

## Public sector (pillar 4)

### Summary

The “public sector” covers the public service, Crown entities, and local government as separate governance subsystems and as components of the national public sector system.<sup>372</sup> The National Integrity System is assessed for its effectiveness in containing corruption and promoting ethical behaviour and in safeguarding other governance values.<sup>373</sup>

Public sector institutions contribute to New Zealand’s low level of corruption against each integrity dimension. Important integrity underpinnings are:

- a national culture that strongly supports adherence to the rule of law with, in general, a high congruence between what the laws say and actual practice<sup>374</sup>
- sophisticated and comprehensive approaches to transparency and accountability, including central bank independence and public sector financial management
- operational accountability integrated into the fabric of public management processes rather than treated as an afterthought<sup>375</sup>
- coherence across public sector governance frameworks covering state-owned enterprises, monetary policy, fiscal policy, and central and local government and their autonomous agencies.

Low corruption is important to, but by no means the only element in, good public sector governance. New Zealand has a powerful executive with comparatively weak formal checks and balances, and this report highlights emerging governance challenges in the making of policy and regulation, the relationship between ministers and officials, and the relationship between central government and local government. The main findings in this assessment relate to resourcing, independence, transparency, accountability, public procurement, integrity systems, integrity promotion, and the public sector reform programme.

**Resourcing:** The systems for resourcing public sector organisations are adequate. Output-based budgeting and reporting provides reliable information on the cost and volume of services.<sup>376</sup> Two systemic factors can contribute to the under-funding of

---

<sup>372</sup> The “public sector” includes the state services (entities that serve as instruments of the executive branch of government, and also local government, sub-national governance entities that exercise their powers under statute. This report does not cover state-owned enterprises or statutory bodies outside the executive such as the Reserve Bank of New Zealand. It is hoped that after this National Integrity System assessment, a separate assessment will be undertaken of state-owned enterprises against international standards such as OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (Paris: OECD, 2005).

<sup>373</sup> In keeping with the wider definition of integrity adopted for the New Zealand National Integrity System.

<sup>374</sup> For example, after the Christchurch earthquakes public concern focused on the adequacy of building standards. Compliance with existing standards (with one or two tragic exceptions) has not been an issue.

<sup>375</sup> Allen Schick, *The Spirit of Reform: Managing the New Zealand state sector in a time of change* (Wellington: State Services Commission, 1996).

<sup>376</sup> This judgement on the resourcing system does not preclude that individual entities may be under-resourced.

services: insufficient information on the results of policies and a regulatory interface between central and local government that risks distorting local resource allocation.<sup>377</sup>

**Independence:** The public sector is not improperly influenced by other branches of the state or by non-governmental institutions. Public services are delivered without party-political bias. Public servants are seen as non-political actors. Well-institutionalised rules and conventions maintain public sector political neutrality around general elections.

The conventions for relationships between ministers and departments in respect of independent policy advice and major decisions on departmental management lack clarity.<sup>378</sup> Some decisions by central government on local governance leave unclear the place of local democracy in the country's governance. Some decisions on Crown entity board appointments have left room for doubt that the principle of Crown Entities' arm's length relationship with government has been respected.<sup>379</sup>

**Transparency:** The Official Information Act 1982 (OIA)<sup>380</sup> combined with the Public Finance Act 1989, generally accepted accounting principles, the Reserve Bank of New Zealand Act 1989, and good financial management control make the New Zealand public sector one of the world's most transparent.<sup>381</sup> This institutional assessment generally confirmed this high standing. Transparency shortcomings were, however, found in meeting international good practice standards for national environmental reporting.<sup>382</sup> There have also been important systemic shortcomings across government in the reporting on the impact of policies.<sup>383</sup>

**Accountability:** Accountability relationships within the public sector, among agencies, departments, and their ministers, are clear at the operational level. There is a strong legal framework for the executive's accountability to the legislature. A variety of laws and processes all contribute in practice to public sector accountability for management and activities.<sup>384</sup> Legislation for local government and for the management of natural resources provides for the direct engagement of and accountability to local communities. School boards are locally elected from among students' parents.

---

<sup>377</sup> Productivity Commission, *Towards Better Local Regulation* (Wellington: New Zealand Productivity Commission, 2013).

<sup>378</sup> Review of Expenditure on Policy Advice, *Improving the Quality and Value of Policy Advice: Findings of the committee appointed by the government to review expenditure on policy advice* (Wellington: Treasury, 2010) (often called the "Scott Report"). The review was chaired by former Secretary to the Treasury Dr Graham Scott. The other team members were former Secretary of the Department of Human Services in Victoria, Australia, Patricia Faulkner and Commerce Commission member Pat Duignan.

<sup>379</sup> See the independence section of this pillar report.

<sup>380</sup> One of the earliest countries to do so and with a scope that covers Cabinet papers.

<sup>381</sup> Open Budget Index 2011

<sup>382</sup> Parliamentary Commissioner for the Environment, *How Clean is New Zealand? Measuring and reporting on the health of our environment*, 2010.

<sup>383</sup> The government released a discussion document in 2013 concerning a proposal for a new bill to improve nation-level state of the environment reporting and improve some of the environment statistics that underpin it: Ministry for the Environment, "Release of discussion document: Proposed Environmental Reporting Bill", Cabinet Economic Growth and Infrastructure Committee, March 2013.

<sup>384</sup> The OIA, citizens' surveys, the chief executive management process, the financial management and accounting system, departmental and agency Performance Improvement Framework reports, and reviews of regulatory regimes.

The executive's accountability for the impact of policies is not well institutionalised. Project and programme evaluation occurs in some sectors, but the public management system does not demand that major policies be independently monitored and evaluated. This exposes the government and the public to the risk that policy failures are not recognised and corrected.<sup>385</sup> The public has been particularly at risk from the lack of accountability for regulatory policies.

**Public procurement principles:** Public procurement principles reflect international good practice and the process appears to be working well in general. Faults identified in oversight reports usually relate to relatively marginal issues of process. However, there are shortcomings in information and transparency on what may be the full state of affairs because, in a highly decentralised system by international standards, systematic procurement records are not readily available within departments and agencies. Public procurement has improved since the 2003 National Integrity System assessment, but risks arise from the capability of staff, especially in smaller entities; passive oversight with reliance on targeted discovery through the OIA, select committee mechanisms, and entity-level *ex post* audits; and the potential for conflicts of interest in a small market. The country's exposure to procurement corruption is increasing with the changing geography of its trade and purchasing patterns and increasing off-shore procurement.

**Integrity systems:** Integrity systems in departments and agencies for the control of corruption and promotion of ethical conduct are sound, and the evidence is that, in general, public sector staff act with integrity. Surveys of integrity and conduct (by the State Services Commission) and of fraud awareness, detection, and prevention (Office of the Auditor-General) show good results overall. Management control in some departments and agencies does not appear to be adequate for assuring internal processes for administrative justice.<sup>386</sup>

**Integrity promotion:** The departments and agencies involved are active in fighting corruption and promoting integrity. Those involved in international trade provide information and advice to the business community on New Zealand's international anti-bribery and corruption obligations.<sup>387, 388</sup> New Zealand signed and ratified the OECD Anti-Bribery Convention (2001).<sup>389</sup> Key issues are the need to increase penalties for private sector bribery offences and the ratification and implementation of the UN Convention against Corruption (UNCAC).

**Public sector reform programme:** The government has launched ambitious reforms to better protect the public interest in the managerial problem areas identified. Many of these problems are institutionally embedded, and earlier attempts to solve them have

---

<sup>385</sup> The Public Finance (Fiscal Responsibility) Amendment Bill may rectify this.

<sup>386</sup> Protection of private information, integrity of complaint and dispute settlement procedures, and responsiveness to the OIA and Protected Disclosures Act 2000.

<sup>387</sup> The Serious Fraud Office, Ministry of Justice, Office of the Auditor-General, and SSC.

<sup>388</sup> The Ministry of Foreign Affairs and Trade and the New Zealand Export Credit Office provide high-level advice on their websites.

<sup>389</sup> The effectiveness of its implementation is being assessed by an OECD working group undertaking a phase 3 evaluation.

proven unsustainable. The lesson from the past is that success requires a multi-faceted systemic approach and should be regularly evaluated.

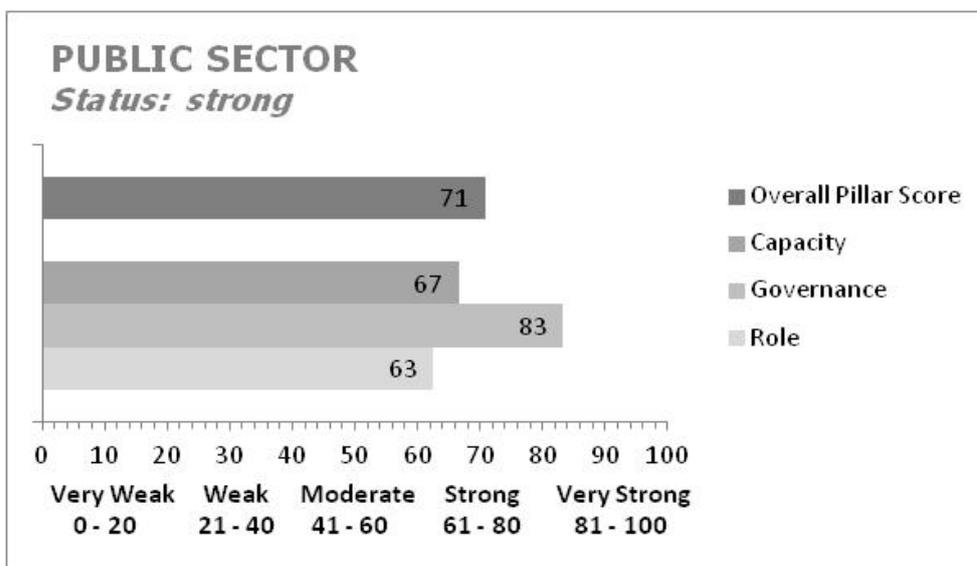
The policy advisory responsibility of the public service is an important underpinning of public sector integrity. The move to enhance the stewardship responsibility of the public service is a positive development. The desired outcome of a more capable and professional public service advisory cadre will also require active support from ministers and Parliament.

The variety of institutions and processes covered in this pillar report is extensive. At a general level, the institutional and governance arrangements strongly support ethical behaviour, suppress corruption, and promote transparency and high levels of accountability. There are, however, pressures (including governance arrangements that have promoted fragmentation) on the capacity of the public service to provide free and frank advice and to assure high-quality regulatory processes. Information on the impact of policies is insufficient, and the role of local government is variable. At a practical level, there has been resistance to the obligations established by the OIA. While procurement processes have improved considerably, specific enhancements are still needed. The public sector has been helpful in promoting integrity among exporters, but could do more to encourage integrity-focused education and training in wider civil society.

Some of the recommendations that would fall to the public sector to implement arise from the analysis in other pillar reports, for example those relating to providing more civics education and establishing registers that record the owners or beneficiaries of companies and trusts. The recommendations in Chapter 6 that flow directly from this pillar report include developing strategies to enhance evidence-based policy making and evaluate the effects of policies and departmental restructuring, initiating or improving reports on social and environmental outcomes and fiscal matters, getting a more firmly embedded role for local government, and improving transparency and capability in procurement processes.

Three broader sets of recommendations draw together many of the threads in this report, and both ministers and the public service will need to drive them. These are recommendations for a national anti-corruption strategy (see the law enforcement pillar report), the development of an Open Government Partnership plan using a consultative process, and further research and evaluation.

Figure 6: Public sector scores



Source: Transparency International New Zealand, 25 October 2013.

### Structure and organisation

In major reforms in the 1980s, New Zealand’s “machinery of government” was transformed at both national and local levels. Large departments were broken up into smaller more-focused departments, policy functions were separated from delivery functions, some non-commercial public functions were corporatised under government-appointed boards, statutory regulators were created, and the commercial operations of government were sold off or corporatised in state-owned enterprises. An integrated set of laws with the Public Finance Act 1989 as its centrepiece drove fundamental changes in fiscal transparency and management. The reforms aimed to reduce regulatory burdens (or transaction costs) within state services and in society at large. Top-down restrictive regulation was replaced by “self-regulatory” design features. In the public service, the specification and reporting of outputs for each department and the accountability of chief executives were seen as replacing much central process control – so too was the use of statutory boards for many public sector functions.

These reforms, combined with an output-based budgeting and reporting system, enhanced transparency, efficiency, and accountability for departmental activities. However, beginning with a review by Allen Schick, a growing number of internal and external commentators concluded that the deep incentives for chief executives to attend to departmental outputs came at the expense of whole cross-governmental effectiveness and due attention to the impact of policies.<sup>390, 391, 392</sup> In the subsequent 15 years, central agencies launched several efforts to retrofit a stronger culture of

<sup>390</sup> Schick, 1996.

<sup>391</sup> Particularly government reports on “Managing for Outcomes” and “Review of the Centre”.

<sup>392</sup> Ed Campos and Sanjay Pradhan, *Budgetary Institutions and Expenditure Outcomes: Binding Governments to Fiscal Performance* (World Bank, 1999) (an early critique that the New Zealand emphasis on technical efficiency and aggregate control was at the expense of allocative efficiency – the capacity to identify and fund new priorities).

collective endeavour across the public service, but these did not produce sustainable change. Current government initiatives are described below.

## Public service

The public service comprises 29 departments.<sup>393</sup> The management of the core public service is decentralised. In the late 1980s traditional permanent secretaries were replaced by chief executives with wide responsibility and authority for department management, including for organisation and personnel. These chief executives have a performance agreement with their minister and a limited-term employment contract with the State Services Commissioner. Ministers are forbidden by law to become involved in departmental staffing matters.

## Crown entities

The Crown entities covered in this assessment are as defined in the Crown Entities Act 2004. They are established by Acts of Parliament and are legal entities in their own right that the Crown owns.<sup>394</sup> The assigning of functions or activities to a Crown entity indicates that they should be carried out at arm's length from the government. Crown entities spend about two-thirds of current and capital spending and one-third of total Crown expenses.<sup>395</sup> District health boards, school boards of trustees, universities and polytechnics, and organisations such as the Privacy Commission, the Accident Compensation Corporation, and Radio New Zealand are Crown entities.<sup>396</sup>

Crown entity boards are accountable to a Responsible Minister, who is assisted by a monitoring department, and to Parliament. Boards have powers similar to those of boards of private enterprises and appoint chief executives. While ministers appoint most Crown entity boards, some are a mix of elected representatives and ministerial appointees. School boards of trustees are elected by the school communities they serve.

## Local government

Local government reforms in 1989 fundamentally changed local government governance, management, and services.<sup>397</sup> Further reforms in 2002 required councils to undertake participatory longer-term planning for their communities' desired outcomes, including sustainable development.<sup>398</sup> Councils have statutory duties and authority to undertake their functions and to secure revenue through a variety of rating

---

<sup>393</sup> State Sector Act 1988: Schedule 1.

<sup>394</sup> Cabinet Office, *Cabinet Manual 2008* (Wellington: Department of the Prime Minister and Cabinet, 2008). [www.cabinetmanual.cabinetoffice.govt.nz/3.28](http://www.cabinetmanual.cabinetoffice.govt.nz/3.28)

<sup>395</sup> State Services Commission, "Crown entities: Balancing independence and risk", updated 28 June 2010. [www.ssc.govt.nz/node/1314](http://www.ssc.govt.nz/node/1314)

<sup>396</sup> *Cabinet Manual*, 2008: para. 3.28.

<sup>397</sup> The 1989 reforms reduced 691 multi-function and special purpose local authorities to 86 new councils encompassing regional and territorial (city and district) councils. In 2010 the number of councils was further reduced to 78 when the new Auckland Council replaced former city councils and the regional council.

<sup>398</sup> The Local Government Act 2002, Local Government Electoral Act 2001, and Local Government Rating Act 2002 have the explicit joint purposes of enhancing local government's responsiveness to community needs and its accountability to those communities.

and charging mechanisms. They are legally required to be financially prudent. By international standards, local government in New Zealand has a narrow range of functions and low central government financing (on average, 9 per cent of operating revenue).

