

Chair
Cabinet State Sector Reform and Expenditure Control Committee

BETTER PUBLIC SERVICES PAPER 1: OVERVIEW OF LEGISLATIVE POLICY PROPOSALS

Proposal

1. The Better Public Services (BPS) programme is the next phase in the Government's public sector reforms focused on getting the system working to deliver better results and improved services for New Zealanders.

2. This paper summarises the accompanying suite of six papers that collectively seek changes to New Zealand's public sector management system to support the BPS programme. The other papers are:

- BPS Paper 2: Better system leadership
- BPS Paper 3: Departmental Agencies
- BPS Paper 4: Specific Purpose Boards
- BPS Paper 5: Amendments to the Public Finance Act 1989
- BPS Paper 6: Amendments to the State Sector Act 1988
- BPS Paper 7: Amendments to the Crown Entities Act 2004.

3. This paper seeks agreement to issue drafting instructions to Parliamentary Counsel Office in accordance with the relevant Cabinet decisions arising from this suite of papers. These instructions would amend the Public Finance Act (PFA), State Sector Act (SSA) and Crown Entities Act (CEA) in an omnibus *State Sector Reform (Public Finance) Bill*.

4. It also proposes that the Ministers of Finance and State Services undertake consultation on the draft Bill prior to its introduction with other parties in Parliament, with the Business Committee and with the Chair of the Finance and Expenditure Select Committee.

Background

5. On 25 January, Cabinet invited the Deputy Prime Minister and the Minister of State Services to submit further papers to Cabinet by 30 April on substantive policies or decisions arising from the Better Public Services work programme, including legislative amendments needed to give full effect to these policies. Cabinet noted that as the formal work programme is actioned, more advice will be brought to Cabinet as required with further recommendations [CAB Min (12) 1/1 refers].

Comment

6. The Better Public Services Advisory Group (BPSAG) found that while the current system is generally well regarded: *“a step change is needed in how New Zealand’s state services are run. New Zealanders deserve better results and support from the state services”*.

7. The accompanying suite of papers proposes legislative amendments needed to support this step change. These changes are to the core architecture of the public sector management system: the State Sector Act, Public Finance Act and Crown Entities Act. Collectively the proposed changes support a significant re-orientation of how State services are currently led and organised, shifting the focus from the actions and activities of individual agencies working in bureaucratic silos towards supporting agencies to work together to take a sector and system-wide view.

8. The objectives underpinning these proposals are to support and encourage:

- government agencies working more closely together and organising themselves around results that make a difference to New Zealand
- government agencies sharing functions and services, purchasing goods and services, and developing systems together in order to leverage the scale and expertise of the system
- greater financial and reporting flexibility to support agencies working together and to provide better quality performance information to Parliament
- stronger leadership at the system, sector and departmental level to achieve the desired change in the performance of State services.

9. The changes provide a wider range of tools and a more enabling public sector management system to support the broader BPS programme. However, legislative change, while necessary, is not sufficient in itself to achieve the results and step change we are seeking.

10. The BPS programme challenges Ministers, as well as agencies, to work more collaboratively to achieve results. This includes sharing resources as well as information to improve the quality and efficiency of services and policy decisions.

11. Greater collaboration and collective accountability involves a more sophisticated, and hence more complex, set of accountability arrangements. For example, by design proposals for Departmental Agencies and legislative Specific Purpose Boards will lead to overlapping responsibilities and accountabilities at both chief executive level and

Ministerial level. Given the additional complexity involved, the new tools proposed in these papers should be used selectively, after consideration of the full range of options available.

12. Change will also be driven by delivering on the Prime Minister's 10 BPS results for New Zealanders and the need to deliver better services and value for money. Boards, sector, result and functional leaders all have critical roles in delivering a step change in performance for the state services. Central agencies will need to work together as a 'corporate head office' for the State services to support agencies and drive these changes.

Overview of proposals in each paper

13. The following provides an overview of the package of initiatives in each of the six papers.

BPS Paper 2: Better system leadership

14. In January, Cabinet agreed that there needs to be a Head of State Services with responsibility for overall performance of the State services and powers to appoint sector leaders, functional leaders, and deploy senior leaders across the State sector. Cabinet also agreed to the State Services Commissioner acting as the Head of State Services to the extent possible within existing legislation.

15. This paper details the proposals necessary for the State Services Commissioner to give effect to the Head of State Services concept agreed by Cabinet. Supporting these proposals are changes being initiated across the three central agencies to work much more collaboratively together as a de facto 'corporate head office' of the State services, drawing on their distinct but mutually reinforcing roles.

16. The State Services Commissioner would appoint Public Service leaders, such as sector leaders and result leaders, in addition to the Commissioner's statutory role in appointing Public Service chief executives. The Commissioner would be responsible for putting in place systems for expectation setting and performance management in relation to these leadership roles.

