

To this end, the discussion document proposed that the Public Service should comprise of:

- existing Public Service departments
- all agencies in the existing State services that are subject to a positive degree of Ministerial influence through the power to appoint and remove board members and/or the power to direct the agency to have regard to government policy (including some Crown entities).

Sixty-six submissions commented on this proposal. Nearly half of the submitters (30) identify as public servants. Eleven submissions were from Crown entities, one was from the PSA and six submissions were from members of the public. A small number of submissions were made by academics, union representatives, and other individuals.

Overall there were mixed views:

- Just over half of the submitters support the approach and extended coverage of the Public Service, including 75 percent of the submissions from public servants. Half of these submitters propose broader coverage to include independent Crown entities, or

further to include all central government agencies, and some to include local government.

- Of eleven submissions from the Crown entity sector on inclusion of Crown agents and autonomous Crown entities, only Callaghan Innovation (and to a certain extent ACC) positively support the proposed coverage of the Public Service. Three entities argue explicitly to be excluded from the expanded Public Service (Government Superannuation Fund Authority, Guardians of NZ Superannuation and NZ Lotteries Commission).
- Ten submitters express caution on the basis of the complexity of the issues, the clear challenges in rolling out the new provisions, and the potential nuances, unintended consequences and risks especially for the role of the entity, the board's governance, and requirements for independence for agencies that are intentionally at arms-length.
- Six submitters consider there is no clear rationale or problem definition, or query the need for legislation rather than non-legislative ways to achieve the objectives.
- Two submitters suggest exploring other criteria for determining the scope of the Public Service, i.e., broader than simply the degree of ministerial influence.
- The PSA sees sense in the purpose statement and Crown Māori relationship clause applying to all organisations delivering public and community services, and the principles and values applying to the current State services, though it considers there issues to be worked through.

The majority of public servants supported the concept that they should all identify with a common goal of working for the benefit of New Zealand and New Zealanders. Views on the mechanisms for expressing this common identity were mixed. While many public servants supported extending the scope of the Public Service, there was concern about the blurring of boundaries between Public Service departments and arms-length bodies. There was almost universal opposition from those Crown entities who submitted.

Opposition could be grouped under two themes:

- Being part of a group named “the Public Service” would reduce the independence of entities that exercise quasi-judicial, commercial, monitoring, review, mediation, or investigative functions. There was some confusion that being part of “the Public Service” would also entail becoming part of the legal Crown and being subject to more direct Ministerial influence or control (it would not).
- The proposed principles of the Public Service were more appropriate for public servants that worked directly with ministers, and may be interpreted as having a “muzzling effect”, constraining the professional rights and obligations of public servants where there is no legitimate need to apply these principles.

3.4 Options

The proposals in the discussion document have developed due to consultation and further policy work. To achieve the objective of a unified Public Service with a common culture and identity, while navigating potential objections, it is proposed that the Public Service include Public Service departments and Crown agents.

It is not expected that other agencies will immediately begin to engage further with Public Service departments simply by being included within the Public Service. . However, these options, like those in section 2, may prompt these agencies to feel more like a team. As discussed in section 2.2, social psychology and behavioural economic research has consistently found that identifying with a group influences the behaviour of its members, which can increase cooperation within that group. In this case, the “group” is the Public Service. By bringing other agencies into that group, the aim is that Public Service departments and those agencies currently outside the Public Service feel like a unified team, and are more incentivised to cooperate.

Of course, this approach will not work with all agencies, as there are consequences when an agency becomes part of the Public Service, such as upholding the principles discussed in section 2. Agencies brought within the Public Service umbrella will need to be those with some accord with Public Service departments.

Therefore, when considering the scope of the Public Service, consideration was given to:

- which organisations need to cooperate with each other to deliver public services to New Zealanders
- which organisations share a common purpose and foundational principles
- which organisations the public would regard as part of the Public Service
- which organisations do the public generally hold ministers responsible for their performance
- which organisations need to maintain some degree of separateness or independence from others.

Further options to change the definition of the Public Service by altering the expectations and legal status of organisations (either Crown agents or all Crown entities) were not pursued, to maintain existing constitutional arrangements, the scope of the legal Crown, and the expectations, duties and functions of those organisations. Therefore, while the options below consider extending the scope of the Public Service, these options *do not* propose an extension of the legal Crown, nor the expectations, duties or functions of Crown entities. They will continue to be governed in accordance with the Crown Entities Act as is appropriate for an organisation designed to operate at arms-length from ministers.

Further options to change the definition of the Public Service by altering the legal status, governance and accountability of organisations (either Crown agents or other types of Crown entities) were not pursued, to maintain existing constitutional arrangements, the scope of the legal Crown, and the functions and arms-length status of those organisations, including the role and authority of the governing board. The proposals as formulated would add a collective duty on the board to ensure the entity plays its part in relation to the proposed principles of the Public Service, but this would be an independent duty on the board and would not affect or alter the legal status and nature of the entity as a body corporate in its own right.

Furthermore, the options considered below aim to create a common understanding of the roles that the public views as providing public services. Altering the legal status of organisations is not necessary to achieve this.

The options considered are:

- Option 1 (status quo): scope of Public Service remains the same.
- Option 2 (preferred option): widen the Public Service to include Crown agents.
- Option 3: widen the Public Service to include all Crown entities.
- Option 4: a flexible definition of the Public Service, with the ability to add and remove organisations through Order in Council.
- Option 5: rename the Public Service the “core Public Service”, and rename the State services the “wider Public Service”.

Non-Public Service departments (New Zealand Police, New Zealand Defence Force, and the Parliamentary Counsel Office) will not be included in the Public Service due to their need for separation or independence in delivering some functions.

These options are discussed and analysed below.

Option 1 (status quo): scope of the Public Service remains the same

Under the status quo, only departments would remain as part of the Public Service.

Although the current scope of the Public Service is not well understood, the status quo has the advantage that the Public Service definition remains consistent with the definition of the legal Crown. Proposals to change the Public Service definition have already caused some confusion that this may also change the definition of the legal Crown, and thus also change constitutional convention (which it does not).

However, this narrow definition of the Public Service may risk a rift between the Public Service and the wider State services, which don't always see themselves as being part of the Public Service. This rift can cause a lack of cooperation which can further risk the standard of services being provided to New Zealanders.

Option 2: widen the Public Service to include Crown agents

Under this option, “Public Service” will initially include Public Service departments and Crown agents.

This accords with their organisational form, as Crown agents are more similar to departments than other types of Crown entities are, because they are required to give effect to Government policy directions from their responsible ministers in relation to the individual entity's functions and objectives. It also makes sense from the public's perspective, as there is effectively no difference in the way they engage with departments compared to Crown agents.

Including Crown agents in the “Public Service” emphasises that they work together with Public Service departments to deliver better outcomes for New Zealanders, thus creating a unifying ethos.

This option also avoids including autonomous Crown entities and independent Crown entities in the Public Service, which received opposition from all submitters from autonomous and independent Crown entities.

However, as discussed above, extensions to the Public Service definition (options 2-4) could cause confusion by leading some to the incorrect assumption that the legal Crown is also extended, which is not the case.

Option 3: widen the Public Service to include all Crown entities

Under this option, all departments and all Crown entities would be included under the term “Public Service”, with the clarification that there are no associated changes to the rules, governance, decision rights, powers, or responsibilities.

This option has the benefit that it creates a clear and consistent identity of “the Public Service” that would be more easily understood by the public. Including Crown entities in the Public Service would also emphasise that they work together with Public Service departments to deliver better outcomes for New Zealanders.

However, aside from Crown agents, the public does not necessarily view the remaining Crown entities in the same way as they do with the rest of the Public Service. Independent Crown entities and autonomous Crown entities are usually seen as having more regulatory and oversight functions, where the public expects a degree of independence from ministers. So including Crown entities in the Public Service would not necessarily be in line with the public’s view of who provides public services.

Neither would this option be in line with submissions from Crown entities during consultation. Crown entities were concerned that being part of the Public Service would reduce their independence, and that being subject to the Public Service principles would be inappropriate for a semi-autonomous body.

Option 4: a flexible definition of the Public Service, with the ability to add and remove organisations through Order in Council

Under this option, the Public Service will be the current Public Service (i.e. departments) but include the ability to add and remove organisations through Order in Council. These organisations might (indicatively) include organisations from within the follow categories:

- Crown Agents
- School Boards of Trustees
- Autonomous Crown Entities and Independent Crown Entities
- Non-Public Service Departments

This legislative process will be unable to foresee all future changes to organisations and their functions. There may be other groups that, in future, may wish to be included in the Public Service, or that the Government may wish to include. This option allows this to happen through Cabinet decision, rather than requiring passage of an amendment act.

However, this option runs the risk of further complicating what is already cluttered and complicated terminology and applying arbitrary and fuzzy boundaries between classifications of organisations. Neither does it provide a common understanding of the roles that the public views as providing public services.

This option would also introduce inconsistencies in how duties on organisations are created. Duties on chief executives or boards are usually brought about through legislation. But this option would, for example, enable an independent Crown entity to become part of the Public Service through Order in Council, where different duties would apply to the board than the

ones created through legislation, and which were reviewed by Parliament. If duties are put on individuals or boards through legislation, there is an argument that they should likewise be changed through legislation, rather than secondary legislation such as an Order in Council.

Option 5: rename the Public Service the “core Public Service”, and rename the State services the “wider Public Service”

Under this option, the current arrangements would be retained, but groups would be renamed to give a greater sense of common identity and purpose, and emphasise that Crown entities work together with Public Service departments to deliver better outcomes for New Zealanders. The Public Service would be renamed “core Public Service”, and the State services renamed “wider Public Service”, and all relevant legislation would be amended with these new terms to retain the original intended meaning.

This would allow all organisations in the State services to be referred to under the general term “the Public Service”, while retaining the clarity of distinction between administrative divisions (departments) within the Crown that work closely with ministers, and separate legal organisations (Crown entities) intended to operate at arms-length from ministers.

In the context of a Westminster style democracy, the phrase “Public Service” (New Zealand, Australia, Canada) or “civil service” (UK) is used to refer to the permanent group of public servants that exist as part of the executive government and the legal Crown (alongside other branches of Government). The relationship between departments and ministers is categorically different to that between Crown entities and ministers, and retaining some distinction is useful for clarifying the different obligations and proper operation of each.

While this option was not consulted on, it aims to respond to submissions that Crown entities should be seen as part of the Public Service, whilst ensuring that the arms length relationship of Crown-entities continues to be well understood by all parties. However, it is possible that Crown entities may reject the notion of being part of even a wider Public Service.

This option may also be perceived as overly complicated, and the nuance of the distinction may not be well understood by the public or across the Public Service. We expect that, in practice, “the Public Service” would be the default non-legal term to refer to both groups together, with the distinction between “core” and “wider” Public Service reserved for situations where a distinction is required.

Table 4. Options for the scope of the Public Service

Reform objectives			Criteria						
Deliver better outcomes and better services	Create a modern, agile and adaptive New Zealand Public Service	Affirm the constitutional role of the Public Service in supporting New Zealand's democratic form of government	Policy objectives			Acceptability	Clarity	Sustainability	Feasibility
	Provide the ability to effectively join up around citizens and to respond to cross-cutting issues	Generate alignment and interoperability across the Public Service	Establish behavioural and cultural foundations for a unified Public Service						
Option 1 (status quo): scope of Public Service remains the same	0	0	0	0	0	0	0	0	
			The narrow boundary of the Public Service causes fragmentation between the Public Service and the State services, which is detrimental to the unifying ethos. While some state servants feel they should not be cooperating with departments of the Crown because Crown entities are not part of the Public Service.	There were mixed reviews on the proposals to extend the scope of the Public Service. Crown entities were the main opponents.	The current scope of the Public Service is not well understood.				
Option 2 (preferred option): widen the Public Service to include Crown agents	0	0	+	+	-	0	0		
			Including Crown agents in the "Public Service" emphasises that they work together with Public Service departments to deliver better outcomes for New Zealanders, thus creating a unifying ethos.	This option reflects the public's perspective, as there is effectively no difference in the way they engage with departments compared to Crown agents. It also avoids including ACEs and ICEs in the Public Service which received opposition from all ACE and ICE submitters.	A new definition of the Public Service may cause confusion as to the legal implications of the change in definition. For example, the Public Service is now different than the legal Crown.			Crown agents are more similar to departments than other types of Crown entities are. This option would not change the way that Crown agents operate, but will mean the purpose, principles and values of the Public Service will apply to them.	
Option 3: widen the Public Service to include all Crown entities	0	0	++	--	-	0	--		
			Including Crown entities in the "Public Service" emphasises that they work together with Public Service departments to deliver better outcomes for New Zealanders, thus creating a unifying ethos.	Although many public servants supported the idea of including Crown entities in the Public Service, this proposal received opposition from almost all Crown entities. Neither does it reflect the public's perspective of who should be regarded as the Public Service.	A new definition of the Public Service may cause confusion as to the legal implications of the change in definition. For example, the Public Service is now different than the legal Crown.			Crown entities sit at arms-length from Ministers in order to maintain independence from political decision making. Bringing them within the realm of the Public Service would be at odds with their role.	
Option 4: a flexible definition of the Public Service, with the ability to	0	0	0	0	--	+	0		
			As it would not be clear which organisations sit		This option is likely to cause uncertainty about	This option would ensure that the definition of the			

add and remove organisations through Order in Council			within the Public Service, there is likely to still be confusion and fragmentation under this option, rather than a unifying ethos.		which organisations sit within the Public Service.	Public Service can change if needed.	
Option 5: rename the Public Service the 'core Public Service ', and rename the State services the 'wider Public Service '	0	0	⁺ Renaming the State services the 'wider Public Service' emphasises that Crown entities work together with Public Service departments to deliver better outcomes for New Zealanders, thus creating a unifying ethos. The language may be seen as too complicated or overly nuanced by some parties.	0 While this option was not consulted on, it aims to respond to submissions that Crown entities should be seen as part of the Public Service, whilst ensuring that the arms length relationship of Crown-entities continues to be well understood by all parties. However, it is possible that Crown entities may reject the notion of being even part of a wider Public Service.	0 This option provides clarity in that it implies that the Public Service and Crown entities have some things in common, while continuing to maintain the precision of separate categories. However, this option may be overly complicated and therefore may be less clear to public servants and the public.	0	0 This option is feasible as the legal effect would be merely a renaming of existing categories retaining the existing meaning and effect of these categories.

Key:

- ++ better than doing nothing/the status quo
- + somewhat better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- somewhat worse than doing nothing/the status quo
- - worse than doing nothing/the status quo
- relevant objective or criteria

PROACTIVELY RELEASED BY THE MINISTER OF STATE SERVICES

Option 2 is the preferred option as it helps establish the behavioural and cultural foundations for a unified Public Service, and was also an option largely accepted during consultation.

3.5 Conclusion and impact

The State Services Commission recommends Option 2 – extending the Public Service to include Crown agents.

Including Crown agents within the Public Service will not change their legal status as a separate entity that exists outside the legal Crown. The Crown will still consist of ministers and their departments. It will not change the legal functions, powers, duties, or responsibilities of Crown agents, their boards, or employees, or their relationship with ministers.

The term “Public Service” appears in 55 other Acts, and these will need to be amended as appropriate to retain the original intended meaning. There are also countless mentions of the “Public Service” in common law. The meaning of these cases will have to be interpreted with this change of definition in mind.

Including Crown agents within the Public Service means that they will be affected by the proposed purpose, principles, values and guidance on rights and responsibilities, outlined in the previous section.

- The proposed purpose statement can be applied to Crown agents. Crown agents may have a specific purpose statement within the legislation that established them (for example the Accident Compensation Act 2001). In cases where these purposes are in conflict, the purpose in the specific act will apply above that in the Public Service Act.
- The principles of the Public Service are appropriate for Crown agents to the extent that they apply:
 - Political neutrality. Crown agents should give effect to government policy without political favour. The proposed guidance on rights and responsibilities is intended to address any concern that applying the principle of political neutrality to Crown agent employees would have a chilling effect on their personal right to political expression or their professional obligations. (Note that board members themselves are not part of the Crown agent and therefore are not covered by this principle.)
 - Free and frank advice to ministers. Many Crown agents do not have the function to provide advice to ministers, therefore this principle does not apply. Where they do provide advice (for example, the Health Promotion Agency, New Zealand Public Health and Disability Act 2000) it should be free and frank.
 - Merit-based appointment. Employees of Crown agents should be appointed on the basis of merit. Board members of Crown agents are appointed through a separate process by ministers, but as noted above, board members themselves are not part of the Crown agent.

- Open government. Crown agents are subject to existing provisions on open government as organisations in Schedule 2 of the Ombudsman Act 1975.
- Stewardship. A culture of stewardship is already applied to Crown agents as part of the State sector system.⁸⁵
- These principles can be imposed as collective duties on Crown agent boards. This would add to the existing list of collective duties in the Crown Entities Act. The Crown agent is a body corporate that is legally separate from the board members, employees, and any office holders. The nature and purpose of a collective duty is to ensure that the entity acts in a certain way.⁸⁶ This is quite distinct from the board members' individual duties⁸⁷ which require the individual members to act in a certain way. The effect of the proposed collective duty is that the board must ensure that the entity plays its part in relation to the principles, and the chief executive is responsible to the board for ensuring the entity has suitable policies and practices in place and that staff act accordingly.
- It is appropriate to apply standards and guidelines for behaviour to Crown agents as they are already included within the Commissioners mandate.⁸⁸

Financial implications

There are no cost implications for extending the scope of the Public Service to include Crown agents. These proposals will not change public servants' legal status or responsibilities, but will reinforce the behaviours and expectations of them.

Risks

The proposal may reduce understanding of the role of the Public Service and its employees. New Zealand's system of government is strongly modelled on Westminster traditions. Similar governments (UK, Canada, Australia) also maintain a distinction between administrative units within the Crown, and instruments of the Crown that are separate legal entities. The requirements of a permanent politically neutral Public Service, working as part of the Crown, serving ministers on a day-to-day basis, can be difficult to understand. The purpose and principles of the Act are intended to help clarify how public servants should act, consistent with their constitutional role, as established over a lengthy history (beginning in the Northcote Trevelyan Report of 1854). Extending the definition of the Public Service to include arms-length bodies (Crown agents), although not changing the separate legal status of Crown agents from the Crown, has the potential for confusion. In broadening the definition of the Public Service, the proposal may reduce understanding of the constitutional role of the Public Service in New Zealand's system of government. Implementation of this proposal will therefore require detailed engagement and communication with the Public Service (including Crown agents) and other stakeholders.

The proposal may reduce understanding of the role of arms-length bodies. Crown agents are form of Crown entity that is "closest" to government, in that Crown agents must give effect to government policy consistent with their functions. Nonetheless this arrangement differs from the requirement of public servants to follow any lawful instruction from ministers. Placing departments and Crown agents in the same category, under the same purpose and

⁸⁵ State Sector Act 1988, s1A

⁸⁶ Crown Entities Act 2004, ss49-52

⁸⁷ Sections 53-57

⁸⁸ State Sector Act 1988, s57

principles, risks confusing ministers, public servants, and state servants about how Crown agents should operate. Such issues will need to be mitigated by engagement to ensure that Crown agents and other stakeholders understand the intention of the change and how this affects or does not affect the role of Crown agents.

Including Crown agents in the definition of the Public Service results in differences between related terms. The Electoral Act 1993 defines a public servant as a member of a Public Service department, the Education Service, or the New Zealand Police (a non-Public Service department). The Electoral Act definition of public servant is therefore already inconsistent with the definition of Public Service in the State Sector Act, in that some public servants work for the State services. By changing the definition of Public Service to include Crown agents, this would continue this inconsistency that some State servants are within the definition of the Public Service. As this issue already existing, the risk of inconsistency is likely to have minimal impact.

The terms “Public Service” and “State service” are in widespread use, including in 55 and 42 Acts respectively. The proposal uses an existing term (“Public Service”) to refer to a different group of organisations. As such, it has the potential to create additional complexity, requiring amendments to other legislation to retain the original intended meaning of these statutes, as well as numerous other documents. It is likely that the change in definition will result in some unintended consequences for primary legislation as well as other regulation, policies, and official documents. This will be mitigated by thorough checking of the statute book, and communication with parties responsible for other official documents.

The proposal may result in confusion about the relationship between ministers and arms-length bodies. The proposal does not change the powers, responsibilities, duties or governance arrangements of Crown agents (with the exception of a new collective duty on board members). However, it may have a normative effect of suggesting to ministers that their relationship with Crown agents should be the same as their relationship to departments. This may result in ministers inadvertently seeking to exert greater influence on Crown agent decisions that are established in legislation as being made at arms-length. This will be mitigated through communication with the Cabinet Office to ensure that the Cabinet Manual continues to reflect how ministers should act with respect to Crown agents of the Public Service.

4. Providing Information to Support the Government System

4.1 Background

New Zealand's Public Service is an important source of authoritative information on which both government and opposition parties can develop policy, and the public can assess proposed policies pre-election.

Providing well-analysed information on the short and longer-term trends and issues facing the Public Service helps ensure an informed democracy, and helps the Public Service deliver better outcomes and services to New Zealanders and affirm its constitutional role in supporting New Zealand's democratic government.

Reporting on long-term information and analysis

As noted in section 1.1, New Zealand's Public Services do generally perform efficiently and responsively, but mostly at the departmental level. This has been reflected in the requirements imposed throughout the public sector, which support reporting at the departmental level, and mostly for short-middle term planning.

The production of longer-term information varies between departments. The Treasury Long Term Fiscal Statement includes the Secretary of the Treasury's best professional judgement, which improves public and Parliamentary understanding of the future policy context.

Other legislation, such as the Environmental Reporting Act 2015, requires the Public Service to independently produce reports. The Environmental Reporting Act requires the Government Statistician and the Secretary for the Environment to act independently and give a fair and accurate representation⁸⁹ on topics specified by the Governor General on recommendations by Order in Council.

However, many departments do not publish this type of longer-term analysis, nor is there current, regular, independent reporting on issues at a sector-wide level. The Commissioner can provide a report on matters affecting the State services,⁹⁰ but there is no requirement on the Commissioner to provide a report.

Other jurisdictions require the Commissioner to report on the state of the Public Service, in addition to the Commissioner's operations. For example, in New South Wales the Commissioner is required to report an annual assessment of the performance of the government sector. This includes notable achievements, challenges and priorities and an analysis of government sector workforce data.

Pre-election information

The Public Service has an important role in the government formation process by providing information and analysis to negotiating parties. Following a general election and confirmed vote count, political parties may negotiate to form a government under Mixed Member Proportional (MMP) election rules. The introduction of MMP in 1996 also included a process to allow political parties access to the Public Service to gather:

- information on existing government policy

⁸⁹ Environmental Reporting Act 2015, ss15 and 16

⁹⁰ State Sector Act 1988, s19

- information relating to party proposals, including costings, policy implications and implementation considerations
- analysis on effects of modifying/combining policies.

Since 1996, in addition to governments issuing self-denying ordinances to not use the Public Service to cost election policies, negotiating parties have made requests to the Prime Minister for information held by the Public Service, who makes decisions on whether to provide access. The Commissioner has been responsible for ensuring negotiating parties appropriately receive relevant information, while maintaining the political neutrality of the Public Service.

The Commissioner exercises this role by issuing guidance for the State Sector on appropriate conduct for officials during the negotiation phase of forming a government; and by coordinating the process of central agency officials providing information to political parties. The Commissioner's role is based on agreement by successive Prime Ministers, not legislative provisions.

The Commissioner's current role is described through the Cabinet Office Circular and Cabinet Manual. CO (17) 6 states: "only the Prime Minister may authorise access by a political party to State sector agencies." The process for managing requests is outlined through the Commission's guidelines. The Cabinet Manual broadly reflects the practice, while the Commission's guidelines detail how the process may be managed. The Commissioner holds this role to ensure the Public Service remains politically neutral.

4.2 Problem or opportunity

Although departments manage to report their own outputs reasonably well on a short term horizon and provide the relevant information to political parties when forming a government, there are a few issues with the status quo:

- Not all departments are providing information about long term trends and drivers. This information is important, as it allows for informed democracy and the development of informed policies by both government and opposition parties.
- There is no regular reporting on issues at a wider Public Service level. This is not sufficient as the complex problems facing New Zealand require a Public Service that can take a holistic view across and within sectors.
- Negotiating parties have received information from the Public Service to help form a new Government, but there is no legislative basis for this, so the process relies on the cooperation of the current Prime Minister. There is an unlikely but important risk that a hypothetical future Prime Minister may withhold access to the Public Service during the government formation process which may lead to information asymmetry for political parties.

4.3 Consultation

In order to improve the level of insights available, the discussion document proposed:

- That the Act include a requirement to prepare a sector level long-term insights briefing mid-way through the electoral cycle that would outline forecast key trends, opportunities and risks in a sector.

- A requirement for a sector level briefing supporting stewardship⁹¹ by covering the medium to long term would include:
 - a document produced mid-way through each election cycle (this could occur at a point two years after an election and a year before the next election)
 - forecast key trends, opportunities and risks in a sector over the medium to long term
 - a responsibility on relevant sector chief executives to produce the briefing, with support from relevant chief executives to help inform development
 - a requirement to produce a long-term insights briefing to be included in the Act.

Other options proposed were:

- seconding officials to the Office of the Leader of the Opposition and / or other key shadow portfolios
- giving departments a more formalised role providing long-term information on key trends, opportunities and risks to Parliamentary Select Committees.

The discussion document also proposed that the role of the Commissioner in the government formation process be made explicit, to provide greater certainty for all actors involved in the process and remove the possibility that rules could be put in place that might unduly favour an incumbent government.

There were 124 submissions focused on this reform section. Of these submissions, there were responses from public servants (73), members of the public (12), government departments (1), non-governmental organisations (19), academics (16) and three anonymous. Many submitters supported making the role of the Commissioner in the government formation process explicit in the Act. Several strongly supported creating a long-term insights briefing as a legislative requirement. Of those submitters, a medium-term period of 10 years on average was favoured. Some submissions were of the view that there should be a stronger government induction process and improvements to the website to ensure existing information on medium and long-term trends is communicated efficiently.

4.4 Options

The proposals consulted on have developed further due to the feedback received and further policy work. In particular, a new proposal for a system wide report is included.

The intent of the options discussed below is to incentivise consistent reporting about long-term trends and drivers in discreet sectors and the Public Service as a whole, and whether the Public Service has the capability to meet future needs. This will allow for informed democracy, and the development of informed policies by both government and opposition parties.

Reporting on long-term information and analysis

Options for improving regular reporting by government departments are:

⁹¹ In this context meaning leading medium and long term sustainability, and sector capability, health and capacity.

- Option 1 (status quo): Maintain the current reporting requirements on departments
- Option 2: introduce non-legislative requirements on departments to independently produce long-term insights briefings and on the Commissioner (or an independent expert) to produce a system wide report
- Option 3: Introduce legislative requirements on departments to independently produce long-term insights briefings and on the Commissioner (or an independent expert) to produce a system wide report

These options are discussed and analysed below.

Option 1 (status quo): Maintain the current reporting requirements on departments

Reporting by the Public Service is currently short-term and departmentally focused. While some long-term reporting does occur (e.g. the Treasury Long Term Fiscal Statement), it is on an ad hoc basis, with no Public Service-wide requirement to produce longer-term reports or information.

Fewer reporting requirements could give departments more autonomy to apply resources where they see fit. But there is a risk with the status quo that, the lack of a requirement for long-term reporting means there is no incentive for departments to carry this out. This can lead to a lack of information about long-term trends and drivers, without which informed policy may not be possible.

Option 2: introduce non-legislative requirements on departments to independently produce long-term insights briefings and on the Commissioner (or an independent expert) to produce a system wide report

Long-term insights briefings

Under this option, administrative requirements would be put on chief executives of each department (or collectively by groups of chief executives) to produce long term insights briefings to be tabled in Parliament, as was supported during consultation. This would allow government and other political parties to understand the landscape when developing policies, and would be publicly available. This requirement would be akin to other such requirements on chief executives, such as the need to produce a four year plan.

The purpose of the long-term insights briefings would be to provide a protected space for policy stewardship and help balance incentives for longer-term thinking against incentives for short-term thinking. To achieve this purpose, the long-term insights briefings need to document the future trends, opportunities and risks facing New Zealand. The goal is not to predict the future, but to generate knowledge of the possible futures in order to help shape and navigate them. To be credible and effective, the long-term insights briefings need to be evidence based. The information to be included needs to be considered from the perspective of how it enables the country to better prepare for the future, against any risks created by including the information.

To maintain the independence of the long-term insights briefing, relevant chief executives should sign off the briefings before being provided to the appropriate Minister to table in Parliament, allowing the government to comment on the briefings and to enable Parliamentary scrutiny.

