

1912

Public Services Act

State Services Commission

SSC, n.d.[a]

History of the Office of State Services Commissioner

This document backgrounds the establishment of the Commission. Beginning at 1840, it charts the governance arrangements of the Public Service Act of 1912. This Act laid the foundation for the public service as we know it today: it set up a non-political and unified career public service, with appointment, promotion and dismissal being entrusted to the State Services Commissioner.

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Origins of the Public Service and Office of State Services Commissioner

From 1840 to 1860

When William Hobson arrived in 1840 to establish a colonial government in New Zealand among the whalers, sealers, traders, soldiers of fortune and outlaws, and the chieftains and their hapu and iwi, he brought with him a Colonial Secretary, and a Colonial Treasurer-Collector of Customs. Soon after he added an Attorney-General and a Police Magistrate.

These four men were the beginnings of New Zealand's Public Service.

Within the year the civil service had grown to 39 officers - in the Governor's office, the Colonial Secretary's office, the Attorney-General's office, the Department of Customs, the Protectorate of Aborigines, the Post Office, the Treasury, the Public Works Department, and half a dozen other departments. All were based in Auckland.

The departments that grew up over the next few decades operated under the direct control of their Ministers, in arrangements that were practical in pioneering times. Ministers approved appointments, determined pay and conditions, and oversaw administration and financial management, with varying degrees of diligence.

The 'frontier' Public Service

Understandably, Ministers were inclined to see that the people appointed were sympathetic to their own political outlook and priorities - and inevitably, in a small population, these were sometimes friends or acquaintances. The Public Service was run on somewhat ad hoc 'frontier' lines, and seems not to have been much different from its parent institution, the British civil service. In their report on the British civil service Sir Stafford North and Sir Charles Trevelyan described a bureaucracy that was, in the 1850s, rife with patronage, fragmented and inefficient. They proposed reforms to create a professional career service, with entry by competitive examination, merit promotion, and promotion between departments, among other things.

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In New Zealand Edward Stafford began to advocate public service reform at about the same time. A bill introduced by him as Premier and enacted in 1858 disqualified public servants from election to the House, and another passed later the same year provided for public service pensions.

From 1860 to 1912

During his second term as Premier, in the 1860s, Stafford introduced further legislation that took things another step beyond arbitrary personnel management by Ministers, with rules for matters such as classification, promotion, salaries and allowances, annual increments, discipline and retirement.

However, the good intentions of that legislation were generally frustrated in implementation.

The Vogel Ministry was disposed to strengthen rather than constrain ministerial discretion in respect to Public Service staffing and control. Lacking proper control and leadership, the Service grew rapidly to about 11,000.

When the Government faced serious economic difficulties in the 1880s it looked for savings, short and long term, in the Public Service. It saw a solution in abandoning 'all ideas and traditions... as to the Government being required to treat its employees on any different principles from those which would regulate a well conducted establishment of any large employer'. Businessman Ministers turned to familiar business practices to justify retrenchment and a return to ad hoc control of staffing in departments.

Endeavours to put personnel management on a systematic and politically neutral basis by those who saw the Public Service as an important constitutional institution rather than as a mere vassal of the Ministers of the day, were consistently thwarted through until 1912.

'A refuge for the ineffectual and indolent'?

Appointments of 'temporary employees', 'extra clerks' and 'skilled persons' enabled Ministers to skirt the formal entry and promotion systems. By the end of the century 'temporary clerks' comprised more than 20% of the Public Service. As Premier, Richard Seddon dispensed 'temporary' appointments in the Public Service to grateful constituents throughout the length and breadth of the country.

His successor Ward ended these excesses but shied away from proposals that would take 'the power of control of the Public Service' away from 'the people' (through their elected representatives) – something that would risk, in his view, development of 'an uncontrollable autocracy'.

'The power of control' sank lower and lower into a mire of detail: public servants could not give music lessons in their own time without their Minister's written approval, while the names of those late to work each week, and their excuses, were put before departmental Ministers on Monday mornings.

By the end of the first decade of the twentieth century the New Zealand Public Service was widely held to be inefficient and wasteful, and grossly overstocked with beneficiaries of political patronage. Such criticisms were no doubt unfair to many upright and hard-working officials.

The line between what the Public Service did to support Ministers in the exercise of their administrative duties, and what it did to support Ministers' personal and party political interests was blurred.

The Hunt Commission

Following the 1911 general election the Mackenzie administration launched what was to become known as the Hunt Commission on the civil service. In the Reform Government that followed, Alexander Herdman, the most persistent advocate of Public Service reform over the preceding ten years, took over responsibility for the Royal Commission with considerable enthusiasm. The tide of public opinion was by then running strongly against political patronage.

Objections to political patronage seem to have been in three main areas:

Departments' inefficiency and lack of responsiveness resulting from the dual burdens of excessive petty rules and regulations, and large numbers of incompetent 'back door' employees; and also from disunity, and lack of clarity as to performance expectations and lines of accountability (were staff responsible to the Minister or to the head of the department?);

Excessive financial burdens on the State, arising from inflated wage bills and low returns of value for money; and

Straight out corruption, in the forms of favouritism of particular groups, communities and individuals, and favours for services.