### Recent developments

In April 2011, the government responded to concerns about public service policy advice with a suite of priority actions aimed at sustained improvement in the quality and management of policy. Actions included producing better financial and management information to drive value for money and efficiency; improving the leadership and management of policy advice within agencies; and driving stronger central agency stewardship of the state sector to support cross-agency collaboration, performance improvement, capability building, and a focus on medium- and longer-term policy challenges.<sup>399, 400</sup>

These priorities informed existing and new central agency programmes, some of which have culminated in the major public sector reform programme Better Public Services, which recently amended the Public Finance Act 1989 and State Sector Act 1988.<sup>401, 402</sup> Key goals of Better Public Services are to reallocate decision-rights, so ministers, supported by the central agencies (the State Services Commission, Treasury, and the Department of the Prime Minister and Cabinet) are better able to act strategically across the public sector and to use public sector resources more efficiently from a whole-of-government perspective.<sup>403, 404</sup>

In a supportive initiative, the three central agencies are driving the Performance Improvement Framework under which external consultants (including former senior public servants) are contracted to work with individual departments and agencies to report against a “mixed scorecard” questionnaire, covering results (responsiveness to government priorities and the efficiency and effectiveness of core business) and organisational management.<sup>405</sup> The Performance Improvement Framework review is

---

<sup>399</sup> New Zealand Government, *Summary of the Government Response to the Review of Expenditure on Policy Advice*, April 2011. [www.treasury.govt.nz/statesector/policyexpenditurereview/summ-repa-apr11.pdf](http://www.treasury.govt.nz/statesector/policyexpenditurereview/summ-repa-apr11.pdf)

<sup>400</sup> Review of Expenditure on Policy Advice, 2010.

<sup>401</sup> Better Public Services Advisory Group, *Better Public Services Advisory Group Report* (New Zealand Government, 2011).

<sup>402</sup> State Sector Amendment Act 2013 and Public Finance Amendment Act 2013.

<sup>403</sup> The programme aims to enhance customer feedback, and make better use of private sector services. It has measurable and time-bound outcome targets in 10 high-priority cross-cutting areas. The legislative proposals include a greater range of organisational options (including operational agencies with their own minister), more meaningful information to Parliament about what state services are spending and achieving, requiring Crown entities to collaborate with other public entities, and expanded scope for government direction for Crown entities. Better Public Services requires the central agencies to work more collaboratively as the public sector’s “corporate centre”: Parliament is considering the Public Finance (Fiscal Responsibility) Amendment Bill to introduce greater transparency in relation to priorities for resource allocation, the interaction between fiscal and monetary policy, inter-generational impacts, and the consistency of past fiscal policy with fiscal strategy.

<sup>404</sup> Territorial local authorities were not covered in *Better Public Services Advisory Group Report* (Better Public Services Advisory Group, 2011), yet the Productivity Commission found that local governments have responsibility for implementing 30 pieces of primary legislation, which is overwhelming their capacity and interfering with local priority setting: Productivity Commission: 2013.

<sup>405</sup> State Services Commission, Treasury, and Department of the Prime Minister and Cabinet.

identifying management problems, enhancing cross-government learning, and supporting interdepartmental cooperation. Since the framework was piloted in 2009, most government departments have been reviewed and reviews of Crown entities have started.

The main goal of Better Public Services is to shift the locus of management attention away from individual agencies towards the goals and interests of government as a single enterprise. The proposed combination of legal, structural, and regulatory measures has the potential to change the dynamics of the public management system. Success will require ministers to accept a higher level of cross-portfolio leadership and central agencies and departments to develop the processes and culture necessary for sustained matrix management across the government agenda. These are challenging goals, and, as with any major regulatory reform in a complex area, the consequences are uncertain.<sup>406</sup>

**Regulatory governance** has become more important as the economy has become more complex. Government interventions rely increasingly on influencing independent actors, rather than on direct government action. Big changes have occurred in the scope of regulation, as markets have become global and in the design of regulation to minimise the perceived “dead weight” costs of compliance imposed on those regulated. The public sector reforms of the 1980s and 1990s can be viewed, in retrospect, as a regulatory revolution. New approaches to regulation, whether for health and safety, building standards, financial institutions, or the machinery of government, relied heavily on self-regulation and allowing those regulated to find the best way to reach regulatory goals.

Until 2010, the main means for ensuring the quality of regulation was a *Cabinet Manual* requirement that Cabinet papers with regulatory implications be accompanied by a regulatory impact statement. In 2009, ministerial approval was obtained for a regulatory impact analysis framework, which has been the basis for an ongoing Treasury programme of risk assessment of the main regulatory regimes across government. As of April 2013, Treasury obtained ministerial approval for “Initial Expectations for Regulatory Stewardship”.<sup>407</sup>

#### 4.1.1 Resources (practice)

**To what extent does the public sector have adequate resources to effectively carry out its duties?**

Score: 4

*The public sector has coherent systems for resourcing the public sector with the exception of central government’s transfer of regulatory responsibilities to local government. The high managerial delegation to chief executives and the scarcity of information on service impact makes it difficult to assess resource adequacy at the individual department or agency level.*

---

<sup>406</sup> Peter Mumford, “Best practice regulations: Setting targets and detecting vulnerabilities”, *Policy Quarterly* vol. 7(3), 2011, p. 36.

<sup>407</sup> Treasury, “Regulation information releases”. [www.treasury.govt.nz/economy/regulation/inforeleases](http://www.treasury.govt.nz/economy/regulation/inforeleases)

## Public service

Public service funds are allocated and reported to Parliament on the basis of outputs and are accounted for in a way that reveals the cost of capital and commitments. This provides an information base that helps to ensure activities planned by departments are adequately resourced. Decentralised responsibilities for staff numbers and remuneration levels generally allow departments, within their overall budget, to secure the skills they need.

Resources provided to the public service appear adequate for the services agreed. The SSC commissions a survey of citizens' satisfaction of 42 frequently used public services.<sup>408</sup> This survey, which covers services from both the public service and Crown entities, has shown a small increase in citizens' satisfaction levels since it began in 2009.<sup>409</sup> Departmental reporting systems do not show up under-funding in particular organisations.

Whether public service resources are adequate from the perspective of impact on desired outcomes is not clear, because little policy impact evaluation is undertaken. This information gap makes it difficult to know when activities are sub-critical or being funded to no avail.

## Crown entities

The Crown entity sector is diverse. A broad indication of the adequacy of Crown entity resourcing is that their financial statements show their operating costs are less than their revenue. Individually, such entities have freedom to set rates of remuneration according to market conditions in accordance with an agreed plan. They are funded in different ways, reflecting their roles and degrees of autonomy *vis-à-vis* ministerial control. Funding options include a dedicated budget appropriation, appropriation as part of a broader Vote, formula-based funding allocated from an appropriation, a mix of government and other funding, third-party fees for services, and income from services provided.

Like other agencies within the state sector, they have operated in an environment of fiscal constraint since 2008, following a sustained period of increased government funding before that. There is a general sense that services are being delivered effectively.<sup>410</sup> Board fees and Crown entity employees' wages and salaries are set within broader requirements and expectations for state sector remuneration which aim to achieve consistency in levels of remuneration and ensure reasonable use of public funds.

---

<sup>408</sup> State Services Commission, "Kiwis Count survey: NZers satisfaction with public services," update August 2012.

<sup>409</sup> The overall service quality score for public services between February and June 2012 was 72, an increase over the 2009 score of 69.

<sup>410</sup> State Services Commission, "Kiwis Count survey". [www.ssc.govt.nz/kiwis-count](http://www.ssc.govt.nz/kiwis-count)

## Local government

Strategic and annual plan provisions for resourcing local government encourage transparency and accountability. Territorial local authorities are mainly resourced from rates and other local charges. The availability of resources is subject to the ability of councils to justify and sustain their requirements. There are central-government imposed constraints on their borrowing. They have the freedom to establish their own rates of remuneration for their staff.

The overall adequacy of territorial local authority resourcing is affected not only by the local council's demands, but by the cost of discharging diverse regulatory responsibilities on behalf of central government. The Productivity Commission recently concluded that "the monitoring of local regulations is under-resourced and that this is undermining the achievement of regulatory objectives. Inquiry participants suggested that statutory timeframes are resulting in councils spending more resources on processing consents than they would otherwise consider efficient. The result is that other regulatory tasks (such as monitoring and enforcement) may receive fewer resources than necessary".<sup>411</sup> The commission recommended that central and local government should agree on a protocol to govern their interaction on regulatory matters.

### 4.1.2 Independence (law)

#### To what extent is the independence of the public sector safeguarded by law?

Score: 4

*Weaknesses in the professional independence of the public sector are now being addressed through new legislation on policy advice and stewardship responsibilities. There is confusion and a lack of clarity about when central government can override decisions taken by democratically elected local politicians.*

## Public service

The independence of the public service is safeguarded by law and legal convention. The public service is under the direction of the political executive, but it has its own professional obligations in terms of acting lawfully, acting impartially, and providing policy advice.

Public service independence serves the public interest in the continuity of the government system. Important conventions and rules guide the service during the vulnerable periods of election campaigning, a caretaker government (for delays in forming a government), and government formation. For general elections, conventions for ministers and officials protect public confidence in the democratic process by keeping the public sector running but abstaining from making decisions that might compromise the rights of an incoming government and by ensuring the public service is even-handed in its provision of information to political parties involved in forming the government.

---

<sup>411</sup> Productivity Commission, 2013.

A more difficult area is balancing the public sector's professional independence with its obligation to serve the government of the day. Portfolio ministers' legal powers over their departments are extensive. The State Sector Act's restrictions on ministerial power over departments are precise only about the independence of chief executives in staffing decisions, and the responsibility on the State Services Commissioner to appoint chief executives. (The Executive Council has the power to decline the commissioner's recommendation in favour of a named alternative. In such a case, the decision is published in the *New Zealand Gazette*.<sup>412</sup>)

In ministers' relations with departments, the discretion of individual ministers is limited by the law and by Cabinet discipline. The public service must serve the government of the day and in so doing it is expected to operate as a non-partisan, merit-based career service operating within the law and providing ministers with "free and frank" policy advice – alerting ministers to the possible consequences of following particular policies, whether or not such advice accords with ministers' views.<sup>413</sup> The *Cabinet Manual* says ministers are responsible for the direction and policies of their departments, but should not be involved in their day-to-day operations.<sup>414</sup>

These legal and conventional arrangements are intended to promote the collective interest of government and to maintain the confidence of successive governments, and, in so doing, maintain public trust in government institutions over time.<sup>415</sup> In other developed countries' government systems, these values are preserved through detailed administrative law<sup>416</sup> or the oversight of the legislature.<sup>417</sup> New Zealand inherited the Westminster system in which the independence of the public service is mainly maintained by convention and culture.

### Crown entities

The Crown Entities Act 2004 provides for Crown entities' independence<sup>418</sup> by focusing on the relationships between ministers, boards, and Crown entities. The framework legislation specifically addresses the interaction of Crown entities with the public, stakeholder groups, or business. It may also be covered in individual Crown entities' enabling legislation. State services Crown entities are subject to the SSC code of conduct, which sets independence requirements for interactions with these groups.<sup>419</sup> Boards of schools and tertiary education institutions have independence provisions included in the Education Act 1989.<sup>420</sup>

---

<sup>412</sup> The government's "official newspaper" that the Department for Internal Affairs produces.

<sup>413</sup> Michael Wintringham, "State Services Commissioner". *Guide to the Parliament and the Government*. [www.decisionmaker.co.nz/guide2005/hgw%2005/hgw\\_sscom\\_06.html#state](http://www.decisionmaker.co.nz/guide2005/hgw%2005/hgw_sscom_06.html#state)

<sup>414</sup> *Cabinet Manual*, 2008: para. 3.5.

<sup>415</sup> The appointment of Heads of Mission and Heads of Post in the Ministry of Foreign Affairs and Trade is exempt from this provision of the Act.

<sup>416</sup> For example, Sweden (and other European countries with detailed administrative law).

<sup>417</sup> In the US system, Congress must approve the Administration's senior appointments, and the Congressional Budget Office and the General Accounting Office have statutory advisory independence.

<sup>418</sup> Crown entities' individual legislative provisions for safeguarding independence have not been examined.

<sup>419</sup> State Services Commission, *Standards of Integrity and Conduct* (Wellington: State Services Commission, 2007). [www.ssc.govt.nz/sites/all/files/Code-of-conduct-StateServices.pdf](http://www.ssc.govt.nz/sites/all/files/Code-of-conduct-StateServices.pdf)

<sup>420</sup> Education Act 1989, sections 75 and 161.

Legislative provisions for board appointments emphasise appointment based on merit as well as providing for diversity. In making appointments, ministers must take account of these factors.<sup>421</sup> A Crown entity's enabling legislation defines its board's composition.<sup>422</sup> Board structures reflect the degree of Crown entity independence – some boards require a mix of ministerial appointees and elected representatives from communities and staff groups, and school boards of trustees consist entirely of elected members. There are normally limits on the length of board members' terms.<sup>423</sup>

### **Local government (territorial and local authorities)**

New Zealand local government's scope is not defined in a single, constitutional document.<sup>424</sup> Its powers are found in numerous statutes, principally the Local Government Act 2002, Local Government (Rating) Act 2002, and Local Electoral Act 2001. Together, these Acts "provide for those spheres in which forms of local government have authority".<sup>425</sup> Within its own sphere, local government has a considerable degree of independence, but no entrenched constitutional provisions protect that independence, and Parliament may alter the governing statutes by a simple majority vote.

The recently amended Local Government Act 2002 extended the minister's powers to intervene in territorial local authority affairs.<sup>426</sup> The government explained that it was introducing a graduated mechanism for government assistance and intervention. The powers include requesting information; appointing a Crown review team, a Crown observer, a Crown manager, or a commissioner; and calling a local body election. Local Government New Zealand and Society of Local Government managers argued in vain that the new provisions for government intervention were unnecessary given existing legislation and external scrutiny, and given that the minister already had powers of intervention in a disaster or a failure of a local authority to perform its functions, duties, and responsibilities.

In 2010, the Minister of Local Government and Minister for the Environment promoted a law change, passed under urgency, allowing appointed commissioners to replace the elected members of Environment Canterbury, a regional council, with a view to improving its relationship with the region's 10 territorial local authorities in the context of work on a fresh-water management strategy. A further law change, also under urgency, provided for Environment Canterbury's governance arrangements to be reviewed in 2014 and for commissioner governance to be extended until 2016.<sup>427</sup> These legislative actions have been controversial. There have been accusations that central government failed to uphold the rule of law and interfered because of farmer

---

<sup>421</sup> Crown Entities Act 2004, section 29.

<sup>422</sup> For example, section 94 of the Education Act 1989 (provisions for boards of trustees), section 267 of the Accident Compensation Act 2001, or section 10 of the Museum of New Zealand Te Papa Tongarewa Act 1992.

<sup>423</sup> Crown Entities Act 2004, section 32.

<sup>424</sup> Crown Entities Act 2004, section 32.

<sup>425</sup> Matthew S. R. Palmer, "What is New Zealand's Constitution and who interprets it? Constitutional realism and the importance of public office-holders", *Public Law Review* vol. 17, 2006, p. 145.

<sup>426</sup> The most recent amendments to the Local Government Act 2002 were through the Local Government Act 2002 Amendment Act 2012.

<sup>427</sup> Environment Canterbury (Temporary Commissioners and Improved Water Management) Act 2010.

lobby concerns about regional water management decision making.<sup>428</sup> A leading constitutional lawyer described the process as “constitutionally repugnant”.<sup>429</sup> He observed, “This didn’t go through any select committee consideration, no submissions and no consultation. Why should urgency be taken on a matter such as this?”.