A desired outcome of the long-term insights briefings is to encourage open and informed conversations about future risks and opportunities facing New Zealand. This is more likely to be achieved if there is consultation with the public and stakeholders as part of the long-term

insights briefing process. Therefore, the State Service Commission recommends that chief executives publicly share the draft briefing and provide the opportunity to comment. Feedback should be taken into consideration in finalising the briefing.

System wide report

There would also be a requirement on the Commissioner to produce a system wide report which could include:

- The performance of the Public Service in achieving its purpose, upholding its foundational principles and its ethical conduct. There is strong public and Parliamentary interest in how the Public Service is performing. There was specific feedback through the consultation process on the need for a report on how well the Public Service is upholding the stewardship principle.
- The capability of the Public Service to meet future needs. This could include information about how the Public Service is anticipating future needs, long and medium term drivers that affect the operating context, and risks and opportunities related to the capability of Public Service, its workforce and institutions.

Under this option the requirements for both the long-term insights briefing and the system wide report will last only as long as the government in office allows them to. Because this option has no legislative backing, it will also be up to the Minister to decide whether the briefing is worth producing, and the contents of that briefing.

Option 3: Introduce requirements on departments to independently produce long term insights briefings and on the Commissioner (or an independent expert) to produce a system wide report

This option is similar to option 2, except the requirements on chief executives and the Commissioner are legislative requirements. Submitters who commented on this proposal generally supported a legislative requirement on chief executives to produce a long term insights briefing.

The advantage of this option over option 2 is that it will ensure the requirements are maintained over time. Placing requirements in primary legislation provides a potentially stronger normative basis for chief executives to assert their independence in producing the report, if doing so was not supported by their Minister.

Having a legislative requirement also makes it easier for departments to undertake their long-term planning, for it will be certain that this reporting is required, so departments should take this into account for their resourcing requirements.

Table 5. Options for long-term insights briefing and system-wide reporting

Reform objectives				Criteria			
Deliver better outcomes and better services	Create a modern, agile and adaptive New Zealand Public Service	Affirm the constitutional role of the Public Service in supporting New Zealand's democratic form of government					
Policy objectives							
	Provide the ability to effectively join up around citizens and to respond to cross-cutting issues	Generate alignment and interoperability across the Public Service	Establish behavioural and cultural foundations for a unified Public Service	Acceptability	Clarity	Sustainability	Feasibility
Option 1 (status quo): maintain the current reporting requirements on departments	0	0	0 There is no regular reporting of long-term trends across the Public Service.	0 Submitters agreed there is a need for long-term insights reporting.	0	0	0
Option 2: introduce non-legislative requirements on departments to independently produce long-term insights briefings and on the Commissioner (or an independent expert) to produce a system wide report	0	0	++ Information gathered and provided under this option on long-term trends allows for informed democracy, and the development of informed policies by both government and opposition parties.	+ Submitters were supportive of a requirement on chief executives to produce a long term insights briefing.	0	0 Under this option the requirements will only last as long as the Minister or government in office allows them to.	- Because this option has no legislative backing, it will be up to the Minister to decide whether the briefing is worth producing, and the contents of that briefing.
Option 3: introduce legislative requirements on departments to independently produce long-term insights briefings and on the Commissioner (or an independent expert) to produce a system wide report	0	0	++ Information gathered and provided under this option on long-term trends allows for informed democracy, and the development of informed policies by both government and opposition parties.	++ Submitters who commented on this proposal generally supported a legislative requirement on chief executives to produce a long term insights briefing.	+ This option clarifies that that this type of long-term planning is an expectation on departments, which allows them to take this into account in terms of resourcing.	++ This option ensures that the requirements are maintained over time, and are not overturned by a future unsupportive government or deprioritized by an unsupportive Minister.	0 This option upholds the integrity of the document because it puts a legal duty on chief executives to produce the briefing independent of the Minister and political interference. While there will be some costs involved in developing these briefings, these can be absorbed within baseline funding.

Key: ++ better than doing nothing/the status quo

+ somewhat better than doing nothing/the status quo

0 about the same as doing nothing/the status quo

- somewhat worse than doing nothing/the status quo

-- worse than doing nothing/the status quo

■ relevant objective or criteria

Option 3 is the preferred option, as it ensures the requirements are not eroded over time and provides clarity to chief executives that this expectation needs to be met, potentially enabling better resource management to undertake the briefings.

Further analysis has been undertaken to answer the following questions:

- What content should the long-term insights briefings include?
- What topics should be included in the long-term insights briefings?
- What type of content should the system wide report cover?
- Who should develop the state of the Public Service report?
- When should the state of the Public Service report be developed?

This analysis is detailed below.

What content should the long-term insights briefings include?

There is a spectrum of information that could be included in the long-term insights briefings. The options considered are:

- Option 1 (preferred option): intelligence about the future
- Option 2: factors that could influence the future trends and their implications
- Option 3: policy responses

Each option adds a layer of analysis. These options are discussed and analysed below.

Option 1 (preferred option): intelligence about the future

Under this option, future trends are identified through the following information and analysis:

- Quantitative information about past trends, the current state and future projections based on different assumptions (known knowns)
- Qualitative information based on existing research and futures studies, as well as stakeholder engagement (known unknowns)

While this option will enable an understanding of the what could happen in the future, it may not provide enough analysis to link the future with the decisions of today.

Option 2: factors that could influence the future trends and their implications

This option would include identifying future trends in option 1, but further apply analysis of the intelligence about the future trends to identify the influencing factors and the critical uncertainties. It may also identify limitations in the future fitness-for-purpose of the current policy settings.

This option would enable understanding of what could happen in the future and why, as well as where policy changes may be needed. However, this option may also create tensions between officials and ministers if factors are identified that the current government has chosen not to address, or current policy settings are identified as not appropriate in the future.

Option 3: policy responses

This option includes the analysis in options 1 and 2, but also provides advice about what the priorities for the future should be and what actions should be taken to achieve them.

While this option could raise understanding of how to respond to future challenges, it conflicts with the principal of political neutrality and could create tensions between officials and ministers if the advice goes against current policy settings.

Option 1 is the preferred option. Options 2 and 3 would extend the mandate of the Public Service. It is not the role of the Public Service to express what the priorities for the future should be and what action should be taken to pursue them. The role of the Public Service is to provide information and analysis about areas that governments might be expected to want to take action in. This includes issues likely to be important to the public interest now and in future, even though a current government may not wish to focus its attention on them.

What topics should be included in the long-term insights briefings?

There needs to be a process for identifying topics for the outlook briefings. Most of the future trends are multi-dimensional and cross-sectoral, which means sector-based briefings may result in duplication of effort and interdependencies being missed. An alternative approach is to provide flexibility to consider an issue through a system or sector lens. This would require a process for determining the topics of the briefings for each electoral cycle. This requires a decision on whether the topic selections should be independent of the influence of the government of the day, or whether the current government should have a role in selecting and shaping the topics. There is a tension in conducting stewardship work with discussing issues beyond the immediate priorities and preferences of the government that may adversely affect the Public Service's relationship with the Government.

Options considered were:

- Option 1: list of set topics
- Option 2: topics determined by the Public Service
- Option 3: topics determined by a working group
- Option 4: topics determined by the Government
- Option 5: topics determined by a Parliamentary Committee

If a process for determining the topic for each cycle is chosen, there are variations around who provides advice versus makes the decision and whether checks and balances should be built into the process.

The options are discussed and analysed further below.

Table 6. Comparison of options for how topics set for long-term insights briefings

	Description	Pros	Cons	Possible variations
Option 1: List of set topics	The topics are set out in legislation, and remain constant across cycles.	Provides consistency across cycles of priorities (e.g. the four capitals in the Treasury's Living Standards Framework).	Risks the priorities losing relevance over time. Risks being too ambitious too early, and therefore being seen as a failure.	The topic description could be loose to provide flexibility, or tight to provide certainty.

		Reduces need for planning to identify priorities for each cycle.		
Option 2: Topics determined by the Public Service	Chief executives decide the topics	<p>Enables the priorities to change across cycles to maintain relevance, drawing on what is learned in the system wide report.</p> <p>Enables a learning process to inform selection of topics in the next cycle.</p> <p>Can use understanding of medium and long-term context to aid selection.</p>	Risks creating tension between officials and ministers if topics are chosen that a current Government does not want explored.	<p>Could include a requirement for public consultation.</p> <p>Instead of the Public Service determining the topics, it could provide advice to the Government.</p>
Option 3: Topics determined by a working group	A working group is appointed to decide the topics	<p>Enables the priorities to change across cycles to maintain relevance.</p> <p>Strengthens the independence of the topic selection process.</p>	<p>Likely to increase planning and administration costs.</p> <p>Risks expectations exceeding the capability of the Public Service to deliver reports.</p>	<p>The appointment of members to the Working Group could be by the Minister, Commissioner or independent statutory officer (e.g. Auditor General).</p> <p>The membership criteria could be set out in a legislative instrument.</p> <p>Instead of determining the topics, the Working Group could provide advice to an alternative decision maker.</p>
Option 4: Topics determined by the Government	The Government decides the topics, based on advice from the Public Service and/or working group	<p>Enables the priorities to change across cycles to maintain relevance.</p> <p>Likely to align with the government's long-term vision for New Zealand's future.</p>	Risks not examining the assumptions, expectations, and uncertainties that underpin the current government's vision for the future.	The advice to the Government from the Public Service and/or working group could be made public, thereby making transparent the government's decision on the topic selection.
Option 5: Topics determined by a Parliamentary Committee	A Parliamentary committee decides the topics based on advice from the Government/ Public Service or working group.	<p>Enables the priorities to change across cycles to maintain relevance.</p> <p>Enables bipartisan support of the priorities if agreement can be reached.</p>	<p>Likely to increase planning and administration costs.</p> <p>Potential for compromises on the topic selection reducing the utility of the briefings, or inability for agreement to be reached.</p>	Instead of a Parliamentary committee determining the topics, the list of topics determined by the Public Service, working group or Government could be subject to Parliamentary scrutiny.

SSC recommends that chief executives determine the topics for their long-term insights briefings, as they are in the best position to select the topics, based on their current understanding of the sector. The risk raised above around possible tension between officials and ministers through having the Public Service determine the topics can be mitigated by including provisions that the long-term insights briefing not include any commentary for or against existing government policy or possible future policies.

What type of content should the system wide report cover?

Two options were looked at in determining what the content of the report should be:

- Option 1: Focus on stewardship performance
- Option 2 (preferred option): Broader Public Service performance, including stewardship

These options are discussed and analysed below.

Option 1: Focus on stewardship performance

The report could focus on how the Public Service is discharging its stewardship responsibilities under the Act, along with any challenges and notable achievements. This would address both policy stewardship in preparing for the future and managing risks, as well as stewardship of Public Service resources to maintain and build capability for the future. The report could draw on existing information from the various sources, and/or collect new information based on consistent criteria for assessing stewardship.

However, a focus on stewardship may mean that interdependencies with other capability areas may be missed, and create additional requirements in an already cluttered and disjointed reporting environment.

Option 2 (preferred option): Broader Public Service performance, including stewardship

The report could focus on the capabilities and performance of the Public Service more broadly, including stewardship. It could draw together analysis of the Public Service workforce data which is currently produced, with the Commissioner's report on operations, and include an assessment of achievements, challenges and priorities for the Public Service. While there is some potential for a focus on stewardship to be diluted, this drawing together of existing reporting can help present a more complete performance picture and avoids a double up of reporting requirements.

Option 2 is the preferred option, because it creates a fuller picture of the Public Service and leverages existing reporting requirements.

Who should develop the state of the Public Service report?

The purpose of the state of the Public Service report is to improve accountability of the Public Service for discharging its stewardship responsibilities. There are two broad options for who should develop the report:

- Option 1 (preferred option): The report is prepared and signed off by the Commissioner
- Option 2: The report is prepared externally to the Public Service by an independent expert

These options are discussed and analysed below.

Option 1 (preferred option): The report is prepared and signed off by the Commissioner

Option 1 is more likely to build the capacity and capability of the Public Service. By having this expertise in house, it can be used to support agencies and stewards in their performance improvement efforts. This also aligns with current reporting where the Commissioner reports on the Public Service workforce data and the Commissioner's operations.

Option 2: The report is prepared externally for the Public Service by an independent expert

Option 2 builds more independence into the process and enables expertise to be drawn from outside the Public Service. However, it may create the appearance of an audit which can lead to gaming behaviour by agencies and stewards.

On balance the State Service Commission recommends that the Commissioner prepare the report.

When should the state of the Public Service report be developed?

There are different options for the frequency of when the reports should be developed:

- Option 1: annually
- Option 2 (preferred option): once every three-year electoral cycle
- Option 3: long-term or as required

These options are discussed and analysed below.

Option 1: annually

Option 1 is more likely to maintain a focus on stewardship based on the premise "what gets measured, gets done". However, this may inadvertently result in a short-term focus for stewardship activities.

Option 2 (preferred option): once every three-year electoral cycle

Option 2 provides a stewardship assessment for each term of government. It also provides time between reports to enable agencies to make improvements.

Option 3: long-term or as required

Option 3 risks losing a sustained focus on stewardship performance given the long time-horizon. It could be crowded out by regular reporting on other topics.

On balance, the State Service Commission recommends that the state of the Public Service report be produced every three years.

Pre-election information

Options for protecting the ability of political parties to access information from the Public Service when forming a government are:

- Option 1 (status quo): Retain the current informal process for supporting government formation
- Option 2: Codify the role of the Commissioner in supporting the government formation process

These options are discussed and analysed below.

Option 1 (status quo): Retain the current informal process for supporting government formation

Under the status quo, it would be the Prime Minister's role to decide whether to give non-executive access to the Public Service once a request is made by a political party during the government formation process. The Prime Minister could decline access at any point. If the Prime Minister grants access, the Commissioner would be responsible for ensuring negotiating parties appropriately receive relevant information, while maintaining the political neutrality of the Public Service. The Commissioner issues guidance for the State Sector on appropriate conduct for officials during the negotiation phase to form a government; and coordinate the process of central agency officials providing information to political parties.

This process would continue to be outlined in the Cabinet Manual and the Cabinet Office Circular. Both the Manual and Circular could be amended at the Prime Minister's and Cabinet's discretion.

The status quo has worked well in the past, with Prime Ministers consistently providing political parties with access to the Public Service during government formation. Therefore there is clearly no urgency to change the status quo. However, there is a small risk that a future Prime Minister could withhold permission, resulting in an asymmetry of information among political parties attempting to form a government.

Option 2: Codify the role of the Commissioner in supporting the government formation process

Under option 2, the Commissioner would have the legal role of managing involvement by officials in the government formation process.

- Negotiating parties would refer requests for access to departments to the Commissioner.
- The Commissioner would have the function of granting access to departments, if they are reasonably satisfied that the request is relevant to negotiations on the formation of government and is made by a political party that is part of such negotiations, and during the negotiation period.
- The Commissioner will issue to departments standards on providing information and analysis to negotiating parties.
- Chief executives must comply with these standards except as agreed in writing with the Commissioner.

By giving the Commissioner the power to manage access by political parties to the Public Service, this option ensures that the power sits with an apolitical figure, thus ensuring that political parties have equal access to the Public Service when attempting to form a government.

There is, however, a small risk that by giving the Commissioner this power, they will be under higher scrutiny to ensure they are acting in a politically neutral manner. However, the Commissioner already has a substantial role in managing access to the Public Service when a government is being formed, so any additional risk would be minimal.

Table 7. Options for protecting constitutional practices around the formation of government

Reform objectives			Criteria						
Deliver better outcomes and better services	Create a modern, agile and adaptive New Zealand Public Service	Affirm the constitutional role of the Public Service in supporting New Zealand's democratic form of government	Policy objectives			Acceptability	Clarity	Sustainability	Feasibility
	Provide the ability to effectively join up around citizens and to respond to cross-cutting issues	Generate alignment and interoperability across the Public Service	Establish behavioural and cultural foundations for a unified Public Service						
Option 1 (status quo): retain the current informal process for supporting government formation	0	0	0	0	0	0	0	0	
Option 2: Codify the role of the Commissioner in supporting the government formation process	0	0	<p style="text-align: center;">+</p> This option will ensure that the Public Service can carry out their constitutional role in the government formation process. However, there is a risk that once the Commissioner has the legal role for managing information provision during government formation, they are seen as less politically-neutral.	<p style="text-align: center;">++</p> Many submitters supported making the role of the Commissioner in the government formation process explicit in legislation.	<p style="text-align: center;">+</p> This option provides a greater degree of certainty for all actors involved in the process that the conventions that the Public Service will provide information to negotiating parties will be honoured.	<p style="text-align: center;">+</p> This option ensures that the conventions that the Public Service will provide information to negotiating parties will be honoured, and avoids the unlikely but important risk that a hypothetical future Prime Minister may withhold access to the Public Service during the government formation process and thereby precipitate a constitutional crisis.	0		

Key:

- ++ better than doing nothing/the status quo
- + somewhat better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- somewhat worse than doing nothing/the status quo
- - worse than doing nothing/the status quo
- relevant objective or criteria

Option 2 best meets the objective of protecting constitutional practices around the formation of government by codifying the current arrangement of making the Commissioner responsible for managing the provision of information during government formation, and therefore ensuring this practice carries on through successive governments.

4.5 Conclusion and Impact

The State Services Commission recommends:

- A duty on chief executives of each department (or collectively by groups of chief executives) to independently produce long-term insights briefings identifying future trends and long-term insights. Chief executives will use their best professional judgment in the selection of topics and the content of the briefing.
- A duty on the Commissioner to produce a system wide “state of the public sector” report. This could focus on the capabilities and performance of the Public Service more broadly, including stewardship, and would be produced every election cycle.
- Codifying the role of the Commissioner in supporting the government formation process.

The requirement to produce a long-term briefing will apply only to department chief executives, not Crown entity boards, as any Crown agent sectors will be covered by their monitoring agency.

Requiring long-term insights briefings and a system wide report will enable government to develop more robust and resilient policy, by ensuring the Public Service is mindful of future contexts, risks and opportunities.

Risks

First, there is a risk that the new legislative requirements are treated as a compliance activity to develop additional reports with little value derived from the process. This could be mitigated, by implementing a broader stewardship program that supports the Public Service to realise the potential of the legislative settings. Accountability can also be strengthened through an assessment of stewardship performance of the Public Service.

There are also ways to balance the need for independently produced information with the need to maintain flexibility and compliance costs. The following steps can be taken to mitigate the risks:

- Require briefings infrequently, at minimum only once per electoral cycle.
- Allow chief executives to choose the topics of the briefings, to their best professional judgement and consistent with the purpose of the briefings.
- Require that draft briefings be provided for public comment on both the topic and the content of the briefing.
- Allow groups of departments to collectively produce a single briefing, where there is significant subject matter overlap (for example, the various departments of the natural resources sector, or of the justice sector).

- Furnishing the briefings to Ministers to be tabled in Parliament as soon as reasonably possible.

There are similar risks for the “state of the public sector” report. Similar mitigating steps can be taken, such as requiring briefings infrequently, allowing the Commissioner to choose the topics, and requiring the findings to be tabled in Parliament.

Second, there is a risk that futures thinking is not coordinated across the Public Service and other actors (e.g. academia and think tanks), resulting in duplication of efforts and reports. An assessment of stewardship performance would address coordination and duplication issues by taking existing reports into account in recommending the future topics.

Third, Public Service stewardship responsibilities could be deprioritised through existing ministers not enabling sufficient resource allocation. The requirement to make these briefings publicly available will create transparency if any changes to the priorities are made.

Other regulatory programmes

The Government is currently considering establishing an independent fiscal institution through amendments of the Public Finance Act. The institution would include a policy costing function for political parties throughout the electoral cycle. This would have implications for the scope and nature of the role of the Commissioner during the co-ordination of non-executive access to the Public Service during the government formation process. If this proposal is implemented, legislation may need to be amended to ensure the Commissioner’s role is consistent with that proposal.

Financial implications

Most of the data that would inform a system-wide report is already collected by the Commission. Any additional costs to analyse the data, write the report etc. would need to be met out of existing baselines.

There may be extra costs to departments in developing the long-term insights briefings. However, chief executives have existing stewardship responsibilities under the current Act. The new proposals create specific requirements to develop reports that forecast key trends, opportunities and risks over the long term. This falls within the existing responsibilities, with some departments already producing these types of reports. Therefore, the costs associated with implementation should be absorbed within existing budgets.

5. Te Ao Tūmatanui

5.1 Background

Modern Aotearoa/New Zealand operates within a system of government underpinned by the Treaty of Waitangi through a strong Māori/Crown relationship.

New Zealand's Public Service is a significant instrument of the Crown, so is a vehicle for strengthening the Māori/Crown relationship and improving outcomes. The Public Service's role is to serve all citizens, including Māori. Arguably, the Public Service has a greater responsibility given the perennially poor outcomes Māori continue to face across most social, health and justice indicators. To improve outcomes as part of being a modern, agile and adaptive Public Service, the Public Service needs to better understand and value, engage with and respond to Māori needs and aspirations.

As discussed in section 1.1, the current State Sector Act makes it difficult for cross-agency collaboration on complex, modern problems. Māori have expressed desire for a more joined up Public Service and raised concerns about the lack of a holistic approach to improving outcomes for them. In addition to their over-representation in negative statistics in most social areas, Māori are also under-represented in Public Service leadership roles.

Concerns about the ability of the system to respond to issues affecting Māori were strongly expressed during national hui held last year by the Minister responsible for Māori/Crown Relations. They have also been raised in numerous contemporary claims before the Waitangi Tribunal and during the consultation over the state sector reform proposals. It was clearly indicated during the hui held by Hon Kelvin Davis that the system has not adequately delivered in its engagements with, and in outcomes for, Māori.

To address these concerns, there is non-legislative work underway across the Public Service. Many departments are developing frameworks and implementing changes to build their own capability to deliver better outcomes for Māori. Te Arawhiti, Te Puni Kōkiri and the State Services Commission are working together to unify departmental initiatives and create an integrated plan across the Public Service. This non-legislative initiative aims to strengthen system leadership to create a unified approach, leverage existing capability and experience in the system, and give clearer strategic direction to priorities and unify effort.

5.2 Problem or opportunity

The current State Sector Act is silent on the Treaty of Waitangi or the Māori/Crown relationship, aside from the duties on Public Service employers to recognise the aims and aspirations of Māori, the employment requirements of Māori and the need for greater involvement of Māori within the Public Service. The reform of the Act provides a significant opportunity to provide explicit direction for public servants on expectations to effect system-wide change to better meet the needs and aspirations of Māori.

While there are pockets of good practice in the Public Service, the quality of relationships with Māori and level of responsiveness to issues that affect them varies. This is evident in the continuing poorer outcomes for Māori – for example, 32 per cent of Māori students achieve University Entrance compared with 57 per cent of Pakeha, the Māori incarceration rate is seven times higher than the non-Māori rate; and 62 per cent of children in state care are Māori.

These statistics, and commentary on the need for the Public Service to improve, are not new. However, there has been no systematic approach to delivering better outcomes for Māori and

developing Māori leadership across the Public Service. A new approach is needed that provides clear expectations for the Public Service. Many Māori have now settled their historical claims and have strong expectations of a different relationship with the Crown and the Public Service.

The system-wide non-legislative interventions described in section 5.1 will be a step towards improving services for Māori. But there are too few of these initiatives, and they have not yet achieved a consistently high level of responsiveness or effectiveness for Māori across the government's wellbeing areas.

5.3 Consultation

To ensure the Treaty partnership is upheld, the discussion document proposed:

- 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. 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 supporting Māori in leadership and decision-making roles.
- Explicit provisions in the Act to strengthen and clarify the Commissioner's and chief executives' collective responsibilities, including
 - responsibility for developing the cultural competence and capability of the Public Service
 - supporting Māori leadership within the Public Service and ensuring the Public Service has strong relationships with Māori, is responsive to the needs and aspirations of Māori and advances opportunities to work with Māori.

About 340 responses were received on these proposals. Several submissions – e.g. from IPANZ, the PSA, Institute of Internal Auditors, the Human Rights Commission, Te Pou Matakana, ANZSOG, Transparency International NZ and Te Runanga o Ngai Tahu – provided detailed comment and proposals representing large numbers of people. The PSA ran its own process so that its 6,000 Māori delegates could make a submission (from Te Runanga o Nga Toa Awhina) in addition to the views expressed by its broader membership. Views from approximately 200 Māori public servants who participated in seven hui nationwide were summarised and included in feedback.

The overwhelming majority of submissions support the proposals or view them as positive as far as they go, but call for further strengthening of statutory provisions, implementation mechanisms, or both.

The areas of greatest agreement, and areas where additional mechanisms, policies or statutory provisions called for, were:

- Building workforce composition and capability, in terms of supporting Māori to enter and succeed within the Public Service and providing development and training for all public servants in the Treaty of Waitangi, te reo, tikanga and te Ao Māori;
- Reflecting genuine partnership in how the Public Service engages with Māori, moving beyond a consultation model to one based on co-design;
- Codifying expectations of the Commissioner and chief executives to provide for adequate guidance and oversight so accountabilities are clear and senior leaders are held to account for performance;
- Explicit references to the Treaty of Waitangi within a new Act, as distinct from the role of the Public Service in supporting the Māori/Crown relationship or the duty to respond to the needs and aspirations of Māori. This is expressed in several ways.

12 of the 345 responses oppose the proposals or express broader objections to race based policies, special treatment for Māori or approaches by government that responders feel support ongoing Treaty grievance. There is little detail provided in these general statements of opposition. All the objections are contained in individual submissions.

12 of the 345 responses express a question or concern that the focus on Māori could impact responsiveness to other ethnicities and New Zealand's growing multicultural profile.

5.4 Options

While most of the key themes from consultation supported aspects of the proposal, one new idea is that the prominent stand-alone clause should explicitly reference the Treaty of Waitangi.

The options discussed below aim to increase responsiveness to Māori, particularly in areas of engagement, participation and partnership; delivering services and results; workforce composition and capability; and leadership and culture. It is not expected that any of these options alone will achieve this. Departments will need to continue non-legislative initiatives already underway, and others will need to be established. The options raised in this section are not intended to replace this work. They will lock in commitment from departments by placing duties on chief executives, to continue or establish the type of programmes now being established in some areas of the Public Service.

This feedback has resulted in the following options:

- Option 1 (status quo): no reference to the Māori/Crown relationship – rely solely on non-legislative initiatives
- Option 2: A stand-alone prominent clause with codified expectations as set out in the discussion document
- Option 3: A stand-alone prominent clause with codified expectations and reference to the Treaty of Waitangi
- Option 4: A stand-alone prominent clause with codified expectations that give effect to the Treaty of Waitangi and its principles.

Submitters also made clear that there should be a second objective – to acknowledge that the Crown’s commitment to its relationship with Māori comes from the Treaty of Waitangi.

These options are discussed and analysed below.

Option 1 (status quo): no reference to the Māori/Crown relationship – rely solely on non-legislative initiatives

The status quo includes some non-legislative initiatives already under way. Departments are developing frameworks and implementing changes to build their own capability to deliver better outcomes for Māori. These initiatives will be a step towards improving services and helpful tools to support codified expectations, but they alone will not be enough to reflect the Treaty partnership and provide the change needed to deliver meaningful results to Māori.

The initiatives have not yet achieved a consistently high level of responsiveness or effectiveness for Māori across the government's wellbeing areas. There is a need to lock in commitment to achieve responsiveness and effectiveness for Māori across the public sector. There is a high risk that if the status quo remains, Māori will continue to be over-represented in negative statistics and under-represented in leadership roles in the public sector. In addition, New Zealand is likely to forgo opportunities in the evolving post-settlement environment, so a do-nothing approach would be contrary to the government’s expectations for the future Māori/Crown relationship including the establishment of the new portfolio for Māori/Crown relationships and Te Arawhiti.

Option 2: A stand-alone prominent clause with codified expectations as set out in the discussion document

The discussion document proposed that the Act include a prominent stand-alone clause that is clear about expectations of the Public Service in relation to being a Treaty partner, and contains guidance to support the public sector in building its capability. The expectations on chief executives would be based on those consulted on (outlined in section 5.3). These expectations are in line with current Government expectations, set out alongside the establishment of the Māori-Crown portfolio. There is therefore no additional costs within the current environment. However, if future governments backtracked on the expectations created alongside the Māori-Crown portfolio, they would be locked into the costs created under the legislative provisions of this option.

Feedback from consultation supported expectations on the Public Service to uphold the Māori/Crown relationship, with specific obligations on the Commissioner and chief executives. The Commissioner would be responsible for chief executive performance, including holding chief executives accountable for upholding the expectations of the Public Service in relation to Māori.