17. The State Services Commissioner would also be responsible for functional leadership, which involves working across agencies to secure economies or efficiencies, improve services, develop expertise and capability, and ensure business continuity. The Commissioner may delegate responsibility for functional leadership by appointing functional leaders. Cabinet approval would be required whenever a functional leader role is intended to impose mandatory obligations on departments, such as requiring departments to comply with standards or processes (e.g., ICT or procurement).

18. This paper also proposes a formal leadership role, through amendments to the State Sector Act, for the State Services Commissioner in relation to senior leadership development (developing a 'talent pool') across the Public Service.

19. To enable more flexible deployment of senior leaders to areas of need and to support their leadership development, the paper proposes an amendment to the State Sector Act to enable the State Services Commissioner to designate certain positions in

departments that must be filled by agreement between the relevant departmental chief executive and the Commissioner.

20. More detail on how the role of the Commissioner will be expressed in the State Sector Act is provided in *BPS Paper 6: Amendments to the State Sector Act 1988*.

BPS Paper 3: Departmental Agencies

21. The proposals in this paper would enable Departmental Agencies to be established. Departmental Agencies are nested within a host department, but retain operational autonomy. They provide a mechanism for maintaining a focus on delivery of services, while having closer policy and resource coordination with the 'host department' than would be possible if a separate stand-alone department or Crown entity were created. In the United Kingdom, the equivalent to Departmental Agencies (Executive Agencies) has been used for a variety of operational activities, such as the Education Funding Agency, Highways Agency and National Archives.

22. Departmental Agencies provide the potential to:

- deliver new functions that may have otherwise led to the creation of a separate department or Crown entity;
- incorporate certain operational and/or regulatory functions presently delivered by separate Crown entities into the legal Crown; and
- consolidate currently separate departments into a single department (establishing Departmental Agencies for any operational activities).

23. Departmental Agencies have a chief executive, accountable for operational matters to a responsible Minister, who may be the same as the responsible Minister for the host department. The host department would provide advice to Minister(s) on strategy, policy and funding for the Departmental Agency. The State Services Commissioner and the chief executive of the host department would undertake a joint process for the appointment of the chief executive of the Departmental Agency.

24. While Departmental Agencies provide opportunities for stronger coordination and sharing of services and resources, they do involve more sophisticated, and hence more complex, accountability arrangements. Accordingly, Departmental Agencies would be used selectively and considered alongside other options such as stand-alone agencies or branded business units within a department.

25. Departmental Agencies are most suitable for functions or services that:

- Have relatively stable policy settings
- Are cohesive and/or fall within a clearly defined area/activity (eg. administrative or regulatory)
- Are readily defined and measurable, with low levels of interconnectedness with other functions within the host department.

BPS Paper 4: Specific Purpose Boards

26. This paper proposes using Specific Purpose Boards where necessary to strengthen the collective accountability of constituent departments to co-ordinate (or integrate) policies, strategies and activities to achieve results or other objectives.

27. Specific Purpose Boards could be established through Cabinet mandate or, to further strengthen collective accountability, through the State Sector Act. Under both approaches, a terms of reference approved by Cabinet would set out the specific duties and functions of the Board, such as setting strategies and advising on resource allocation. Chief executives of constituent departments would remain responsible for implementing the agreed strategies through their respective departments as Boards would not be expected to directly hold assets or employ staff.

28. The State Services Commissioner would appoint a chair, who may have a casting vote. Independent members may be appointed; however, under the Cabinet mandate approach they would have an advisory role only.

29. As with Departmental Agencies, Specific Purpose Boards involve more sophisticated, and hence more complex, accountability arrangements. To work successfully, Boards need clear accountability to a Minister or group of Ministers, with all issues arising within constituent departments that fall within the Board's remit to go through the Board and/or its Minister(s).

30. Given the additional complexity, Cabinet-mandated and legislative Boards would be used selectively and considered alongside options such as merging departments.

BPS Paper 5: Amendments to the Public Finance Act 1989

31. The proposed package of changes to the Public Finance Act will support the goals of the BPS programme and improve the legislation by reducing compliance costs, introducing greater flexibility, clarifying certain responsibilities and removing prescriptive reporting requirements that have proven problematic in practice.

32. To support a results approach and improve the operation of the appropriation system, this paper proposes creating a new type of appropriation (a multi-component purpose-based appropriation) that would allow the Government to create appropriations made up of several components that all contribute towards the same result. There are also a number of changes to the PFA to reduce compliance costs, increase flexibility, and improve parliamentary scrutiny (e.g., of departmental capital expenditure).