The supplementary paper on environmental governance expresses concern about the Environment Canterbury laws in the light of the risk of central government overriding other resource decisions assigned by statute to the local government level. It also expresses concern that amendments to the Resource Management Act 1991, the administration of which has become part of councils’ democratic role, will constrain public participation and access to justice and place elements of environmental decision making beyond public access.<sup>430, 431, 432</sup>

#### 4.1.3 Independence (practice)

**To what extent is the public sector free from external interference in its activities?**

Score: 3

*The public sector remains politically impartial, but organisational fragmentation over the last two decades has weakened the provision of professional policy advice. There are also concerns about how central government transfers regulatory responsibilities to local government.*

#### **Public service**

The public service is independent in the sense that it discharges its responsibilities impartially and adheres to the rule of law. It also has a duty to provide ministers with professional policy advice without fear or favour. Some recent studies raise concern about how well this duty is being fulfilled.

The NIS assessment interviews and academic and media coverage indicate that the public service has not come under undue influence from other branches of the state or from other institutions in society. The independence of the public service seems well established. The political neutrality of public servants has rarely been an issue. Public

---

<sup>428</sup> Human Rights Commission, *Submission to the Select Committee on Local Government and the Environment, on the Environment Canterbury Act*, 2012).

<sup>429</sup> Philip Joseph, “Environment Canterbury legislation”, *New Zealand Law Journal* June 2010, p. 193.

<sup>430</sup> The Resource Management Act 1991 is the centrepiece of environmental governance in New Zealand and the broad statutory framework provides for a degree of public involvement. However, potential systemic issues include ensuring all those interested or affected are aware of plan-making processes and their rights to make submissions, the skills and resources of local authorities to adopt wider participatory approaches, and the timing of planning processes and whether these limit responsiveness to participation. Also there are concerns about how much information is available to the public to allow them be fully informed to make submissions.

<sup>431</sup> Ralph Chapman, Amanda Thomas, Sophie Bond, Eddie Goldberg and Chris Livesey, *Transparency International New Zealand Project: A report on New Zealand environmental governance*, supplementary paper 2 (Wellington: Transparency International New Zealand, 2013).  
[www.transparency.org.nz/docs/2013/Supplementary-Paper-2-Environmental-Governance.pdf](http://www.transparency.org.nz/docs/2013/Supplementary-Paper-2-Environmental-Governance.pdf)

<sup>432</sup> The Resource Management Amendment Act 2013 passed into law on 27 August 2013.

service culture tends to discourage political advocacy within the work place.<sup>433</sup> Concerns have sometimes been expressed about the role of political advisers in ministers' offices, but in practice public servants and political advisers appear to have successfully co-existed without serious instances of blurring roles.<sup>434</sup>

Such difficulties as there have been are in the policy advisory relationship between ministers and chief executives. In one recent case, a department failed in its advice to discharge its responsibilities under the law.<sup>435</sup> There is also a solid body of evidence of public service advice falling short of good professional standards. As this report was being finalised, the Prime Minister's Chief Science Advisor, Sir Peter Gluckman, released a report on the role of evidence in public policy formation.<sup>436</sup> Gluckman finds that while there is excellent practice in some parts of the public service, "some policy practitioners held the view that their primary role was to fulfil ministerial directives, rather than to provide an evidence-informed range of policy options on which ministers could develop a position".

The Scott Report in 2010 was critical of the state of the policy advisory system, noting:<sup>437</sup>

- a reluctance by some chief executives to bring big issues to ministerial attention
- weak leadership and management of policy development
- poor cross-government coordination
- a lack of attention to future policy needs and capacity
- a lack of experience among chief executives and senior management teams on policy content and the advisory process
- a failure to understand the particular management challenges of departments with policy intensive role.<sup>438</sup>

Other issues raised were the low quality of regulatory impact statements associated with draft legislation, poor public access to government-held data, limited public input to policy development, the desirability of more pre-emptive releases of information under the OIA, weak monitoring and evaluation, and the need for more published research.

---

<sup>433</sup> Public Service Association, "Post-election survey of PSA members: Analysis of the questions on political neutrality", 2007.

<sup>434</sup> Chris Eichbaum and David Shaw in "Revisiting political advisers and public servants in Westminster systems", *Governance* vol. 21(3), 2008, conclude "Yet empirical tests of the assumption that political advisers pose a threat to the conventions that underpin the permanent civil service in Whitehall, Canberra, Ottawa, Dublin, Wellington, and elsewhere, and its relationship with its political masters and mistresses, are few and far between".

<sup>435</sup> Parliamentary Services illegally released private information on a matter of high political sensitivity.

<sup>436</sup> Sir Peter Gluckman (Prime Minister's Chief Science Advisor), *Role of Evidence in Policy Formation* (Auckland: Office of the Prime Minister's Science Advisory Committee, 2011).

<sup>437</sup> Review of Expenditure on Policy Advice, 2010.

<sup>438</sup> See also the statement in Suzy Frankel and Debora Ryder, eds., *Recalibrating Behaviour: Smarter regulation in a changing world* (Wellington: Lexis Nexus, 2013) that "the strong impression is that over successive administrations over the past 15 years, free and frank advice has been under attack".

These are matters for serious concern. The public service's policy advisory role and capacity are crucial to maintaining public service professional independence.<sup>439</sup> Building institutional competencies, knowledge, and reputation in key areas of public policy is the work of decades not years. The Scott Report considered that ministers and the public service share the blame for the poor state of policy advice.<sup>440</sup> A Better Public Services report talks of new policy demands, but does not address the incentives for the institutional competencies required.<sup>441</sup>

Some politicians appear to have an ideological (or managerial) objection to the public service's advisory role, as if that role is at odds with the government's right to govern. This has been expressed in ministers' reluctance to seek public service advice or fund its development.<sup>442</sup>

In New Zealand and the United Kingdom the responsibility to provide independent policy advice to ministers is described in similar terms, but operates differently. A UK observer recently highlighted the direct, hands-on role that some New Zealand ministers now take on policy matters.<sup>443</sup> He characterised this as exhibiting "ministerial entrepreneurship" compared with the United Kingdom's more "deliberative" approach. This difference was highlighted when the Minister of State Services, in a speech in London, presented the New Zealand system as allowing for more direction from ministers, so a model the UK Government might benefit from emulating.<sup>444</sup>

The law and administrative process give individual portfolio ministers a powerful role in the appointment of chief executives.<sup>445</sup> The Commissioner has a statutory obligation to ask Ministers to advise him of matters which should be taken into account in making a chief executive appointment.

In practice this means that the Commissioner asks Ministers for their views on the position and on the composition of an interview panel. Note however that this consultation with Ministers does not amount to an ability of Ministers to direct the Commissioner in the exercise of his statutory function.

When the government is trying to strengthen the public service from a collective interest perspective, it is timely to consider whether the existing chief executive selection process has been one of the drivers of fragmentation. For instance, the nature of chief executive appointments has also become an important means of effecting macro-managerial change.

---

<sup>439</sup> An article covering covers a trans-Tasman 2013 report on the state of the public service found, "Cohesion between the cabinet and the state sector was slipping": Tracy Watkins, "Best, worst of our public service revealed", *Stuff*, 4 June 2013. [www.stuff.co.nz/national/politics/8750749/Best-worst-of-our-public-service-revealed](http://www.stuff.co.nz/national/politics/8750749/Best-worst-of-our-public-service-revealed).

<sup>440</sup> Review of Expenditure on Policy Advice, 2010.

<sup>441</sup> Better Public Services Advisory Group, 2011.

<sup>442</sup> Interview with Neil Walter, former public service chief executive and former chair of two Crown entity boards, 3 December 2012.

<sup>443</sup> Martin Stanley, *New Zealand and UK Compared*, February 2013. [www.civilservant.org.uk/nz.pdf](http://www.civilservant.org.uk/nz.pdf)

<sup>444</sup> Jonathan Coleman, "Taking a results approach to delivering Better Public Services," 26 February 2013. [www.beehive.govt.nz/speech/taking-results-approach-delivering-better-public-services](http://www.beehive.govt.nz/speech/taking-results-approach-delivering-better-public-services)

<sup>445</sup> In addition to their effective veto on the commissioner's recommendation.

Under current arrangements, the policy advisory process is unclear when a portfolio minister plays a leading role in specifying that a new chief executive should be committed to fundamentally reorganising a department and its staff.<sup>446, 447</sup> The structure and capability of any major policy-oriented public service department is a matter of collective interest because it has implications for coordination with other policies and affects the interests of future governments. As discussed under “Accountability”, despite the importance of machinery-of-government policy in New Zealand public sector governance, from the public perspective it lacks quality assurance, transparency, and accountability.

The Scott report, and now the Gluckman report, show that some chief executives have adapted to the implied simple principal–agent relationship with their minister, by reducing their role and capacity for policy advice. These tendencies appear more marked in New Zealand than in the United Kingdom. New Zealand ministerial–chief executive relationships are one on one whereas the UK Permanent Secretaries are more collegial and under active oversight and guidance from the head of the civil service.<sup>448</sup> Contributing factors are that New Zealand has had many departments, some quite small, and, in contrast to the United Kingdom, has tended not to appoint new chief executives from within the department involved.<sup>449</sup>

This situation, in part, reflects New Zealand’s public service management policy. In a significant number of cases, chief executives have been appointed from outside the public service. Chief executives, especially if new in the policy area, can find themselves in a situation of co-dependency with their minister and with little capacity for independent advice. A recent Performance Improvement Framework overview finds that individual ministers tend to be happier with agencies with a weak strategy and sense of purpose.<sup>450</sup>

Another difference is that the collective interest in the quality and independence of departmental policy advice in the UK system is reinforced by intense scrutiny of senior officials by the Public Accounts Committee of the House of Commons. Any

---

<sup>446</sup> In most cases of departmental restructuring, there has been a collective interest requirement for a budget and staff reduction. In principle, this does not require major structural change.

<sup>447</sup> Restructuring (discussed below) is sometimes necessary. The integrity problem is that while restructuring has been a very heavily used tool in New Zealand’s public management, there has been no credible process of evaluating its effectiveness, so no public assurance on risks of politicisation or poor policy design.

<sup>448</sup> Interview with Len Cook, former Chief Statistician in New Zealand and the United Kingdom, 8 March 2013: “the collegiality at the top in the [United Kingdom] is greater as a result of structurally different processes. These include the annual Sunningdale conference, an annual Cambridge visit, the Civil Service Management Board, cross government heads of profession, whole of government fast stream recruitment and weekly Permanent Secretaries meetings. The head of the Civil Service is also active in ensuring the system works, for instance in ensuring Permanent Secretaries are prepared for [Public Accounts Committee] hearings if it is their first time. There is also a lot more structured development of top level people – the cabinet office every year asked me about up and comers – that happened once in 8 years in New Zealand.”

<sup>449</sup> Stanley, 2013, reports that only one New Zealand chief executive in seven was from within the department involved.

<sup>450</sup> State Services Commission, Treasury, and Department of the Prime Minister and Cabinet, *Core Guide 3: Getting to great – Lead reviewer insights for the from the Performance Improvement Framework* (Wellington: New Zealand Government, 2013).

shortcomings result in public criticism of the department in question. New Zealand's parliamentary scrutiny is not as well informed or independent in this regard.<sup>451, 452</sup>

It appears that the fragmentation of government action that the Better Public Service reforms are designed to rectify has also unintentionally impaired the collective public interest in the independence of the policy advisory capacity of the public service.<sup>453</sup> This finding suggests that if Better Public Services is to successfully strengthen departmental policy stewardship, not only will new capacities have to be built in the public sector, but portfolio ministers will have to be motivated to act more collectively.

### Crown entities

Crown entities have checks and balances (boards, monitoring departments, external watchdog agencies) to protect them from external interference. Operating independently requires a fine balance, as some entities must give effect to or have regard for government policy and are subject, in some circumstances, to whole-of-government direction and to SSC integrity and conduct expectations. SSC provides guidance to monitoring departments on inducting board members and on integrity and conduct issues.<sup>454</sup>

The 2003 NIS assessment report noted public perceptions that ministerial board appointments were, in some instances, politically motivated or seeking to influence a Crown entity's independence.<sup>455</sup> Independent research on the relations between government and boards (in this case for state-owned enterprises)<sup>456</sup> found that two-thirds of directors considered that "the process for appointing board members is too politically influenced". Despite amendments to the appointment procedures in the State-Owned Enterprises Act 1986,<sup>457</sup> perceptions continue that some government appointments to Crown entity boards are unduly influenced by party political factors.<sup>458</sup>

---

<sup>451</sup> Stanley, 2013; interview with Len Cook, former Chief Statistician in New Zealand and the United Kingdom, 8 March 2013.

<sup>452</sup> The legislature pillar report (pillar 1) supports recommendations to strengthen select committee scrutiny of the public sector, and recent amendments to the Public Finance Act 1989 (covered later in this report) makes the chief executive more individually accountable.

<sup>453</sup> On the risk of unintentional change in constitutional arrangements, Matthew Palmer in "New Zealand constitutional culture", *New Zealand Universities Law Review* vol. 22, p. 565, 2007, says, "While I am comfortable with ... with an unwritten constitution I am very concerned that we pay attention to what it is. It may be harder to change aspects of an unwritten constitution if they exist only in implicit practices which are not articulated as 'constitutionally' important. More importantly having our constitution located in many different elements is that it is easier for those elements to change, and for some groups of people to consciously change them, without serious public discussion, or even awareness, that a change is contemplated.

<sup>454</sup> State Services Commission, *Board Appointment and Induction Guidelines* (Wellington: State Services Commission, 2012).

<sup>455</sup> Transparency International, *National Integrity Systems: Transparency International Country Study Report: New Zealand 2003* (Berlin: Transparency International, 2003), p. 27.

<sup>456</sup> Richard Norman, "How should state-owned enterprises be governed?" *Public Sector* vol. 30(4), 2008, p. 37.

<sup>457</sup> "Crown Entities and Other Bodies", State Services Commission, 1 October 2013. Crown Entities Act 2004, section 29. For reasons that are not clear, the government did not use the term "merit" in its amendments of this Act, but the terminology used is similar in meaning.

<sup>458</sup> The following articles include appointments to boards of the Accident Compensation Corporation, New Zealand on Air, and the Health Promotion Agency. One article noted that three of seven appointees to the board of the Health Promotion Agency had close political affiliations with the National party. One appointee was the chief executive of a lobbying group the interests of which appear to conflict with those of the board:

In 2012, concerns were expressed about appointments to the boards of the Accident Compensation Commission, New Zealand on Air, and the Health Promotion Agency.<sup>459</sup>

Such controversy may be associated with only a small proportion of appointments made, but given the importance of Crown entities, and the arm's length principle on which they are founded, something is needed to convince the public that these processes are trustworthy. Many countries have addressed how to maintain public confidence in senior state sector appointments. Processes need to recognise that candidates with overt political associations may also have the skills and experience required for a particular role. The United Kingdom, after public concern about political cronyism, adopted rules devised by Lord Nolan,<sup>460</sup> which provide for a combination of ministerial responsibility, merit, independent scrutiny, equal opportunities, probity, openness and transparency, and proportionality.

### Local government (territorial and local authorities)

The Productivity Commission<sup>461</sup> maintains that central government mistakenly treats local government as its operational arm. It concludes “the lack of effective interaction between central and local government is having a detrimental effect on New Zealand's regulatory system. The uneasy relationship between the two spheres of government is rooted in divergent views and understandings of their respective roles, obligations and accountabilities”.

The integrity issue here is not about whether central government has good reason for overriding local government decision making in these individual cases. As exemplified in the Environment Canterbury case, it is rather the apparent absence of clear and agreed principles to govern relationships between the two spheres of government in terms of the legitimacy and sustainability of local democracy. The principle in action seems to be that local government is free to take decisions – as long as central government does not disagree. This is a shaky foundation for the future, especially since the creation of the Auckland “super-city”<sup>462</sup> and the possibility of further local government aggregations, which could, because of their size and significance, have a greater need for some constitutional protection.

---

Kate Shuttleworth, “New ACC board chair gets mixed reception”, *New Zealand Herald*, 4 September 2012.