The prominent stand-alone clause could include a high-level statement recognising the special relationship with Māori. The clause would set out the stated policy intent of the changes, which could include enabling a mutually beneficial and future-focused Māori/Crown relationship and being highly responsive to Māori needs and aspirations.

The delivery of the relationship with Māori would be part of the requirements of the roles of Commissioner and chief executives. They would be required to develop Māori leadership and ensure appropriate Māori representation in senior Public Service positions.

Chief executives will be required to meet these expectations where it is reasonable and practical to do so, while considering their other statutory obligations.

The expectations in relation to better engagement with Māori would support the Public Service acting to encourage participatory democracy across the system. This would provide guidance to departments on how to work with Māori to build their capability to engage with and across the Public Service, helping Government deliver better outcomes for Māori.

These provisions will provide further incentive for departments to build Māori workforce capability and support Māori in senior leadership roles, which will further help ensure the Public Service is functioning as a representative bureaucracy. This would also help alleviate the concentration of Māori in particular departments and cultural advisory roles.

A prominent stand-alone clause would assist the Public Service in fulfilling its constitutional role by giving special recognition to the Māori/Crown relationship arising from the Treaty of Waitangi as part of New Zealand's constitutional framework.

While this option would be a step towards improving Māori outcomes, it does not reflect the feedback received through the consultation process that explicit reference is needed to the Treaty of Waitangi.

Option 3 (preferred option): A stand-alone prominent clause with codified expectations and reference to the Treaty of Waitangi

Option 3 proposes the stand-alone prominent clause outlined in Option 2 with an additional reference to the Treaty. Including an explicit recognition of the Treaty will contextualise the expectations on the Commissioner and chief executives. This option reflects the feedback received from the consultation process, which called for the proposed clause to give explicit reference to the Treaty of Waitangi in recognition of the special position Māori occupy as tangata whenua.

As with Option 2, the proposed codified expectations on the Commissioner and chief executives are those set out in section 5.3, and will act to incentivise chief executives to establish initiatives that uphold the Māori/Crown relationship.

This option goes further than Option 2 by providing explicit recognition to the Treaty of Waitangi in addition to these core responsibilities. These responsibilities are mandated by the special position of Māori as tangata whenua. Special recognition of Māori arises from tangata whenua status, separate from diversity and inclusion. This is supported by the consultation feedback on the proposed clause (Option 2).

A reference to the Treaty does not bind the Public Service in giving effect to the Treaty as defined by the courts. This option simply acknowledges that the codified expectations in respect to the Māori/Crown relationship are derived from the Treaty as one of New Zealand's founding constitutional documents.

This is the preferred option, because it responds to feedback during consultation that the Treaty of Waitangi warrants explicit recognition in the Act. It also means that expectations on the Public Service to support the Māori/Crown relationship are contextualised through express recognition of the Treaty of Waitangi.

Option 4: A stand-alone prominent clause with codified expectations which gives effect to the Treaty of Waitangi and its principles

Option 4 proposes the stand-alone prominent clause set out in Option 2 with an additional commitment that the wider Public Service will "give effect to the Treaty of Waitangi and its principles". This option is different from Option 3 as it would bind the Public Service to "give effect" to the Treaty and its principles as defined by the courts. The Commissioner and chief

executives will be accountable to upholding the Treaty and its principles beyond the expectations codified in legislation. Such a provision would be ambiguous, and its application would be subject to determination by the courts.

There are different ways of achieving this in legislation. Legislation can impose procedural obligations on decision-makers to consider the Treaty principles, or a general obligation to give effect to the Treaty principles. By referring to the Treaty in this manner, there will be a broader obligation on the Crown extending beyond the core responsibilities set out in section 5.3.

The codified expectations clarify the responsibility of the Public Service in supporting the Māori/Crown relationship, but there is some ambiguity about how the Treaty and its principles would be given effect in practice. This could give rise to costly legal proceedings.

This is not the recommended option, given its ambiguity and the potential scope of this obligation.

PROACTIVELY RELEASED BY THE MINISTER OF STATE SERVICES

Table 8. Options for Te Ao Tūmatanui

Reform objectives							
	Deliver better outcomes and better services	Create a modern, agile and adaptive New Zealand Public Service	Affirm the constitutional role of the Public Service in supporting New Zealand's democratic form of government				
Options	Policy objectives			Criteria			
	Provide the ability to effectively join up around citizens and to respond to cross-cutting issues	Generate alignment and interoperability across the Public Service	Establish behavioural and cultural foundations for a unified Public Service	Acceptability	Clarity	Sustainability	Feasibility
Option 1 (status quo): no reference to the Crown/Māori relationship – rely solely on non-legislative initiatives	0	0	0	0	0	0	0
Option 2: A stand-alone prominent clause with codified expectations as set out in the consultation document	0	0	++ The Commissioner will hold chief executives accountable for building Māori workforce composition and capability, reflecting genuine partnership in engaging with Māori, delivering services and results that are responsive to Māori, and supporting Māori leadership.	+ Submissions were overwhelmingly in support of this option, but many thought it could go a step further to give explicit reference to the Treaty of Waitangi.	0	++ Codifying the expectations on chief executives will mean that they are incentivised to establish initiatives that uphold the Māori/Crown relationship.	0 This recommended option does not have any direct financial implications, as it is mainly codifying existing Cabinet policy direction.
Option 3 (preferred option): A stand-alone prominent clause with codified expectations and reference to the Treaty of Waitangi	0	0	++ The Commissioner will hold chief executives accountable for building Māori workforce composition and capability, reflecting genuine partnership in engaging with Māori, delivering services and results that are responsive to Māori, and supporting Māori leadership.	++ This option responds to feedback during consultation that the clause should give explicit reference to the Treaty of Waitangi.	- It is not entirely clear what the effects of the reference to the Treaty of Waitangi will have on policy making, or how the provision would be interpreted by the courts.	++ Codifying the expectations on chief executives will mean that they are incentivised to establish initiatives that uphold the Māori/Crown relationship.	- Expressing duties in legislation may also give rise to the risk of tortious action for breach of statutory duty. However, many of the expectations this proposal would put on chief executives are already expectations that Government has for chief executives. (See section 5.5)
Option 4: A stand-alone prominent clause with codified expectations which gives effect to the Treaty of Waitangi and its principles.	0	0	++ The Commissioner will hold chief executives accountable for building Māori workforce composition and capability, reflecting genuine partnership in engaging with Māori, delivering services and results that are responsive to Māori, and supporting Māori leadership.	+ This option responds to feedback during consultation that the clause should give explicit reference to the Treaty of Waitangi. However, while not consulted on, it is unlikely that a proposal with such uncertain scope such as giving effect to the Treaty of Waitangi would receive the same level of support.	-- The potential scope of option 4 is unclear, and has the potential to put much broader obligations on the Commissioner and chief executives than intended or can be foreseen. Its application would be subject to determination by the courts.	++ Codifying the expectations on chief executives will mean that they are incentivised to establish initiatives that uphold the Māori/Crown relationship.	-- The ambiguity about how the Treaty and its principles would be given effect in practice could give rise to costly legal proceedings.

Key:

- ++ better than doing nothing/the status quo
- + somewhat better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- somewhat worse than doing nothing/the status quo
- worse than doing nothing/the status quo
- relevant objective or criteria

PROACTIVELY RELEASED BY THE MINISTER OF STATE SERVICES

Option 3 is the preferred option as there is not enough clarity about how the Treaty of Waitangi and its principles would be given effect in practice under option 4. The potential scope of option 4 is unclear, and has the potential to put much broader obligations on the Commissioner and chief executives than intended or can be foreseen. Its application would be subject to determination by the Courts.

Option 3 responds to feedback during consultation that recognition of the Treaty of Waitangi is warranted, while holding chief executives accountable for building Māori workforce composition and capability, reflecting genuine partnership in engaging with Māori, delivering services and results that are responsive to Māori, and supporting Māori leadership.

5.5 Conclusion and impact

The SSC recommends Option 3 - a stand-alone prominent clause with codified expectations and reference to the Treaty of Waitangi, with expectations put on the Commissioner and chief executives for:

- 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.

A prominent clause with codified expectations may raise understanding of obligations on the Crown (and the Public Service) to uphold the principles of the Treaty of Waitangi, and lead to more effective conversations about how the Public Service can support the Crown to better respond to the needs and aspirations of Māori.

These proposals will apply to departments and Crown agents, as the new 'Public Service'.

Financial implications

This recommended option does not have any direct financial implications. The proposals and expectations enable a long-term build towards their achievement. Achieving them will require agencies to prioritise building capability as part of training, development, recruitment and operating procedures and management practices within existing budgets, and this is already an identified capability gap for the Public Service.

The SSC is using existing mechanisms such as Career Boards and the Leadership Success Profile to place additional emphasis on this area.

The Government has already set expectations with the establishment of the new Maori/Crown portfolio and the new Departmental Agency Te Arawhiti. The legislation is going some way to codifying this existing cabinet policy direction.

If the government decides not to progress with this or any of the options, there is a high risk that policy and services will continue to have a mixed level of effectiveness for Māori with variable improvement of outcomes, therefore increasing overall costs to government.

Further resource requirements may be desirable and these may be sought as required to support a wide reaching and heavy lift in capability.

Risks

By putting duties on the Commissioner and chief executives, agencies may lose some autonomy in how they choose to operate, as they will have more statutory duties under this option.

Expressing duties in legislation may also risk tortious action for breach of statutory duty. However, many of the expectations in this proposal are already required of chief executives.

PROACTIVELY RELEASED BY THE MINISTER OF STATE SERVICES

6. Employment in the Public Service

6.1 Background

As discussed in section 1.5, the proposed objectives of the reform are to:

- deliver better outcomes and better services,
- create a modern, agile and adaptive New Zealand Public Service, and
- affirm the constitutional role of the Public Service in supporting New Zealand's democratic government.

Inherent in achieving these objectives is the aim of drawing the Public Service together to operate as a single unified service rather than a collection of discrete entities. This is important to enable cross-agency collaboration (deliver better outcomes and services), facilitate and enable movement of employees across organisational boundaries (create a modern, agile and adaptive New Zealand Public Service), and instil a commitment to common principles and behaviours across the system (affirm the constitutional role of the Public Service in supporting New Zealand's democratic government).

The existing paradigm for employment in the Public Service cuts across this aim, as the State Sector Act treats each individual department as a distinct employer for the purposes of the Employment Relations Act, Holidays Act, and other employment legislation.

In practice this means that, when any public servant leaves a permanent position in a department to take up a role in another department, the move is deemed to be the end of one employment relationship and the beginning of another entirely different employment relationship, exactly as it would be between two firms in the private sector. This undermines any perception of working in a unified single system.

The existing paradigm can be altered to support the aims of the current reform. The reform presents an opportunity to recalibrate employment arrangements to support the aims of the legislative reform and the change process already in train within the Public Service.

Specifically, new legislative provisions on employment can support the aims of building a unified Public Service with a common spirit of service and aligning agencies to deliver citizen-centred services and results for New Zealand.

6.2 Problem or opportunity

The way the State Sector Act treats employment leads to three major problems in achieving the reform objectives. None of these problems is solely attributable to the statute. Different legislation may not be a sufficient condition for resolving the issues, but it is reasonable to believe that it is a necessary condition.

First, treating departments as if they are separate employers has important implications for how public servants experience employment in the Public Service. Employment is specific to individual departments, and the setting of terms and conditions of employment therefore happens in a highly decentralised way. In relation to staff on individual employment agreements, of which there are many, the departmental chief executive is solely responsible for setting or negotiating the terms and conditions of employment. In relation to collective

employment agreements, the Commissioner remains the employer party, but this responsibility is delegated to each departmental chief executive in respect of their own department (this was the clear policy direction at the time the Act was passed).

The negotiation of employment agreements happens at the level of the individual department. This arrangement is problematic as it reinforces the perception of the Public Service as a collection of discrete entities rather than a unified Service, and therefore runs counter to the policy direction of the review of the State Sector Act. Treating departments as separate employers also increases the likelihood of competitive relationships between departments. Public servants see departments competing for scarce skills, reinforcing the identification with departmental 'silos'.

Second, decentralisation has led to high variation in terms and conditions of employment. A Victoria University analysis of Public Service collective employment agreements as at 2017 shows how wide this divergence has become⁹². The terms and conditions of employment can often be quite different for public servants performing the same or similar jobs in other departments.

This degree of variation has some important effects:

1. First, it complicates the movement of people from their existing jobs to positions in other departments, because moving to another department may mean accepting conditions of employment that are different to, even inferior than, the conditions that the employee enjoys in their 'old' department.

This is unfortunate as inter-departmental career mobility is widely recognised as a way of developing skills and competencies of the Public Service workforce. There is also research evidence that the movement of employees between organisations can be positive for both organisations as it fosters relationships and mutual understanding between both.⁹³

2. A second issue concerns lack of portability of entitlements across the Public Service. Employees accumulate service-related entitlements in the course of employment in an agency; most notably annual leave and sick leave. On leaving that department, these accumulations are either cashed up (in the case of annual leave) or else may be lost altogether.

Often departments will recognise previous service of new employees and this operates, to an extent, to facilitate mobility. However, recognition of previous service arrangements are only a partial solution and have not been universally embraced. Of the 47 Public Service collective employment agreements analysed in the Victoria study, only two-thirds provided recognition of previous service for the purpose of calculating leave entitlements.

It is reasonable to suppose that issues around lack of portability of service related entitlements are a further reason for "friction" in the system inhibiting movement of public servants between agencies for career development purposes.

⁹² see Sue Ryall, Tessa Davies, Lorraine Brown: *'Key terms and conditions across public service collective agreements'*, Victoria University of Wellington Centre for Labour, Employment and Work, June 2018

⁹³ Deepak Somaya, Ian O Williamson, Natalia Lorinkova: *'Gone but not lost: The different performance impacts of employee mobility between co-operators versus competitors'*, Academy of Management Journal, vol.51, no.5, 2008

Third, the provisions of the State Sector Act complicate necessary machinery of government changes and therefore operate against the aim of an agile and adaptive New Zealand Public Service.

When departments or parts of departments are merged into each other, usually to facilitate implementation of new government policies and priorities, several issues arise:

- the costly and involved “offer and acceptance” procedures under the Act, which are used to ensure that no one takes both a redundancy payment from their old department and a job in their new department.
- the need, following the formation of a new or merged department, to harmonise the terms and conditions of employment inherited from the precursor departments. This process is lengthy and costly in many instances.

6.3 Consultation

The discussion document proposed that the Commissioner, in consultation with chief executives and relevant functional and professional leads, can negotiate, directly or through delegation, common terms and conditions for functions or professions across existing Public Service departments. This would enable:

- the introduction of standard job titles, sizing and pay bands. Placement within bands would remain a decision of the employing chief executive.
- other conditions of employment including leave entitlements.

A total of 192 responses were received on this proposal. The majority of submitters were in favour of this proposal. Most respondents favoured of having common terms and conditions amongst government departments, as this would support mobility – enabling the carrying of benefits from department to department, promoting transparency and preventing competition between departments for employees. Others supported a consistent approach to employment framework and pay across the Public Service. Those who opposed the proposals identified the risks to flexibility, innovation, and the rights of individuals in moving to common terms and conditions.

6.4 Options

Further policy work has somewhat reframed the potential path for change. Essentially there are a range of options for driving change ranging from those which rely on existing mechanisms (status quo) to recentralising the Public Service employment framework. Between these two ends of the spectrum lie several intermediate or middle options relying on a lesser degree of statutory change to drive greater alignment in terms and conditions of employment across the Public Service. These options are:

- Option 1 (modified status quo): rely on a variety of existing mechanisms
- Option 2: intermediate mechanisms relying on statutory change to drive greater alignment in terms and conditions of employment across the Public Service
- Option 3: recentralisation of the Public Service - the Commissioner as employer

These options are discussed and analysed below.

Option 1 (modified status quo): rely on greater use of a variety of existing mechanisms

Five mechanisms are currently used to steer the system towards greater alignment in terms and conditions of employment.

Voluntary alignment

The Public Service chief executives are now organised as the State Sector Leadership Team and work with the Commissioner on the stewardship of service-wide issues. The State Sector Leadership Team has sponsored and supported the growth of tripartite arrangements in the Public Service which aim to build a partnership relationship between the Public Service Association and other unions and employers. The overall aim is to shift Public Service employment relations from an essentially reactive mode into proactive engagement on issues relating to the future of the Public Service workforce. One of the agreed actions is the establishment of a joint process on common terms and conditions of employment in the Public Service.

Government Expectations on Employment Relations in the State Sector

These are issued periodically by successive governments and are due to be rewritten and reissued in April this year. The Expectations apply to both individual and collective negotiations and apply broadly across the State sector. The Expectations are used as a basis for amendments to the Commissioner's conditions of delegation to departmental chief executives.

The current Expectations have been "designed" to, amongst other things, "foster consistency on employment matters in the State sector". The Expectations direct agencies to consider, how their actions can "support greater consistency across the State sector". Specifically mentioned are service recognition and minimum redundancy protections.

Workforce Policy Statements

The State Sector Act provides for the Commissioner to draft, for Ministerial agreement, workforce policy statements which "relate to workforce (including employment and workplace) matters for the purpose of fostering a consistent, efficient, and effective approach to such matters across the State sector".⁹⁴ Departments and Crown agents must give effect to these Government Workforce Policy Statements, and autonomous Crown entities must have regard to them.

These statutory provisions have never been used in practice. More than anything this reflects the employment relations environment of the 2008-18 period in which the emphasis was almost exclusively on fiscal risk from wage bargaining rather than on addressing issues around wider terms and conditions of employment or workforce development issues.

Models and Standards

Within the Public Service there are also examples where models and standards are used to 'nudge' behaviour towards desired changes. These include government procurement agreements, standard consultancy, goods and services agreements, and the process for

⁹⁴ State Sector Act 1988, ss55A-55D

setting terms and conditions for the employment of Public Service departmental chief executives.

Multi-Employer Collective Agreements

The Employment Relations Act 2000 allows unions to initiate bargaining for collective agreements that apply to two or more employers (Multi-Employer Collective Agreements). These agreements can be a vehicle for harmonising terms and conditions of employment across the employer parties to the agreement and across the parts of the workforce that are covered by collective bargaining. They have been used this way in the State sector, notably in the early 2000s in the case of DHB workforces.

Multi-Employer Collective Agreements are not currently used in the Public Service. After 30 years of enterprise bargaining in the Public Service, there is neither the capability and expertise, nor possibly the inclination from employers or employees, to make this a fast or easy option.

Option 2: intermediate mechanisms relying on statutory change to drive greater alignment in terms and conditions of employment across the Public Service

Between the status quo and the recentralisation lie a range of possibilities requiring a lower level of legislative and institutional change.

Appointment to the Public Service

Legislation can provide for employees to be appointed to the Public Service rather than solely to the department which employs them. This should encourage a change in employees' perception of themselves as members of a wider Public Service. This would not entail much change in practice, as the departmental chief executive would continue to perform the role of employer in relation to public servants working in the department. The cumbersome "offer and acceptance" process, currently used to transfer employees whose jobs remain the same when the function they work in is shifted between departments, could be removed from legislation. Offer and acceptance would of course continue to apply where a public servant is transferring to a substantively different job as functions move to a different department.

Over time, it is expected that fewer employees will be made redundant, as there will be a culture, and appropriate mechanisms to redeploy them across the system.

Transfer accumulation of annual leave entitlement when changing job within the Public Service

Employees accumulate service-related entitlements in the course of employment in an agency; most notably annual leave and sick leave. On leaving that department these accumulations are either cashed up (in the case of annual leave) or else may be lost altogether.

It is reasonable to believe that greater portability of entitlements from one department to another would ease career mobility within the Public Service, and may be one of the things which strengthen a sense of identity as members of the wider Public Service. This is entirely consistent with the purpose of the proposed new legislation which is to, in a number of ways, 'bring the Public Service back together again'.

Most accumulations of service-related benefits could be made portable through voluntary agreement between the departments of the Public Service. Essentially this would involve a broadening of the content and scope of the existing policies on recognition of prior service. Therefore these do not require any statutory provision. But the exception is annual leave which the law requires to be paid out at the cessation of employment. Provision could be made in legislation for annual leave accumulations to be portable between departments.

The cost implications are neutral to the Crown, but would involve costs to individual departments hiring staff from another department, as the employee will bring their annual leave entitlement with them.

Negotiation of common terms and conditions across the Public Service

An amendment to the statutory responsibilities of the Commissioner could be made, so that the Commissioner could place conditions on delegation of collective bargaining responsibilities to chief executives. This could be used as the framework for negotiation of common terms and conditions covering specified occupational groups or other cohorts of employees across the Public Service.

This could be a mandatory and permissive, rather than prescriptive, provision and therefore any risks would be managed through gradual implementation and progressive evaluation of change.

Carry over into new legislation the current Act's provision for Government Workforce Policy Statements

This would be a way of strengthening setting expectations with greater authority. Workforce Policy Statements must be given effect to by departments of the Public Service and by Crown agents.

Option 3: recentralisation of the Public Service - the Commissioner as employer

Before the State Sector Act, the SSC was the employer of all departmental public servants, and many employment decisions, including those concerning individual public servants, were handled centrally. This model was replaced by the State Sector Act, under which public servants became the employees of each departmental chief executive.

It is generally agreed that the flexibilities introduced by the State Sector Act, including in employment, did bring some benefits because they brought decision making closer to the Public Service front line, enabling quicker decisions and allowing chief executives to shape organisations and workforces according to the organisation's particular function and needs.⁹⁵ By contrast the former single employer model was infamous for its slowness and lack of responsiveness.

There is debate about whether a single employer system could work differently in future. It may be possible for such a system to operate on a more flexible and devolved basis than in the past. Formal delegations (if necessary set in legislation) could be used to ensure that most employment decisions are devolved to departmental chief executives while preserving the ability of the Commissioner to determine issues that need to be addressed centrally.

⁹⁵ Schick (1996) Schick, A. (1996). *The Spirit of reform: managing the New Zealand State Sector in a time of change*. State Services Commission of New Zealand, Wellington. ascribed most of the gains from the 1980s and '90s reforms to management doctrines derived from established organisational theory.

This delegation model already operates successfully in negotiations for collective employment agreements. Under the State Sector Act the Commissioner is the employer party for all departmental collective bargaining but has, for many years now, delegated this responsibility to each chief executive in respect of their own department.

But there are also risks. Too many decisions could be recentralised because of the way delegations work. It is inherent in delegations that the delegator (in this case the Commissioner) retains ultimate responsibility for decisions. Over time this risks unintentionally setting up a dynamic towards recentralisation of decisions as Commissioners move to limit their exposure to risk. There would be a consequent cost in terms of the ability to implement arrangements tailored and appropriate to the specific role and circumstances of each department.

Assuming the single employer model could be made to work, it would provide very strong leverage to address the problems set out above. It would support a common Public Service identity as all public servants would be appointed by the same employer and to the same overall institution.

Other levers would be directly based on the Commissioner's employment relations role. These would provide the Commissioner with the ability to directly drive commonality of terms and conditions of employment, subject to the provisions of the Employment Relations Act on negotiation of employment agreements. It would also provide a highly effective mechanism for transmitting and implementing government employment and workforce objectives into the system, including implementation of expectations in relation to pay equity and an inclusive and diverse workforce.

However, as outlined above, the single employer option involves risks of recentralisation over time. It would also involve a major immediate change to employment arrangements when, the current reforms are based on enabling provisions that can drive change over time rather than "big bang" changes.

A further issue with the Commissioner employment option involves the lack of capability and capacity in the Public Service to implement and administer such a change. Few employment relations or human resources practitioners now have experience, or even recollection, of the pre-1988 regime. The implementation challenges would be very large, as were the challenges of the post 1988 shift to departmental employment. The vast majority of people in the Public Service employment and workforce only have experience only of a fully devolved system, and the risks of major immediate change would be high for this reason alone.

As the employer of the whole Public Service, the SSC would require more staff to act in this capacity. In 1987 when this model was last used, the Commission had 302 permanent staff, more than twice the size of today's Commission, and likely roughly more than twice the cost.

Table 9. Options for employment in the Public Service

Reform objectives							
	Deliver better outcomes and better services	Create a modern, agile and adaptive New Zealand Public Service	Affirm the constitutional role of the Public Service in supporting New Zealand's democratic form of government				
Options	Policy objectives			Criteria			
	Provide the ability to effectively join up around citizens and to respond to cross-cutting issues	Generate alignment and interoperability across the Public Service	Establish behavioural and cultural foundations for a unified Public Service	Acceptability	Clarity	Sustainability	Feasibility
Option 1 (status quo): rely on a variety of existing mechanisms	0	0	0	0	0	0	0
Option 2: intermediate mechanisms relying on statutory change to drive greater alignment in terms and conditions of employment across the Public Service	0	++ The Commissioner would be able to use levers to set common terms and conditions for groups or cohorts across the Public Service. This mechanism, along with mechanisms to appoint public servants to the Public Service, and allow portability of entitlements, should increase alignment and ease career mobility throughout the Public Service.	++ With public servants appointed to the Public Service rather than solely to the department which employs them, and a greater portability of entitlements, this should encourage a change in employees' perception of themselves as members of a unified Public Service .	++ Most submitters were in favour of having common terms and conditions, and increasing mobility across the Public Service.	- This option risks causing confusion on who is the legal employer of the Public Service employees.	0	- Alignment of terms and conditions will have financial impacts as terms and conditions are harmonized. These are not able to be quantified at this point given that costs will depend on the specific occupational group(s) to be involved, their size and current variation in terms and conditions of employment, and the range of conditions of employment to be addressed.
Option 3: recentralisation of the Public Service - the Commissioner as employer	0	++ As the employer of the Public Service, the Commissioner could set common terms and conditions for Public Service employees. This would also enable public servants to move flexibly within the Public Service without having to change employer and, over time, with seamless transition in terms and conditions of employment.	++ Having the Commissioner as the employer of all public servants would provide a strong sense of commonality.	-- This option would likely lead to greater constraints on the discretion of chief executives, and is unlikely to have their support.	+ This option clarifies that while Public Service employees are employed by departments, they are working for one Public Service.	-- While under this option the Commissioner would delegate the powers and responsibilities of the employer to departments, over time this risks unintentionally setting up a dynamic towards recentralisation of decisions as Commissioners move to limit their exposure to risk.	-- There is a lack of capability and capacity in the Public Service to implement and administer this option. Few employment relations or human resources practitioners now would have experience or recollection of the pre-1988 regime. The implementation challenges would be very large, as were the challenges of the post 1988 shift to departmental employment.

Key:

++ better than doing nothing/the status quo

+ somewhat better than doing nothing/the status quo

0 about the same as doing nothing/the status quo

- somewhat worse than doing nothing/the status quo

-- worse than doing nothing/the status quo

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6.7 Conclusion and impact

The SSC recommends Option 2 that legislation provide for:

- appointment of Public Service employees to the Public Service
- transfer accumulation of annual leave entitlement when changing job within the Public Service
- negotiation of common terms and conditions across the Public Service
- carry over into new legislation the current Act's provision for Government Workforce Policy Statements.

This option enables a modern, agile and unified Public Service, while maintaining enough departmental autonomy to enable departments to carry out their functions.

It is envisaged that by allowing departments to function both independently and as a part of a broader, unified Public Service, the Public Service can deliver better outcomes and better services to New Zealanders.

Most of the proposals in this section apply solely to government departments. This is because government departments are already part of the same legal entity – the Crown. Crown entities, however, are separate legal entities. Therefore, despite the fact that under the proposals in section 3, Crown agents would be included within the scope of the Public Service, it would not be legally viable to *appoint* Crown agent employees to the Public Service, its own legal entity, while being employed to a separate legal entity – the Crown agent. However, any workforce policy statements made by government would apply to Crown agents as well as government departments, and autonomous Crown entities would have to have regard to them.

Financial implications

The proposals regarding negotiation of common terms and conditions of employment are for enabling provisions and do not prescribe any adjustment to terms and conditions of employment. However, obviously their use will have financial impacts as terms and conditions are harmonized. These are not able to be quantified at this point given that costs will depend on the specific occupational group(s) to be involved, their size and current variation in terms and conditions of employment, and the range of conditions of employment to be addressed.

However, some contextual information on the Public Service workforce can give some idea of possible magnitudes. Also, understanding the policy intent can indicate the (constrained) circumstances where costs may arise. There are also process considerations.

Process considerations

It would be inaccurate to assume that, where disparate conditions are being brought into line, each employee would “go to the top” of the existing variation. Typically translation exercises (the arrangements used to transit employees from one salary scale to a new and different one) are based on a guarantee that no employee will be worse off as a result. However, this guarantee can be met, to some extent, by “grandparenting” individuals at levels above the maxima of new scales or ranges, mitigating the aggregate increase.