33. To increase flexibility, improve quality and reduce compliance costs in reporting to Parliament, while maintaining Parliament's ability to scrutinise and control Government expenditure and performance, the paper proposes:

- removing the one-size-fits-all approach to reporting performance against appropriations and replacing this with a system that allows departments to select the most appropriate method of measuring and reporting on performance for each appropriation;

- departments tabling information on their future intentions at least once every three years (instead of tabling a Statement of Intent, with prescribed content, each year); and
- providing more flexibility in the way departments provide information currently tabled as an Annual Report. For example, this information could be provided in a year-end report covering a sector.

34. To support a stronger focus on medium term stewardship and to clarify departmental chief executives' responsibilities for non-departmental activities, the paper proposes changes to the prescription of chief executives' responsibilities to make it clear that they are responsible for: the medium and long term stewardship of their department; for what is achieved with each departmental appropriation; and for the financial management of non-departmental activities.

BPS Paper 6: Amendments to the State Sector Act 1988

35. In addition to amendments to the State Sector Act arising from proposals in papers 2 and 3, a range of other substantive and technical amendments are proposed in paper 6 to address specific issues or problems in the state sector system and to ensure the State Sector Act is fit for purpose to meet the contemporary and longer term needs of the State services. The more substantive proposals are to:

- insert a clause setting out the purposes of the State Sector Act;
- insert a clause setting out, for the first time in legislation, the role of the Commissioner in providing leadership and oversight of the State services;
- broaden the principal functions of the Commissioner and lift them to a more strategic level focusing on agency, sector and system-wide performance, supported by an expanded power to inspect and investigate;
- clarify and broaden the regime for Public Service chief executive delegations;
- set out the Commissioner's role relating to workforce matters, and to replace the current inconsistent regime of responsibilities and obligations for collective bargaining with a simpler, uniform system;
- introduce flexibility, and with it the ability to act with more agility or independence, on a number of fronts: the grounds for appointing an Acting Commissioner or Deputy Commissioner; the panel composition for Public Service chief executive appointments; the process for determining chief executive conditions; the special circumstances pertaining to Ministerial Advisor positions; and
- ensure an appropriate protection from personal liability for Public Service chief executives and their employees with regard to performing departmental functions or powers.

BPS Paper 7: Amendments to the Crown Entities Act 2004

36. Crown entities provide the majority of New Zealand's public services. The proposals in this paper tackle the challenge of how to realise the objectives of the Better Public Services reforms while acknowledging Crown entities are intended to operate with a degree of autonomy under a governance board.

37. Achieving this balance involves updating existing mechanisms so they can be adapted to broader sector or system priorities. The key proposals are to:

- strengthen sectoral leadership by expanding the existing collective duty (s.50) so that Board members ensure that the entity collaborates with other public entities where practicable;
- strengthen functional leadership by enlarging the scope for the use of the whole of government direction;
- improve performance by formalising information gathering powers of the Minister of State Services and clarifying the role of monitoring departments; and
- streamline reporting by making the default for the Statement of Intent every three years and simplifying the reporting requirements.

38. The paper also proposes applying the governance provisions in the Crown Entities Act to entities currently listed on Schedule 4 of the Public Finance Act. This would be achieved by amending Schedule 4 to list the entities covered by these governance provisions (which include whole of government directions) and, where appropriate, exemptions for individual entities.

Relationship between proposals across the papers

39. Where practicable, the policy proposals and related legislative changes are set out within each paper. Nevertheless, there are interdependencies in the proposals across the papers, of which the key interdependencies are:

- *BPS Paper 5: Amendments to the Public Finance Act 1989* includes certain changes to reporting and appropriations to support a focus on results, which complements the Specific Purpose Board proposals in BPS Paper 4;
- *BPS Paper 6: Amendments to the State Sector Act 1988* includes amendments to the role of the Commissioner that would reinforce the leadership proposals in BPS Paper 2; and
- *BPS Paper 7: Amendments to the Crown Entities Act 2004* includes changes to support the extension of functional and sectoral leadership proposals set out in papers 2 and 4 to Crown entities.

Consultation

40. The State Services Commission and Treasury have been consulted on the proposals in these papers. Their views are reflected in this suite of papers.

41. The Department of Prime Minister and Cabinet has been informed of these proposals. The Office of the Controller and Auditor General has also been engaged in the development of the proposals relevant to its role.

42. Other stakeholders in the State sector have also been involved in the development of the proposals in these papers, through discussion documents and workshops. In general, the feedback was supportive of the proposals. Public Service chief executives have been provided with copies of the suite of papers.

43. The Business Committee's agreement to the Bill being introduced as an omnibus Bill will also be sought in accordance with Standing Order 260. We also propose consulting the Business Committee and other parliamentary parties about the structure of the Bill prior to its introduction, given the recent changes to Standing Orders in respect of the committee of the whole House stage (Standing Order 297).