[www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=10831727](http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10831727)

“Editorial: ACC culture must be more fair and open”, *New Zealand Herald*, 7 September 2012.

[www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10832252](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10832252)

Isaac Davision, “Lobbyist appointment no conflict: Key”, *New Zealand Herald*, 25 June 2012.

[www.nzherald.co.nz/politics/news/article.cfm?c\\_id=280&objectid=10815422](http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10815422)

Isaac Davision, “Nats accused of health agency cronyism”, *New Zealand Herald*, 28 June 2012.

[www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10815974](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10815974)

Derek Cheng, “Key bats away talk of cronyism”, *New Zealand Herald*, 4 February 2012.

[www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10783229](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10783229)

<sup>459</sup> Shuttleworth, 2012; “Editorial: ACC culture must be more fair and open”, 2012; Davision, “Lobbyist appointment no conflict: Key”, 2012; Davision, “Nats accused of health agency cronyism”, 2012; Cheng, 2012.

<sup>460</sup> Meredith Edwards, John Halligan, Bryan Horrigan, and Geoffrey Nicoll, *Public Governance in Australia* (Australian National University, 2012). <http://epress.anu.edu.au/titles/australia-and-new-zealand-school-of-government-anzsog-2/public-sector-governance-in-australia-2>

<sup>461</sup> Productivity Commission, 2013.

<sup>462</sup> A single large local authority for the Auckland region, formed by the amalgamation of 8 previous regional and local authorities

#### 4.2.1 Transparency (law)

**To what extent are there provisions in place to ensure transparency in financial, human resource and information management of the public sector?**

Score: 4

*The legal provisions for public sector transparency, especially fiscal transparency, have been adequate. Recent changes to the legal requirements for reporting on public sector effectiveness and stewardship should, when implemented, bring the legal framework for public sector transparency up to a high standard.*

#### **Official Information Act 1982**

The Official Information Act 1982 (OIA) has been in place for 31 years. It is deeply imbedded in the administrative system, is widely complied with, and has contributed to a high public expectation of government transparency. However, the problems with the political-administrative interface appear to be impacting on the willingness of some ministers and some public sector chief executives to comply with the OIA on issues of potential political sensitivity. This is creating tension between some ministers and public servants, and in some cases public service compliance appears to the public as grudging and slow.<sup>463</sup> The point has been reached that the Chief Ombudsman has announced an “own motion” investigation of the handling of OIA requests.

In 2012, the Law Commission reviewed the official information legislation and recommended a new and reformed Act (covering local government as well), OIA coverage of the administration of Parliament, the courts, and the officers of Parliament, and a new information agency or an expanded role for the Office of the Ombudsman. In March 2013, the government responded, rejecting all the major recommendations apart from extending the OIA to the administration of the courts.

#### **Fiscal transparency**

New Zealand has been a pioneer in fiscal transparency and continues to exhibit international best practice in many respects.<sup>464</sup> It was the first country to publish a full balance sheet of the government, and the approach to mandating transparency in the Fiscal Responsibility Act 1994 (mirrored in the Local Government Act since 1996) influenced the development of international fiscal transparency standards. The success of these measures is reflected in New Zealand’s top ranking out of 100 countries in the Open Budget Index 2012.

Roles for fiscal management are clearly allocated between the executive and the legislature, central and local governments, and within the public sector. Parliament has imposed a high degree of budget transparency on local government. As noted, New Zealand ranks first in the Open Budget Index. However, global fiscal transparency

---

<sup>463</sup> These matters are described in the Ombudsman pillar report (pillar 7).

<sup>464</sup> Fiscal policies are government taxation, borrowing, spending, and the investment and management of public resources – sometimes referred to simply as budget transparency. In technical terms, fiscal policies are public policies implemented through the provision of non-market services, and the redistribution of income and wealth, financed primarily by taxes and other compulsory levies on non-government sectors.

standards are evolving and increasingly emphasise the importance of legislative oversight of the executive's management of fiscal policy and the need for direct public engagement to improve the quality and legitimacy of fiscal management.

### **Public service**

The framework for public service operational financial transparency is the Public Finance Act 1989, which requires departmental plans and reports to be organised around outputs and include non-financial as well as financial measures of departmental performance. Departments routinely release corporate documents such as the Statements of Intent, briefings for the incoming minister, and annual reports. In addition, departments publish a variety of managerial and professional papers, including planning documents, statistics, evaluation and monitoring reports, articles in journals and other publications, research, regulatory or impact statements, and operational guidelines. The depth and variety of such publications varies across departments and according to their different areas of business. In general, detailed information about departments' operational decisions is not proactively made available to the public, but is usually subject to disclosure under the OIA.

In the last two or three years, central agencies have produced reports on aspects of the management and performance of government departments: Performance Improvement Framework reports led by SSC and assessments of regulatory regimes produced by Treasury. These provide a new level of transparency about public sector management and are available on departmental websites.

The effectiveness of public management policy has, as discussed below, been less transparent than other policy areas, despite being of high public interest. It is hoped that this situation will change with the recent changes to the Public Finance Act 1989,<sup>465</sup> making chief executives directly accountable for departmental capacity and effectiveness, and the recently approved expectations for regulatory stewardship,<sup>466</sup> which should impose a new discipline on the regulation of the public service.

### **Public Records Act 2005**

The Public Records Act 2005 sets out information-management requirements for the public sector.<sup>467</sup> The Act, and the record-keeping audits it prescribes, is an important part of the legal framework for public sector transparency and accountability. It supports the OIA by requiring records to be created and maintained. Under the Public Records Act, every public office and local authority must have full and accurate records of its affairs until their disposal is authorised, including records of any matter that is contracted out. The Chief Archivist acts independently and is not subject to direction from either the minister or the chief executive. Visibility of the operation of the system is provided through an annual report to Parliament on the state of record keeping in

---

<sup>465</sup> Public Finance Amendment Act 2013.

<sup>466</sup> Treasury, *Regulatory System Report 2013: Guidance for departments*, 2013.  
[www.treasury.govt.nz/publications/guidance/regulatory/systemreport/04.htm](http://www.treasury.govt.nz/publications/guidance/regulatory/systemreport/04.htm)

<sup>467</sup> The full scope of this Act is "the legislative, executive and judicial branches of the Government of New Zealand": Public Records Act 2005, section 4.

public offices, and a programme of independent audits of record-keeping practices, which is also reported annually to Parliament.

### **Crown entities**

Clear provisions support Crown entities' transparency in financial, human resources, and information management. Legislation outlines how board members' fees are set. Crown entities must publish an annual report on their affairs, including content prescribed by legislation. Legislation also requires Crown entities to disclose board members' and employees' remuneration over NZ\$100,000, subject annual reports to scrutiny by the Office of the Auditor-General, have their annual report tabled in Parliament by the Responsible Minister, and report compliance in the annual report.

Crown entities are subject to information management provisions set out in the OIA, Privacy Act 1993, and Public Records Act 2005. Crown entities' actions are subject to review under the Ombudsmen Act 1975. A Crown entity may have its own independent review and appeal authority, so there are circumstances when the Ombudsmen cannot investigate a complaint.<sup>468</sup>

### **Local government**

The Local Government Official Information and Meetings Act 1987 has, according to the recent Law Commission report on official information,<sup>469</sup> done much to strengthen the trust of citizens in local government. Territorial local authorities share the positive characteristics of central government in terms of transparency and are, by law, comparatively more open to engagement with citizens through the requirements for local level long-term planning and the Resource Management Act 1991.

#### **4.2.2 Transparency (practice)**

##### **To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?**

Score: 4

*In practice, public sector transparency is slipping behind international best practice. The quality of national reporting on the environment has been a significant area of weakness.*

### **Fiscal transparency**

A high degree of transparency exists in practice, reflected in New Zealand's top ranking out of 100 countries on the Open Budget Index 2012.<sup>470</sup> The index measures in

---

<sup>468</sup> Ombudsmen Act 1975, section 17(7)(a).

<sup>469</sup> Law Commission, *The Public's Right to Know: Review of the official information legislation*, NZLC R125 (Wellington: Law Commission, 2012).

<sup>470</sup> The full Open Budget Survey 2012 of New Zealand, consisting of 125 questions, together with a New Zealand country summary produced by the International Budget Partnership, is available at <http://internationalbudget.org/what-we-do/open-budget-survey/country-info/?country=nz>. The survey contains links to all the New Zealand budget documents cited.

detail the information in eight key Budget documents.<sup>471</sup> In the 2012 index, New Zealand's scores out of 100 were Pre-Budget Statement – 100, Executive's Budget Proposal – 93, Enacted Budget – 100, Citizens Budget – 67, In-Year Reports – 96, Mid-Year Review – 92, Year-End Report – 97, and Audit Report – 95.

Nevertheless, there are areas of concern in terms of disclosure of fiscal information.

- Non-financial data on performance and outcomes: Considerable scope exists to further improve the information and data in Budget and departmental documents and in fiscal reports on the expected and actual impacts and outcomes of government spending.
- Related to the point above is the need for more comprehensive, regular, and technically independent reporting and commentary on “state of the nation” environmental and social indicators.
- Transparency of tax expenditures: The tax expenditure statement needs further deepening.
- The desirability of a single, simplified “citizens’ guide” to the Budget. There is no single, short, non-technical, user-friendly guide to the annual Budget aimed at the average citizen – although much of the information that such a guide might contain is scattered across the different Budget documents.

The Open Budget Survey 2012 had an expanded focus on public participation compared with previous rounds. Also, the recently adopted High Level Principles on Fiscal Transparency, Participation and Accountability promulgated by the Global Initiative on Fiscal Transparency assert a citizen right to direct participation in public debate on fiscal policy.<sup>472</sup> While New Zealand has not overall been innovative in this area, the public outreach during preparation of the 2013 Long-Term Fiscal Position and of the deliberations of the Tax Working Group in 2009 are important improvements. The Open Budget Survey 2012 concluded that the strength of legislative oversight of fiscal policy in New Zealand and the level of public engagement in fiscal policy were only moderate.<sup>473</sup>

There is public concern about the transparency of the proposed SkyCity Entertainment Group project,<sup>474</sup> in which a casino operator will finance the construction of a new public national convention centre in return for a relaxation of gambling regulation to allow the operator to recoup construction costs. The centre will, in effect, be financed by gamblers. Government support for a public facility is most transparently financed through some combination of compulsory taxes, rates, or user charges. The policy

---

<sup>471</sup> These documents contain details of where New Zealand does not achieve the top mark on specific questions in the survey. The Open Budget Index 2012 is based on data and information released up to 31 December 2011.

<sup>472</sup> The UN General Assembly endorsed the Global Initiative on Fiscal Transparency high-level principles in December 2012. The Global Initiative on Fiscal Transparency is a multi-stakeholder initiative lead by the International Monetary Fund, the World Bank, the International Budget Partnership, the governments of Brazil and the Philippines, and other official sector and civil society entities. The principles are available at <http://fiscaltransparency.net>

<sup>473</sup> Covered in more detail in the legislature pillar report (pillar 1, section 1.3.1).

<sup>474</sup> Office of the Auditor-General, *Inquiry into the Government's Decision to Negotiate with Sky City Entertainment Group Ltd for an International Convention Centre*, 2013.

trade-off between the social costs and benefits of gambling is best decided on its own merits, rather than by an individual operator being provided with a relaxed regulatory framework in return for providing an unrelated public benefit. This is a disguised fiscal activity that shifts the immediate cost off the government's budget. While concern has focused on the compromised public procurement process in the SkyCity project, the proposal also raises concerns from both fiscal transparency and regulatory perspectives.

No principles, objective criteria, or robust management framework are published for such "hybrid procurements" involving government contracts or arrangements with non-government entities in which regulations or other public policy settings to be applied to an individual entity are negotiated as part of the package of terms and conditions.

### **Public service**

The OIA governs disclosure of publicly held information on request, but proactive disclosure is variable.

A step towards making more public service data and information available is the New Zealand Declaration on Open and Transparent Government that departments adopted in 2011 to monitor departments' promotion of the private sector's re-use of "high-value" public data "to grow the economy, strengthen our social and cultural fabric, and sustain our environment".<sup>475</sup> Twenty-seven departments have so far released new kinds of information.

Similar energy needs to be applied to making public service information more proactively available in the interests of good governance. Some departments are already proactive in releasing material, but commentators such as the Ombudsmen have recommended that the public sector now be more systematic in moving towards more proactive disclosure. The Scott review recommends that "the government should be more proactive about the release of Cabinet papers, minutes and decisions. The decision to release a Cabinet paper and other material such as briefings, under the OIA, or what should be withheld, should be made at the time of writing, should be routine and, once the decision has been taken, the paper should be made publicly available, not just to the requestor".<sup>476</sup>

### **International development**

New Zealand has signed the International Aid Transparency Initiative (IATI), and in IATI's 2012 Transparency Index, was ranked 16th out of 72 donors. This was a big improvement on its 2011 ranking of 30th. Internationally, the standard of transparency of official development assistance expenditure is not high. New Zealand's current transparency performance, though improved, is classified as "moderate". IATI has advised New Zealand to produce "a revised implementation schedule that sets out an ambitious timetable for publication to the IATI Registry in 2013, aiming for full

---

<sup>475</sup> "Declaration on Open and Transparent Government", Government ICT Update, December 2012.

<sup>476</sup> Review of Expenditure on Policy Advice, 2010.

implementation by 2015. As a first step, it could improve the existing data on its website and make it compatible with the IATI standard.

### Environment policy

The Parliamentary Commissioner for the Environment reported that New Zealand lacks reliable and independent state of the environment reporting. The Ministry for the Environment has produced only two national environment reports, in 1997 and 2007.<sup>477</sup> The commissioner criticised the 2007 report for lack of independence and for fundamental technical errors. Despite its “clean and green” marketing pitch, New Zealand is the only OECD country without a legal requirement for regular independent reporting on the state of the environment or for consistent reporting across local authorities.

In 2011/12, the government consulted on an environmental reporting bill to improve consistent, independent environmental reporting in New Zealand. At that time, the proposal in the discussion document fell short of what would be needed under the Aarhus Convention.<sup>478, 479</sup> However, on 8 August 2013, the Minister for the Environment announced that legislation would be introduced that would provide for a “comprehensive synthesis [state of the environment] report covering all environmental domains” to be prepared and “released every three years”.<sup>480</sup>

### Crown entities

Existing transparency provisions concerning financial, human resources, and information management in Crown entities are implemented effectively. As part of the Better Public Services programme, government expects Crown entities to disclose non-sensitive performance information more frequently on their websites. Chief executives of statutory Crown entities comply with the State Service Commissioner’s disclosure regime for expenses, gifts, and hospitality. This information is freely available on the internet.

Crown entities are subject to public information provisions. Agencies responsible for investigating complaints under these provisions publish opinions and case notes. A small number of these concern Crown entities. Processes for managing board member interests are not subject to routine external review. This places increased emphasis on

---

<sup>477</sup> Parliamentary Commissioner for the Environment, 2010.

<sup>478</sup> See the August 2011 Cabinet paper Release of discussion document [www.mfe.govt.nz/publications/ser/measuring-up-environmental-reporting/cabinet-paper-11co1298-environmental-reporting-bill.pdf](http://www.mfe.govt.nz/publications/ser/measuring-up-environmental-reporting/cabinet-paper-11co1298-environmental-reporting-bill.pdf) and Cabinet Economic Growth and Infrastructure Committee, “Proposed Environmental Reporting Bill: Release of discussion document” Cabinet minute EGI Min (11) 17/5, 11 August 2011. [www.mfe.govt.nz/publications/ser/measuring-up-environmental-reporting/cabinet-minute-environmental-reporting-bill.pdf](http://www.mfe.govt.nz/publications/ser/measuring-up-environmental-reporting/cabinet-minute-environmental-reporting-bill.pdf)

<sup>479</sup> The UN Economic Commission for Europe Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters was adopted on 25 June 1998 in the Danish city of Aarhus at the 4th Ministerial Conference of the Environment for Europe process.