Moreover, it is not necessary to address all terms and conditions at the same time, or even at all. Change may be more effectively targeted at non-salary conditions of employment rather than remuneration *per se*.

Financial impacts can also be mitigated by sequencing and phasing change over time.

Policy considerations: nature and scope of intended changes

Policy considerations affect how the provisions to work in practice.

The proposals for common terms and conditions are limited to employees in Public Service departments, i.e., to the departments which currently negotiate collective agreements under delegation from the Commissioner. These departments constitute around 13 per cent of the total public sector workforce. It's worth noting large chunks of the public sector workforce are on nationally standard pay and conditions agreements already, including all primary and secondary teachers and most if not all the DHB workforces. This limits the risk of flow on pressures from changes in the core Public Service.

Even within the Public Service, we would not propose harmonising all terms and conditions of employment across all occupational groups. Though there would undoubtedly be pressure from unions for widespread harmonisation, and though the evolution of Public Service career pathways over time would require greater standardisation, the initial focus would be on harmonising certain terms and conditions of employment. The aim would be to ease mobility amongst those groups with transferable skills that can be enhanced by career mobility within the Public Service, and where the flexibility to move people between departments is useful to build agility of the system.

Data: Workforce size and composition

Some relevant information exists on the relative size of the Public Service workforce. At 49730 full-time equivalent employees (HRC 2018 data), the core Public Service makes up 13 per cent of the overall public sector total of just over 400,000 employees.

The table below sets out the occupational categories used in the HRC, the percentage of public servants in each.

Occupational Group	Percentage of Public Service workforce
Inspection and Regulatory Workers	21
Information Professionals	11.6
Managers	11.5
Contact Centre Workers	10
Social, Health, and Education Workers	18

Clerical and Admin Workers	8.4
Policy Analysts	5.5
Legal, HR, and Finance	4.6
ICT Professionals and Technicians	3.8
Other Professionals	4.6
Other	0.8

Risks

Some risks have been identified with the proposal to transfer accumulation of annual leave entitlement when public servants change job within the Public Service:

- While this proposal would be cost-neutral to the Crown, it would result in costs to departments that employ people already within the Public Service, as the employee would bring an annual leave entitlement with them that the receiving agency would have to honour. Aside from increasing the risk carried by the receiving agency, this could result in productivity costs and back-fill costs. (The agency the employee is leaving will have a corresponding “saving”, therefore the cost to the Crown is neutral.) This could be mitigated by applying a cap on carry-over of leave, translating leave at a rate of old pay into new pay, or by agreements between the employee’s departing and receiving agencies to transfer the cost of leave between them.
- This increase in cost to departments hiring from within the public sector could cause departments to preferentially hire from the private sector, where the incoming employee will be starting with no annual leave. However, this is unlikely as a hiring manager will be focused on the merit of the candidates, rather than the leave balance they bring with them. If any risk remained, this could be mitigated in the same way as the risk above.

7. Diversity and Inclusion

7.1 Background

Currently, the State Sector Act establishes general principles that apply to personnel policies within the departments of state.⁹⁶ These principles include “an equal opportunities programme” and a requirement of “recognition” of the “employment requirements” of Māori, women and people with disabilities. The principles also provide for recognition of Māori aims, aspirations and the need for greater involvement of Māori in the Public Service. The Act further provides that an equal employment opportunities programme aims to identify and eliminate 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.⁹⁷

Data has highlighted that disparities remain within the public sector workforce,⁹⁸ despite the principles outlined above, and recent developments such as the release of the Government’s Gender Pay Principles for the public sector.

According to the SSC’s 2018 Human Resources Capability survey, disparities remain in:

- Under-representation of Māori, Pacific, and Asian peoples in the top three tiers of the Public Service
- Over-representation of people of European background in managers and policy analyst groups
- The persistence of a gender pay gap which, though reducing, is of considerable magnitude and is partly accounted for by the over-representation of women in certain occupational groups
- An ethnic pay gap which is not reducing and reflects the degree of difference in participation by occupation
- The representation and experience of members of Rainbow Communities – though data is scarce, there are indications from overseas research that members of these communities face lack of inclusion in workplaces
- Disabled people, and particularly disabled women, who are among the most marginalised groups in the New Zealand workforce.

Further, as the Human Rights Commission has reported, it is questionable whether current structures and government strategies sufficiently reflect diverse communities and are able to respond appropriately to meet their needs.

Agency engagement surveys indicate issues with the inclusiveness of workplaces.

7.2 Problem or opportunity

Two problems have been identified with the current limited diversity of the Public Service workforce. The first concerns fairness. There is no indication that people of any group do not want to work in the Public Service or advance to more senior and more highly remunerated roles in the Public Service. That indicates issues in, and obstacles to, participation and advancement that need to be addressed on equity grounds.

⁹⁶ State Sector Act 1988, s56

⁹⁷ Section 58

⁹⁸ State Services Commission Public Service Workforce Data

Second, there are benefits to the Public Service and the delivery of Public Services. To best serve New Zealanders, the Public Service needs to reflect and be representative of the increasingly diverse communities it serves. A diverse Public Service is important to enable communities to trust, and to access, the Public Services they need. Research shows that a more diverse workforce with inclusive practices is more responsive to the needs of communities,⁹⁹ engages more effectively, is innovative, delivers more meaningful programmes^{100 101 102} and has a greater impact.

Further, it is well established that bringing diverse perspectives to decision-making can result in more robust decisions. For example, the more diverse the perspectives, the greater the breadth of potential risk that can be identified and mitigated.

Inclusiveness is essential to reaping the benefits of diversity. Inclusive work environments enable diverse employees by welcoming and encouraging the expression of alternative world views. Inclusion is a process of integration and change as well as an outcome (“I feel included”)¹⁰³. For example, a study of six countries (Australia, China, Germany, India, Mexico and the United States) showed that being included led to greater engagement in citizenship behaviors and increased innovativeness for participants.¹⁰⁴

A more diverse workforce combined with an inclusive work climate can build positive perceptions in the workplace based on recognition of individual and group identities, leading to a stronger sense of unity and belonging to the organisation.¹⁰⁵ Changing the Act’s requirements on Public Service employers will help address current issues in inclusion and diversity and contribute to the aim of a more effective and sustainable workforce positioned to enable better outcomes and services for New Zealanders. Proposed changes will also support the Government’s goal of the State sector as an exemplar employer.

7.3 Consultation

Diverse perspectives, experiences and knowledge should be sought after and valued at all levels. To this end, attention has moved from a focus on just removing sources of exclusion to a broader emphasis on building diversity and inclusion in the Public Service with the aim of fostering, promoting, and driving best practice in diversity and inclusion measures.

The discussion document proposed that the Act explicitly reference diversity and inclusion, to the effect that it would be a duty of the Commissioner to promote diversity and inclusion across the Public Service. Equally, chief executives would have a duty to promote diversity and inclusion within their departments.

262 responses were received on the diversity proposals. The majority were from individual public servants (170). We also heard from members of the public (30), NGOs (12),

⁹⁹ Battisson et al (2009) ‘Chief’ Priority: attracting more women to chief executive positions in the New Zealand public service, report to the State Services Commission and the Australia and New Zealand School of Government.

¹⁰⁰ Nair, N., & Vohra, N. (2015). Diversity and inclusion at the workplace: a review of research and perspectives.

¹⁰¹ Bourke, J., & Dillon, B. (2018). The diversity and inclusion revolution: Eight powerful truths. Deloitte review, 22, 81-95

¹⁰² Ohemeng, F. L., & McGrandle, J. (2015). The Prospects for Managing Diversity in the Public Sector: The Case of the Ontario Public Service. *Public Organization Review*, 15(4), 487-507.

¹⁰³ Nair, N., & Vohra, N. (2015). Diversity and Inclusion at the Workplace: A review of research and perspectives, Indian Institute of Management, Ahmedabad 2012

¹⁰⁴ Prime & Sahib “Inclusive leadership: the view from six countries, Catalyst, New York 2014

¹⁰⁵ Nair, N., & Vohra, N. (2015). Diversity and inclusion at the workplace: a review of research and perspectives.

academics (11), unions (11), Māori entities (3), and Crown entities (2). The remainder of responses are listed as other (9) or unknown (21).

The span of non-governmental organisations wishing to comment on diversity and inclusion proposals is broad: Transparency International, Salvation Army, Deloitte, Chartered Accountants NZ and Australia, IPANZ, and ANZSOG. Unions provided detailed views – PSA, Tertiary Education Union, PPTA, and Te Runanga o Nga Toa Awhina. Some Public Service staff networks held their own workshops on this topic and provided feedback reflecting consultation amongst their members, including the government Women’s network; the Disabled network; and the Public Service diversity and inclusion network.

Overall, responses reflect overwhelming support for the proposals to include explicit reference to diversity and inclusion in legislation, to establish a duty on the Commissioner for system leadership on this matter, and to establish a duty on chief executives with respect to departments.

16 responses, however, oppose any reference to diversity and inclusion for a range of reasons: believing the concept is discriminatory, undermines merit, will lead to quotas, or because they feel it should not be legislated for.

A further 15 express some doubt about how the new duties will be implemented in practice; or with the interaction between merit and diversity; or whether inclusion is the primary lever rather than diversity.

7.4 Options

It is important to be clear that actions to build inclusiveness do not breach or alter the merit principle. Rather, they aim to ensure that all groups have equal ability to demonstrate merit by removing barriers to participation and advancement in the workplace, and by recognising the importance, to the Public Service, of the knowledge and experience of New Zealand communities that is brought by women, people living with disabilities, members of the LGBTQI rainbow community, Māori and Pacific peoples, and other under-represented or disadvantaged groups. Moving to implement inclusive policies and practices in organisations can foster an environment that encourages, welcomes and utilises diverse perspectives to deliver better results and services. As the Human Rights Commission stated in its submission: “There is merit in diversity”.

The options below intend to address:

the problem raised in section 7.2, that the current Public Service workforce is not equitable as it does not reflect the public it serves, especially when looking at the composition of Public Service leaders,

- the opportunity raised in section 7.2, for the Public Service to:
 - become more responsive to the needs of communities
 - engage more effectively
 - deliver more meaningful programmes with greater impact
 - have a stronger sense of unity and belonging to the Public Service.

Successfully building a more diverse Public Service is important to mitigate risks to the sustainability of future Public Services due to population ageing and an increasingly tight labour market. For example, future Public Services will rely on being able to attract and retain employees drawn from diverse communities with a younger demographic than the traditional recruitment base. Inclusion is an important aspect of diversity. People are more likely to be attracted and to stay in inclusive work environments that are fair, foster full participation and recognise the individual and group needs of employees.

It is not expected that the proposals in this section alone will provide for a diverse Public Service and achieve the benefits described above. Agencies will need to put in place mechanisms to increase inclusiveness in their organisations. These proposals will simply provide the legal incentive for those Public Service agencies to do so.

The options considered for improving diversity and inclusiveness in the public sector are:

- Option 1 (status quo): continue to rely on equal employment opportunities programmes
- Option 2: prepare a workforce policy statement on diversity and inclusion in the Public Service
- Option 3 (preferred option): supplement a workforce policy statement (Option 2) with legislative changes explicitly recognising the value of diversity, and placing duties on chief executives and the Commissioner

Option 1 (status quo): continue to rely on equal employment opportunities programmes

As discussed in section 7.1, current legislation states that employers in the public sector should have an equal employment opportunities programme and requires recognition of the employment requirements of Māori, women and people with disabilities. Equal employment opportunities programmes should identify and eliminate 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.

While progress is being made, there is still much room for improvement in increasing the representation of diverse groups in the Public Service, and changes to the status quo could enable change to occur more readily.

Option 2: prepare a workforce policy statement on diversity and inclusion in the Public Service

The current State Sector Act makes provision for government workforce policies to be promulgated as Workforce Policy Statements which must be given effect to in the Public Service and by Crown agents, and which autonomous Crown entities must have regard to.

A workforce policy statement on diversity and inclusion would be a strong way of expressing government expectations in this area and would extend the reach of government expectations beyond the Public Service and into the wider Public Service.

A workforce policy statement could incentivise departments and Crown entities to ensure their hiring practices are inclusive. Having clear expectations that the Public Service needs to practice inclusiveness and strive for diversity could enable, and be a step towards, a more diverse Public Service. As discussed in section 7.2, research shows that a diverse workforce is more responsive to the needs of communities, engages more effectively, is innovative, delivers more meaningful programmes and has greater impact. Diversity can also build

positive perceptions in the workplace based on recognition of individual and group identities, leading to a stronger sense of unity and belonging to the organisation.¹⁰⁶

There may be a small cost to agencies to change their employment practices to stay in line with government expectations. This would be met within baselines.

This option relies on the continued support of the Commissioner and chief executives through successive appointments, so is liable to change. While a workforce policy statement on diversity and inclusion is a step in the right direction, it may fall short of expectations of public servants and the public.

Option 3 (preferred option): supplement a workforce policy statement (Option 2) with legislative changes making explicit recognition of the value of diversity, and placing duties on chief executives and the Commissioner

A workforce policy statement would go a long way in stating the detail of government expectations, but this could be supplemented by legislative changes which provide a positive impetus for greater inclusiveness and workforce diversity in the Public Service:

- making explicit recognition of the value of diversity and of fostering inclusiveness
- making chief executives responsible for promoting inclusiveness in employment and workplace policies and practices
- providing for the Commissioner to lead on diversity and inclusiveness, to provide guidelines and standards to that end, and to report on diversity and inclusiveness.

There was overwhelming support for these proposals during consultation. These legislative changes would fill gaps in the legislation: a clear statement that the Public Service needs workplaces which are fair and inclusive, and therefore support a diversity of workforce that reflects the composition of New Zealand society.

It would also mean that leaders in the Public Service (specifically the Commissioner and chief executives) would have an ongoing statutory obligation to improve diversity and inclusiveness in the public sector. These legislative changes would mean the proposals will be sustained through time, whereas a workforce policy is reflective of the Commissioner and government of the time, and so is liable to change.

There may be a small cost to agencies to change their employment practices to stay in line with government expectations. This would be met within baselines.

¹⁰⁶ Nair, N., & Vohra, N. (2015). Diversity and inclusion at the workplace: a review of research and perspectives.

Table 10. Options for increasing diversity in the public sector

Reform objectives				Criteria			
Deliver better outcomes and better services	Create a modern, agile and adaptive New Zealand Public Service	Affirm the constitutional role of the Public Service in supporting New Zealand's democratic form of government					
Policy objectives				Criteria			
Provide the ability to effectively join up around citizens and to respond to cross-cutting issues	Generate alignment and interoperability across the Public Service	Establish behavioural and cultural foundations for a unified Public Service		Acceptability	Clarity	Sustainability	Feasibility
Option 1 (status quo): continue to rely on equal employment opportunities programmes	0	0	0	0	0	0	0
Option 2: prepare a workforce policy statement on diversity and inclusion in the Public Service	0	+	+	+	++	0	0
		Having clear expectations that the Public Service needs to be practice inclusiveness and strive for diversity could be a step towards a Public Service that is responsive to the needs of communities, engages more effectively, is innovative, delivers more meaningful programmes and has a greater impact.	Having clear expectations that the Public Service needs to be practice inclusiveness and strive for diversity could be a step towards a more diverse workforce. This diversity combined with an inclusive work climate can build positive perceptions in the workplace based on recognition of individual and group identities leading to a stronger sense of unity and belonging to the organisation. ¹⁰⁷	While a workforce policy statement on diversity and inclusion is a step in the right direction, it is expected that it would fall short of expectations of public servants and the public.	A workforce policy statement would make government's expectations for diversity and inclusion clear.	This option relies on the continued support of the Commissioner and chief executives through successive appointments, so is liable to change.	There may be a small cost to agencies to change their employment practices in order to stay in line with government expectations. This would be met within baselines.
Option 3 (preferred option): supplement a workforce policy statement (Option 2) with legislative changes making explicit recognition of the value of diversity, and placing duties on chief executives and the Commissioner	0	++	++	++	++	++	0
		Having clear expectations and duties on Public Service chief executives to promote inclusiveness and strive for diversity could be a step towards a Public Service that is responsive to the needs of communities, engages more effectively, is innovative, delivers more meaningful programmes and has a greater impact.	The promotion of inclusiveness in the Public Service, combined with good guidelines and standards on how to practice diversity and inclusiveness can help build a more diverse workforce. This diversity combined with an inclusive work climate can build positive perceptions in the workplace based on recognition of individual and group identities ¹⁰⁸ leading to a stronger sense of unity and belonging to the organisation.	There was overwhelming support for proposals to include explicit reference to diversity and inclusion in legislation, and to establish a duty upon the Commissioner for system leadership, and a duty on chief executives with respect to Departments.	Embedding this concept in law will make government's expectations for diversity and inclusion clear.	Embedding this concept in law and putting duties on the Commissioner and chief executives will ensure these expectations will be sustained through time.	There may be a small cost to agencies to change their employment practices in order to stay in line with government expectations. This would be met within baselines.

¹⁰⁷ Nair, N., & Vohra, N. (2015). Diversity and inclusion at the workplace: a review of research and perspectives.

¹⁰⁸ As above.

Key:

++ better than doing nothing/the status quo

+ somewhat better than doing nothing/the status quo

0 about the same as doing nothing/the status quo

- somewhat worse than doing nothing/the status quo

-- worse than doing nothing/the status quo

■ relevant objective or criteria

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Option 3 is the preferred option as it has the strongest incentives to establish diversity and inclusiveness in the Public Service. This option also received a lot of support during consultation.

7.5 Conclusions and impact

The preferred option is to:

- have a workforce policy statement on diversity and inclusion, setting government expectations in this area
- make explicit the recognition of the value of diversity and of fostering inclusiveness in legislation
- make chief executives responsible for promoting inclusiveness in employment and workplace policies and practices
- provide for the Commissioner to lead on diversity and inclusiveness, to provide guidelines and standards to that end, and to report on diversity and inclusiveness.

These proposals will apply to Crown entities to the extent that they are covered by workforce policy statements. The remaining provisions will apply to department chief executives and the Commissioner.

Implementing the proposal above would mean that employers within the Public Service would have a larger pool of applicants when hiring, as those that were hindered before would no longer face barriers to employment and would be encouraged to apply. The Public Service would move towards merit-based selection that reflects the citizens it serves. This would be consistent across the Public Service and at all levels. As discussed in section 7.1, this diversity could help the New Zealand Public Service be more responsive to the needs of communities, engage more effectively, become more innovative, and deliver more meaningful programmes with greater impact. Diversity is also a cornerstone for a sustainable, agile, adaptive future Public Service. Thus diversity is one of many proposals in this Impact Statement that can help the Public Service meet the objective of delivering better outcomes and better services for New Zealanders.

Financial implications

There will be unquantifiable costs involved in each department taking action to remove current barriers to employment. However, there are already responsibilities on chief executives to develop and monitor their equal employment opportunities programmes and policies.¹⁰⁹ Therefore the extra duty on chief executives to promote diversity and inclusiveness in employment and workplace policies and practices can be incorporated in their existing responsibilities.

A change towards more inclusive employment practices in the Public Service may also result in reduced employment disputes.

Risks

There is a risk of confusion between the interface of merit and diversity and inclusion. This has already been seen during the consultation process. This could be mitigated by providing information about how these two principles work together in the Commissioners guidelines and standards.

¹⁰⁹ State Sector Act 1988, section 58.

8. Pay Equity

8.1 Background

Pay equity is a major workforce issue for the State sector, as Government is a significant employer and funder of services predominantly provided by women. Treasury analysis estimates that there are potential pay equity claims covering around 192,000 State sector workers, mostly in the health, education and social sectors. Treasury estimates that the number and scale of claims could directly increase State sector wage costs over the next four years.

There are several current pay equity claims in the State sector. Three claims have been resolved covering care and support workers in the health sector, social workers in Oranga Tamariki and education support workers employed by the Ministry of Education. Further claims currently being addressed include nurses and midwives; allied health workers and clerical workers in District Health Boards; part-time secondary teachers; school support workers and early childhood educators employed in private sector settings; and support workers employed by the Ministry for Primary Industries.

The logistical challenge and financial implications, together with the requirement to be a good and fair employer, have led government to seek a framework for orderly and coordinated resolution of pay equity claims. The alternative is to leave the issue to be addressed through litigation in the courts. That would be a potentially interminable process with unpredictable outcomes and costs.

It is worth noting in passing that, due to court decisions on the application of the Equal Pay Act, the issue of how to address pay equity in the State would be live for any government regardless of its policy direction or preferences.

Government has put a framework in place for addressing pay equity. The initial step was agreed Pay Equity Principles. These require that the “process of establishing equal pay should be orderly, efficient, kept within reasonable bounds and not needlessly prolonged” (Principle 15). They also require that all employees of the same employer who undertake the same or substantially similar work are notified of a claim so that they can be joined to it.

Given the scale of the pay equity issue in the State sector, the Government has a clear expectation that pay equity processes should be well coordinated and subject to monitoring and advice to ministers on the financial and other implications of settlements. A coordinated and coherent approach to managing the significant pay equity claims across the State sector is important to ensuring fairness across and between similar claimant groups, and to avoiding the risk that differing interpretations of the Government’s Pay Equity Principles could set adverse precedents that could affect the resolution of other claims.

These requirements are also reflected in the Equal Pay Amendment Bill now before Parliament. It requires that an employer endeavour to progress claims efficiently and effectively [13J(b) &(c)] and notifies all relevant employees as above [s13 E]. The purpose of this Bill, stated in its explanatory note, “is to improve the process for raising and progressing pay equity claims and eliminate and prevent discrimination, on the basis of sex, in the remuneration and employment terms and conditions for work done within female-dominated jobs. It aims to provide a simple and accessible process for claimants to progress a pay equity claim. In doing so, it also aims to promote the enduring settlement of claims relating to sex discrimination on pay equity grounds.”

In summary, the Government has an established policy position on implementing pay equity that is based on agreed Pay Equity Principles. The Government's approach is positive and proactive and informed by a concern to promote fairness by ensuring that no sector is left out of addressing pay equity issues. The Government prefers to address these issues through established processes for negotiation between employers and employees, rather than through litigation.

8.2 Problem or opportunity

Pay equity presents both problem and opportunity.

Problem

In 2018 the Ministerial Oversight Group on State Sector Employment Relations tasked the Commissioner with strengthening oversight of State sector pay equity claims to provide a system-wide co-ordinated approach to enabling effective management of claims and fiscal impacts, given the increasing scale, pace, complexity and potential "flow on" impacts of claims.

The coordination and alignment challenge has two distinct dimensions:

- the Public Service, where the Commissioner's role and leverage are strongest
- the wider State sector, where the Commission's presence is less pervasive

So far the SSC has developed this role on an essentially consensual basis. Public Service pay equity negotiations have been treated as if they were collective agreement negotiations covered by the Commissioner's role set out in section 68 of the State Sector Act. So, while the Commissioner will delegate conducting these negotiations to the chief executive, the chief executive must carry out the negotiations in consultation with the Commissioner, and therefore be subject to State Services Commission agreement on negotiation strategies and final settlements. However, section 68 of the Act is explicitly about collective agreements made under the Employment Relations Act, and pay equity negotiations are not directly negotiations for settling collective employment agreements. Therefore, the Commissioner lacks a firm and enforceable mandate in this area of high government priority and expectation regarding SSC performance.

Opportunity

It is reasonable to consider that a commitment to addressing the historic under-valuation of women's work in the Public Service will contribute to making the Public Service workplace, and Public Service roles traditionally undertaken by women, more attractive. The aging of the Public Service workforce, together with the perennial problem of attracting scarce specialist expertise, will make this a pressing matter. Pay equity supports this aim by fully recognising and rewarding the capability requirements of work traditionally performed by women. This is likely to have a positive workforce impact by increasing the attractiveness of roles previously affected by undervaluation in the labour market. More broadly, research suggests that pay equity may support improved social and economic outcomes for women and their families¹¹⁰. Achieving greater fairness through pay equity could also enhance the commitment of public servants to the common principles and values/behaviours that can be set out in the new Public Service Act.

¹¹⁰ NZIER: Economic impacts of pay equity: A Survey of the Literature; Report for the Ministry for Women Nov2015

8.3 Consultation

The discussion document proposed that, in future, the Commissioner has the same role in respect of pay equity negotiations as the Commissioner has in relation to collective agreement negotiations.

A large majority of responses during public consultation supported the Commissioner having oversight of pay equity negotiations, for reasons of consistency in how negotiations occur, and to ensure consistency of pay across the system.

Some submissions expressed concern about the vesting of this responsibility in the Commissioner alone. However, making this a joint responsibility with public sector unions would raise problems in legislative framing, and there is both a policy commitment and practice of joint working in this area.

8.4 Options

The options considered for giving the Commissioner a firm and enforceable mandate for increasing consistency and oversight of pay equity claims are:

- Option 1 (status quo): use existing mechanisms
- Option 2: workforce policy statement
- Option 3: supplement a workforce policy statement by extending the Commissioner's legal oversight role.

These options also aim to support the Government's commitment to addressing the historic under-valuation of women's work in the Public Service, and contribute to making the Public Service workplace, and Public Service roles traditionally undertaken by women, more attractive.

Option 1 (status quo): use existing mechanisms

This would involve continuing to treat pay equity negotiations as if they were collective agreement negotiations covered by the Commissioner's delegation. However, agency compliance with Commissioner directions is essentially on a consensual basis at present, given that it is unlikely that the Commissioner's statutory powers actually cover pay equity negotiations. Consensual arrangements can work well, but they quickly become fragile where the interests of a particular agency (in, for example, settling a claim quickly and without too much internal dissent) clash with wider strategic aims as represented by the guidance of the SSC.

We consider that the coordination of pay equity in the Public Service, and attendant risks, are too important to be managed in such a precarious manner.

The situation is even less sure across the wider State sector. Here the Commission relies on general government expectations in relation to a large group of agencies which, though instruments of the Crown, are outside of, and deliberately at arms-length from, government and the SSC.

Failure to ensure coordination and consistent interpretation could be seen as a breach of the Pay Equity Principles which require that the 'process of establishing equal pay should be orderly, efficient, kept within reasonable bounds and not needlessly prolonged' (Principle 15).

Option 2: Workforce policy statement

The current State Sector Act provides for government workforce policies to be promulgated as workforce policy statements. These must be given effect to in the Public Service and by Crown agents, and autonomous Crown entities must have regard to them.

A workforce policy statement could set a common process for handling pay equity claims within departments and Crown agents. This creates a surer basis for articulating government expectations and obligations of agencies in relation to the coordination role of the SSC.

A large majority of responses during public consultation supported the Commissioner having oversight of pay equity negotiations, for reasons of consistency in how negotiations occur, and to ensure consistency of pay across the system.

The drawback with a workforce policy statement is that this mechanism, though in statute since 2013, has never been used. Agencies are not used to the mechanism, and introduction and implementation could be difficult and take time, with consequent risk.

Also, while a workforce policy statement would provide for the Commissioner's oversight of pay equity claims, it would fail to provide for delegation of the Commissioner's oversight to the responsible chief executive, as currently exists for collective agreement negotiations. This would mean that either the Commissioner would have to be involved personally in each pay equity claim, or the Commissioner would have to continue to use their unclear mandate to deal with collective agreement negotiations for pay equity claims.

Option 3: Workforce policy statement plus extend Commissioner's oversight role

Option 2 has merit but needs some reinforcement. This can be provided by bringing pay equity settlements within the scope of the Commissioner's authority in relation to collective negotiations. This would mean that pay equity negotiations in departments would occur under delegation from the Commissioner and be subject to such process and content requirements as the Commissioner considers necessary.

The use of a workforce policy statement is still needed as, while the Commissioner's statutory role would only cover departments,¹¹¹ the workforce policy statement would extend to Crown agents, including District Health Boards, and so have a wider reach.

This option would most robustly meet Government's expectation of a managed approach to pay equity claims and would mitigate associated risks including the significant cost implications for Government as both employer and funder. It also provides the most certainty that, regarding the Commissioner's function, pay equity negotiations are treated as collective agreement negotiations.

¹¹¹ Extending the Commissioner's statutory role to include District Health Boards would require amendments to the New Zealand Public Health and Disability Act 2000, which is not the aim of the State Sector Act reform process.