44. The Chair of the Finance and Expenditure Select Committee will be briefed on the content of the *State Sector Reform (Public Finance) Bill* once the draft legislation has Cabinet's agreement, but before it is introduced to the House. The Finance and Expenditure Select Committee also needs to be consulted on significant format and content changes to the Estimates, Information Supporting the Estimates, and the Supplementary Estimates (section 18 of the Public Finance Act). This consultation will be done at the same time as the Committee is considering the Bill.

Consultation with Other Parliamentary Parties

45. Given the significance of the Public Finance Act, State Sector Act and Crown Entities Act to the successful functioning of New Zealand's public sector management system, other Parties across Parliament will be consulted prior to the Bill being introduced. This is to seek cross-party support through outlining the key changes, the implications of these changes, and ensuring that Members of Parliament are aware that the proposals maintain the integrity of the public sector management system while strengthening its ability to support the needs of a 21st century public sector. This early consultation approach follows a similar process used for the 2004 amendments to these Acts.

Financial Implications, Human Rights Implications and Regulatory Impact Analysis

46. This paper and the accompanying suite of papers have no financial or human rights implications. These papers do not require a Regulatory Impact Analysis, as the proposals deal with administrative and governance arrangements of the government.

Legislative Implications

47. The Legislative Programme provides for an omnibus *State Sector Reform (Public Finance) Bill* as priority 4 (to be referred to a select committee in 2012) that will capture the amendments arising from the suite of papers to the Public Finance Act, State Sector Act and Crown Entities Act.

48. We are planning to have the Bill ready for introduction into the House in August 2012. Reporting and appropriation changes will not be enacted in time to inform Budget 2013 (i.e., Budget 2013 appropriations and documents would be prepared

under current requirements), but these changes can be selectively applied during 2013/14 where required. The new requirements would fully apply from Budget 2014. Other proposals in the papers can be applied once the Bill is enacted.

Publicity

49. The changes proposed in this paper are consistent with the themes outlined in the recently released Better Public Services Advisory Group report and signaled in recent statements, notably those accompanying the Prime Minister's speech of 15 March 2012.

50. We anticipate there will be interest in the proposals from the Public Service Association, academics and other public sector specialists, but do not expect wider public interest in these specific changes.

51. However, in the interests of transparency, we intend to publicly outline the changes and what they will mean.

Recommendations

52. We recommend that the Cabinet Committee on State Sector Reform and Expenditure Control:

- 1 **note** that in January 2012 Cabinet invited the Deputy Prime Minister and the Minister of State Services to submit further papers to Cabinet by 30 April on substantive policies or decisions arising from the Better Public Services work programme, including legislative amendments needed to give full effect to these policies [CAB Min (12) 1/1 refers]
- 2 **note** that the six accompanying papers detail the legislative and administrative changes to the public sector management system to support agencies working together to take a sector and system-wide view and using their collective resources and expertise to deliver the results and better services for New Zealanders - the other papers are:
 - BPS Paper 2: Better system leadership
 - BPS Paper 3: Departmental Agencies
 - BPS Paper 4: Specific Purpose Boards
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 - BPS Paper 6: Amendments to the State Sector Act 1988
 - BPS Paper 7: Amendments to the Crown Entities Act 2004

Drafting Instructions

- 3 **authorise** the Ministers of Finance and State Services to issue drafting instructions to Parliamentary Counsel Office for an omnibus bill to amend the Public Finance Act, State Sector Act and Crown Entities Act to give effect to the Cabinet decisions arising from the accompanying papers and

to give effect to other minor and technical matters that arise during the drafting process

- 4 **authorise** the Ministers of Finance and State Services to make decisions on minor and policy decisions that arise during the drafting of the legislation

Consultation

- 5 **note** that the Finance and Expenditure Select Committee would be consulted on significant changes to the format and content to the Estimates, Information Supporting the Estimates, and the Supplementary Estimates (refer section 18 of the Public Finance Act)
- 6 **note** that the Business Committee's agreement to the Bill being introduced as an omnibus Bill would be sought in accordance with Standing Order 260
- 7 **invite** Ministers of Finance and State Services to consult the Business Committee and other parliamentary parties about the structure of the *State Sector Reform (Public Finance) Bill* before its introduction
- 8 **invite** Ministers of Finance and State Services to brief the Chair of the Finance and Expenditure Select Committee on the contents of *State Sector Reform (Public Finance) Bill* before its introduction
- 9 **invite** the Ministers of Finance and State Services to undertake consultation with other parties in Parliament on the changes in the *State Sector Reform (Public Finance) Bill* before its introduction
- 10 **invite** the Ministers of Finance and State Services to publicly outline the proposals contained in the six accompanying papers.

Hon Bill English
Deputy Prime Minister

Date: ____ / ____ / _____

Hon Dr Jonathan Coleman
Minister of State Services

Date: ____ / ____ / _____