<sup>480</sup> Amy Adams, “Govt to mandate three-yearly state of the environment reports”, 8 August 2013. [www.beehive.govt.nz/release/govt-mandate-three-yearly-state-environment-reports](http://www.beehive.govt.nz/release/govt-mandate-three-yearly-state-environment-reports).

integrity provisions and guidance for board members. Some board appointments are publicly advertised, although this is not a legislative requirement.<sup>481</sup>

#### 4.2.3 Accountability (law)

**To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions, and how do they work in practice?**

Score: 5

*The legal provisions for public sector accountability are comprehensive.*

In this section and the following one, accountability is addressed from two perspectives: the vertical accountability of public officials as agents to political decision makers as principals; and democratic policy accountability whereby governments are accountable to Parliament and indirectly to citizens for the impacts and consequences of the use of the powers with which they are entrusted.

The public service, Crown entities, and territorial local authorities are all subject to scrutiny by the Ombudsmen (under the official information legislation and the Ombudsmen Act 1975) and by the Office of the Auditor-General. In addition, they are subject to the Protected Disclosures Act 2000.

#### **Public service**

As covered under “transparency” above, public service officials are held accountable for performance under the Public Finance Act 1989 and State Services Act 1988. These Acts were recently amended to strengthen accountability for departmental policy stewardship, including giving more attention to effectiveness. This has been an area of systemic weakness despite New Zealand being a pioneer in the use of outcomes-focused reporting from the Reserve Bank in its role of targeting inflation<sup>482</sup> (used as a model for the legislation of many other countries) and in the setting of quotas for fisheries management.<sup>483</sup>

#### **Crown entities**

Crown entity boards are required by law to be answerable to the minister (or ministers) and through the minister to Parliament. Ministers are responsible to Parliament for overseeing and managing the Crown’s interests in and relationships with the entities within their portfolios. Boards are the primary monitor of an entity’s performance and governance. The governance of non-public service entities provides for the participation of ministers (with differing rights and restrictions) in setting strategies, requesting information, and monitoring performance. Entities also operate under

---

<sup>481</sup> Treasury’s Crown Organisations Management Unit has a dedicated website for board appointments: [www.boardappointments.co.nz](http://www.boardappointments.co.nz)

<sup>482</sup> Reserve Bank of New Zealand Act 1989.

<sup>483</sup> Fisheries Act 1996.

scrutiny from the Office of the Auditor-General, the Ombudsmen, and regulatory bodies as appropriate (for example, the Commerce Commission).<sup>484</sup>

The Crown Entities Act 2004 describes boards' responsibilities and role and spells out the accountability of members to the Responsible Minister for performing their duties.<sup>485</sup> The minister can remove board members with just cause (including misconduct, an inability to perform the functions of office, neglect of duty, and breach of collective or individual duties). Dismissal of a board or board member must comply with the principles of natural justice.<sup>486</sup>

Crown entities are legally required to report to the legislature and account for their actions through Statements of Intent and annual reporting mechanisms. This system also provides for scrutiny through select committee financial reviews. Corrupt use of official information and bribery of officials are offences under the Crimes Act 1961. Boards and their members are held to account for their actions through various accountability mechanisms.

### **Local government**

There is comprehensive legal provision for oversight by communities, ministers, and independent statutory bodies of local authorities' activities. These bodies include the Parliamentary Commissioner for the Environment, Local Government Commission, Remuneration Authority, and the Department of Internal Affairs (in a monitoring capacity).

All local authorities are audited on the basis of their performance, stewardship, and compliance. Elected members' pecuniary interests are overseen through the Local Authorities (Members' Interests) Act 1968. The government and independent authorities oversee the performance of territorial local authorities in meeting the requirements of the law on these as well as on anti-corruption standards.

#### **4.2.4 Accountability (practice)**

**To what extent do public sector employees have to report and be answerable for their actions in practice?**

Score: 4

### **Public service**

*In practice, hierarchical public sector operational accountability has been applied more effectively than democratic and policy accountability. Until very recently there has been no system-wide accountability for evaluating the impact of policies. Accountability for the effectiveness of public management policies, including regulation and the machinery of government, has been particularly weak.*

---

<sup>484</sup> Crown Ownership Monitoring Unit, "Our role". [www.comu.govt.nz/about-comu/our-role](http://www.comu.govt.nz/about-comu/our-role)

<sup>485</sup> Crown Entities Act 2004, sections 25 and 26.

<sup>486</sup> Crown Entities Act 2004, sections 36–41.

The public service has three vertical accountability arrangements. First, senior public servants are under formal performance agreements to deliver specified outputs with the resources granted. (Over the years, there have been refinements and elaborations in the internal accountability to ministers through agreements, plans, budgets, financial reports, and key indicators.) Second, departmental activities are subject to regulation and guidance by the three central agencies to maintain collective standards of financial and human resource management, regulatory quality, and policy coordination. Third, the executive's vertical accountability to Parliament is based on the presentation of budgets, estimates, plans, and annual reports as required under the Public Finance Act 1989 and the discharge of the range of departments' legislated responsibilities.

These arrangements are subject to scrutiny, investigation and reporting by the Office of the Auditor-General and the Ombudsmen, and are subject to the OIA and the Protected Disclosures Act 2000.

Also, the Better Public Services reforms include specific, measurable, and time-bound outcome targets in 10 high-priority cross-cutting policy areas. While previous governments have set up programmes of strategic goals to drive public sector priorities, the Better Public Services provisions go further in terms of measurable indicators for such goals and in providing for state services resources to be applied more flexibly in pursuit of these goals. These aspects of the Better Public Services reforms, as discussed below, are in their early days and fall short of being an impact feedback system for the full range of government activities.<sup>487</sup> Their effectiveness also depends on significant investment in evaluation capacity both of the impact of existing interventions and of the appropriateness of the indicators.<sup>488</sup>

### Policy impact evaluation

The recent comparative study of New Zealand's fiscal transparency observes "there is considerable scope for further improving the information and data in budget documents and fiscal reports on the anticipated and actual impacts and outcomes of government spending".<sup>489</sup> This is particularly so for the social and environmental impacts of fiscal policies, which are now more prominent in international fiscal transparency standards.<sup>490</sup>

A growing volume of local academic research (most recently by Bill Ryan and Derek Gill<sup>491</sup>) points out that the lack of evaluation inhibits the adaptation of national policies

---

<sup>487</sup> Paul McBeth, "Public service falling short on evaluating policy, Treasury boss says" *National Business Review*, 15 April 2013. [www.nbr.co.nz/article/public-service-falling-short-evaluating-policy-treasurys-makhlouf-says-bd-138685](http://www.nbr.co.nz/article/public-service-falling-short-evaluating-policy-treasurys-makhlouf-says-bd-138685)

<sup>488</sup> Jacqueline Cuming and Sharleen Forbes, "Better public service: The case for monitoring and evaluation", *Policy Quarterly* vol. 8(3), 2012, p. 49.

<sup>489</sup> See the Supplementary NIS Paper on fiscal transparency at [www.transparency.org.nz/docs/2013/Supplementary-Paper-3-Fiscal-Transparency.pdf](http://www.transparency.org.nz/docs/2013/Supplementary-Paper-3-Fiscal-Transparency.pdf)

<sup>490</sup> For example, Principle 4 of the High-Level Principles on Fiscal Transparency, Participation and Accountability promulgated by the Global Initiative for Fiscal Transparency, which states, "Governments should communicate the objectives they are pursuing and the outputs they are producing with the resources entrusted to them, and endeavour to assess and disclose the anticipated and actual social, economic and environmental outcomes."

<sup>491</sup> See, for example Bill Ryan and Derek Gill, eds., *Future State: Directions for public management in New Zealand* (Wellington: Victoria University Press, 2011).

as society changes. It also lays government open to the unthinking perpetuation of policies, pushing problems on to future generations.<sup>492</sup> The problem is highlighted in a report by the Prime Minister's Chief Science Advisor, who concludes "the quality of assessment and evaluation of policy implementation is quite variable. The required scrutiny can be devalued by agencies that assume their primary mandate is to implement political decisions. As a result, funding for evaluation is frequently trimmed or diverted".<sup>493</sup> This systemic deficiency has been periodically recognised, but various attempts to improve the situation have come to little.<sup>494</sup>

The resistance to independent evaluation seems entrenched in the incentives of the public management system. Possible explanations are that chief executives' incentives are too strongly focused on output delivery, and that ministers have in general become less tolerant of departments producing reports with the potential for political embarrassment. The Secretary to the Treasury has said that "policy stewardship" should be a goal for the Better Public Services reforms in that the state sector "should understand the impact that policy is having over the medium and long term, and test spending in existing areas to see if it's delivering the results we need".<sup>495</sup> This approach is now included in the Public Finance Act 1989 and in the recently approved expectations for regulatory stewardship. If successfully institutionalised, these measures will represent real progress towards improved impact monitoring and evaluation across the public sector.

### Public service restructuring

An SSC survey of state services employees in 2010<sup>496</sup> found that 65 per cent of the 8238 staff surveyed had been involved in a restructure or merger in the past two years.<sup>497</sup> This same group reported significantly less trust in departmental management than those not involved. This compares with 18 per cent affected by structural change for a similar survey of federal government in the United States.<sup>498</sup> For most organisations, major structural changes that unsettle a large proportion of their staff tend to be under taken in quite extreme circumstances. In the New Zealand public service on the other hand, such restructurings have become what a chief executive recently described as "standard operating procedure". In the United Kingdom, most structural changes are politically driven. In New Zealand more than half are driven by chief executive often within a short time of taking up their job.<sup>499</sup>

---

<sup>492</sup> The lack of evaluative activity is also noted by Martin Stanley (Stanley, 2013) and the Scott Report (Review of Expenditure on Policy Advice, 2010).

<sup>493</sup> Gluckman, 2013: 3.

<sup>494</sup> Bill Ryan and Derek Gill, "Past present and the promise: Rekindling the spirit of reform", in Ryan and Gill, 2011.

<sup>495</sup> Secretary to the Treasury Gabriel Makhoul quoted in McBeth, 2013.

<sup>496</sup> Research New Zealand, *State Services Commission: Integrity and Conduct Survey 2010* (Wellington: State Services Commission, 2010). [www.ssc.govt.nz/2010-survey-report](http://www.ssc.govt.nz/2010-survey-report)

<sup>497</sup> Richard Norman and Derek Gill, *Restructuring: An overused lever for change in New Zealand's state sector*, IPS11/06 (Wellington: Institute for Governance and Policy Studies, Victoria University of Wellington, 2011).

<sup>498</sup> Norman and Gill, 2011.

<sup>499</sup> Norman and Gill, 2011.

Any public service organisation may be required to reduce spending and staff numbers. This does not require a deep reorganisation unless the organisation is dysfunctional or has to meet quite new demands. The frequency with which public service chief executives restructure departments is difficult to justify in the absence of transparency about why the present organisational structure is unsatisfactory and of accountability for the costs in reduced morale, productivity, and unplanned exits of staff.<sup>500</sup> There are also risks from interruptions of institutional memory and services. Accountability for the ultimate success or failure of restructuring decisions is obscure. No central agency undertakes an *ex post* review, and by the time the outcome is evident, the chief executive involved may have gone to another job.

The restructuring of the Ministry of Foreign Affairs and Trade initiated in 2012 is a case in point. A new chief executive introduced a fundamental change to the *modus operandi* of the ministry, transforming it from a career diplomatic service to one based on term contracts. The changes have seen a loss of experienced staff and a high degree of concern in the “international relations community” about the reasons for the change and the negative impacts it is having and may continue to have on institutional capacity. There has been a lack of transparency around the public policy justification for this major change, the analysis of the shortcomings of the career service model, the various options for addressing the concerns, and the justification for the particular change strategy that was decided on. In the public debate, it has been unclear who was the architect of the changes – the chief executive, the minister, or central agencies – and who should be accountable for publicly defending the strategy and explaining the changes. In the absence of a detailed *ex ante* analysis of the costs and benefits of different options for reform it will be difficult to evaluate the success or otherwise of the changes.<sup>501, 502</sup>

The use of structural change to improve departmental performance is such a prominent feature of the New Zealand public management system that the public service must carry the burden of proof that the public interest has been served by this approach.<sup>503</sup> In the absence of independent evaluation, it is difficult to escape the conclusion that, over and above necessary restructurings, the phenomenon has been unduly driven by the short-term interests of chief executives, ministerial preconceptions, and, possibly, central agencies lacking better means of influencing public service behaviour. The institutional health of the public service is a matter of collective rather than departmental concern. Departmental reforms should be decided on the basis of robust

---

<sup>500</sup> In the Integrity and Conduct Survey 2010, SSC found increasing mistrust of managers among staff involved in restructuring – despite that these would have been the “survivors”: Research New Zealand, 2010.

<sup>501</sup> “Neil Walter notes for address at the launch of ‘New Flags Flying’”, 27 November 2012; Stuart McMillan, “Changed MFAT leaves sorry mess”, *National Business Review*, 5 April 2012; Terence O’Brien, “Culture of MFAT under threat”, *Dominion Post*, 2 April 2012; Winston Peters, address at launch of *Persona Non Grata* written by Michael Green, 27 June 2013. (MFAT stands for the Ministry of Foreign Affairs and Trade.)

<sup>502</sup> Foreign services require tacit knowledge and devolved tactical decision-making. OECD countries have similar systems for career-based socialisation and development of diplomats. What makes New Zealand different has not been explained.

<sup>503</sup> In the recent Performance Improvement Framework report, SSC is criticised for relying only on minister’s feedback as the performance measure for success of machinery of government policy: State Services Commission, Treasury and the Department of the Prime Minister and Cabinet, *Review of the State Services Commission (SSC)* (Wellington: New Zealand Government, 2013).

evidence-informed analysis and, from now on at least, demonstrate that they meet the expectations for regulatory stewardship.

### **Crown entities**

The legal accountability framework for board members appears to be effective in practice. In several examples in the past 10 years the activities of boards and their members have been subject to external scrutiny and investigation.<sup>504</sup>

### **Local government**

In 2012, the Auditor-General, in reporting on local government's ability to meet its future needs, expressed general satisfaction with local authorities' efforts (under the long-term plan provisions) to deliver services in prudent and sustainable ways and to plan prudentially and by not raising rates to unreasonable levels.

### **Regulatory governance**

In modern government, the public sector's regulatory role has become of equal, if not greater, importance than its roles in public services and transfers. In the last two or three decades New Zealand governments have been innovative in regulatory design, but the associated accountability has been lacking.

In recent years, lives were lost in the collapse of the CTV building in the Christchurch earthquake and in a gas explosion in the Pike River mine near Greymouth. The collapse of non-bank financial institutions and inadequate weather-proofing of tens of thousands of private dwellings caused the loss of billions of dollars to citizens. The investigations of these events revealed major deficiencies in accountability for the design, implementation and oversight, of regulation by both central and local government.

The Royal Commission on the Pike River Coal Mine Tragedy concluded that "New Zealand has a poor overall health and safety record compared with other advanced countries ... This time the lessons must be remembered. Legislative, structural and attitudinal change is needed if future tragedies are to be avoided. Government, industry and workers need to work together".<sup>505</sup> The commission found that the Department of Labour's "main public accountability documents ... did not reveal any concern about [the department's] ability to administer the health and safety legislation" or "provide much insight into the performance of the mining inspectorate, or the health and safety inspectors as a whole".<sup>506, 507</sup>

---

<sup>504</sup> These include OAG inquiries and performance audits, ministers using powers to remove boards or board chairs or members, board member resignations following privacy breaches at the Accident Compensation Corporation, Privacy Commissioner investigations, and New Zealand Police and Serious Fraud Office investigations.

<sup>505</sup> Royal Commission on the Pike River Coal Mine Tragedy, *Royal Commission on the Pike River Coal Mine Tragedy*, 2012, p. 35

<sup>506</sup> Royal Commission on the Pike River Coal Mine Tragedy, 2012: 30.