Table 11. Options for increasing oversight and consistency of pay equity

Reform objectives							
	Deliver better outcomes and better services	Create a modern, agile and adaptive New Zealand Public Service	Affirm the constitutional role of the Public Service in supporting New Zealand's democratic form of government				
Options	Policy objectives			Criteria			
	Provide the ability to effectively join up around citizens and to respond to cross-cutting issues	Generate alignment and interoperability across the Public Service	Establish behavioural and cultural foundations for a unified Public Service	Acceptability	Clarity	Sustainability	Feasibility
Option 1 (status quo): use existing mechanisms	0	0	0	0	0	0	0
Option 2: workforce policy statement	0	+	A workforce policy statement could set a common process for handling pay equity claims within departments and Crown agents.	+	0	0	-
Option 3 (preferred option): supplement a workforce policy statement by extending the Commissioner's legal oversight role	0	++	As well as the workforce policy statement, the Commissioner's role in negotiating collective agreements within departments would be extended to pay equity claims, thus allowing the Commissioner to coordinate these claims.	++	++	++	0
				A large majority of responses during public consultation supported the Commissioner having oversight of pay equity negotiations, to ensure consistency in how negotiations occur, and to ensure consistency of pay across the system.	This option provides the most clarity that, with regards to the Commissioner's function, pay equity negotiations are to be treated as collective negotiations.	This option: <ul style="list-style-type: none"> - provides the most stability as it is not as susceptible to change as a workforce policy statement - is in line with the Commissioner's oversight role of collective negotiations - allows delegation, which will allow the Public Service to address, over time and as needed, issues around the current variability of terms and conditions of employment between departments. 	This option also allows delegation of negotiating pay equity claims to chief executives, while retaining oversight. This will allow the Public Service to address, over time and as needed, issues around the current variability of terms and conditions of employment between departments

Key:

- ++ better than doing nothing/the status quo
- + somewhat better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- somewhat worse than doing nothing/the status quo
- worse than doing nothing/the status quo
- relevant objective or criteria

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8.5 Conclusion and impact

Accordingly, the SSC proposes that the Commissioner's general oversight role of collective negotiations be extended to cover the resolution of pay equity claims occurring within government departments, and that a workforce policy statement be used to strengthen the oversight and consultation requirements on Crown agents.

The legislative part of this proposal simply places on a robust statutory basis the current practice of the Commissioner, which is in line with government policies and expectations but currently lacks a sure statutory mandate.

The workforce policy statement will have its own implementation process, at which time the impact will be assessed if required.

Financial implications

A coordinated and coherent approach to managing the significant pay equity claims across the State sector will help reduce the significant cost implications for Government as both employer and funder.

Risks

These proposals aim to mitigate the risk of unpredictable fiscal cost to the government of pay equity claims.

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9. State Services Commissioners

9.1 Background

From 1913 to 1989 the SSC was headed by a multi-member Commission of up to four Commissioners. At all times, the Commission was headed by a chief or principal Commissioner, or “Chairman”, assisted by others. Since the passing of the State Sector Amendment Act (No. 2) 1989, there has been a single Commissioner appointed together with a statutory Deputy State Services Commissioner (Deputy Commissioner) who may exercise all the Commissioner’s functions, duties, and powers, subject to the Commissioner’s control, and automatically steps in and exercises them if the office of Commissioner is vacant for any reason, or if the Commissioner is absent from duty for any reason.

In 2011, the Better Public Services Advisory Group called for the Commissioner to be formally designated the Head of the State Services, in part to “provide the Prime Minister and Ministers with a single point of reference to ensure that the state services respond quickly and decisively to ministerial priorities and overall system performance”. In 2013, amendments to the State Sector Act specified that the role of the Commissioner included providing “leadership and oversight of the State services”.

Historically the decision as to whether to have a single Commissioner or a multi-member Commission has been influenced by three important requirements:

- *Sufficient skills and expertise given the role and its size and complexity.* Consequently, the original reason for a multi-member Commission was to provide a broad range of experience and expertise for the Commission’s role as the employer of all public servants. A multi-member Commission enabled a high volume of administrative decision-making.
- *Effective and accountable leadership.* This forms a rationale for having a single Commissioner, especially as the Commissioner’s role today is all about leadership at the system level. Leadership by committee tends not to be as effective as is needed now.
- *Checks and balances on the exercise of the statutory powers of the role.* Throughout the history of the Public Service there have been statutory provisions in place to ensure the Commissioner is able to work independently of ministers. The current provision in the State Sector Act is section 5 which provides that the Commissioner shall not be responsible to the Minister for how he or she carries out key functions under the Act. A single Commissioner, appointed for a relatively long term, is a way of enhancing the leadership of the role and the independence of ministerial influence that is at the heart of the politically neutral, merit-based Public Service.

9.2 Problem or opportunity

In order to provide a strong centre for the Public Service, it is important to take the opportunity provided by the re-write of the Act to strengthen leadership in the Public Service at all levels, starting with the Commissioner.

To support the Commissioner’s expanded leadership role, it is important to reconsider the role of the Commissioner and the composition of the Commission to ensure it supports an evolving Public Service. The Commissioner needs the right level of support to deliver the leadership role now expected. The aim is to retain strong, decisive leadership of the State sector through an independent Commissioner, and a single point of responsibility for ministers and chief executives.

9.3 Consultation

In the discussion document, three options were put forward for the structure of SSC leadership, focusing on the appointment of the Commissioner/s and/or deputy Commissioners:

- **Option 1: Enhanced status quo** (emphasis on leadership and influence)
 - Five-year term (rather than up to five years), renewable.
 - After consultation with the leader of each party in the House.
 - Deputy Commissioner to have same status and rank as a departmental chief executive.
- **Option 2: Commission with specified roles** (emphasis on collective knowledge, skills, experience)
 - Chief Commissioner with sole authority, possibly for a single seven-year term.
 - Deputy Commissioner, with power to act if Commissioner incapacitated or absent.
 - One or two other Commissioners to assist the Commissioner, under the Commissioner's control, expected to have delegated responsibilities.
- **Option 3: Chairperson model** (emphasis on check and balance through consensus-oriented mode of operation)
 - Chairperson: casting vote/final determination if required.
 - Deputy Chairperson: power to act if Chairperson is incapacitated or absent.
 - One or two other Commissioners.

Only 13 submissions commented on this set of options. Seven submissions were made by public servants, two by academics, and one each by TINZ, the Institute of Public Administration New Zealand, a member of the public, and John Tamihere – Te Pou Matakana. There was no general consensus on the proposals, and the submissions consisted of a broad range of views. Some supported option 1, noting that a single point of independent leadership would be more effective in bringing together chief executives.

Several submissions supported option 2. Some were of the view that it resonates as the most democratic and appropriate for the Commission's tasks. Others noted that it provides for one ultimate decision maker, but with support providing a range of wide skills and experience.

A small number of submitters favoured option 3. One noted that it provides a more robust oversight process, while still enabling flexibility to act. Others were of the view that decision-making will benefit from a diversity of views and experience, and that it is imperative to have an appropriate check on the exercise of considerable power.

Overall, most submitters favoured multiple Commissioners, while several favoured a single Commissioner. Some supported a non-Māori Commissioner and a Māori Commissioner. Others supported a single Commissioner with several deputies. Several submissions were of the view that the number of Commissioners is immaterial as it depends on the accountability mechanisms put in place to chief executives, the Minister and the wider public.

9.4 Options

Feedback during consultation, and further policy work on how to ensure the Commissioner has the right level of support to deliver the leadership role now expected, has resulted in consideration of the following options:

- Option 1 (status quo): single Commissioner with one statutory Deputy Commissioner
- Option 2: status quo with one additional optional statutory Deputy Commissioner
- Option 3: multi-member Commission.

One further option, considered post-consultation, was to appoint a statutory Deputy Commissioner Māori, to provide visible leadership on outcomes for Māori. However, while some agencies supported this proposal, other agencies said delegating this responsibility to a Deputy Commissioner could undermine the importance of that role. Option 2 now allows for an additional Deputy Commissioner to take on several roles, including responsibility for the Māori/Crown relationship, if it seems appropriate.

These options are discussed and analysed below.

Option 1 (status quo): single Commissioner with one statutory Deputy Commissioner

Under the status quo there is a single Commissioner appointed, with a statutory Deputy Commissioner who may exercise all the Commissioner's functions, duties, and powers, subject to the Commissioner's control in the Commissioner's absence. This arrangement means the Commissioner has little capacity to deal with what has become a broad role, risking inefficient service for ministers.

Option 2 (preferred option): status quo with one additional optional statutory Deputy Commissioner

Under this option, there would remain a single Commissioner and a statutory Deputy Commissioner, but with the option of appointing an additional statutory Deputy Commissioner. This could provide the benefit of additional resource to manage issues and promote best practice.

This proposal is based on the assumptions that:

- strong decisive leadership emerges more readily from an individual than a committee and consensus approach to decision making
- it is necessary to maintain the independence of role while also providing the Commissioner with sufficient 'sounding boards' and internal checks and balances needed to avoid a concentration of power
- ministers would still have a clear, single reference point in terms of who is responsible to them, and
- chief executives would continue to have a single-point employer relationship.

Because of the statutory authority of the two Deputy Commissioners to have and exercise all the Commissioner's functions, duties, and powers, they would each hold the same status and rank as a chief executive. They would be eligible, accordingly, for an eventual transfer into a departmental chief executive position, as provided for in State Sector Act.¹¹²

Under this option the statutory deputies could take on several roles, e.g., responsibility for the Māori/Crown relationship.

¹¹² Section 37A

A second statutory Deputy Commissioner would result in financial costs to the State Services Commission of around \$500,000.

Option 3: multi-member Commission

In this model, functions and powers are vested in the Commission itself and exercised under a board or committee. The Commission would be headed by a Chairperson who would have the final say, and a deputy Chairperson when the Chairperson is absent.

This model ensures there is a breadth of skills and experience available in leading the Commission and Public Service, and it also provides checks and balances on exercising statutory powers. But it risks indecisive and ineffective leadership, due to decisions having to be made by Committee.

This option lacks a simple accountability model, with a single point of responsibility for ministers and chief executives. This risks uncertainty for Ministers about who is accountable to them, and for chief executives about who is their employer.

This option results in financial costs to the SSC for each person employed as part of the board or committee of the Commission. The total costs may range from \$1.5 million for a three member committee to \$3 million for a six member committee. Cost would depend both on the size of the committee and expertise of the committee members.

There may also be opportunity costs arising from slower decision making, which could lead to lost opportunities to make improvements and gains in the system.

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Table 12. Options for strengthening leadership at the centre

Reform objectives							
Deliver better outcomes and better services	Create a modern, agile and adaptive New Zealand Public Service	Affirm the constitutional role of the Public Service in supporting New Zealand's democratic form of government					
Policy objectives				Criteria			
Provide the ability to effectively join up around citizens and to respond to cross-cutting issues	Generate alignment and interoperability across the Public Service	Establish behavioural and cultural foundations for a unified Public Service		Acceptability	Clarity	Sustainability	Feasibility
Option 1 (status quo): single Commissioner with one statutory Deputy Commissioner	0	0	0	0	0	0	0
Option 2 (preferred option): status quo with one additional optional statutory Deputy Commissioner	0	0	++ This option allows for an additional statutory Deputy Commissioner, who could provide additional resource to manage issues and promote best practice, and results in a stronger team to lead the Public Service.	+ Several submissions supported option 2. Some were of the view that it resonates as the most democratic and appropriate for the tasks of the Commission. This option also allows giving the additional statutory Deputy Commissioner several roles, which could include responsibility for the Māori/Crown relationship, which some submissions called for.	0	0	0 A second statutory Deputy Commissioner would result in financial costs to the State Services Commission of around \$500,000.
Option 3: multi-member Commission	0	0	+ This model maximises the skills and expertise available for leading the Commission, but risks a diffusion of power and responsibility, which could impact on the Commission's ability to lead the Public Service.	0 While there was strong advocacy from some submitters for a multi-member commission, others warned this would diffuse responsibility for leading the Public Service.	- This option lacks a simple accountability model, with a single point of responsibility for Ministers and chief executives, which risks uncertainty for Ministers in who is accountable to them, and for chief executives, in who is their employer.	0	- This option results in financial costs to the State Services Commission for each person employed as part of the board or committee of the Commission. The total costs may range from \$1.5 million for a three member committee to \$3 million for a six member committee. Cost would depend both on the size of the committee and expertise of the committee members.

Key:

- ++ better than doing nothing/the status quo
- + somewhat better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- somewhat worse than doing nothing/the status quo
- worse than doing nothing/the status quo
- relevant objective or criteria

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While the status quo maintains a simple accountability model, with the single Commissioner accountable to Ministers and the employer of chief executives, the leadership structure has not grown with the size of the role. The Commissioner is now the Head of the State Services, not just the State Services Commission, so this expanded role justifies an expanded leadership team.

Adding the option of a second statutory Deputy Commissioner under option 2 would strengthen the centre by increasing the scope and expertise of the Commissioners, as well as maintaining a single point of responsibility for Ministers and chief executives. This option would also increase the checks and balances on the Commissioner, as the Deputy Commissioners can hold the same powers as the Commissioner.

Option 2 also avoids the risks to decisive and effective decision making that exist under option 3 due to decisions being made by Committee.

9.5 Conclusion and Impact

The State Services Commission recommends option 2, essentially the status quo with an additional, optional statutory Deputy Commissioner.

Additionally, the SSC recommends that the Commissioner be able to effectively delegate the responsibilities arising from being chief executive of the SSC (as currently exists) to allow more time for focus on the outward, system leadership that is pivotal to the Head of State Services role.

Benefits

Under this proposal, the SSC would have the additional resource of another statutory Deputy Commissioner, who could provide additional skills and expertise to the leadership of the Public Service while managing issues across the service and promote best practice.

Costs

This proposal involves a cost of around \$500,000 to hire an additional statutory Deputy Commissioner. This cost would be met by the SSC.

However, it is anticipated that this cost to hire an additional statutory Deputy Commissioner may lead to greater efficiencies in the leadership of the Public Service and the potential for unquantifiable savings should these efficiencies transpire.

Risks

The key short-term risk of maintaining the status quo is that implementation of the changes proposed to the State Sector Act, and the leadership of the subsequent Public Service strategy, could be compromised if there is insufficient senior leadership capability within the Commission. The appointment of an additional statutory Deputy Commissioner may mitigate this risk to some extent.

10. Leadership of the Public Service

10.1 Background

As discussed in section 1.1, the reforms of the 1980s led to a devolved model with strong vertical accountabilities, where chief executives were responsible to ministers for the delivery of outputs for their agency. This weakened the ability of chief executives to work together to achieve joint outcomes.

While many of the outputs provided by government can be delivered by agencies operating independently, achievement of improved outcomes for many New Zealanders requires joined-up services. This demands joined-up leadership by chief executives.

Legislatively, some expression was given to these dimensions through amendments in 2013 that expanded a chief executive's responsibilities to include responsiveness on matters relating to the collective interests of government, as well as stewardship.

State Sector Leadership Team

As a step towards stronger system leadership by chief executives, the Commissioner has begun to meld the chief executives of departments and some key Crown entities into a State Sector Leadership Team with the purpose of improving the system and performance of the Public Service as well as strengthening cohesion. The State Sector Leadership Team convenes regularly to work on the health of the operation of the system and to better support the government of the day.

Functional leaders

A step towards more effective system leadership by chief executives was also taken as part of the Better Public Services reform, with functional leaders established by Cabinet mandate in 2012. Functional leaders are existing chief executives appointed by the Commissioner to be responsible for leading a function across the whole State sector system in addition to their agency leadership role. Until 2012, chief executives had only been appointed to lead individual agencies.

Initially, the Commissioner appointed functional leaders for government office accommodation, procurement and information technology. Other system leaders have since been appointed, with Heads of Profession established in areas such as policy, finance and human resources.

Functional leadership has led to more integrated service delivery, recognising that people expect to interact with government to have a personal need met, rather than having to interact with multiple agencies delivering related services. For example, the IT functional lead chief executive began to cluster services around key life events for New Zealanders – for example, having a baby. SmartStart enables new parents to update their benefit with the Ministry of Social Development, request an Inland Revenue number for their baby and update their Working for Families application, all from the birth registration process. This enables families to focus on their newest family member, rather than spend time navigating their way through an assortment of government agencies.

10.2 Problem or opportunity

Current leadership models do not incentivise collaboration to achieve joint outcomes, and instead have strong vertical accountabilities, whereby chief executives are responsible to ministers for delivering outputs for their own agency. This makes it difficult for the Public

Service to show leadership and achieve outcomes across issues that span agency boundaries, and it means that system benefits such as improved inter-operability are not being realised. The Public Service needs to strengthen the leadership potential of chief executives and allow for collaborative leadership across common issues and roles with a focus across the system.

While the introduction of the State Sector Leadership Team and functional leaders has addressed the issue to some extent, problems remain.

State Sector Leadership Team

The State Sector Leadership Team works well, though it is reliant on the goodwill of chief executives and the Commissioner. There is an opportunity to codify this way of working so that it is the expected way to operate, with the responsibility for collective work embedded in the roles of both the Commissioner and all chief executives. The executive team could work together to develop and drive a strategy for an agile, connected Public Service system.

Functional leaders

Problems with the functional leaders' model have become clear since they have come into effect. At a high level, the norm, strongly established in current legislation, is that a chief executive role is to lead an agency. They are vested in legislation with the necessary powers and functions to lead an agency. If they are also appointed to a system leadership role, they have to win the leadership mandate, powers and functions on a case by case basis with their colleagues and through Cabinet agreement. There are functional leaders now, operating without legislative provisions. But, in the absence of provisions in the SSA supporting the role, this is not necessarily sustainable.

Specific problems are:

- The Commissioner does not have a secure mandate to appoint new functional leaders or change the functions and powers of existing system leaders. This results in a protracted Cabinet decision-making process to secure agreement to any changes. For example, achieving changes to the IT functional lead roles took more than 18 months.
- System benefits are created primarily through inter-operability, and the key to this is having agreed guidance and standards to which all agencies adhere. The powers of system leaders to set common standards need to be negotiated for each new appointment and, often, also agreed by Cabinet. This can be a long, slow process.
- Functional leaders are appointed at chief executive level. The only way this can be done currently is to add the role to an existing department chief executive. A problem arising from this is that the chief executive position can become overloaded – they are charged with both leading a large, complex agency and leading a large system function. One of their leadership roles can suffer as a result. A current example of overload is the chief executive of the Department of Internal Affairs who is also the Government Chief Digital Officer, charged with achieving government digital transformation.
- Because of the requirement that functional leaders are agency chief executives, the best person may not be able to be appointed to the job. This is because the technical knowledge and skills required to lead a function across the system are not necessarily the same knowledge and skills required to lead an agency. The

functional leader usually needs to be a technical expert in the field, as well as being able to lead through influence, whereas agency leadership usually requires more of a generalist with well-developed people and organisational management skills. An associated problem is that there is no clear career path for the technical expert to move into a tier 1 leadership position.

10.3 Consultation

Functional and professional leads

The discussion document proposed:

- That the Act empowers the Commissioner to appoint functional and professional leads at the level of a chief executive.
- That the Act includes a definition of the role of functional and professional lead.
- That the Act gives the functional and professional leads the power to publish guidance and standards which may, subject to ministerial agreement, have mandatory effect within the Public Service.

There were 35 submissions on these proposals. A large number of those submitters supported these proposals. Most were of the view that the proposals give clarity around decision rights and ensure accountability for delivery. Others noted that there needs a decision-making framework to determine where leads are necessary including their role, function, capability, governance, funding, decision rights, monitoring and performance measurement. Some submitters believed the proposals would better equip designated leads to focus on long-term capability issues. Six submissions did not support the proposal, commenting that the positions could inhibit responsiveness to future needs, and that chief executives were unlikely to have the time needed to dedicate to the role.

Strengthen collective responsibility and accountability of chief executives

The discussion document proposed including an overarching reference to the collective responsibility and accountability of chief executives in the Public Service by:

- including an overarching reference to the collective responsibility and accountability of chief executives in the New Zealand Public Service Act by including:
 - Collective responsibility for ensuring the health of the Public Service;
 - A duty to act in the collective interests of the Public Service; and
 - Reference to collective responsibility and accountability in chief executives' conditions of employment.
- placing a duty on the Commissioner to convene chief executives as a team, and work with them to deliver stewardship of the system, its performance and its delivery.
- placing an equivalent duty on chief executives to work with the Commissioner and other system leaders to deliver stewardship to the system, its performance and its delivery.

125 submissions commented on these proposals. Overall, there was general support for the proposal with 107 comments in support or support in part the proposal. Six submitters said

that, based on the information in the consultation document, they did not know or did not have enough information to comment. 20 submitters do not support the proposals.

86 submissions were submitted by public servants, two by Crown Entities, nine by academics, two by unions, six by other Non-Government Organisations, 16 by members of the public and four others. Views were also put forward during consultation sessions during the consultation period.

Some submitters were of the view that legislation is not required because agencies are already working collaboratively. Other submitters commented that agencies aren't working collaboratively and support legislation being enacted. Some submitters were of the view that as little as possible should be in legislation, others felt that as much as possible should be in legislation.

Many submitters commented that mechanisms already exist for working collaboratively, but what needs strengthening is accountability for collective stewardship of the system and to whom those accountabilities are owed. The existing mechanisms mentioned are collective work plans, letters of expectations, performance expectations, contractual obligations and annual reports. Some submitters supported providing a mechanism by which chief executives are held collectively accountable for a joint appropriation covering a collaborative inter-agency activity.

Some submitters commented that the collective accountability can only be achieved if Parliament alters its practices to align with it. Some examples given were ministerial portfolios, ministerial accountabilities, the structure of Votes and the composition and mandate for Cabinet Committees.

Chief executive tenure

While there were no proposals on chief executive tenure, some submitters also raised concerns that the re-appointment process of chief executives is open to political influence. Chief executives are expected to be responsive to the government of the day, but also maintain sufficient independence to serve the long-term interests of the public of New Zealand. Chief executives are currently appointed to a role for a term of up to and not more than five years, which can be extended from time to time. A chief executive will typically lead improvements to the organisation and embed the changes in the first five years of their tenure. If their changes are successful they are often re-appointed for a further two years to further refine them.

Some submitters argued that to achieve re-appointment, a chief executive is incentivised to be responsive and do what the Minister wants, rather than providing alternative advice that may in the best interests of the public the chief executive serves.

Submitters also argued that the resulting fixed term of appointment should be up to seven years, not the current five years. Stakeholders argue that this term is appropriate to allow chief executives to make progress in the performance of their agencies. On the other hand, extending the period of appointment may incentivise chief executives to be insufficiently responsive to the government of the day.

10.4 Options

Functional chief executives

On the basis of further policy work and feedback from consultation, a new role of functional chief executive is proposed to strengthen system leadership so that chief executives can lead system improvement as their core role..

The options for strengthening system leadership are now:

- Option 1 (status quo): maintain functional leaders
- Option 2 (preferred option): allow for a new system leader - functional chief executive

These options are discussed below.

Option 1 (status quo): maintain functional leaders

This option continues to use the existing functional leaders/heads of profession to develop system leadership in the Public Service. System leadership has been achieved under the status quo, by giving responsibility for system functions to chief executives, for example with the IT functional lead discussed in section 10.1.

However, the current model for functional leads severely limits the potential for system leadership. Barriers have been identified which mean functional leaders cannot deliver on the full potential that was envisaged when these positions were established, and the model has limited flexibility. In particular:

- it is difficult to appoint functional leads, because there is no clear mandate for the Commissioner to do so;
- their roles are not specified in legislation, as they are for chief executives;
- the powers necessary to achieve interoperability across the Public Service need to be established on a case-by-case basis, and
- the candidates are limited to departmental chief executives.

Option 2 (preferred option): allow for a new system leader - 'functional chief executive'

This option would enable the Commissioner to appoint functional chief executives, who would hold the rank and status of a chief executive without having to be chief executive to a department. The Commissioner would be able to appoint functional chief executives to key system leadership roles, providing a career pathway for technical experts and thought leaders. This would address the overload issue for chief executives who are both agency and system leaders. Agency chief executives could continue to be functional leaders where this is most appropriate and does not lead to overload issues.

To be effective, system leaders will need to improve interoperability in the system through having agencies adhere to common guidance and/or standards in some areas. Therefore, functional chief executives would also have the power to publish guidance and standards which may, subject to ministerial agreement in Cabinet, have mandatory effect within the Public Service.

With this improved interoperability will come increased benefits to the system. The benefits of the IT functional lead chief executive were discussed in section 10.1. By enabling functional chief executives to publish guidance and standards, interoperability in the system will be easier to achieve.

Under this option, non-chief executives can be appointed, so the hiring pool is larger, allowing the best person to be appointed to the job.

Functional chief executives would have the same status as agency chief executives and would be members of the Public Service Leadership Team. The principal responsibilities and duties provided for in the new Act would mirror those of chief executives of departmental agencies.

Specifically, a functional chief executive would have the following key features given effect through legislation:

- Named positions that are established by addition to a schedule in the legislation (through Order in Council)
- Hosted by a Public Service department (which is identified in the schedule)
- Appointed and employed by the Commissioner (with the host department chief executive an ex officio member of the appointment panel)
- Responsible to appropriate ministers for specific functions either within a department or (more commonly) across the State sector system. Functions will be determined through the same process used with departments and departmental agencies.

It is further proposed that the legislation contain provisions allowing for chief executives of the system or functions to be established who can:

- use appropriations under the Public Finance Act 1989, to support a function that requires the ability to incur expenses, and
- be directed by an appropriation minister to use an appropriation, and thus be responsible for accounting for what is achieved with that appropriation.

These additional features would be allocated to certain chief executives of system or functions by recording them in the schedule of the Act.

It is not intended that these positions become reporting entities in their own right, but that requirements under the Public Finance Act are discharged through the host department.

Costs of establishing a functional chief executive and the costs of any mandatory standards would be considered by Cabinet when the position is established.

Table 13. Options for system leadership

Reform objectives							
	Deliver better outcomes and better services	Create a modern, agile and adaptive New Zealand Public Service	Affirm the constitutional role of the Public Service in supporting New Zealand's democratic form of government				
Options	Policy objectives			Criteria			
	Provide the ability to effectively join up around citizens and to respond to cross-cutting issues	Generate alignment and interoperability across the Public Service	Establish behavioural and cultural foundations for a unified Public Service	Acceptability	Clarity	Sustainability	Feasibility
Option 1 (status quo): maintain functional leaders	0 While some system leadership has been achieved under the status quo, there are barriers limiting the flexibility and potential of this model.	0 Functional leads do not have the powers necessary to achieve interoperability across the Public Service .	0	0	0	0 The Commissioner does not have a secure mandate to appoint new functional leaders or change the functions and powers of existing system leaders.	0 The current model for functional leads severely limits the potential of this model.
Option 2 (preferred option): allow for a new system leader – ‘functional chief executives’	++ Functional chief executives would be responsible to appropriate ministers for specific functions rather than for a specific department, enabling them to provide leadership to problems that span multiple agencies.	++ To improve interoperability, functional chief executives could publish guidance and standards which may, subject to ministerial agreement in Cabinet, have mandatory effect within the Public Service.		0 This option was not consulted on, but there were mixed responses to the proposal to give chief executives more responsibility.	0 This option may introduce some complexity in relative responsibilities between the functional chief executive and the department chief executive, but it may also help clarify who is responsible for what advice.	+ This option ensures sustainability by having clear legal mandate.	+ This option will enable functional chief executives to carry out a system leadership role more capably than functional leads could in their operational framework.

Key:

- ++ better than doing nothing/the status quo
- + somewhat better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- somewhat worse than doing nothing/the status quo
- - worse than doing nothing/the status quo
- relevant objective or criteria

Strengthen collective responsibility and accountability of chief executives

The proposals in relation to collective accountability and responsibility have been developed further. The concept of “collective responsibility” could be understood as meaning all members are held equally to account as a collective for any action or inaction. An option giving effect to this idea by appointing chief executives to a formal leadership board was discounted early on in the policy process. This was because it was unclear how it would be possible to effectively hold such a large collective (e.g. 30+ chief executives) to account. Inevitably, collective accountability becomes more diffuse as the number of people to be held collectively responsible increases (e.g. free-rider problems). A more feasible option would be to provide for responsibility on individual chief executives to support work that is focused on collective system interests and hold them to account for their contribution to the collective effort.

Some of the feedback on collective accountability and responsibility of chief executives are included in the proposals later in this Impact Statement on Public Service Executive Boards and Public Service Joint Ventures. This includes the suggestion that chief executives are collectively accountable for a joint appropriation covering a collaborative inter-agency activity. Other aspects of collective accountability are included in the leadership options set out below.

Options to strengthen leadership and allow for collaborative leadership are:

- Option 1 (status quo): maintain current form of the State Sector Leadership Team
- Option 2 (preferred option): codify the State Sector Leadership Team

These options are discussed below.

Option 1 (status quo): maintain current levers for developing system leadership

Under this option, chief executives would continue to work together as a State Sector Leadership Team, which has been establishing system-level leadership and working to strengthen cohesion and interoperability across the Public Service.

However, the current State Sector Leadership Team is held together by the goodwill of the current Commissioner and chief executives. There is a risk that future commissioners or chief executives may not be willing to engage in the Leadership Team, which may mean that it ceases to function completely. This would leave a very large gap in the system in terms of collective responsibility and system leadership, and risk the objectives of the reform not being met.

Option 2 (preferred option): codify the State Sector Leadership Team

Under this option, the State Sector Leadership Team would be required by law. It would become the Public Service Leadership Team, with an express statutory mandate to develop and drive a Public Service Strategy for an agile, connected Public Service system.

The key benefit of option 2 over the status quo is that, in requiring a Leadership Team by law, it will be protected from the decisions of future commissioners and chief executives who may not prioritise the Team.

This Public Service Leadership Team would consist of all Public Service chief executives and other senior leaders as determined by the Commissioner, and build off the work of the State Sector Leadership Team. This flexible membership would allow new chief executives

to be included (or removed) to reflect changes in organisational structure (i.e. new departments/departmental agencies).

This option also addresses the point above, that specific duties are required to hold chief executives to account, by requiring chief executives to support the Commissioner in their role of leading a coordinated, collaborative Public Service.

There are no additional costs to implementing this option, as the State Sector Leadership Team already exists. This option merely codifies its existence, to ensure this team operates with future commissioners and chief executives.

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Table 14. Options for securing the State Sector Leadership Team

Reform objectives				Criteria			
Deliver better outcomes and better services	Create a modern, agile and adaptive New Zealand Public Service	Affirm the constitutional role of the Public Service in supporting New Zealand's democratic form of government					
Policy objectives							
	Provide the ability to effectively join up around citizens and to respond to cross-cutting issues	Generate alignment and interoperability across the Public Service	Establish behavioural and cultural foundations for a unified Public Service	Acceptability	Clarity	Sustainability	Feasibility
Option 1 (status quo): maintain current form of the State Sector Leadership Team	0 The current State Sector Leadership Team has been establishing system-level leadership across the Public Service.	0 The current State Sector Leadership team has been working to strengthen cohesion and interoperability across the Public Service.	0 The current State Sector Leadership Team is focused on how the Public Service can work together as a team.	0	0	0 The current State Sector Leadership Team is held together by the goodwill of the current Commissioner and chief executives. There is a risk that future commissioners or chief executives may not be willing to engage in the Leadership Team.	0
Option 2 (preferred option): codify the State Sector Leadership Team	0 This would continue under the Public Service Leadership Team.	0 This would continue under the Public Service Leadership Team.	0 This would continue under the Public Service Leadership Team.		0	++ Under this option, the State Sector Leadership Team would be required by law, protecting it from the decisions of future commissioners and chief executives.	

Key:

- ++ better than doing nothing/the status quo
- + somewhat better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- somewhat worse than doing nothing/the status quo
- worse than doing nothing/the status quo
- relevant objective or criteria

Option 2 is preferred, as it will protect the Leadership Team from the decisions of future Commissioners and chief executives who may not prioritise it.

CE Tenure

Due to the perception of consultation respondents that political neutrality is jeopardised through the re-appointment process of chief executives, several options have been considered on how chief executive tenure could be changed to ensure political neutrality:

- Option 1 (status quo): appoint for a fixed term of up to five years with power to extend
- Option 2: extend the fixed term to seven years and remove the re-appointment provisions
- Option 3: appoint chief executives to a permanent position.

Option 1 (status quo and preferred option): appoint for a fixed term of up to five years with power to extend

Chief executives would remain to be appointed for five years, with the possibility of a two year re-appointment. This system has worked well in the past, and New Zealand is recognised internationally as having a politically neutral Public Service executive.¹¹³

Data analysed by the Commission shows that the average tenure of chief executives between 2009 and 2015 was 4.3 years. Of the 43 chief executive tenures examined, 24 were reappointed to their position, or left to fill a chief executive role or equivalent position in the Public Service.

Option 2: extend the fixed term to seven years and remove the re-appointment provisions

This option would extend the fixed term of chief executives from five years to seven years, but with no power to extend the term, as currently exists. This would remove any perception of political influence in the re-appointment process, and reflect what already happens, as many chief executives are re-appointed for two years.

However, this option is less flexible than the status quo, which allows for the opportunity to consider replacing the current chief executive after five years, if this is in the best interests of the system.

As chief executives would only need to be hired every seven years rather than every five years, this option would result in reduced process costs in hiring chief executives. However, as the average tenure for chief executives is currently below the five-year fixed term, extending the fixed term to seven years may not have much of an impact on increasing the length of tenure served by chief executives (see also average tenure for permanent appointments in other jurisdictions under option 3 below).

Option 3: appoint chief executives to a permanent position

Under this option, chief executives would be permanently appointed. This could be appointment to a specific position; or appointment to a generic Public Service chief executive

¹¹³ Bouckaert, G., & Pollitt, C. (2011). *Public Management Reform. A Comparative Analysis—New Public Management, Governance and the Neo-Weberian State*. Oxford: Oxford University Press.

position with the appointee required to rotate through other chief executive roles from time to time.

This option would provide security of tenure for chief executives and remove any political motives that may be introduced through a re-appointment process. However, there is a risk that this option would create a closed pool of chief executives that could limit the introduction of new and diverse talent from outside the pool.

This option provides the potential for reduced recruitment costs if chief executives serve a longer tenure than currently. However, as the average tenure served is currently below the fixed term of five years anyway, appointing chief executives to permanent positions may not have an impact on length of tenure. Neither does international evidence signal that permanently appointing chief executives would increase the length of tenure. The United Kingdom and Canada both appoint their equivalents of chief executives to permanent positions. The tenure of deputy ministers (chief executive equivalent in Canada) in Canada averaged at around 3.3 years from 2003 to 2005.¹¹⁴ In 2015, the average tenure for permanent secretaries (chief executive equivalent in the United Kingdom) in the United Kingdom was 3.1 years.¹¹⁵¹¹⁶

Conclusion

While developing these options, the SSC looked into the claim that chief executives tell the Minister what they want to hear, rather than give free and frank advice, due to the incentive to seek reappointment. The SSC concludes this perception is not material enough. There does not appear to be a strong influence on chief executives to give biased information due to the re-appointment process. Therefore, even if options 2 and 3 would have changed the length of chief executive tenure, there is no reason to move away from the status quo, which is working as it should, and does not influence the political neutrality of chief executives.

10.5 Conclusion and impact

The State Services Commission recommends:

- allowing for a new system leader - functional chief executives
- codifying the State Sector Leadership Team
- remaining with the status quo for chief executive tenure (appointing for a fixed term of up to five years with power to extend).

Proposals relating to functional chief executives and chief executive tenure relate solely to departments, as Crown entities have boards rather than chief executives. The proposal for the Public Service Leadership Team relates to departments chief executives and any other senior leaders the Commissioner wishes to be involved.

The two proposals, if implemented will enable the Public Service to organise around the needs of New Zealanders.

Changes will need to be made to the Public Finance Act to implement proposals related to functional chief executives.

¹¹⁴ Bourgault, "The Deputy Minister's Role in the Government of Canada: His Responsibility and His Accountability," P. 264 -26.

¹¹⁵Institute for Government, United Kingdom, analysis of permanent secretary appointments, 2005 to 2015

¹¹⁶ Despite being permanently appointed, chief executive tenure in Canada and the United Kingdom has political dependency, and so chief executive tenure is often linked to the political continuity of a government.

Legislating a Public Service Leadership Team will ensure that the Leadership Team endures, and avoids the risk of moving the default way of working back to the vertical accountabilities that have been embedded in the Public Service, as has happened in the past.

Possible uses for the new functional chief executive model are:

- *System leadership functions:* system leadership functions are currently delivered by chief executives of departments, who often have other significant operational responsibilities. The proposed functional chief executive model provides a way to establish separate functional lead positions with the same status as a chief executive, giving these functions sufficient focus, visibility and mandate without overloading existing departmental chief executives.
- *Functions within departments:* the model could also be used to increase the visibility, focus and accountability of specific functions within departments. This would reduce the need for structural change if such a shift is required.

An example of where this approach might be implemented is to strengthen existing functional lead roles, such as the existing Government Chief Digital Officer role (currently the chief executive of the Department of Internal Affairs). By establishing the Government Chief Digital Officer position as a functional chief executive housed within the Department of Internal Affairs, the function would be given the required focus, while allowing the chief executive for the Department of Internal Affairs to focus on their significant operational responsibilities.

Functional chief executives will be able to improve interoperability in the system by producing guidance or standards which may, subject to Ministerial agreement, have mandatory effect within the Public Service. With this improved interoperability will come increased benefits to the system. The benefits of interoperability have already been demonstrated with the interoperability created by the IT functional lead discussed in section 10.1.

Financial implications

There is no cost in putting the Public Service Leadership Team in legislation, as it will be codifying existing practice. Costs of establishing a functional chief executive and the costs of any mandatory standards would be considered by Cabinet at the time a position is proposed. These costs are likely to be smaller than the costs of alternative options, such as establishing a new department.

The interoperability in the system that functional chief executives and the Public Service Leadership Team can bring can result in significant cost savings for the Crown. For example, since 2011, the Property Functional Leadership programme has reduced costs of \$420 million in accumulated rental and facilities management costs by taking a centre-led, collaboratively delivered approach to managing the Crown's office estate.¹¹⁷

Risks

The proposals related to functional leadership and the Public Service Leadership Team build on existing mechanisms which have largely been acceptable and reasonably effective ways of improving system leadership. There is no identified risk in codifying these mechanisms in legislation. The risk that is addressed through the proposals above is that ways of operating though agreement of current leaders are not necessarily sustainable.

¹¹⁷ Data from the Ministry of Business, Innovation and Employment

Functional leaders have had to work hard to establish their roles and win the mandate necessary to improve inter-operability. They exist through agreement between central agencies in 2012 that the State Services Commissioner should appoint them. They have no basis in legislation.

The State Sector Leadership Team is even more person-specific – it was established by the incoming State Services Commissioner who was appointed in July 2016, and would not necessarily be continued by a new Commissioner.

The risk of maintaining the status quo is that roles and processes that have demonstrably improved horizontal work for the benefit of both individual agencies and the public management system may be lost if no longer supported by central agencies and their ministers. The risk of this occurring is real because current legislative settings have the normative effect of incentivising individual agencies to maximise their own outcomes rather than acting collectively to maximise benefit for the system.

There is no evidence of the perceived risk that the chief executive re-appointment process incentivises chief executives to tell ministers what they want to hear rather than to provide free and frank advice, whereas there may be a risk of worse outcomes through altering a tenure system that has worked well for all concerned for several years.

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11. Senior Leadership

11.1 Background

There are around 900 Public Service senior leaders, other than chief executives, in large and/or critical leadership roles. Senior leaders are largely in tier 2 roles, with some tier 3 and tier 4 roles in large organisations (including Crown entities) also included.

Leadership and leadership development are considered to be important levers for improving performance in the Public Service and supporting a more unified identity. The need for a more coordinated approach was recognised as part of the 1988 reforms where employment and development were delegated. The State Sector Act 1988 established a Senior Executive Service which was repealed in 2005, with its failures identified as:

- the emphasis on managerial accountability of chief executives, leading to reduced loyalty to the broader value of the Public Service that the Senior Executive Service was supposed to cultivate,
- insufficient powers for the Commissioner to appoint to roles within the Senior Executive Service and to direct provision of training, and
- weak incentives for individuals or departments to invest in senior leadership development.

The need for a mechanism to enable senior leaders to address the critical needs of the system led to the enactment of a provision in the 2013 amendment of the State Sector Act to designate key positions in the Public Service. The intent was to use it in concert with the other senior leadership provisions to enable senior leaders to move between key positions to meet either their developmental needs or a critical Public Service need. In practice, there is little if any alignment between the use of key positions and the other provisions relating to senior leadership, and the use of the key positions have merely placed an additional requirement on the Commissioner to have some level of involvement in every appointment of a key position.

The current legislation provides for:

- Developing the capability of senior leaders. The Commissioner is required to develop and implement a strategy for the development of senior leaders, including, for example, flexible deployment to developmental roles in the Public Service.
- The use of secondment to develop senior leaders (with the agreement of the senior leader and the relevant chief executive).
- A responsibility on chief executives to assist the Commissioner to fulfil his/her responsibilities.

While the current Act provides for development of senior leaders, there is no framework for utilising senior leaders for the benefit of the Public Service.

11.2 Problem or opportunity

There is currently no framework for utilising senior leaders for the benefit of the Public Service. While a role that is critical to the system may be designated as a key position, there is no mechanism to move senior leaders into key positions for the purpose of meeting the

needs of the system. Without this ability, there is a risk that system benefits are not being realised.

While progress has been made towards a more unified approach to senior leadership development, more is needed to strengthen and improve the development of senior leadership. The following are barriers to progress:

- There is no expectation that senior leaders will move around the Public Service. Soft levers are used to secure the cooperation of chief executives and senior leaders to move them around the system.
- Leaders are being recognised, rewarded and incentivised to deliver results for their agencies rather than outcomes that benefit the system.
- There are no common ways of working. Differences in conditions of employment between agencies can act as a barrier to mobility across the system, and can result in pay disparity and an inability to move leave entitlements with the senior leader.
- Secondment can only be used by the Commissioner for the development of the senior leader. Yet there is a need to move senior leaders into roles, not necessarily for the development of that senior leader, but to meet a need in an agency or the system as a whole.
- While a role that is critical to the system may be designated as a key position, there is no mechanism to move senior leaders in key positions for the purpose of meeting the needs of the system or the needs of an agency within the Public Service.
- The current key position provision requires the Commissioner to be involved in individual recruitment processes where this is not necessary. This has become cumbersome and detracts from the Commissioner's more strategic system leadership role.
- Movement across the system tends to be temporary and ad hoc, with no mechanism to permanently transfer senior leaders into roles. Currently vacancies for positions that senior leaders have filled through secondment have to be notified and a full recruitment process followed, despite agencies often wanting to employ the senior leader into the position because their secondment has demonstrated that the senior leader is suitable for the role.

11.3 Consultation

The discussion document outlined a provision enabling the establishment of a Senior Leaders Service model.

112 submissions commented on this proposal, including comments from 147 leaders from the Public Service Leaders Group who attended one of ten workshops held on the proposal to establish a Senior Leaders Service as part of the State Sector Act reform.

Most written submissions were made by public servants. Overall, there was general support for the proposal, with most submitters providing comment on the proposal. Nine submissions agreed with the proposal and made no other supporting comments. One submission did not support the proposal and did not comment on the basis for that disagreement. 24 submissions said they did not know enough to comment.

Some respondents were of the view that legislation is not required because agencies are already working collaboratively, and other respondents commented that legislative support is needed. Legislation is needed to remove existing key positions provisions (which have not worked as intended), and to strengthen existing provisions to develop a senior leadership strategy that chief executives are bound to use in employment and deployment of senior leaders

A large number of submissions acknowledged that the Senior Leaders Service can be introduced through the provisions of the 1988 Act, but that legislative change was required to incentivise implementation. Many respondents commented that for the Senior Leaders Service to work, Cabinet may need to change its structures and the Public Finance Act may need to be amended to enable cross-agency work.

11.4 Options

To improve the ability of the system to provide the best possible outcomes and services to New Zealanders, the Public Service needs to have senior leaders that operate as part of a system – putting system first rather than agency first.

This would mean:

- having a cohort of senior leaders who expect to work flexibly across the Public Service to best meet the needs and best interests of the Public Service as a whole,
- having senior leaders working as a team, supporting chief executives to set the direction of the Public Service system and coordinating activities,
- developing a unifying culture led from the upper echelons of the Public Service with shared values, ethos and ways of working, and
- developing the next generation of senior leaders through on-the-job experience, training and other development mechanisms.

Following further policy work and feedback that the proposal should be enabling rather than prescriptive, the proposal is to amend current provisions to allow the Commissioner a full range of levers to improve senior leadership.

The options are now as follows:

- Option 1a (status quo): maintain key positions
- Option 1b (enhanced status quo): modify key positions
- Option 2 (preferred option): remove the current key position provisions and develop a strategy to support deployment of senior leaders to meet system needs, as well as support the development needs of senior leaders
- Option 3: Commissioner employs chief executives and all senior leaders in the Public Service

These options are discussed further below.

Option 1a (status quo): maintain key positions

Currently the Commissioner can designate a key position for two purposes: because of its potential to develop senior leaders, or because it is critical to the Public Service. A chief executive may appoint an employee to a key position with the Commissioner's agreement and the Commissioner must publish the list of key positions.

While a role that is critical to the system may be designated as a key position, there is no mechanism to move senior leaders into key positions for the purpose of meeting the needs of the system.

Option 1b (enhanced status quo): modify key positions

This option would modify the key positions provisions in the Act so that the Commissioner is involved in the appointment, development and rotation of senior leaders through a small number of key positions, in conjunction with their chief executive (who remains the employer).

The Commissioner would be able to move senior leaders into key positions for the purpose of meeting system needs, emphasising that Public Service leaders work to deliver outcomes that benefit the system, rather than just the results for their agencies. Other improvements to key positions will allow for a simpler and more flexible appointment process.

Changes would be made to:

- set expectations that chief executives are responsible for assisting the Commissioner with meeting the needs of the system as a whole, including supporting the flexible deployment of senior leaders
- enable secondments to be used to meet system needs
- enable the Commissioner to determine to what extent they wish to be involved in the appointment of key positions.

Option 2 (preferred option): remove the current key position provisions and develop a strategy to support deployment of senior leaders to meet system needs, as well as support the development needs of senior leaders

Option 2 is similar to option 1b, in that it aims to achieve the same outcome of enabling flexible deployment of senior leaders to meet system needs, but through different means.

Under this option key positions would be removed, but the Commissioner would develop and implement a strategy for senior leadership for the purpose of development (as currently) and also to meet the needs of the system as a whole. This strategy would be developed through a collaborative process with the Public Service Leadership Team.

This would allow the Commissioner to use a full range of levers to improve senior leadership, from setting expectations and providing guidance relating to the employment and development of senior leaders through to direct involvement in appointment and secondment. The Commissioner's level of involvement would depend on the context. This option would allow the Commissioner to deploy senior leaders to meet system needs, and set the expectation that chief executives are responsible for assisting the Commissioner with meeting the needs of the system as a whole, which includes supporting the flexible deployment of senior leaders into roles throughout the system.

Additionally, this option would:

- Enable the use of secondments or permanent transfer to be used not only for the development of that senior leader, but also to meet a need in an agency or the

system as a whole. This may reduce inefficient processes and recruitment costs within the Public Service.

- Enable the Commissioner to determine the nature and extent of their involvement in senior leadership positions and ensure appointments and deployments are made in accordance with the leadership strategy set by the Commissioner.
- Enable common expectations and ways of working, and standard conditions of employment for senior leaders.

Option 3: The Commissioner employs chief executives and all senior leaders in the Public Service

This option would mean that, in addition to the current role as employer of chief executives, the Commissioner would be responsible for the recruitment, deployment and development of all public servants in designated senior roles. This would allow the Commissioner to more easily shift talent to parts of the system where it is required, emphasising that Public Service leaders work to deliver outcomes that benefit the system, rather than just the results for their agencies.

However, this would effectively dis-empower chief executives in the engagement of their most senior staff and establish a muddled employer relationship. It would also effectively shift the role of the State Services Commission from setting expectations and providing guidance on senior leadership (a strategic role) to a much more operational role. This option would also have a substantial impact on the State Services Commission by substantially increasing the number of people it employs and manages. It may also lead to the perception that senior leaders are part of a “closed club”.

It is also unclear how delegations of chief executive powers as employer would work if their staff were employed by the Commissioner.

Table 15. Options for senior leadership

Reform objectives							
	Deliver better outcomes and better services	Create a modern, agile and adaptive New Zealand Public Service	Affirm the constitutional role of the Public Service in supporting New Zealand's democratic form of government				
Options	Policy objectives			Criteria			
	Provide the ability to effectively join up around citizens and to respond to cross-cutting issues	Generate alignment and interoperability across the Public Service	Establish behavioural and cultural foundations for a unified Public Service	Acceptability	Clarity	Sustainability	Feasibility
Option 1a (status quo): maintain key positions	0	0 While a role that is critical to the system may be designated as a key position, there is no mechanism to move senior leaders in key positions for the purpose of meeting the needs of the system.	0	0	0 The current provisions have caused some confusion on whether senior leaders can be deployed to meet the needs of the Public Service.	0	0
Option 1b : modify key positions	0	++ The Commissioner would be able to move senior leaders in key positions for the purpose of meeting system needs. Other improvements to key positions will allow for a simpler and more flexible appointment process.	+ This option would somewhat emphasise that Public Service leaders work to deliver outcomes that benefit the system, rather than results for their agencies.	+ While this option was not consulted on, in effect it achieves the same results as the Senior Leadership Service, so is likely to have support.	++ This option provides clearly that the Commissioner can deploy senior leaders to meet the needs of the Public Service.	+ This option changes legislative provisions to allow for flexible deployment of senior leaders to suit system needs, therefore securing the power in law.	0
Option 2 : (preferred option): remove the current key position provisions and develop a strategy to support deployment of senior leaders to meet system needs, as well as support the development needs of senior leaders	0	++ This option would allow the Commissioner to deploy senior leaders to meet system needs, and set the expectation that chief executives are responsible for assisting the Commissioner with meeting the needs of the system as a whole, which includes supporting the flexible deployment of senior leaders into roles throughout the system.	++ This option would emphasise that Public Service leaders work to deliver outcomes that benefit the system, rather than results for their agencies.	+ While this option was not consulted on, in effect it achieves the same results as the Senior Leadership Service, so is likely to have support.	++ This option provides clearly that the Commissioner can deploy senior leaders to meet the needs of the Public Service.	++ Under this option the strategy will be developed in collaboration with the Public Service Leadership Team, resulting in a more collaborative, flexible and enabling system for deployment of senior leaders, which may help it stand the test of time.	0

Option 3: Commissioner employs chief executives and all senior leaders in the Public Service	0	++ The Commissioner would be responsible for the recruitment, deployment and development of all public servants in designated senior roles, allowing the Commissioner to more easily shift talent to parts of the system where it is required.	++ This option would emphasise that Public Service leaders work to deliver outcomes that benefit the system, rather than results for their agencies.	-- This option decreases chief executives' autonomy to make employment decisions suited to their agency. Public servants were also concerned during consultation that they could be moved around the Public Service without consent.	++ As the employer, the Commissioner would clearly be able to deploy senior leaders to meet Public Service needs.	++ This option secures the Commissioners power to deploy senior leaders to meet the needs of the Public Service.	- It is unclear how delegations of chief executive powers as employer would work if their staff were employed by the Commissioner.
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Key:

- ++ better than doing nothing/the status quo
- + somewhat better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- somewhat worse than doing nothing/the status quo
- worse than doing nothing/the status quo
- relevant objective or criteria.

PROACTIVELY RELEASED BY THE MINISTER OF STATE SERVICES

11.5 Conclusion and impact

The SSC recommends option 2 - removing the current key position provisions and developing a strategy to support deployment of senior leaders to meet system needs, as well as supporting the development needs of senior leaders.

This proposal will apply largely to departments, but also to Crown entities whose chief executives “sign up” to the strategy.

If implemented, these proposals would have no direct impact on private businesses, individuals or organisations. This proposal will mean the Public Service gets better developed leaders in the right places in terms of system needs. This will result in a more effective Public Service that is better able to meet the needs of New Zealanders.

Financial implications

The development of a senior leadership strategy is an existing provision. The proposal to extend the focus from development of senior leaders to deployment to meet the needs of the system does not have financial implications.

Risks

There is no risk involved in removing the key positions provisions and replacing them with an agreed strategy for employment and deployment of senior leaders. There was a risk in the original proposal to replace the process to ensure merit appointment of senior leaders on secondment or transfer from one based on notification of vacancy; to one based on an alternative (un-tested) process to be developed by the Commission and applied at the point of appointment. This risk was raised during consultation, and the existing provisions to ensure merit appointment (s60 – s65 of the SSA) will be retained. Once developed, the senior leadership strategy would provide guidance on how these provisions can be met through processes that provide more flexibility for senior leaders on secondment or transfer, while maintaining transparency and meeting the principle of appointment on merit.

12. Flexible Organisational Arrangements within Departments

12.1 Background

The New Zealand model of public management created in the 1980s took the separateness and autonomy of individual departments to an extreme degree, treating departments as if they were each separate firms in a private sector context, each with a single and clear purpose. This combination of highly autonomous departments and a tendency towards single-purpose organisations has led to a Public Service that has been effective at delivering outputs within individual departmental remits, but at the cost of high levels of fragmentation and high frequency of significant structural change.

Currently, the public management system is centred on ensuring that the significant policy priorities of government are addressed in a focused way with clear accountability to ministers. To date the conventional way to achieve this has often been by establishing separate organisations, headed by a chief executive, who is the individual and exclusive point of accountability to a responsible (or appropriate) Minister. The result has been a proliferation of separate agencies, with consequent efficiency and coordination issues across the system. Of the 31 departments (and one departmental agency) in the Public Service, eleven have fewer than 200 FTEs, and five have fewer than 50 FTEs. There have been several unsuccessful proposals in recent years to create more small departments, often with very few staff. These departments are often carrying out functions that are judged to be important and to need focus and direct Ministerial accountability.

This approach to addressing the desire for direct ministerial accountability leads to several issues. Achieving alignment and consistency across the Public Service is complicated by the number of different departments and associated vertical accountabilities to ministers. The New Zealand Public Service has relatively high levels of structural change – i.e. establishment, disestablishment, merging and de-merging of departments, as well as internal restructuring within agencies.¹¹⁸ Internal SSC data over the past 20 years has shown that around 14 structural changes take place a year. In comparison, an Australian National Audit Office review suggested that the Australian Public Service experiences around 10 structural changes per year.

There is a well-evidenced productivity dip in organisations that experience structural changes and reorganisations. In New Zealand, evidence suggests that benefits from restructuring will not be realised for around two years after changes are implemented. This productivity dip is heightened by the emphasis placed on departments and vertical accountabilities as the organising framework of the Public Service. As a result, we treat the shifting of functions and employees between departments as significant organisational and employment changes which increase the transaction costs of structural change.

Significant structural changes also affect how well the Public Service can operate as a permanent institution that serves current and successive governments. This role presumes the benefit of past knowledge and experience can be brought to bear on the problems of the day and to provide the Government with the best possible advice. To do so requires that the Public Service have and use its institutional memory and knowledge. Frequent structural

¹¹⁸ The States Services Commission surveyed 4641 public servants in 2007 and 2010. In 2007, 55% of public servants had been involved in a merger or restructure in the last two years, and this increased to 65% in 2010 (Norman and Gill, 2011). Comparatively, Statistics New Zealand data shows that from 2009 to 2017, the average percentage of businesses that restructured in the last year was 51% for large businesses (100+ employees), and less often for small businesses.

changes and fragmentation negatively impact on the institutional memory of departments and the Public Service by disrupting access to those who hold significant memory and knowledge by shifting administrative boundaries, complicating the retrieval of information through lack of clarity over who holds it, and loss of experience through turnover.

There are also relatively significant fixed costs associated with the establishment and operation of a department. Regardless of their size, all departments have the same reporting requirements and statutory requirements under the State Sector Act and Public Finance Act. Such requirements include, but are not limited to annual reports, strategic intentions, four year plans, workforce strategies, and health and safety plans. These requirements can impose significant compliance costs on organisations, and smaller organisations are disproportionately affected by these costs. This is also true of functional areas like procurement and digital, where agencies do not have capability to carry out internal projects so look to centres of excellence for that capability when required.

Alongside the compliance costs and capacity issues, there is the ongoing cost and inefficiency of providing corporate services within small departments. While forming arrangements to share the services of other agencies (shared services) can provide a solution to this, the inability of Public Service departments to form legally binding agreements with each other means that these arrangements are inherently unstable.

Amendments to the State Sector Act in 2013 sought to tackle these issues through introducing the departmental agency model as an alternative to a department. A departmental agency is a unit that sits within a host department and is headed by a chief executive who is appointed and employed by the Commissioner. The original policy intent of the departmental agency model was use for operational and/or regulatory functions, so was designed to provide a reasonable level of operational autonomy. This increased flexibility in departmental arrangements was intended to reduce the impact of structural changes and fragmentation in the system by providing a mechanism for increased accountability without the same degree of structural change and separation as a new department.

12.2 Problem or opportunity

General issues with the current departmental model and its use are canvassed extensively above, including:

- high fragmentation, with a resulting lack of alignment and poor economies of scale for back-office resources and reporting activities, and
- significant amounts of structural change, with associated transaction costs, loss of productivity and loss of institutional memory.