<sup>507</sup> Commenting on the Health and Safety in Employment Act 1992, the royal commission says, "The move towards more self-management by the employer was appropriate but the necessary support for the legislation, through detailed regulations and codes of practice did not appear ... The special rules and safeguards applicable

The Royal Commission report on the collapse of the CTV building in the Christchurch earthquakes, causing the death of 115 people, attributes most blame to engineering issues, but observes that the building “should never have been issued with a building permit by the Christchurch City Council in 1986 because it was not built to the standards of the time”.<sup>508</sup>

About 40,000 houses and apartment buildings built between 1994 and 2005 were found to suffer from severe weather-tightness problems, contributing to the ill health of occupants and rapid deterioration of structures. The repair and replacement costs were estimated at NZ\$11.3 billion.<sup>509</sup> Several court decisions held local authorities liable for compensation claims due to inadequate regulation. Other inquiries queried central government policy making as regards the appropriateness of the Building Act standards for New Zealand conditions. Peter Mumford doubts whether government departments understood the risks and uncertainties related to new regulatory regimes.<sup>510</sup> He maintains that regulatory regimes should always be considered experimental and subjected to regular review.

The government has responded to the recommendations arising out of the inquiries relating to the major regulatory failures, including, in the aftermath of the Pike River mine disaster, the creation of a new Crown entity to focus solely on the development, administration, and enforcement of the Health and Safety in Employment Act 1992, and the workplace enforcement of the Hazardous Substances and New Organisms Act 1996. Treasury uses a “best practice regulation model” for biennial assessments of regulatory capacity for the 56 main regulatory regimes in the public sector.<sup>511</sup> The capacity of the regulatory bodies for 22 of these regimes is conservatively identified by the Treasury as “possible areas of material concern”.

As covered above, Treasury now has approval for expectations for regulatory stewardship. These stewardship expectations represent an important new step towards the wider goal of strengthening policy advice across government. Stewardship is defined to include monitoring, evaluation, and implementation planning as well as good policy advice in relation to regulation both inside and outside government.

That New Zealand’s regulatory problems have not yet been solved is made evident in the recent Productivity Commission inquiry into local regulation. The commission observed that “30 pieces of primary legislation ... confer regulatory responsibilities on local government, and many regulations in secondary instruments”, and identified several shortcomings in the way that regulations are made at the central level including a lack of implementation analysis, poor consultation, and weak lines of

---

to mining contained in the old law, based on many years of hard-won experience from past tragedies, were swept away by the new legislation, leaving mining operators and the mining inspectors in limbo”: Royal Commission on the Pike River Coal Mine Tragedy, 2012: 32.

<sup>508</sup> Canterbury Earthquakes Royal Commission, *Final Report: Volume 6: Canterbury Television Building (CTV)*, 2012, para. 9.3.

<sup>509</sup> “Leaky homes will cost \$11.3b to fix – report”, *New Zealand Herald*, 22 December 2009.

<sup>510</sup> Mumford, 2011.

<sup>511</sup> Treasury, *The Best Practice Regulation Model: Principles and assessments* (Wellington: New Zealand Government, 2012).

accountability.<sup>512</sup> The commission concludes “there is evidence to suggest that implementation analysis is a generic weakness of regulatory policy analysis in New Zealand. This weakness impacts on local government because local government is often the implementer of government policy”.<sup>513</sup>

Over many years, governments, the public sector, and Parliament have been insufficiently accountable to citizens for the quality of the regulations they designed, enacted, and implemented. Many failures arose from deep-seated institutional values and incentives. Although major progress has been made, other regulation-related accidents may be waiting to happen. Regulation must remain high on any integrity watch list for this country.<sup>514</sup>

#### 4.2.5 Integrity mechanisms (law)

**To what extent are there provisions in place to ensure the integrity of public sector employees?**

Score: 5

*Formal responsibilities and accountabilities for staff integrity rest primarily on the chief executives and board members of individual entities. Central agency assurance of these arrangements is light-handed with the SSC’s Integrity and Conduct Survey being the main feedback mechanism.*

#### **Public service and Crown entities**

SSC sets standards of integrity and conduct for most state services agencies and provides advice and guidance to state services employees on matters of integrity and conduct.

Integrity standards are set out in a code of conduct, *Standards of Integrity and Conduct*.<sup>515</sup> The code consists of a one-page document that sets out high-level goals and criteria for state services employees to be fair, impartial, responsible, and trustworthy. It is applied to public service departments and the Crown entities within the State Services Commissioner’s mandate. Staff in these organisations must comply with the code. As part of complying with the code, state services organisations must maintain policies that are consistent with it.

In 2007 and 2010, SSC ran an integrity and conduct survey that measured state servants’ perceptions of trustworthiness and compliance with standards of integrity and conduct within their agencies. The survey is structured around the main elements of the code. SSC also provides advice and guidance to agencies on how to interpret and

---

<sup>512</sup> Productivity Commission, 2013: 5.

<sup>513</sup> Productivity Commission, 2013: 90.

<sup>514</sup> Many of New Zealand’s regulatory reforms followed an approach first articulated in 1972 by Lord Robens in the United Kingdom, that prescriptive regulation creates moral hazard for the regulatee. Part of the philosophy of the revised New Zealand Building Act 2004, for example, was that house buyers and owners were themselves responsible for ensuring houses were sound. This perspective was overturned in the subsequent legal judgments on leaky homes (presentation by Luke Cunningham, law firm, March 2013).

<sup>515</sup> Issued by the State Services Commissioner under section 57 of the State Sector Act 1988.

implement the code in their organisations, and advice on specific matters of integrity and conduct such as on safeguarding the political neutrality of the state services or on state servants' interaction with social media.

The State Services Commissioner may conduct investigations and report on matters of integrity and conduct across most of the state services in order to provide assurance that the activities of agencies and individual state servants are being carried out within the law and within the bounds of proper conduct. SSC states, "there is a relatively high threshold for the involvement of the Commissioner in individual matters of misconduct. In the first instance, individual chief executives are responsible for behaviour within their own organisations".<sup>516</sup>

In the context where individual chief executives carry the main responsibility for the integrity of their organisations, the ability of staff to speak out about wrongdoing is an important safeguard. But the key legal instrument for this purpose is not working well. The Protected Disclosures Act 2000 seems to have had little impact. SSC Integrity and Conduct Surveys show that awareness about this Act is low (although rising).<sup>517</sup> Few people seek the Act's protection. A significant number of whistle-blowers encounter inaction, and believe they are at risk of retaliation.<sup>518</sup>

It is possible that Protected Disclosures Act 2000 requires other changes in the public management system if it is to be effective. But as things stand, this Act falls short of international good practice standards.<sup>519</sup> Important issues seem to be the definitions of reportable wrongdoing, the high threshold for the seriousness of wrongdoing, the effectiveness of the reporting paths established by the legislation; the means of prompting the management of agencies or companies to recognise disclosures once made, central monitoring and oversight systems, incentives prompting agencies or companies to establish internal whistle-blower support and protection strategies, and effective remedies and compensation.

Crown entity employees are subject to the integrity and conduct standards set by the State Services Commissioner. Legislative provisions in this area align with *Cabinet Manual* expectations covering key areas such as the need for impartiality, acting legally and honestly, observing a duty not to disclose information, and acting in good faith without pursuing personal interests. Board members' fees are set through independent mechanisms and within frameworks designed to ensure consistency of remuneration in keeping with reasonable spending of public money. Standards of behaviour expected of Crown entity boards are set out in legislation, which gives boards responsibility "for ensuring the entity acts in a manner consistent with the spirit of public service".<sup>520</sup>

---

<sup>516</sup> State Services Commission, "Integrity and conduct". [www.ssc.govt.nz/integrityandconduct](http://www.ssc.govt.nz/integrityandconduct)

<sup>517</sup> The 2010 survey reported that only a third of staff were aware of the Protected Disclosures Act 2000 despite a statutory requirement that agencies have a protected disclosures policy that is published widely in the agency.

<sup>518</sup> Research New Zealand, 2010.

<sup>519</sup> Including presentations from and discussions with Professor A. J. Brown.

<sup>520</sup> Crown Entities Act 2004, section 47. Cabinet Office, "Fees framework for members appointed to bodies in which the Crown has an interest", Cabinet Office Circular CO (12) 6, 3 July 2009. [www.dpmc.govt.nz/sites/all/files/circulars/coc-09-05.pdf](http://www.dpmc.govt.nz/sites/all/files/circulars/coc-09-05.pdf)

Legislation requires board members to declare interests before (and during) their appointment and to alert the board to any interests of other board members that may be in conflict. The Responsible Minister must be satisfied that the interest is manageable.<sup>521</sup>

### Local government

Comprehensive mechanisms within local government and the Local Government Act ensure integrity. The Act sets out governance principles covering democracy, transparency, accountability, being a good employer, and relations between elected and appointed officers. It also requires each council to produce at each triennial general election a “Governance Statement” that describes in detail their governance arrangements. Local authorities also fall under the ambit of the Office of the Ombudsman, OIA, and Local Government Official Information and Meetings Act 1987. In addition, the:

- Parliamentary Commissioner for the Environment hears and investigates complaints about local authority decisions on environmental issues
- Remuneration Authority sets elected members’ remuneration
- Local Government Act 2002 requires councils to consult and give account to communities concerning planning, revenue raising, and expenditure
- Resource Management Act 1991 covers councils’ preparation and enforcement of regional policy statements, regional plans, and district plans and the integrity of elected members and employees in undertaking their own duties
- Environment Court has roles in mediation and alternative dispute resolution and exists as an appellate authority where there are disputes on council decisions made under the Resource Management Act 1991 and related statutes.

Professional institutions (planning, engineering, architecture) also have codes of conduct or practice and disciplinary sanctions for professional employees of local authorities.

#### 4.2.6 Integrity mechanisms (practice)

##### To what extent is the integrity of public sector employees ensured in practice?

Score: 4

*Overall, the responsibilities for departments and agencies to maintain and promote integrity are actively discharged. However, departmental integrity systems are not centrally monitored and have been found to be weak in areas relating to administrative justice for citizens and staff (such as client appeal systems, privacy, OIA compliance, procurement record keeping, and protected disclosure measures). Surveys show significant differences in integrity between the public service and Crown entities and between the health sector and other sectors.*

---

<sup>521</sup> The Crown Entities Act 2004 provides guidance on how to manage interests and what must be disclosed. The legislation also provides for the ongoing management of interests.

## State services

Results of the Auditor-General's 2012 survey on fraud awareness, prevention, and detection in the state sector show<sup>522</sup> a strong commitment to protecting public resources against fraud.<sup>523</sup>

There is no requirement for regular department or agency feedback on compliance with the Standards of Integrity and Conduct.<sup>524</sup> In the last three years, state services chief executives have agreed, on the suggestion of the State Services Commissioner, to be more transparent about their expenses and receipt of gifts and hospitality by publishing this information on their websites regularly. SSC also publishes the chief executive remuneration tables,<sup>525</sup> which were previously included in the SSC annual report. Publishing this information as a stand-alone document puts it in the public domain in a more timely fashion.

There are no centralised rules on the promotion of values and ethical training. The promotional strategy is to strengthen the ethical culture within the public service by publishing standards and policy and leadership documents, sharing responsibilities, declaring real or potential conflicts of interest, reporting on conflicts of interest, producing various annual reports, and fulfilling the obligation to justify administrative decisions. SSC undertakes some integrity-promoting activities across the state services. For example, in 2012, SSC ran a series of events focused on whistle-blowing, led by international expert Professor A. J. Brown.

The departmental or agency emphasis of the public management system has worked well with most chief executives appearing to have been active in ensuring staff receive ethical training and implementing integrity and conduct standards.<sup>526</sup> Nevertheless, in recent months several security breaches resulted in the release of private information about citizens (contravening the Privacy Act 1993) and, in the case of the Accident Compensation Corporation, revealing that appeal processes were being adjudicated by agents under incentives to support the corporation.

SSC undertook Integrity and Conduct Surveys in 2007 and 2010 and is reportedly considering a revised survey in 2013 to provide a greater level of information. In 2010, there were fewer cases of observed sexual harassment, more staff reporting of misconduct, more collegial support for ethical behaviour, managerial action against breaches, and attention to integrity matters in performance appraisal processes.

Areas of weakness previously noted in 2007 include low awareness of ethics training; continued low awareness of the Protected Disclosures Act; and high levels of observed

---

<sup>522</sup> OAG, *Fraud Awareness, Prevention, and Detection in the Public Sector*, 2012. [www.oag.govt.nz/2012/fraud-awareness](http://www.oag.govt.nz/2012/fraud-awareness)

<sup>523</sup> OAG, "Part 1: Overview: Summary of our fraud survey results for government departments." [www.oag.govt.nz/2012/fraud-summary-govt-departments/part1.htm](http://www.oag.govt.nz/2012/fraud-summary-govt-departments/part1.htm); OAG, "Part 2: Detailed results for these entities." [www.oag.govt.nz/2012/fraud-summary-crown-entities/part2.htm](http://www.oag.govt.nz/2012/fraud-summary-crown-entities/part2.htm)

<sup>524</sup> State Services Commission, *State Services Commission Annual Report for Year Ended 30 June 2011* (Wellington: State Services Commission, 2011).

<sup>525</sup> SSC, *Remuneration of Public Service and State Sector Senior Staff as at 30 June 2012* (Wellington: State Services Commission, 2012). [www.ssc.govt.nz/sites/all/files/rem-senior-statesector-staff-30june12.pdf](http://www.ssc.govt.nz/sites/all/files/rem-senior-statesector-staff-30june12.pdf)

<sup>526</sup> Interview with SSC.

ethical misconduct, especially abusive or intimidating behaviour towards other staff, improper use of the internet or email, and lying to other employees. In addition, some aspects of senior managers' behaviour are perceived poorly. More state servants in 2010 than in 2007 disagreed that they trust middle and senior management to keep promises and commitments.<sup>527</sup>

In 2010, 65 per cent of staff reported their organisation had been through a restructure in the last two years compared with 55 per cent of state servants in 2007. These staff recorded higher levels of dissatisfaction with the information from senior managers about what is going on in their organisation and less trust that senior and middle managers in their organisation will keep their promises and commitments. State servants think managers are less likely to be held accountable for misconduct than are non-managers. Sixteen per cent of state servants who reported a breach or misconduct experienced retaliation as a result.

The Integrity and Trust Surveys also revealed significant attitudinal and behavioural differences between state services governance systems and, in some cases, sectors. These differences reveal that different governance regimes have distinctive integrity risk profiles. For example:

- public servants feel better prepared to handle situations that invite misconduct than do other state servants
- although misconduct is seen at similar levels to among other state servants, Crown entity employees who see misconduct are less inclined to report it
- where Crown entity staff report misconduct but are dissatisfied with the outcome, more than half (53 per cent) say it was because they feel “there was a cover up”
- district health board staff see more misconduct than do other state servants, in particular abusive or intimidating behaviour towards other staff
- where district health board staff report misconduct but are dissatisfied with the result, substantially more in 2010 than in 2007 say it was because corrective action was not severe or complete enough (93 per cent compared with 50 per cent)
- public service employees are more likely than Crown entity employees to agree that their manager disciplines integrity breaches.

### **Crown entities**

The integrity and conduct of boards comes under scrutiny from time to time as evidenced by Auditor-General inquiries into various aspects of board operations. Board chairs have a responsibility to ensure board member conflicts of interest are managed effectively. It is difficult to know how well integrity provisions for board members are ensured in practice.

### **Overview**

While the arrangements for promoting integrity appear comprehensive and actively maintained, the areas of little progress indicated in the surveys are cause for concern.

---

<sup>527</sup> As discussed above, this finding reflects the negative impact of restructuring.

A weakness in the regulatory system seems to be accountability for some processes at the agency level. Central agencies, besides setting standards, may need some process of assuring ministers that the integrity risks of different public sector governance regimes are covered, and that departments and agencies have credible management controls for ensuring integrity including, for example,<sup>528</sup> administrative justice for clients and staff. The Performance Improvement Framework has the potential to surface such issues, and SSC informed the NIS researchers that the next round of Performance Improvement Framework reviews would give more attention to integrity systems, including increasing staff understanding of protections under the Protected Disclosures Act 2000.<sup>529</sup>

Because of the devolved nature of departmental- and agency-level integrity management, the SSC's Integrity and Trust Surveys stand as the key source of independent information on the effectiveness of the public sector's integrity arrangements.