This highlights that , machinery of government changes can have a range of negative impacts that affect how well the Public Service performs although such changes can be used effectively to drive performance and improve Public Services if properly implemented.

The departmental agency model was intended to mitigate these issues. However, learnings from the three departmental agencies established since 2013 have highlighted some issues with the model as it is currently established in the State Sector Act. The model does not provide for the ability to require certainty of corporate services arrangements or strategic alignment with the host department where this may be beneficial. It is also inflexible on several dimensions that make it unsuitable for some applications, including being unable to manage assets. These factors have meant that the departmental agency has been used for functions other than those originally intended, and has in practice operated in a manner

similar to a separate department. The inability of the model to effectively achieve its intended outcome signals a need to provide for more ways to tailor departmental agency arrangements to particular situations.

12.3 Consultation

The discussion document proposed the new Act include a statutory officer model, to provide the ability to establish new lines of ministerial accountability for departmental functions without structural change.

The new statutory officer model was proposed in addition to the departmental agency model. This proposal was based on the existing statutory officer model (senior officials within departments that have responsibilities established through statute), with the aim of providing a mechanism for establishing direct responsibility to Ministers without the cost and disruption of creating a new department or departmental agency.

Key elements of the model, as proposed in the discussion document, are:

- establishment through Order in Council or ministerial agreement
- the employer of the statutory officer would be the chief executive of the host department
- the statutory officer would be allocated certain functions, duties or powers and would be accountable for them to the appropriate Minister.

Other options considered for organisational arrangements within departments were simply amendments to the current departmental agency model and/or introduction of one type of statutory officer. However, such a limited approach would not support the wider aims and intent of the State Sector Act reform, nor would it adequately tackle the issues outlined in respect to structural changes and fragmentation.

A total of 320 submissions commented on the organisational arrangements. Most of these broadly favoured the proposals. The majority agreed that more options for organisational arrangements are needed, and that they need to ensure the system is enabling and flexible.

More specifically, submitters found the term “statutory officer” confusing, and thought these officers should instead be appointed by the Commissioner.

12.4 Options

Responses received through the consultation process together with ongoing policy work has resulted in a fuller set of proposals for organisational forms within departments:

- an option for a more flexible departmental agency model is included to tackle some of the issues highlighted in section 12.2, and to ensure consistency and coherence with other new models proposed
- an option to establish functional chief executives, which would give effect to the statutory officer proposals contained in the public discussion document with some changes to make the model even more flexible and reflective of feedback from consultation. Most notably, it was originally proposed that the then-statutory officer would be a position appointed by the chief executive of the host department, but to achieve consistency with other organisational forms within the Crown the now-functional chief executives will be appointed by the Commissioner.

These would provide a spectrum of options for organisational arrangements within departments so that form can be tailored to function in a more flexible and adaptive manner. With options ranging from simple responsibility for functions, to the ability to use and account for an appropriation, to a ring-fenced unit with the ability to employ staff and hold assets, the spectrum should provide a range of models appropriate for many functions.

Consideration of consultation feedback has helped adjust the options to those laid out below:

- Option 1 (status quo): no new models, organisations within the Crown limited to departments and departmental agencies currently set out in the State Sector Act 1988
- Option 2 (preferred option): introduce a flexible departmental agency model and a functional chief executive model

These options are discussed further below.

Option 1 (status quo): no new models, organisations within the Crown are limited to departments and departmental agencies as currently set out in the State Sector Act 1988

Under the status quo, organisational forms will be limited to those that already exist, namely departments and the current form of departmental agency. Continuing with the status quo will likely see the continued establishment of new departments when ministers want direct accountability and focus on specific issues and areas. This runs the risk of further fragmentation and siloing the Public Service.

Secondly, the existing departmental agency model has several limitations illustrated by recent implementations of the model, as discussed above. Leaving the departmental agency model unchanged is likely to mean that it continues to fail to meet its original policy intent. This has associated risks of complex and/or unclear accountability arrangements and high transaction costs of establishment.

Option 2 (preferred option): introduce a flexible departmental agency model and a functional chief executive model

This option enables two new organisational forms in legislation:

- Flexible departmental agencies
- Functional chief executives.

This would provide a spectrum of options for organisational arrangements within departments so that form can be tailored to function in a more flexible and adaptive manner. With options ranging from simple responsibility for functions, to the ability to use and account for an appropriation, to a ring-fenced unit with the ability to employ staff and hold assets, the spectrum should provide a range of models appropriate for many functions.

This model would enable significant alignment of functions within departments and sectors. It provides a foundation for greater interoperability, as departments can be used as platforms while maintaining autonomy.

Flexible departmental agency model

Changes to the departmental agency model aim to increase the flexibility of the model by:

- allowing for the form of the departmental agency to be tailored to the specific functions,
- increasing the range of different configurations between departments and departmental agencies so that different levels of autonomy and strategic alignment can be achieved, and
- reaffirming that key uses of the model are still anticipated to be for operational and/or regulatory functions, although a departmental agency established as more tightly-aligned operationally to the host department could be appropriate for policy-based functions.

The current departmental agency model would remain the basic form. Through legislation, variations of the departmental agency would be established. It is envisaged that these variations would result in a menu of options, and one or more of these variations could be allocated to a departmental agency as required.

The variations that can be enabled through legislation are:

- a requirement that the chief executive of a departmental agency should operate in the strategic and policy framework of the host department
- the departmental agency would, by default, receive corporate services from the host department, and any deviations from this arrangement would be made jointly by both relevant chief executives
- the deemed delegation of responsibilities of the employer from the chief executive of the host department to the chief executive of the departmental agency would be restricted to only those relating to appointing and removing staff
- the departmental agency would be able to hold assets and make decisions over them.

These variations are proposed as a way to hard-wire elements of the departmental agency model, and the relationship with the host department, by introducing legislative foundations for them.

Decisions on what features are appropriate in any given case would be made by Cabinet and should be based on the requirements of the specific functions of the departmental agency. These features could be added or removed as required by Cabinet agreement and would be recorded in the schedule to the new Act where departmental agencies are listed.

Functional chief executive

Further details on the functional chief executive model are outlined in section 10.

Table 16. Options for flexible organisational form

Reform objectives							
	Deliver better outcomes and better services	Create a modern, agile and adaptive New Zealand Public Service	Affirm the constitutional role of the Public Service in supporting New Zealand's democratic form of government				
Options	Policy objectives			Criteria			
	Provide the ability to effectively join up around citizens and to respond to cross-cutting issues	Generate alignment and interoperability across the Public Service	Establish behavioural and cultural foundations for a unified Public Service	Acceptability	Clarity	Sustainability	Feasibility
Option 1 (status quo): no new models, organisations within the Crown are limited to departments and departmental agencies as currently set out in the State Sector Act 1988	0	0 The current model has been unsuccessful as there is no way to tailor departmental agency arrangements to functions, and exists as a "one-size fits all" approach.	0	0	0 Chief executives and departments are currently unclear on where responsibility lies where departmental agencies are involved.	0	0
Option 2 (preferred option): introduce a flexible Departmental Agency model ¹¹⁹	0	++ This model would enable significant alignment of functions within departments and sectors. It provides a foundation for greater interoperability as departments can be used as platforms, while maintaining autonomy.	0	+ While feedback from agencies has been positive on this proposal, this was not consulted on publicly.	+ This option clarifies the responsibilities between department and departmental agency chief executives.	++ This option introduces ways of hard-wiring these arrangements, increasing the sustainability of arrangements significantly, and providing for greater security.	0

Key:

- ++ better than doing nothing/the status quo
- + somewhat better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- somewhat worse than doing nothing/the status quo
- worse than doing nothing/the status quo
- relevant objective or criteria

¹¹⁹ Functional chief executive options table in section 10.5.

Introducing the new models under Option 2 will:

- reduce the frequency of establishing new and separate departments and reduce the impacts of changes that do happen
- retain the benefits brought about by specialisation and clarity of organisational purpose while shifting the balance towards greater alignment, core organisational stability and capability, and a unified Public Service
- allow for flexibility, stability, integration and specialisation.

This option also better responds to feedback during consultation that more options for organisational form are needed to ensure an enabling and flexible system..

By allowing for simpler organisation forms for delivering on important issues and government priorities, this option avoids the necessity of creating a new department every time new issues arise. It also allows for strategic alignment with other priorities, while still giving those issues the focus, visibility and accountability necessary to make change.

12.5 Conclusion and impact

The SSC recommends Option 2 - introduce a flexible departmental agency model and a functional chief executive model.

This proposal relates solely to government departments. Enabling these models in legislation will cause no direct impact on organisational arrangements within government. The impact will be realised only when the models themselves are implemented, for example when a departmental agency or functional chief executive is established. If these models are implemented as designed, it will support the ability of government to organise effectively, while focusing on the issues that are important to New Zealanders.

Some possible uses for these models are discussed below:

Departmental agency

The flexible departmental agency model is designed to be versatile and able to endure through different contexts and be used to address a range of issues that may be faced by future Governments. While all the ways departmental agencies may be used in the future cannot be anticipated, the following configurations are envisaged:

- *Large scale and responsive:* departmental agencies can be established within a host department to provide profile and responsiveness on certain areas directly to ministers. Operationally the departmental agency remains closely aligned with the host department to reduce the costs of change and ensure the core stability of the host department is supported.
- *Platform with visibility:* departmental agencies dock into a host departmental that operates like a platform. The host department provides scale, resilience and surge capacity for the departmental agency.
- *Integration with autonomy:* departmental agencies within a sector operate in the strategic framework of the host department generating greater integration. Departmental agencies remain operationally autonomous but highly aligned.

An example of where this approach might be implemented is to increase the cost-effectiveness and quality of the provision of corporate services to smaller Public Service

agencies. A large department could invest in a shared services platform and the capability necessary to act as a host department for smaller agencies which would remain autonomous in respect to their functions (the “platform with visibility” configuration). This would be an appropriate arrangement to support functions that are small but require a significant degree of visibility and independence.

Possible uses for the functional chief executive model are discussed at in section 10.6.

Financial implications and risks

Feedback from the consultation process and from agencies on proposals to increase the range and flexibility of organisational arrangements have revealed a concern of increased complexity in the Public Service. As with proposals in section 13 of this document, there is a risk that, if not implemented with careful consideration and only when necessary, these organisational forms could result in increased costs and complexity. SSC has an existing role advising and providing guidance on machinery of government, and it will remain closely involved in proposals to implement and monitor the performance of these models. We do think that they increase clarity around accountability and responsibility between respective chief executives of host departments and departmental agencies.

These proposals do not have direct financial implications, as any costs will be incurred when the models are implemented, not when the legislation is passed. While these models may require resources, these will differ depending on how they are implemented, so it is not possible to know *ex ante* the scale of these associated costs. Cabinet will need to assess financial implications on a case by case basis as the models are implemented, as is currently the case with the establishment of new departments and departmental agencies. During implementation, Cabinet would also consider the tradeoffs in regard to resourcing, weigh the cost of implementation against the expected benefits and agree a suitable approach to ongoing evaluation, as is the case for any machinery of government proposal.

13. New Models for Cross-agency Working

13.1 Background

The 1980s State sector reforms led to a separation of policy, delivery and regulation activities into separate organisations. While this led to many efficiencies, it also means agencies find it difficult to organise and maintain joint or collaborative effort, a critical requirement for the Public Service's ability to work in new and innovative ways.

Within the current statutory framework, responsibility is treated as an inherently and solely individual concept. The individual responsibility of chief executives to individual ministers establishes a default vertical bias in the system towards the work which single departments are funded and responsible for on an individual basis. In this environment it is hard to positively encourage, incentivise or enable horizontal work across departments.

The way responsibility is structured in the legislation produces an environment highly conducive to commitment problems. These emerge when a party to an agreement (in this case a department, its chief executive, and its Minister) is unable to commit to following through on an agreement with an external party because of the pressure and incentive to maximise individual gains (in this case, from the direction of resources into core single-department, siloed, activity). Commitment problems lead to the withdrawal of support for what are essentially voluntary joint operations as the priority of the vertical dimension crowds out commitment to horizontal agreements.

The conventional way of addressing this problem in the private sector is through contracts. However Public Service departments are not distinct legal entities – rather, they are separate administrative units of the same legal entity, the Crown. This means agencies cannot enter into legally enforceable contracts with one another.

A range of non-legislative approaches have been tried over the past 30 years, each of which have shown promise in some situations. The full spectrum of possibilities has been set out in the State Services Commission's System Design Toolkit. This provides an organising framework for possible solutions to cross-departmental problems. The toolkit sets out a spectrum of solutions to enable cross-agency working, ranging from "soft" (voluntary) through middle-range options to "hard" (structural reorganisation).¹²⁰

The Report of the Better Public Services Advisory Group in 2011 proposed that legislative amendments would be needed to enable joint decision-making over, and accountability for, resource allocation across portfolio and agency boundaries [CAB (12)8].¹²¹ However, this was not fully addressed in the legislative changes that followed in 2013. A proposal to enshrine a form of collective accountability in the State Sector Act, by way of multi-CE Specific Purpose Boards, was abandoned late in the policy process. This proposal would have provided for board governance of a separate administrative unit within the legal Crown, thus ensuring a stronger form of collaborative effort than that based on non-statutory arrangements.

Consequently, the formal systems and processes for funding and accountability continue to be those optimised for a vertically-oriented system but do not work so well for cross-cutting matters. While more recent Budgets have attempted to encourage collaborative bids, these

¹²⁰ <http://www.ssc.govt.nz/mog-shared-problems>

¹²¹ State Services Commission 2012. 'Better Public Services: Reform Programme' (Cabinet paper) http://www.ssc.govt.nz/sites/all/files/bps-2256658_0.pdf

have tended to struggle for acceptance and agencies have found it difficult to engage with them collaboratively, as they are an add-on to usual practice.

13.2 Problem or opportunity

To achieve better outcomes and services and create a modern, agile and adaptive Public Service, the Public Service needs to better support different departments to work together to address complex problems which cross organisational boundaries.

While the System Design Toolkit has helped SSC to more effectively apply the range of non-structural models available within the current legislative framework, the fundamental challenges of cross-agency working still remain, including commitment problems, a lack of stability over time and prioritisation of individual departmental responsibilities over joint work.

The fundamental problem is how to “lock in” commitment, resources and responsibility around joint or collaborative work. The current “middle range” solutions don’t really do this - they do not provide for truly joint control of resources, nor do they enable collaborative vehicles to directly control assets and funding or employ staff, and they only provide a relatively weak form of joint responsibility for outcomes.

In the present context, collaborative activity tends to cut against the grain of the system and consequently tends to be marginal, costly to introduce, and only sustainable over time with continuous high levels of focus and commitment by senior leaders. It is widely recognised that working in an integrated way is likely to deliver better outcomes on complex and intergenerational issues which need to be addressed over longer periods of time. This is, however, the area with the least formal institutional structures.

13.3 Consultation

The discussion document proposed the new Act include the following proposals:

- Public Service Executive Boards – to support joined-up strategic policy, planning and budgeting around shared outcomes.
- Public Service Joint-ventures – delivery vehicles to enable a small number of agencies to hold joint resources including assets and staff, and mechanisms to support sustained collaboration by larger numbers of agencies.
- Executive Agencies – to support joined-up frontline delivery by many agencies.

The Executive Agency proposal was intended to enable a department to deliver services at the frontline on behalf of other agencies within their existing policy and funding frameworks. This model will not require any legislative change to the departmental model as it currently exists, so will not be discussed further in this Impact Statement.

The proposal for a Public Service Executive Board in the discussion document (referred to as an interdepartmental executive board in section 13.4 Options) was designed to provide for collective leadership and responsibility together with a menu of possible supporting organisational arrangements up to and including the ability for the board to administer its own separate appropriation, hold assets and employ staff.

A joint venture is an arrangement where two or more parties contribute resources to undertake a specific activity. The discussion document included proposals for joint ventures that are intended to provide a way of joining up, in a single place, the delivery of services otherwise delivered by separate departments.

The discussion document proposed two variants of the joint venture form for consultation: a statutory joint venture, which would be established by Cabinet through an Order-in-Council, and a 'non-equity' joint venture that chief executives could establish themselves with the Commissioner:

- A statutory joint venture (referred to as an interdepartmental venture in section 13.4 Options) would provide a way of bringing together resources into a single distinct entity. It would be governed by a small, focused, and collectively responsible board, report to a responsible Minister, and be able to hold assets, employ staff, and administer appropriations.
- In a non-equity joint venture (referred to as a joint operational agreement in section 13.4 Options), the funding, assets, and staff used would remain under the control of the venture's participating departments. Commitment to joint work is encouraged through the transparent nature of the agreement between chief executives and the explicit support of the Commissioner.

A total of 320 submissions commented on the organisational arrangements. Most of these broadly favoured the proposals. Many submissions did not express an explicit preference for particular organisational arrangement options, but did agree that there needs to be more options.

Many submitters were of the view that structuring the system and funding along portfolio lines will continue to impede cross-agency working. Others suggested that the Act should be amended to allow for collective financial accountability and resource utilisation. Further, it was noted that the budget process could be amended to promote greater clarity, accessibility and engagement by and of the public in line with open government.

A small number of submitters raised concerns about the costs and risks of duplication of functions when the models are implemented, which are discussed further in the below section.

13.4 Options

Consideration of consultation feedback has helped adjust the options to those laid out below:

- Option 1 (status quo): no new models, organisations within the Crown are limited to departments and departmental agencies as currently set out in the State Sector Act 1988
- Option 2 (preferred option): introduce new models for interdepartmental executive boards, interdepartmental ventures, and joint operational agreements.

These options are discussed below.

Option 1 (status quo): no new models, organisations within the Crown are limited to departments and departmental agencies as currently set out in the State Sector Act 1988

Options for joint work under the status quo are limited to those currently available between departments and departmental agencies, and consist of voluntary collaboration entered into to solve issues that need collective action. The SSC would continue to refine and promulgate the existing (non-legislative) options for cross-agency working in the System Design Toolkit.

The status quo fails to meet the objectives of the wider reform package – to deliver better outcomes and services, and create a modern, agile and adaptive Public Service. As discussed above, in the past 30 years since the State Sector reforms of the 1980s, New Zealand has continually struggled to effectively respond to complex boundary-spanning problems. While we have had some success with the various approaches to cross-agency work that operate within the constraints of the existing framework, these have proved difficult to sustain over extended periods due to funding challenges in a department-oriented public finance system, and limited institutional memory and mandate due to a lack of legislative foundation. Concurrently, the complexity and scale of the challenges faced by the Public Service have only increased, and continue to do so. Facing growing issues such as child poverty and climate change, the Public Service will continue to be constrained in its ability to effectively respond with increased consequence.

Option 2 (preferred option): introduce new models for interdepartmental executive boards, interdepartmental ventures, and joint operational agreements

This option provides organisational mechanisms that go beyond the existing vehicles for collaboration described in the State Services Commission System Design Toolkit. Their aim is to enable an approach to inter-agency collaboration that is more durable and sustainable, has lower ongoing transaction cost, and is able to be flexibly tailored to specific issues and circumstances. This is supported by the principle of discriminating alignment, a fundamental principle of transaction cost economics that suggests that different kinds of transactions are more efficiently governed by different modes of governance,¹²² implying that a framework with increased flexibility to tailor the form of an organisational arrangement to the function that is to be delivered suggests will be better able to effectively respond to a wider range of issues.

These models are discussed further below.

Interdepartmental executive boards

The key uses that align with the policy intent of the model are to:

- align strategy and planning activities for a group of agencies operating in overlapping policy areas,
- harness the capabilities of individual departments to collectively plan for, and make funding decisions on, a specific cross-cutting problem or priority.

The key features of the proposed model include:

- Establishment by addition to a schedule in the legislation (through Order-in-Council)
- A terms of reference agreed by Cabinet (including scope, remit and functions)
- Joint and individual responsibility to the minister(s) responsible for the board (as designated by the Prime Minister) for the functions of the board

¹²² Tadelis, S. and Williamson, O., 2010. Transaction Cost Economics—Organizational Handbook. *University of California, Berkeley, CA.*

- A membership consisting of existing departmental chief executives¹²³ (including a Board chair) to be appointed by the Commissioner from the list of departments within the Board's Cabinet-agreed remit
- Ability for the Board and/or the Commissioner to appoint independent advisors to the Board who are not departmental chief executives (not formally part of the Board and having no decision-making authority)
- Ability for the Board to administer an appropriation, appoint and employ staff (with all rights, duties and responsibilities of an employer), and enter into contracts
- A servicing department (identified in the relevant schedule of the legislation) which carries out, on behalf of the Board, all administrative and reporting obligations in respect of the resources controlled by the Board and appropriations administered by the Board¹²⁴
- A requirement for the Board to regulate and publish its own operating procedures,¹²⁵ with provision for the Commissioner to help resolve conflict if there is a breakdown of relationships (as the employer of the chief executive Board members)
- Where a Board has a role in joint strategic planning and budgeting and/or the provision of policy advice, responsibility for any delivery activities relating to the Board's work programme would remain with the relevant individual departments within the Board's remit.

Public feedback was focused on ensuring the system had sufficient flexibility. The executive board model allows for flexibility by including a spectrum of possible options for implementation that runs from simple advisory functions, to allocating funding as appropriation administrators, to employing staff. The spectrum of options gives the flexibility to design executive boards appropriately to the tasks they are expected to do.

Public Service joint ventures

There are two proposed options for the joint venture model as described above.

The proposals for interdepartmental ventures are intended to provide a way of joining up the delivery of one or more functions that would otherwise be delivered separately by departments. The key uses of the interdepartmental venture model would be to join up or align service delivery and/or regulatory functions where this makes sense, though an interdepartmental venture could also have an operational policy function related to its core purpose.

An interdepartmental venture would have the following key features given effect through legislation:

- Establishment by addition to a schedule in the legislation (through Order-in-Council)

¹²³ 'Departmental chief executives' here includes chief executives of public service departments and departmental agencies listed in Schedules 1 and 1A of the SSA, as well as the chief executives of New Zealand Police and New Zealand Defence Force.

¹²⁴ Note that staff employed by the Board are hosted in the servicing department

¹²⁵ As is the case for Crown Entity boards

- Governance arrangements consisting of a small, focused board of departmental chief executives¹²⁶ as agreed by Cabinet, reporting to a responsible Minister (as designated by the Prime Minister)
- A Board chair designated by the Commissioner, from within the board's membership
- Treatment of the Board of the venture as analogous to the chief executive of a department, with the same rights, duties and responsibilities
- Ability for the venture to hold assets, employ staff, enter into contracts and administer appropriations in the same way as a Public Service department
- A requirement for the Board to regulate and publish its own operating procedures, with provision for the Commissioner to assist in resolving conflict if there is a breakdown of relationships (as the employer of the chief executive Board members).

The proposals for Joint Operational Agreements are intended to provide a mechanism for strengthened commitment to joint work between Public Service departments. These agreements would operate as a stronger alternative to the already available Memorandum of Understanding (MoU) arrangements between departments, with cooperation encouraged through the transparent nature of the agreement between chief executives and the explicit support of the Commissioner.

A Joint Operational Arrangement would have the following key features, given effect through legislation:

- Commitment to joint work made through a formal agreement between chief executives (funding, assets, and staff used would remain under the control of the individual participating departments)
- Formed by agreement between relevant chief executives, with authorisation by the Commissioner
- Terminated by joint agreement between the chief executives of the departments involved, or with the Commissioner's agreement
- Requirement for departments to abide by the agreement, with provision for the Commissioner to assist in the resolution of conflict if there is a breakdown of relationships (as the employer of the chief executive Board members).

The joint operational agreement would not confer any formal joint responsibility on chief executives, nor would it involve any change in responsibilities between departments and Ministers.

¹²⁶ 'Departmental chief executives' here includes chief executives of Public Service departments and departmental agencies listed in Schedules 1 and 1A of the SSA, as well as the chief executives of New Zealand Police and New Zealand Defence Force.

Table 17. Options for new models for cross-agency working

Reform objectives				Criteria			
Deliver better outcomes and better services	Create a modern, agile and adaptive New Zealand Public Service	Affirm the constitutional role of the Public Service in supporting New Zealand's democratic form of government					
Policy objectives			Criteria				
	Provide the ability to effectively join up around citizens and to respond to cross-cutting issues	Generate alignment and interoperability across the Public Service	Establish behavioural and cultural foundations for a unified Public Service	Acceptability	Clarity	Sustainability	Feasibility
Option 1 (status quo): voluntary collaboration only	0 Legislation does not restrict cross-agency work, but establishes vertical incentives that restrict effectiveness of existing non-legislative options.	0	0 The current framework provides an incentive to prioritise departmental activities and interests.	0	0	0 Non-legislative approaches to cross-agency work are generally short-lived due to the lack of formal recognition which leads to resourcing and commitment challenges.	0
Option 2 (preferred option): introduce new models for Interdepartmental Executive Boards, Interdepartmental Ventures, and Joint Operational Agreements.	++ This option provides models for cross-agency working that better enables departments to coordinate on complex policy issues or bring together resources to better deliver services to citizens.	0	+ This option has an increased emphasis and legal foundation for cross-agency work, which reinforces the concept and behaviours of the Public Service working as a whole to deliver outcomes other than individual departmental products.	+ There was strong support from those who commented during consultation for increased flexibility in the way that departmental resources are used to deliver outcomes. Agency feedback was also highly supportive.	- This option has the potential to confuse accountability arrangements, which must be mitigated through considered implementation.	++ This option increases sustainability of cross-agency working arrangements by codifying them.	

Key:

- ++ better than doing nothing/the status quo
- + somewhat better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- somewhat worse than doing nothing/the status quo
- - worse than doing nothing/the status quo
- relevant objective or criteria

13.5 Conclusion and impact

The State Services Commission recommends option 2 - introduce new models for interdepartmental executive boards, interdepartmental ventures, and joint operational agreements.

Enabling these models in legislation will cause no direct impact on organisational arrangements within government. The impact will be realised only when the models themselves are implemented, for example when an executive board is established. If these models are implemented correctly, they would be expected to create greater effectiveness within government in dealing with cross-agency issues – issues that are important to the New Zealand public and affect many New Zealanders in their lives.

Some possible uses for these models are discussed below.

Interdepartmental executive boards

As outlined above, the key uses of the Public Service Executive Board that align with the policy intent of the model are to:

- align strategy and planning activities for a group of agencies operating in overlapping policy areas,
- harness the capabilities of individual departments to collectively plan for, and make funding decisions on, a specific cross-cutting problem or priority.

The Board might be used to bring chief executives together to generate a cross-agency policy position on a particular issue such as climate change. Once the proposed Climate Commission is established, it will produce recommendations which the Government will be required to respond to. A board of climate change chief executives established under the Public Service Executive Board model could employ a policy unit independent from individual agency interests and be made jointly responsible for coordinating a unified government response.

Public Service joint ventures

The proposals for joint ventures are intended to provide a way of joining up delivery of one or more functions that would otherwise be delivered separately by departments. The key uses of these models would be to join up or align service delivery and/or regulatory functions where this makes sense, though a joint venture could also have an operational policy function related to its core purpose.

An example of where an Interdepartmental Venture could be used would be to join up a small number of agency delivery functions in a particular place – for example, border agencies operating in Auckland Airport. An Interdepartmental Venture could be used in a range of ways, from simply investing in joint assets (e.g. improved technology for border management for New Zealand and New Zealanders) to fully integrating frontline delivery to streamline the passenger experience.

A Joint Operational Agreement could be used to allow for strengthened shared services agreements between agencies, giving the provider agency the certainty necessary to invest in scaled-up infrastructure and capability. This would allow for more efficient and higher quality corporate services, particularly for smaller agencies.

Financial implications and risks

Feedback from the consultation process and from agencies on proposals to increase the range and flexibility of organisational arrangements have revealed a concern of increased complexity in the Public Service. As with proposals in section 12 of this document, there is a risk that, if not implemented with careful consideration and only when necessary, these organisational forms could result in increased costs and complexity. SSC has an existing role advising and providing guidance on machinery of government, and it will remain closely involved in proposals to implement and monitor the performance of these models to ensure they are only used where necessary and avoid unnecessary proliferation. We do think that they could, in some areas, increase clarity around accountability and responsibility where complex problems span multiple agencies, and therefore it is appropriate that no single department or chief executive is held accountable.

A second risk in implementing models with shared governance is a diffusion of responsibility, as discussed in section 10.5. However, this is mitigated by keeping boards limited to a small group of chief executives, rather than the full suite of chief executives discussed in option 3 of section 10.5.

These proposals do not have direct financial implications, as any costs will be incurred when the models are implemented, not when the legislation is passed. While these models will require resources, these will differ depending on how they are implemented, so it is not possible to know *ex ante* the scale of these associated costs. Cabinet will need to assess financial implications on a case by case basis as the models are implemented, as is currently the case with the establishment of new departments. In deciding to implement one of the new models, Cabinet would also consider the trade-offs in regard to required resourcing, weigh the cost of implementation against the expected benefits and agree a suitable approach to ongoing evaluation, as is the case for any machinery of government proposal.

14. A New Public Service Act

14.1 Options

This Impact Statement has outlined several proposals aiming to:

1. deliver better outcomes and better services
2. create a modern, agile and adaptive New Zealand Public Service
3. affirm the constitutional role of the Public Service in supporting New Zealand's democratic form of government.

There are a different ways these to implement these proposals.

Feedback from consultation has helped develop the options below, which have a strong emphasis on non-legislative reform and could be supported by legislative reform.

There are three options to implement these objectives:

- Option 1 (status quo): continue to use non-legislative means to implement the objectives
- Option 2: supplement the non-legislative changes with legislative changes – an amendment to the current State Sector Act
- Option 3: supplement the non-legislative changes with legislative changes – a new Public Service Act.

These options are discussed and analysed below.

Option 1 (status quo): non-legislative changes

Many submitters during consultation emphasised the importance of non-legislative reform to support legislative reform. Under the status quo, SSC would continue to evolve the system leadership role. The Commission has established the State Services Leadership Team – a group of chief executives brought together by the State Services Commission from across the State Service. This team considers the cultural and behavioural changes needed in the system to continually deliver better for the Government and for New Zealanders.

They focus on defining and delivering a continuous programme for change to support system improvement. Progress has already been made in addressing issues that require collective action, for example:

- setting outcome and service targets for some priority results
- establishing system-level leadership of key functions such as IT, data sharing, digital services, procurement and property, and professional leads in policy, legal, finance, communications and human resources
- convening the Leadership Summit which brought together 650 senior leaders across government as a group for the first time ever to discuss how they are going to work together as a team; and
- introducing awards and recognition for public servants who demonstrate exceptional care and commitment to New Zealanders and act with the highest standards of integrity, to embed and nurture a spirit of service to the community.

The State Services Leadership Team can be used as a key mechanism for implementing change in the public management system.

However, experience and evidence from the past 30 years suggests that non-legislative solutions alone would fail to meet the objectives of the reform, as they would not address the core problems embedded in the current legislation. A significant number of non-legislative solutions have been attempted over the past thirty years to address identified problems. There have also been 13 amendments. These changes, the core elements of the 1980s and 90s model, and the associated incentives, remain deeply embedded within the legislative and performance management framework.¹²⁷ Previous non-legislative reform initiatives (as outlined in section 1 of this document) proved difficult to sustain in the face of vertical incentives that have been hard-wired into legislation.

While non-legislative initiatives go part-way towards meeting the objective of delivering better outcomes and services, these alone cannot create a modern, agile and adaptive Public Service without new tools and instruments allowing more flexibility. Neither can they affirm the constitutional role of the Public Service without making changes to the current framework.

As canvassed in section 1.3, there is also a risk that if option 1 is chosen, agencies may lack the incentive to follow through with these proposals, and will instead be guided by the vertical incentives in the current Act.

Most submitters supported legislative change. A non-legislative programme would likely fall short of their expectations of the reforms.

Option 2: supplement non-legislative changes with amendments to the State Sector Act

While non-legislative solutions are critical to achieving the objectives outlined above, these changes could be led by targeted amendments to the State Sector Act. The majority of submitters supported legislative change, supported by non-legislative mechanisms. This included strong support from public servants.

Amending the State Sector Act would allow us to implement some of the tools and frameworks proposed in the preceding sections to enable flexibility in the system, such as a flexible departmental agency and a functional chief executive.

However, the current State Sector Act is written in terms of responsibilities of the Commissioner and chief executives, not the Public Service. It is not a good fit to insert a purpose, principles and values of the Public Service into an Act that is not about the Public Service. Neither would this option remove or temper the vertical incentives in place under the current Act.

Amending the State Sector Act also has the disadvantage of amending what is already a complex and patchwork piece of legislation. This option may fail to set the clear vision for the Public Service that is envisaged by this reform. While the current Act's aims are to instill accountability, contractualism, managerialism and decentralisation into the Public Service, the aims of this reform are to instill practices of agility, unity and collaboration, which would be at cross-purpose with the current practices, potentially resulting in more confusion and difficulty interpreting the Act.

¹²⁷ Lodge, M. and D. Gill. 2011. Toward a New Era of Administrative Reform? The Myth of Post NPM in New Zealand.' Governance: An International Journal of Policy, Administration, and Institutions. 24(1): 141-166.

Option 3 (preferred option): supplement non-legislative changes with a new Public Service Act

This option is similar to Option 2, but rather than making targeted amendments to the State Sector Act, a new Public Service Act would be created. A new Public Service Act would address the normative effect of the current legislative framework and tilt the balance towards a more unified ethos and collaborative work becoming a norm rather than the exception (as outlined in Section 1.3).

For example, one preferred option, contained in the leadership section above, is to establish system leaders at chief executive level whose role is system leadership rather than agency leadership. This changes the norm, established in the current legislation, that a chief executive role only exists to lead a department (ie the establishment of a department establishes a chief executive position). In the State Sector Act, only departmental chief executives are vested with the necessary powers and functions to lead a department.

Another example are the proposals that set out to change the norm that public servants identify primarily with their individual agency, rather than operating within a unified ethos and part of a single Public Service. Similarly, proposals to develop and enshrine values seek to recognise and incentivise collaborative behaviours. Taken collectively, the proposals seek to achieve a fundamental shift in the balance of the overall framework from that which is currently hard-wired into the State Sector Act.

A new Public Service Act provides the opportunity to define the Public Service in terms of a common mission statement based on a spirit of service to New Zealanders, and change the incentives placed on agencies to focus on the achievement of outcomes of the whole Public Service, rather than individual agencies. Unlike the current Act, a new Act would start with the principles of the Public Service rather than the functions and powers of the Commissioner. This would put the Public Service at the centre of the Act and ensure the meaning and purpose of the Public Service and what it stands for is clearly communicated.

Repealing and replacing an Act builds on recent precedent. For example, the Customs and Excise Act 1996 was extensively amended 28 times before eventually being replaced by the Customs and Excise Act 2018. This provided an opportunity to modernise the content and structure of the Act and make it fit for purpose.

There are three main drivers for a new Act:

1. The Act is 30 years old. It has been amended multiple times and needs to be modernised and clarified. Having clear and modern legislative is important to supporting trust in government and institutions.
2. The world has changed. Rapid social, demographic and technology-driven change on a global scale mean there must be action to ensure New Zealand Public Services are fit for the future and meet the expectations of New Zealanders. A new approach is needed that joins New Zealand Public Service together with citizen-focused outcomes and services.
3. The current public management system is based on the reforms of the late 80s which sought to embed the theory of the marketplace and business-like management models. This has worked well to ensure that departments are accountable for delivering outputs, but they have also narrowed the focus of each department rather than instilling a larger sense of unified common mission.

A large majority (24 out of 25) of submitters who commented on how to make legislative changes supported the development of a new Act.

Table 18. Options for implementing proposals

Reform objectives			Criteria						
Deliver better outcomes and better services	Create a modern, agile and adaptive New Zealand Public Service	Affirm the constitutional role of the Public Service in supporting New Zealand's democratic form of government	Policy objectives			Acceptability	Clarity	Sustainability	Feasibility
	Provide the ability to effectively join up around citizens and to respond to cross-cutting issues	Generate alignment and interoperability across the Public Service	Establish behavioural and cultural foundations for a unified Public Service						
Option 1 (status quo): continue to use non-legislative means to implement the objectives	0 While there are non-legislative tools such as the SSLT that are making incremental changes to the system, there are no tools or frameworks under the status quo that can provide the step change needed to join up around citizens and respond to cross-cutting issues.	0 While there are non-legislative tools such as the SSLT that are making incremental changes to the system, there are no tools or frameworks under the status quo that can provide the step change needed to generate alignment and interoperability across the Public Service.	0 The current State Sector Act is written in terms of responsibilities of the Commissioner and Chief Executives, and does not outline the role of the Public Service.	0	0	0	0	0	
Option 2 (preferred option): supplement the non-legislative changes with legislative changes – an amendment to the current State Sector Act	++ Amending the State Sector Act would allow us to implement some of the tools and frameworks proposed in the preceding sections (such as the flexible departmental agency, and Public Service joint ventures) to provide the ability to join up around citizens and respond to cross-cutting issues.	++ Amending the State Sector Act would allow us to implement some of the tools and frameworks proposed in the preceding sections (such as functional chief executives and appointing public servants to the Public Service) to generate alignment and interoperability across the Public Service.	0 The current State Sector Act is written in terms of responsibilities of the Commissioner and Chief Executives, not the Public Service. It is not a good fit to insert a purpose, principles and values of the Public Service into an Act that is not about the Public Service.	+	-	+			
				118 submissions responded to the question whether we need to make law changes to improve our Public Service, including 83 from public servants and the PSA, and 21 from members of the public. 80 submissions supported legislative change, including strong support from public servants and the PSA. Others supported law change in some areas, but also non-legislative measures were needed.	This option may fail to set the clear vision for the Public Service that is envisaged by this reform. While the current Act's aims are to instill practices of accountability, contractualism, managerialism and decentralisation into the Public Service, the aims of this reform are to instill practices of agility, unity and collaboration, which would be at cross-purpose with the current practices, potentially resulting in more confusion and difficulty interpreting the Act.	This option ensures that the mechanisms and tools proposed in this impact statement will have legislative backing and incentive to be implemented, and won't be eroded over time by reverting back to vertical management.			

<p>Option 3: supplement the non-legislative changes with legislative changes – a new Public Service Act</p>	<p style="text-align: center;">++</p> <p>A new Act will allow the full suite of proposals discussed in this Impact Statement to be implemented. These proposals will provide the ability to join up around citizens and respond to cross-cutting issues.</p>	<p style="text-align: center;">++</p> <p>A new Act will allow the full suite of proposals discussed in this Impact Statement to be implemented. These proposals will help generate alignment and interoperability across the Public Service.</p>	<p style="text-align: center;">++</p> <p>A new Act could be centred around the Public Service, starting with the principles of the Public Service rather than the functions and powers of the Commissioner. This would more clearly communicate the meaning and purpose of the Public Service and what it stands for.</p>	<p style="text-align: center;">++</p> <p>25 submissions included a response to the question whether we should amend the State Sector Act or develop a new Act. Only one submission supported amending the current State Sector Act.</p>	<p style="text-align: center;">++</p> <p>This option sets a clear vision of the role of the Public Service, and the expectations on the Public Service of agility, unity and collaboration.</p>	<p style="text-align: center;">++</p> <p>This option ensures that the mechanisms and tools proposed in this impact statement will have legislative backing and incentive to be implemented, and wont be eroded over time by reverting back to vertical management. A new Act also ensures the proposals will endure, as they are less likely to be overlooked in further amendments to the current Act.</p>	
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Key:

- ++ better than doing nothing/the status quo
- + somewhat better than doing nothing/the status quo
- 0 about the same as doing nothing/the status quo
- somewhat worse than doing nothing/the status quo
- - worse than doing nothing/the status quo
- relevant objective or criteria

PROACTIVELY RELEASED BY THE MINISTER OF STATE SERVICES

While amending the State Sector Act will allow some of the objectives to be achieved, a new Act has clear advantages, in that it allows all the proposals in this impact statement to be implemented, while affirming the constitutional role of the Public Service in supporting New Zealand's democratic form of government.

14.2 Conclusion and impact

The State Services Commission recommends Option 3 – supplement non-legislative changes to the public management system with a new Public Service Act.

There are limitations on the extent to which the impacts of these options can be assessed specifically or quantitatively. This is mainly because the impact of these options is limited to an enabling effect on operations of the Public Service. They will provide the tools and instruments to bring about change in a managed way to meet current and future requirements. The new statute will not drive sudden or discontinuous change in the system. The measurable impacts of these reforms will not be realised until the subsequent work programmes and plans enabled by this legislation have been prepared.

However, some of the more general impacts of a new Public Service Act are:

- A change in how the Public Service operates and delivers services to the public. In its widest reach, it will affect all citizens. It is expected to make the Public Service more agile and adaptive to deliver better services and better outcomes for its citizens.
- Changes to leadership structures and roles, workforce and architecture provisions, which will mean agencies and departments can more easily join capabilities and resources to work together to solve some of the long-standing complex issues affecting citizens that cannot be solved by one department operating alone.
- the role and functions of the Commissioner, Deputy Commissioner, chief executives and the senior leaders will be affected.
- Māori will be affected as the Act will enable the Public Service to strengthen engagement, participation and partnership with Māori, deliver services that are responsive and accessible to Māori, improve Māori outcomes, and improve Māori workforce composition and capability.

A new Act would need to sit alongside, and be supported by, reform of the Public Finance Act and the Crown Entities Act.

15. Implementation and Operation

15.1 How will the new arrangements be given effect?

Legislative process

Legislation is required to implement the proposals set out in this impact statement, including replacing the current State Sector Act 1988 with a new Public Service Act. Specific proposals require new legislation (e.g. for new organisational forms) or changes to existing provisions (e.g. responsibilities of Public Service chief executives), and consequential amendments to other Acts (e.g. to replace references to the “State services” in a number of other Acts).

The legislation programme for 2018 included a New Zealand Public Service Bill with a priority 6 categorisation (instructions to Parliamentary Counsel Office in 2018). The range of potential amendments expanded and a bid has been submitted to include a bill on the legislation programme for 2019 with a priority 4 categorisation (to be referred to a select committee in 2019). The Attorney-General has authorised the Parliamentary Counsel Office to receive drafting instructions before final policy decisions by Cabinet.

The proposed timeline for enacting this Public Service Act is as follows:

Stage	Timing (TBC)
Agency consultation	8 March – 25 March 2019
Ministerial consultation	4 April – 18 April 2019
Policy decisions	GOV: 9 May 2019 Cabinet: 13 May 2019
Final drafting instructions sent to the Parliamentary Counsel Office	14 May 2019
Draft Bill available for targeted consultation with stakeholders	Late July 2019
Bill provided to Ministry of Justice for BORA vet	Late July 2019
Bill considered by Legislation Committee	20 August 2019
Bill considered by Cabinet	26 August 2019
Introduction of Bill	27 August 2019
Report back from Select Committee	March 2020
Enactment	June 2020
Implementation	March 2019 - 2022

Once an initial draft of the Bill is prepared, we will engage with public servants and other specific stakeholder groups in targeted consultation to allow for the refinement of the policy settings and implications before the Bill is introduced, and to discuss the process of implementing and embedding the changes.

Implementation management and administration

The change process, including the development of an implementation plan and monitoring of progress against this plan, will be led through the Commission working collectively with Public Service chief executives. Once enacted, the Commission will be responsible for administering the Act.

One of the proposals in the Public Service Act reform package is to make the Commissioner responsible for convening a Public Service Leadership Team consisting of the Public Service chief executives, with a corresponding responsibility for the chief executives to support the Commissioner in their leadership of the Public Service.

While these new responsibilities will provide the chief executive group with a clearer and strengthened mandate to support their leadership of the system, this shift will build on existing collective arrangements that have been in place for a number of years in the form of the State Services Leadership Team— a chief executives' group from across the State services that is regularly convened to consider the cultural and behavioural changes needed to drive improvements in the system and to embed new ways of working to continually deliver better for the Government and for New Zealanders.

This leadership group is well-positioned to drive and oversee the changes necessary to implement and embed the proposed legislative reforms. The group will take responsibility for embedding the proposed changes to the leadership of the Public Service. The wider group is divided into smaller, more targeted working groups responsible for different areas of system leadership across the Public Service. Many of these groups are aligned to specific areas of the reform package, and are therefore well-placed to plan and oversee the implementation of particular proposals:

- **System reform**, which is overseeing the reforms to the State Sector Act and Public Finance Act. This group would coordinate implementation of the wider reform package, and the legislative changes.
- **System design**, which aims to change the way the Public Service organises itself to support better services and outcomes for New Zealanders. This group would oversee implementation of the new models for organising and governing resources within departments and for cross-agency activity.
- **Spirit of service**, which aims to create a unifying Public Service brand that rests on the foundations of integrity, transparency and independence. This group would oversee the implementation of proposals in section 2 relating to purpose, principles and values of the Public Service, as well as new duties and responsibilities of chief executives.
- **Māori-Crown relationship**, which aims to build a workforce that is valued and recognised for its Mātauranga Māori cultural competence. This group would oversee embedding the Public Service's role in supporting the Māori-Crown relationship.
- **Papa pounamu**, which aims to ensure that the State Services reflects, understands and values the diversity of the communities we serve. This group would oversee implementation of proposals relating to diversity and inclusion.
- **Our people**, which aims to embed a common approach to leadership and talent development across the system. This group would oversee proposals relating to employment in the Public Service, pay equity, and senior leadership.

The State Services Leadership Team may take a more structured role in leading the reforms ahead of the strengthened leadership mandate that will be conferred on them as the new Public Service Leadership Team. This would ensure that the Public Service has already begun to adapt to a new way of working by the time the legislative changes take effect. The sub-groups have been developing work programmes in preparation for the change process, including approaches to communicating the changes to the Public Service. The wider group may also take a leadership role in the reform of the Public Finance Act, and there is an already-established Public Finance System sub-group that may be suited to oversee this.

As this work develops, there are several implementation activities the Public Service Leadership Team can expand on or initiate to ensure that the changes proposed in this Impact Statement are disseminated across the system.

Consideration will be given to:

- Using flagship initiatives to model changes, and use lessons learned from those initiatives to enable widespread implementation
- Using champions in the Public Service to demonstrate to other agencies how the proposals can be implemented
- Promoting successful initiatives across the Public Service
- Continue with work already underway to systematize supporting infrastructures, policies, tools and resources to allow unification of the Public Service
- Championing the use of toolkits and resources already available that align with the future vision for the Public Service, while also guiding development of initiatives that set expectations of culture and reduce barriers to interoperability and achievement of workplace aims
- Maturing current governance and leadership models at senior levels to provide direction as to how officials can align themselves in a similar fashion
- Using established networks and events like the Leadership Summit to co-design and test strategies for implementing the proposals.

16. Monitoring, evaluation and review

16.1 How will the impact of the new arrangements be monitored?

As part of the change management process, each chief executive sub-group will develop an approach to embedding the changes and monitoring progress. This will include identifying areas of priority for implementation, determining resource requirement, defining what success looks like and defining appropriate progress measures for each proposal.

Where possible the monitoring of progress will be supported by the State Services Commission, which already collects data on workforce composition, remuneration, diversity, and career development. Each sub-group also has a secretariat function either hosted in a lead Public Service department or utilising secondments, which would support the group to effectively monitor implementation including obtaining access to necessary information.


There will also be new monitoring requirements for the Commissioner established in relation to some of the specific proposals, such as supporting the Māori - Crown relationship. This will be additional to the existing monitoring requirements on the Commissioner such as monitoring equal employment opportunities programmes.

Measures for monitoring and evaluation

A high-level measurement framework for the proposed reform package is provided below. This aligns with the intervention logic for the reforms and covers process measures for implementing the various proposals as well as impact (intermediate outcome) measures and measures which will indicate whether reform objectives have been achieved. Some of these measures have established baselines in data collected by Public Service agencies (e.g. Kiwis count, DIA and MBIE research) or international organisations (e.g. OECD, World Justice Project), while others will involve surveying public servants through the proposed Public Service census being developed by the State Services Commission. We expect that process measures will allow us to measure the effectiveness of implementation within 2-3 years of legislation being passed, but that improvements in reform objective measures will be over a longer time horizon (5-10 years).

Process measures	
<ul style="list-style-type: none"> There is a process in place to develop values in consultation with public servants Values are developed and tabled in Parliament 	PURPOSE, PRINCIPLES AND VALUES
<ul style="list-style-type: none"> There is a process for socialising Public Service purpose, principles and values with employees of Crown agents 	EXTEND THE SCOPE OF THE PUBLIC SERVICE
<ul style="list-style-type: none"> Agencies are able to generate briefings that meet requirements, within baselines Commissioner issues State of Public Service briefing 	SUPPORT GOVT. FORMATION, INSIGHTS BRIEF & STATE OF PS
<ul style="list-style-type: none"> Employment agreements are updated to reflect new legislative requirements, and common conditions are implemented for targeted professions 	APPOINTMENT TO PUBLIC SERVICE AND COMMON CONDITIONS
<ul style="list-style-type: none"> There is an identified cohort of senior leaders 	SENIOR LEADERSHIP SERVICE
<ul style="list-style-type: none"> The Public Service Leadership Team is convened and has developed a clear work programme 	PUBLIC SERVICE LEADERSHIP TEAM

<ul style="list-style-type: none"> • A second statutory Deputy Commissioner is appointed • Comprehensive evaluation of functional lead roles is conducted (plan for 2022) 	<p>STRENGTHENING THE LEADERSHIP OF THE CENTRE</p>
<ul style="list-style-type: none"> • Where implemented, functional chief executives and departmental chief executives believe that the model helps them to operate more effectively 	<p>FUNCTIONAL CHIEF EXECUTIVES</p>
<ul style="list-style-type: none"> • Where implemented, board members believe that the model helps them to operate more effectively 	<p>INTERDEPARTMENTAL EXECUTIVE BOARDS</p>
<ul style="list-style-type: none"> • Where implemented, departmental agency chief executives and departmental chief executives believe that the model helps them to operate more effectively 	<p>FLEXIBLE DEPARTMENTAL AGENCY MODEL</p>
<ul style="list-style-type: none"> • Where implemented, member chief executives believe that the model helps them to operate more effectively 	<p>PUBLIC SERVICE JOINT VENTURES</p>
<p>Impact measures</p>	
<ul style="list-style-type: none"> • Public servants (including Crown agent employees) are aware of purpose, principles and values and see how these apply to their work (Public Service census) • Political parties do not claim adverse impact by lack of access to Public Service • Public feedback indicates that topics and information in insights briefings are appropriate • Targeted consultation with public management scholars used to evaluate briefing on state of the Public Service • Public servants are aware of their role in the Māori-Crown relationship • There is an increase in representation of disadvantaged groups in the Public Service • Public servants identify more with the Public Service than an individual department (Public Service census) 	<p>Establish behavioural & cultural foundations for a unified public service</p>
<ul style="list-style-type: none"> • Senior leaders see benefit in being part of the senior leadership service • Public servants identify more with the Public Service than an individual department (Public Service census) • Functional leaders report that they can generate better alignment and interoperability across the system, and departments report benefit from their involvement 	<p>Generate alignment and interoperability across the public service</p>
<ul style="list-style-type: none"> • Perceived effort in engaging with government decreases, satisfaction with government increases, increase in service resolution within two contacts (MBIE survey) • Ease of service interaction increases (measure currently under development by DIA) • Pain points experienced in interaction with government decrease (replicate research from Result 10) • Kiwi's Count survey results continue to improve 	<p>Provide the ability to effectively join up around citizens and to respond to cross-cutting issues</p>
<p>Objective measures</p>	
<ul style="list-style-type: none"> • Trust in government increases (measured by e.g. OECD, World Bank, World Justice Project) 	<p>Affirm the constitutional role of the public service in supporting NZ's democratic form of government</p>
<ul style="list-style-type: none"> • New Zealand's scores on international Public Service rankings increase (e.g. InCiSE rankings), and scores improve for measures of: <ul style="list-style-type: none"> ○ Policy making (e.g. Bertelsmann Sustainable Governance Indicators) ○ Fiscal and financial management (e.g. World Economic Forum Global Competitiveness Index, OECD budgeting indices) ○ Regulation (e.g. OECD Indicators of Regulatory Policy and Governance) 	<p>Create a modern, agile and adaptive New Zealand public service</p>

<ul style="list-style-type: none"> ○ HR management (e.g. Quality of Government (QoG) Expert Survey Data, University of Gothenburg) ○ Integrity (e.g. Transparency International Global Corruption Barometer, OECD “Government at a Glance” data) ○ Openness (e.g. World Justice Project: Open Government Index, The Open Knowledge Foundation: Open Data Index, UN E-participation Index) ○ Inclusiveness (e.g. OECD Quality of Government data) 	
<ul style="list-style-type: none"> ● Outcomes for New Zealanders improve as measured through the Treasury Living Standards Framework (Note: while we expect this reform programme to contribute to outcomes, impact will be difficult to attribute across time and causality) 	

16.2 When and how will the new arrangements be reviewed?

The new Public Service Act will be an enabling piece of legislation through which subsequent work programmes and implementation of proposed models can effect positive change in the Public Service. In some cases, subsequent work programmes or implementation of specific models may be subject to Regulatory Impact Assessment requirements themselves, at which time those further impacts can be assessed to ensure they are meeting the aims and requirements of the new Public Service Act.

As the new arrangements may be untested when the legislative changes take effect, there are a range of implementation risks as canvassed in the sections on each set of proposals. To mitigate these risks, we propose to take an “action learning” approach with an iterative approach to review. This would involve focusing on a few key projects that demonstrate the new ways of working and enabling the Public Service to use early learnings to further refine our implementation approach within the flexible legislative framework. For example, implementation of the alternative structural and governance arrangements to support cross-agency working would initially be implemented in response to one or two specific problems, and the successes and challenges of implementation used to inform subsequent uses of the model in an iterative manner.

In some cases, chief executive groups are already laying the foundations for implementation of specific models, including through the Family Violence and Sexual Violence Joint Venture between social sector agencies. This venture is currently operating as a business unit with a Cabinet-agreed cross-agency governance group. While limited in its current iteration by lack of access to the features of the legislative models set out in the proposals above, it constitutes a relatively mature and comparable arrangement that can be used both to inform our initial implementation approach and as a test case for the legislative model to further refine the approach for future implementation.

17. Summary of proposals

Purpose, principles and values of the Public Service

1. Codify the new Public Service purpose in a new Public Service Act.
2. Codify the foundational principles of the Public Service in a new Public Service Act.
3. Codify the values in a new Public Service Act following targeted consultation.
4. Include a statement affirming the rights of public servants in a new Public Service Act.
5. Explicitly provide for the Commissioner to issue guidance on the rights and responsibilities of public servants.

Scope of the Public Service

6. Extend the scope of the Public Service to include Crown agents.

Providing Information to Support the Government System

7. Place a duty on chief executives of each department (or collectively by groups of chief executives) to independently produce long-term insights briefings identifying future trends and long-term insights.
8. Place a duty on the Commissioner to produce a system wide 'state of the public sector' report.
9. Codify the role of the Commissioner in supporting the government formation process.

Te Ao Tūmatanui

10. Legislate a stand-alone prominent clause that refers to the Treaty of Waitangi, and expectations put on the Commissioner and chief executives, for:
 - a. engagement, participation and partnership with Māori: proactive informed and collaborative approaches that are mutually beneficial and strengthen the relationship
 - b. 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
 - c. 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
 - d. 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.

Employment in the Public Service

11. Provide for Public Service employees to be appointed to the Public Service rather than solely to the department which employs them.
12. Provide for the transfer of annual leave entitlement when changing jobs within the Public Service.

13. Allow the Commissioner to place conditions on delegation of collective bargaining responsibilities to chief executives, to build a framework of common terms and conditions across the Public Service.
14. Carry over into new legislation the current Act's provision for Government Workforce Policy Statements, so that Government expectations can clearly be set.

Diversity and Inclusion

15. Develop a workforce policy statement on diversity and inclusion, setting government expectations in this area.
16. Make explicit recognition of the value of diversity and of fostering inclusiveness in legislation.
17. Place a duty on chief executives to promote inclusiveness in employment and workplace policies and practices.
18. Provide for the Commissioner to lead on diversity and inclusiveness, to provide guidelines and standards to that end, and to report on diversity and inclusiveness.

Pay Equity

19. Extend the Commissioner's general oversight role of collective agreement negotiations to cover the resolution of pay equity claims occurring within government departments.
20. Develop a workforce policy statement to be used to strengthen the oversight and consultation requirements on Crown agents.

State Services Commissioners

21. Allow the appointment of a second, optional, statutory Deputy State Services Commissioner.

Leadership of the Public Service

22. Allow for a new type of system leader – a functional chief executive, who would take on a system leadership role, rather than leadership of an agency.
23. Codify the State Sector Leadership Team, so that it is required by law.

Senior Leadership

24. Remove the key position provisions from legislation.
25. Develop and implement a strategy for senior leadership for the purpose of development (as is currently in place), and also to meet the needs of the system as a whole.

Flexible Organisational Arrangements within Departments

26. Establish an improved, flexible departmental agency model.

New Models for Cross-Agency Working

27. Establish new organisational models for Interdepartmental Executive Boards, Interdepartmental Ventures, and Joint Operational Agreements.

A New Public Service Act

28. Legislate the relevant proposals listed above in a new Public Service Act.