Unlike in Australia or the UK, there have been no prosecutions for the offence of misconduct in public office in New Zealand, so New Zealand law on this offence is not clear. An explanation of the offence and its potential is in the annex to this pillar report.

#### 4.3.1 Public education

**To what extent does the public sector inform and educate the public on its role in fighting corruption?**

Score: 3

*The public sector has an active, targeted, and sector-specific approach to combatting corruption, but the system as a whole lacks a body clearly responsible for identifying and promoting action to combat new corruption risks as they emerge. This lack of overview has been manifested in the tardiness of the country's response to international standard setting in the fight against corruption.*

In the New Zealand context, domestic corruption has not been such a problem that there has been a strong domestic constituency for making it a high cross-government policy priority. Where public sector agencies do engage the public on matters relating to corruption, it tends to be in relation to specific policies for which they are responsible. Thus, the Ministry of Business, Innovation and Employment addresses specific matters relating to banking regulation and company governance, the Serious Fraud Office and New Zealand Police investigate and prosecute instances of corruption, and so on.

Those departments and agencies involved in dealing with bribery and corruption (the Serious Fraud Office, Ministry of Justice, Office of the Auditor-General, and SSC) maintain a reasonably high public profile in integrity-promoting activities, and the public sector organisations most involved in international trade (the Ministry of Foreign Affairs

---

<sup>528</sup> For example, client appeal and review processes, and OIA and Protected Disclosures Act 2000 responsiveness.

<sup>529</sup> Interview with A. J. Brown July 2013

and Trade, the New Zealand Export Credit Office, and, albeit to a more limited extent, New Zealand Trade and Enterprise) inform and advise the business community involved in international trade on New Zealand's international anti-bribery and corruption obligations.

This generally satisfactory situation has its risks. One is a tendency to be inactive in cooperating on international anti-corruption activities. As covered in the legislature and political executive pillar reports, New Zealand signed but has yet to ratify the UN Convention against Corruption<sup>530</sup> and has been slow in implementing the requirements of the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions. Secondly, while the public sector's targeted and sector-specific approach to combatting bribery corruption seems appropriate given its relatively low incidence, the public sector system as a whole appears to lack a body clearly responsible for identifying and promoting action to combat new corruption risks as they emerge. As active participants in the global economy, New Zealanders are increasingly exposed to pressures to engage in corruption in other countries.<sup>531</sup> In recent revelations about fraud involving shell companies and tax havens, it appears that some New Zealand citizens have promoted such activities.<sup>532</sup>

#### 4.3.3 Public procurement<sup>533</sup>

**To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?**

Score: 4

*Adequate formal processes are in place for public procurement, and compliance appears to be high. The processes reflect international good practice, but there are serious shortcomings in transparency because, in a highly decentralised system by international standards, systematic procurement records are not readily available within departments and agencies.*

The effectiveness of the institutional arrangements for public procurement is crucial in minimising corruption. The government spends about NZ\$30 billion a year (37 per cent of total appropriations or 90 per cent of output expenses) in procuring works, goods, and services to build and maintain infrastructure and support public programmes.<sup>534</sup>

---

<sup>530</sup> The UN General Assembly adopted the Convention against Corruption on 31 October 2003 by Resolution 58/4. It was opened for signature from December 2003 and signed by 140 countries. As of June 2013, there are 167 parties to the convention, including the European Union.

<sup>531</sup> "New Zealand Tops anti-corruption index – but our off-shore dealings more dubious", *National Business Review*, 27 October 2010 [www.nbr.co.nz/article/nz-shares-top-spot-anti-corruption-index-132133](http://www.nbr.co.nz/article/nz-shares-top-spot-anti-corruption-index-132133)

<sup>532</sup> For example, Nicky Hager, "Money trail leads home to New Zealand" *Stuff*, 7 April 2013. [www.stuff.co.nz/business/money/8515361/Money-trail-leads-home-to-New-Zealand](http://www.stuff.co.nz/business/money/8515361/Money-trail-leads-home-to-New-Zealand)

<sup>533</sup> A more detailed assessment of public procurement is in the supplementary papers. See the Supplementary NIS Paper on Procurement at [www.transparency.org.nz/docs/2013/Supplementary-Paper-4-Public-Procurement.pdf](http://www.transparency.org.nz/docs/2013/Supplementary-Paper-4-Public-Procurement.pdf)

<sup>534</sup> Ministry of Business, Innovation and Employment, *Government Procurement: Buying goods and services – The five principles*, October 2012. [www.business.govt.nz/procurement/pdf-library/a3-principles-of-government-procurement-final.pdf](http://www.business.govt.nz/procurement/pdf-library/a3-principles-of-government-procurement-final.pdf)

Public procurement is lightly regulated through a framework comprising guiding principles (updated in 2012) and a set of rules (2007) that are about to be updated with a wider reach.<sup>535</sup> The rules are mandatory for the 29 public service departments and the police and defence forces, and are advisory for the nearly 3,000 other public entities.<sup>536</sup> The Ministry of Business, Innovation and Employment is responsible for promulgating the policy, rules, and guidance, monitoring implementation of the policy, and investigating complaints.<sup>537</sup> No separate entity conducts procurement. Each entity, through its chief executive, is responsible for tailoring procurement policies and procedures to business need and for conducting and administering procurement contracts.

The rules require open tendering as the norm (subject to reasonable exceptions), objective evaluation of tenders against published criteria, and documentation of the process. While guidelines and model documents are available, standardisation has been minimal. However, this is increasing, both for efficiency and for alignment with international trade treaties.<sup>538</sup> The existing rules regarding transparency and accountability fall short of international good practice in extent and in ease of access.

Large and high-risk projects have, since May 2008, been subject to special review at key milestones through the Gateway review process that SSC administers as part of Treasury's capital asset management regime.<sup>539</sup> The rules require clarifications during tendering to be shared equally with all participants, but recourse on the process or award decision can follow multiple avenues without explicit requirements to be followed. A supplier feedback system in the Ministry of Business, Innovation and Employment handles general concerns about process. General rights and protection for whistle-blowing, provided under the Protected Disclosures Act 2000, apply also to procurement. Formal accountability has been exercised by the Office of the Auditor-General, but procurement is not a standard part of financial or performance audits and its inclusion is, in essence, discretionary.

In practice, compliance with the main processes of open tendering, objective evaluation, and required disclosure appears high, especially for medium to large procurements that must be tendered through an electronic tendering system. Although totalling about 3,000 activities last year, this represents only 10–15 per cent of total

---

<sup>535</sup> Revisions to the *Mandatory Rules for Procurement by Departments* (2006) have resulted in *Government Rules of Sourcing*, which Cabinet approved in April 2013 and come into effect on 1 October 2013. These rules align to the World Trade Organization Agreement on Government Procurement, which is considered to represent best international practice.

<sup>536</sup> State Sector Act 1988, Schedule 1.

<sup>537</sup> Ministry of Economic Development, *Government Procurement in New Zealand: Policy Guidance for Purchasers*, August 2007, Appendix 1.

<sup>538</sup> New Zealand has determined to accede to the World Trade Organization Agreement on Government Procurement. Accession to this agreement will require a much greater degree of reporting on the procurement activities of agencies. Work is under way to meet those requirements. In part, it is intended that this requirement for reporting (transparency) will be met by a replacement Government Electronic Tender Service (GETS), which will be deployed early in 2014.

<sup>539</sup> In April 2013, oversight of major information and communications technology service procurement and management became the responsibility of the Government Chief Information Officer (who is also the Chief Executive of the Department for Internal Affairs).

annual public procurement by value.<sup>540</sup> The extent of procurement not following these procedures and the reasons for this are not readily evident. There are no requirements for disclosure or for informing the market when other forms are being followed. The lack of registers or statistics on all government procurement (particularly for goods) makes it difficult to assess compliance with the rules. While some information is accessible later through select committee reports, integrity would be strengthened by expanding systematic proactive disclosure to include key statistical and implementation information that reflects practice.<sup>541</sup> This would also reveal the variety of procurement practices and performance across the range of large and small entities.

The wide distribution of entities undertaking procurement means that staff capacity and capabilities are areas of discernible risk. Each entity is responsible and accountable for the resourcing, administration, qualification of its staff, and separation of functions for procurement. Large entities such as the New Zealand Transport Agency, which accounts for nearly 10 per cent of total government procurement, have strong systems and capacity, but smaller entities such as certain Crown entities and various boards are particularly exposed to these risks. The Ministry of Business, Innovation and Employment is addressing these issues with a capacity-building programme, including establishing the Procurement Academy to foster world-class procurement training and qualifications (cited by the OECD as good practice) and the Commercial Pool, which provides special expertise. However, further improvements are warranted, including more explicit provisions for the separation of procurement functions between end-users and procurement specialists, guidelines and training on handling the thin market and managing potential conflicts of interest in the small entities, and implementing contract administration systems (especially for handling and disclosing contract variations).<sup>542</sup>

The performance standards for complaint handling need to be more specific and binding (addressed by the new rules), and complaints and resolutions should be published to improve effectiveness and confidence in the system. The administrative sanctions on staff regarding public procurement are limited. However, a supplier may be excluded for false declarations or previous performance deficiencies, and the new rules would broaden the basis of exclusion.<sup>543</sup> In practice, formal audits and inquiries have been effective in encouraging compliance without unduly suppressing efficiency, and findings from the Office of the Auditor-General have served as a leading guide on good practice in procurement. However, there is concern that the extent to which procurement policies and practices are examined in audits depends on both the judgment of the auditor and on funding considerations, because the audited entity is obliged to pay the audit costs. Parliamentary select committee reports also support accountability because they typically include a selective review of procuring entity practice.

---

<sup>540</sup> Ministry of Business, Innovation and Employment, *The Noticeboard – March 2013 – Government Procurement Branch*, March 2013. [www.business.govt.nz/procurement/procurement-reform/noticeboard](http://www.business.govt.nz/procurement/procurement-reform/noticeboard)

<sup>541</sup> See, for example, the Construction Sector Transparency Initiative at [www.constructiontransparency.org](http://www.constructiontransparency.org)

<sup>542</sup> OAG, *Central Government: Results of the 2007/2008 audits*, 2009, p. 87.

<sup>543</sup> Rule 41 *Government Rules of Sourcing*, April 2013

Three large cases illustrate the strengths and some limitations of the procurement framework: the Canterbury earthquake recovery, the international convention centre in Auckland, and Novopay.

For the Canterbury earthquake recovery, the procurement framework at first facilitated a controlled but speedy and innovative approach, using standard rules for core business contracts, deploying probity auditors for large complex projects, and hiring special expertise for procuring land and large-scale facilities in the rebuilding phase. Difficulties emerged, however, in defining pay quantities and financial performance. The next phase may also involve foreign supply chain risks.

For the international convention centre in Auckland, the procurement procedure was changed during procurement. An audit by the Office of the Auditor-General in 2012 highlighted the need for clear and consistent rules to be followed, fairness to all parties, and transparency at all stages.

In the case of Novopay, a large complex payroll system for education, there were high time, cost, and delivery performance difficulties despite an apparently sound procurement process. A ministerial inquiry found that the main problems lay in the departmental and central agency oversight and management of the project.<sup>544</sup>

#### 4.4.1 Treaty of Waitangi

**The Treaty of Waitangi can be understood to create obligations of partnership, respect and participation. What does the public sector do to partner with Māori, to respect and affirm Māori rights to make decisions and to enhance Māori participation in its field of activity? In particular, where the public sector has legal rights and obligations in this respect given to it by the Crown, how well does it honour them, including any Treaty obligations passed on by the Crown?**

*The public sector complies with its legal responsibilities under the Treaty of Waitangi, but little priority is given to oversight and policy development in this constitutionally important area. The comparatively low level of employment of Māori by Crown entities warrants attention.*

Departments and Crown entities are not required to report regularly on Treaty observance. However, the legislation for the functions of some public service departments and Crown entities have specific Treaty requirements that are covered in their overall performance reporting. In addition, Te Puni Kōkiri (the Ministry of Māori Development) provides general guidance for the public sector<sup>545</sup> and periodically reports and advises on specific policy areas from the perspective of the welfare of Māori.<sup>546</sup>

---

<sup>544</sup> Ministerial Inquiry into the Novopay Project, *Report of the Ministerial Inquiry into the Novopay Project* (Wellington: New Zealand Government, 2013). [static.stuff.co.nz/files/NovopayInquiry.pdf](http://static.stuff.co.nz/files/NovopayInquiry.pdf)

<sup>545</sup> For example, Good Practice Participate website, "Related resources for working with Māori Good Practice Participate." <http://goodpracticeparticipate.govt.nz/customer.modicagroup.com/working-with-specific-groups/related-resources/maori.html>

<sup>546</sup> Te Puni Kōkiri, *Treaty of Waitangi and the Ministry for Social Development*, no date.

SSC does not have on-going statutory responsibilities for the Treaty of Waitangi and, where it has undertaken wider activities related to the Treaty, it has been in response to the policies of the government of the day. SSC's personnel management obligations overlap with Treaty interests in the regular monitoring of the employment of Māori.

The good employer provisions of the Crown Entities Act 2004 include the expectation that personnel policies will recognise the aims and aspirations of Māori, their employment requirements, and the need for the involvement of Māori as employees of the entity.<sup>547</sup> SSC's latest Human Resources Capability Survey of public service departments showed 16.4 per cent of Māori staff of whom 9.2 per cent are tier 1–3 managers.<sup>548</sup> On the other hand, only 6.36 per cent of Crown entity employees are Māori, a quarter of respondent entities have no Māori staff, and only two chief executives and very few senior managers are Māori.

Local governments by contrast have clearly stated Treaty-related obligations under the Local Government Act 2002 and Resource Management Act 1991. Treaty issues may also arise in the implementation by local government of a wide range of statutes. The Resource Management Act requires the principles of the Treaty to be taken into account in decisions made under it. In practice, this has meant a duty to consult local Māori who might be affected. Practice across councils is variable.<sup>549</sup> How well Resource Management Act-related consultation results in Treaty principles being taken into account is unclear. The Productivity Commission in its report on local level regulation, observes, "on the available evidence, the current system for involving Māori in resource consent decisions, does not appear to be working well for anyone, largely due to the costs and timeframes involved".<sup>550</sup>

Treaty responsiveness information at the agency level is not consolidated. Also, respect for the Treaty is not just about equal employment opportunities, cultural awareness, and consultation processes. The interests of Māori are deeply engaged in the most difficult policy challenges facing government at national and local levels. The Better Public Services reform programme is attempting an historical recentralisation of some aspects of state services management. Accordingly, SSC is having its management mandate broadened and deepened, and Treasury is seeking to strengthen the quality and public service accountability for policy advice through the expectations for regulatory stewardship.

Given the constitutional standing of the Treaty and the enduring importance of Māori issues across the policy agenda, central agencies could see the monitoring and evaluation of public sector policy advice and services from a Treaty perspective as part of their stewardship responsibilities. How such stewardship information should impact on policies would, of course, remain the prerogative of the government of the day.

---

<sup>547</sup> Crown Entities Act 2004, section 118(2)(d).

<sup>548</sup> Human Rights Commission, "Crown entities monitoring report reveals low numbers of Māori employees", 3 April 2012. [www.hrc.co.nz/2012/crown-entities-monitoring-report-reveals-low-numbers-of-maori-employees](http://www.hrc.co.nz/2012/crown-entities-monitoring-report-reveals-low-numbers-of-maori-employees)

<sup>549</sup> For example, "Memorandum of Understanding and Protocol between Otago Regional Council, Te Rūnanga o Ngāi Tahu and Kāi Tahu ki Otago for Effective Consultation and Liaison", Otago Regional Council, January 2003.

<sup>550</sup> Productivity Commission, 2013.

## Annex to pillar 4

### Misconduct in public office: An integrity-plus approach

In line with the integrity-plus approach, the introduction of an offence of misconduct in public office would prove valuable. It would enable prosecution for a broader range of breaches of integrity, such as improper acts involving varying degrees of abuse of authority or conflict of interest, than is possible under standard bribery laws alone. Good examples are found in the UK and Hong Kong where the law provides for an offence of misconduct in public office, and there are similarities with the US approach to malfeasance in public office.

The Hong Kong Court of Final Appeal defined the elements of the offence of misconduct in public office as:

The offence would be committed where –

- (1) a public official;
- (2) in the course of or in relation to his public office;
- (3) wilfully misconducts himself; by act or omission (for example, by wilfully neglecting or failing to perform his duty);
- (4) without reasonable excuse or justification; and
- (5) where such misconduct is serious, not trivial, having regard to the responsibilities of the office and the office-holder, the importance of the public objects which they serve and the nature and extent of the departure from those responsibilities.

This definition reinforces provisions of the Hong Kong Civil Service Code under which public officials must show commitment to the rule of law; honesty and integrity; objectivity and impartiality; political neutrality; accountability for decisions and actions; and dedication, professionalism, and diligence.<sup>551</sup>

The definition of the elements of the offence in UK law is similar:<sup>552</sup>

1. A public officer acting as such ...
2. Wilfully neglects to perform his duty and/or wilfully misconducts himself ...
3. To such a degree as to amount to an abuse of the public's trust in the office holder ...
4. Without reasonable excuse or justification ...

However, UK law omits the proviso that the misconduct must be serious, not trivial. Penalties in the UK can also be more severe than in Hong Kong.

Commentary on the UK law explains: “The essential feature of the offence is an abuse by the public official of the powers, discretions or duties exercisable by virtue of his official position conferred on him for the public benefit. It does not require the presence

---

<sup>551</sup> Civil Service Bureau, *Misconduct in Public Office*, 2012.

[http://hksargegu.org.hk/S%20Topic/CS%20BOOKLET/MIPO\\_Booklet\\_Eng\\_2012.pdf](http://hksargegu.org.hk/S%20Topic/CS%20BOOKLET/MIPO_Booklet_Eng_2012.pdf)

<sup>552</sup> UK Attorney General's Reference No 3 of 2003 [2004] EWCA Crim 868, para. 61.

of bribery or pecuniary gain, and thus covers a wider range of misbehaviour than corruption narrowly defined.”

The judicial authorities that apply the UK law also recognise that the holder of a public office should not be defined in a narrow or technical sense, and suggest that it is the nature of the duties and the level of public trust involved that are relevant, rather than the manner or nature of appointment. “A public office holder is an officer who discharges any duty in the discharge of which the public are interested, more clearly so if he is paid out of a fund provided by the public.”<sup>553</sup>

A person may fall within the meaning of a public officer where one or more of the following characteristics apply to a role or function that they exercise with respect to the public at large: judicial or quasi-judicial, regulatory, punitive, coercive, investigative, representative (of the public at large), or responsibility for public funds.

An offence of misconduct in public office in New Zealand would reinforce the requirement for ethical behaviour in the public service and state services, form a legal adjunct to the State Service Commission’s Code of Conduct, support chief executives of public agencies, and lend strength to a national anti-corruption strategy. Along with other laws, codes, and conventions governing integrity in public service, it would need to be supported by a broader educational strategy for public officials in New Zealand.

In addition, the restoration of the annual central record of criminal offences by state servants, such as the State Service Commission used to publish before 1988, could be an integral part of an anti-corruption strategy.

## References

- Adams, Amy “Govt to mandate three-yearly state of the environment reports”, 8 August 2013. [www.beehive.govt.nz/release/govt-mandate-three-yearly-state-environment-reports](http://www.beehive.govt.nz/release/govt-mandate-three-yearly-state-environment-reports).
- Better Public Services Advisory Group, *Better Public Services Advisory Group Report* (New Zealand Government, 2011).
- Cabinet Economic Growth and Infrastructure Committee, “Proposed Environmental Reporting Bill: Release of discussion document” Cabinet minute EGI Min (11) 17/5, 11 August 2011. [www.mfe.govt.nz/publications/ser/measuring-up-environmental-reporting/cabinet-minute-environmental-reporting-bill.pdf](http://www.mfe.govt.nz/publications/ser/measuring-up-environmental-reporting/cabinet-minute-environmental-reporting-bill.pdf)
- Cabinet Office, *Cabinet Manual 2008* (Wellington: Department of the Prime Minister and Cabinet, 2008). [www.cabinetmanual.cabinetoffice.govt.nz/3.28](http://www.cabinetmanual.cabinetoffice.govt.nz/3.28)
- Cabinet Office, “Fees framework for members appointed to bodies in which the Crown has an interest”, Cabinet Office Circular CO (12) 6, 3 July 2009. [www.dpmc.govt.nz/sites/all/files/circulars/coc-09-05.pdf](http://www.dpmc.govt.nz/sites/all/files/circulars/coc-09-05.pdf)
- Campos, Ed, and Sanjay Pradhan, *Budgetary Institutions and Expenditure Outcomes: Binding Governments to Fiscal Performance* (World Bank, 1999).
- Canterbury Earthquakes Royal Commission, *Final Report: Volume 6: Canterbury Television Building (CTV)*, 2012.
- Cheng, Derek, “Key bats away talk of cronyism”, *New Zealand Herald*, 4 February 2012. [www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10783229](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10783229)

---

<sup>553</sup> In *R v Whitaker* [1914] KB 1,283.

- Civil Service Bureau, *Misconduct in Public Office*, 2012.  
[http://hksargegu.org.hk/S%20Topic/CS%20BOOKLET/MIPO\\_Booklet\\_Eng\\_2012.pdf](http://hksargegu.org.hk/S%20Topic/CS%20BOOKLET/MIPO_Booklet_Eng_2012.pdf)
- Coleman, Jonathan, "Taking a results approach to delivering Better Public Services," 26 February 2013. [www.beehive.govt.nz/speech/taking-results-approach-delivering-better-public-services](http://www.beehive.govt.nz/speech/taking-results-approach-delivering-better-public-services)
- Cuming, Jacqueline, and Sharleen Forbes, "Better public service: The case for monitoring and evaluation", *Policy Quarterly* vol. 8(3), 2012, p. 49.
- Davison, Isaac, "Lobbyist appointment no conflict: Key", *New Zealand Herald*, 25 June 2012. [www.nzherald.co.nz/politics/news/article.cfm?c\\_id=280&objectid=10815422](http://www.nzherald.co.nz/politics/news/article.cfm?c_id=280&objectid=10815422)
- Davison, Isaac, "Nats accused of health agency cronyism", *New Zealand Herald*, 28 June 2012. [www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10815974](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10815974)
- "Editorial: ACC culture must be more fair and open", *New Zealand Herald*, 7 September 2012. [www.nzherald.co.nz/nz/news/article.cfm?c\\_id=1&objectid=10832252](http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10832252)
- Edwards, Meredith, John Halligan, Bryan Horrigan, and Geoffrey Nicoll, *Public Governance in Australia* (Australian National University, 2012). <http://epress.anu.edu.au/titles/australia-and-new-zealand-school-of-government-anzsog-2/public-sector-governance-in-australia-2>
- Eichbaum, Chris, and David Shaw, "Revisiting political advisers and public servants in Westminster systems", *Governance* vol. 21(3), 2008.
- Frankel, Suzy, and Debora Ryder, eds., *Recalibrating Behaviour: Smarter Regulation in a Changing World* (Wellington: Lexis Nexus, 2013).
- Gluckman, Peter (Prime Minister's Chief Science Advisor), *Role of Evidence in Policy Formation* (Auckland: Office of the Prime Minister's Science Advisory Committee, 2011).
- Human Rights Commission, "Crown entities monitoring report reveals low numbers of Māori employees", 3 April 2012. [www.hrc.co.nz/2012/crown-entities-monitoring-report-reveals-low-numbers-of-maori-employees](http://www.hrc.co.nz/2012/crown-entities-monitoring-report-reveals-low-numbers-of-maori-employees)
- Human Rights Commission, *Submission to the Select Committee on Local Government and the Environment, on the Environment Canterbury Act*, 2012).
- Integrity and Trust Survey "State Services Commission", 2010.
- Joseph, Philip. "Environment Canterbury legislation", *New Zealand Law Journal*, June 2010, p. 193.
- Law Commission, *The Public's Right to Know: Review of the official information legislation*, NZLC R125 (Wellington: Law Commission, 2012).
- "Leaky homes will cost \$11.3b to fix – report", *New Zealand Herald*, 22 December 2009.
- Local Futures Research Project, *Local Government Strategy and Communities* (Wellington: Institute of Policy Studies, 2006).
- Mandatory Rules for Procurement by Departments* (2006)
- McBeth, Paul, "Public service falling short on evaluating policy, Treasury boss says" *National Business Review*, 15 April 2013. [www.nbr.co.nz/article/public-service-falling-short-evaluating-policy-treasurys-makhlouf-says-bd-138685](http://www.nbr.co.nz/article/public-service-falling-short-evaluating-policy-treasurys-makhlouf-says-bd-138685)
- McMillan, Stuart, "Changed MFAT leaves sorry mess", *National Business Review*, 5 April 2012.
- Ministerial Inquiry into the Novopay Project, *Report of the Ministerial Inquiry into the Novopay Project* (Wellington: New Zealand Government, 2013). [static.stuff.co.nz/files/NovopayInquiry.pdf](http://static.stuff.co.nz/files/NovopayInquiry.pdf)
- Ministry for the Environment, "Release of discussion document: Proposed Environmental Reporting Bill", Cabinet Economic Growth and Infrastructure Committee, March 2013.
- Ministry of Business, Innovation and Employment, *Government Procurement: Buying goods and services – The five principles*, October 2012. [www.business.govt.nz/procurement/pdf-library/a3-principles-of-government-procurement-final.pdf](http://www.business.govt.nz/procurement/pdf-library/a3-principles-of-government-procurement-final.pdf)

- Ministry of Business, Innovation and Employment, *Government Rules of Sourcing*, 2013.
- Ministry of Business, Innovation and Employment, *The Noticeboard – March 2013 – Government Procurement Branch*, March 2013.  
[www.business.govt.nz/procurement/procurement-reform/noticeboard](http://www.business.govt.nz/procurement/procurement-reform/noticeboard)
- Ministry of Economic Development, *Government Procurement in New Zealand: Policy Guidance for Purchasers*, 2007.
- Mumford, Peter, “Best practice regulations: Setting targets and detecting vulnerabilities”, *Policy Quarterly* vol. 7(3), 2011, p. 36.
- “Neil Walter notes for address at the launch of ‘New Flags Flying’ ”, 27 November 2012.
- New Zealand Government, *Summary of the Government Response to the Review of Expenditure on Policy Advice*, April 2011.  
[www.treasury.govt.nz/statesector/policyexpenditurereview/summ-repa-apr11.pdf](http://www.treasury.govt.nz/statesector/policyexpenditurereview/summ-repa-apr11.pdf)
- “New Zealand Tops anti-corruption index – but our off-shore dealings more dubious”, *National Business Review*, April 2013.
- Norman, Richard, “How should state-owned enterprises be governed?” *Public Sector* vol. 30(4), 2008, p. 37.
- Norman, Richard and Derek Gill, *Restructuring: An overused lever for change in New Zealand’s state sector*, IPS11/06 (Wellington: Institute for Governance and Policy Studies, Victoria University of Wellington, 2011).
- O’Brien, Terence, “Culture of MFAT under threat”, *Dominion Post*, 2 April 2012.
- OECD, *OECD Guidelines on Corporate Governance of State-Owned Enterprises* (Paris: OECD, 2005).
- Office of the Auditor General, *Central Government: Results of the 2007/2008 audits*, 2009.
- Palmer, Matthew, “New Zealand constitutional culture”, *New Zealand Universities Law Review* vol. 22, 2007, p. 565.
- Palmer, Matthew S. R., “What is New Zealand’s constitution and who interprets it? Constitutional realism and the importance of public office-holders”, *Public Law Review* vol. 17, 2006, p. 145.
- Parliamentary Commissioner for the Environment, *How Clean is New Zealand? Measuring and reporting on the health of our environment*, 2010.
- Productivity Commission, *Towards Better Local Regulation* (Wellington: New Zealand Productivity Commission, 2013).
- Public Service Association, “Post-election survey of PSA members: Analysis of the questions on political neutrality”, 2007.
- Research New Zealand, *State Services Commission: Integrity and Conduct Survey 2010* (Wellington: State Services Commission, 2010). [www.ssc.govt.nz/2010-survey-report](http://www.ssc.govt.nz/2010-survey-report)
- Review of Expenditure on Policy Advice, Improving the Quality and Value of Policy Advice: Findings of the committee appointed by the government to review expenditure on policy advice* (Wellington: Treasury, 2010).
- Royal Commission on the Pike River Coal Mine Tragedy, *Royal Commission on the Pike River Coal Mine Tragedy* (Wellington: Royal Commission, 2012).
- Ryan, Bill, and Derek Gill, “Past present and the promise: Rekindling the spirit of reform”, in Bill Ryan and Derek Gill, eds., *Future State: Directions for public management in New Zealand* (Wellington: Victoria University Press, 2011).
- Ryan, Bill, and Derek Gill, eds., *Future State: Directions for public management in New Zealand* (Wellington: Victoria University Press, 2011).
- Schick, Allen, *The Spirit of Reform: Managing the New Zealand state sector in a time of change* (Wellington: State Services Commission, 1996).

**National Integrity System Assessment 2013**  
**Chapter 5: Public sector (pillar 4)**

- Shuttleworth, Kate, "New ACC board chair gets mixed reception", *New Zealand Herald*, 4 September 2012.  
[www.nzherald.co.nz/business/news/article.cfm?c\\_id=3&objectid=10831727](http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=10831727)
- Stanley, Martin, *New Zealand and UK Compared*, February 2013.  
[www.civilservant.org.uk/nz.pdf](http://www.civilservant.org.uk/nz.pdf)
- State Services Commission, *Board Appointment and Induction Guidelines*, 2012.
- State Services Commission, *Remuneration of Public Service and State Sector Senior Staff as at 30 June 2012*, 2012. [www.ssc.govt.nz/sites/all/files/rem-senior-statesector-staff-30june12.pdf](http://www.ssc.govt.nz/sites/all/files/rem-senior-statesector-staff-30june12.pdf)
- State Services Commission, *Standards of Integrity and Conduct* (Wellington: State Services Commission, 2007). [www.ssc.govt.nz/sites/all/files/Code-of-conduct-StateServices.pdf](http://www.ssc.govt.nz/sites/all/files/Code-of-conduct-StateServices.pdf)
- State Services Commission, *State Services Commission Annual Report for Year Ended 30 June 2011* (Wellington: State Services Commission, 2011).
- State Services Commission, Treasury, and Department of the Prime Minister and Cabinet, *Core Guide 3: Getting to great – Lead reviewer insights for the from the Performance Improvement Framework* (Wellington: New Zealand Government, 2013).
- Transparency International, *National Integrity Systems: Transparency International Country Study Report: New Zealand 2003* (Berlin: Transparency International, 2003), p. 27.
- Treasury, *Regulatory System Report 2013: Guidance for departments*, (Wellington: Treasury, 2013). [www.treasury.govt.nz/publications/guidance/regulatory/systemreport/04.htm](http://www.treasury.govt.nz/publications/guidance/regulatory/systemreport/04.htm)
- Treasury, *The Best Practice Regulation Model: Principles and assessments* (Wellington: New Zealand Government, 2012).
- Watkins, Tracy, "Best, worst of our public service revealed", *Stuff*, 4 June 2013.  
[www.stuff.co.nz/national/politics/8750749/Best-worst-of-our-public-service-revealed](http://www.stuff.co.nz/national/politics/8750749/Best-worst-of-our-public-service-revealed)