The Public Service Act 1912

The Hunt Commission in due course recommended, as 'the most important matter of all', establishment of a Board of Management under Cabinet, to have 'absolute and undisputed power' in 'all matters relating to the control and management of the Service - ... appointments, salaries, promotion, suspensions, dismissals, and indeed everything affecting officers - ' It suggested the Board's first duties should include blocking all 'back doors' of entrance to the Public Service, and arranging for all promotions be made from within the Service.

The outcome was the Public Service Act 1912 – based on Herdman's Bill already before the house – which set up a non-political and unified career Public Service; non-political through powers of appointment, promotion and dismissal being entrusted to an independent body – the Public Service Commissioner.

There seems little doubt that the Public Service Act was seen at the time as a welcome shakeup of the bureaucracy. On 19 September 1912 the Auckland Weekly News carried a cartoon showing the new Premier, Massey, leaning through the window of the 'Political Nominee Department' to drop a sword marked 'Civil Service Reform' on the head of a foppish clerk lounging at his cobwebbed desk, above the caption: 'The sword of Damocles – modern version'.

What is New Zealand's form of 'political neutrality' in practice?

Solid foundations

The Public Service Act 1912 gave New Zealand's Public Service a shape and culture that endured for 50 years. The essence of this culture was the separation of 'political' and 'administrative' functions, both in conduct of the Government's business and in management of the Public Service itself.

In terms of management of the Public Service, the 1912 Act removed Ministers' direct involvement in appointments and personnel administration. Section 6 of the Act is notable. Under the heading Political Influence: "(1) No person shall, directly or indirectly, solicit or endeavour to influence the Commissioner... with respect to the appointment of any other person to the Public Service..." and "(3) Any officer who, directly or indirectly, solicits or endeavours to influence the Commissioner... for the purpose of obtaining promotion or increase of salary shall be deemed to be unworthy of such promotion or increase...and he shall be liable to immediate dismissal".

While Ministers grew to acknowledge the independence of the Commissioner in personnel matters, Commissioners did need to patrol their boundaries following the Act.

Resistance to non-political control of personnel surfaced regularly - in 1917 for example, when Ministers sought to interfere with a particular appointment, and in 1918, when the Repatriation Department was set up under a board of Ministers and expressly not as part of the Public Service.

Hard times

In 1935 the new Government gave signs it was unconvinced about independent control of personnel management in the Public Service when it considered an appointment to the vacant Commissioner position. Unenthusiastic about the logical successor (a conservative committed to non-political management) and preferring another officer more sympathetic to its welfare State priorities, it eventually plumped for both, as co-equal Commissioners.

After a couple of awkward years, however, the conservative, Thomas Mark, became sole Commissioner, with his co-Commissioner, John Boyes, taking on establishment of the new Social Security Department.

Mark continued to work hard for an independent and professional Service, and in 1941 'courageously defied a Minister over the issue of inspecting a sub-department and compelling the resignation of its head' - before dying of heart failure in the Minister's office in the midst of the confrontation.

Post World War II and the State Services Act 1962

The period from the end of the War through to the late 1950s was notable for the expansion of the State's activities and of its work force, and the increasing influence of the Public Service Association in personnel management (pay fixing). The 1962 Royal Commission on the State services appears to have been set up chiefly because a review was considered timely, rather than to address any major problems, or urgent political or public concerns.

The State Services Act 1962, picking up the recommendations of the McCarthy Commission, established a multi-member Commission comprising a Chairman and Commissioners in place of the sole Public Service Commissioner. The Act continued to provide for independence 'in matters relating to decisions on individual employees' and provided penalties for any person 'who directly or indirectly solicits or endeavours to influence the Commission' with respect to these matters.

As with the earlier Public Service Act, Ministers generally understood and respected the need for independence in these matters, although the boundaries were tested from time to time.

While separation of functions ('political' and 'administrative') in relation to personnel matters was provided for in the law, separation of functions in respect to management of the conduct of the Government's business seems to have been more subtle: as employees of the Commissioner, rather

than of a Minister, the focus of heads of departments and their staffs switched towards service of the system – rather than service of a particular personality, or ‘patron’, as Minister.

Furthermore, permanence in a career Public Service – in contrast to the lack of permanence in office of governments and Ministers - made any obvious political allegiance a marked disadvantage. When the prime practical requirement was an ability to work equally well with whichever government and Ministers came into office, a reputation for neutrality – ‘professionalism’ - became a virtue.

Neutrality reinforced

Political neutrality became integral to a career Service dedicated to serve the government of the day, and ready to serve the government of tomorrow with the same professionalism and loyalty. Appointments and personnel decisions were made independent of political interests, and there developed a well understood (on both sides) boundary between the business of politicians (policy development and advocacy, and ‘politics’ - with a public face); and the business of public servants (policy advice and implementation, and ‘administration’ - with a high degree of anonymity).

Those principles firmly established, scope continued to exist for friction in the areas where the two systems met; for example, around election times, and from day to day in support services for Ministers in the House (debates, select committees etc), in dealing with the public (speeches, correspondence etc) and in the provision of ‘free and frank’ advice. Practice from 1912 led to development of a body of conventions and principles for the guidance of both Ministers and officials – and development of a mutual dependence, a trust, that each side would fulfil its role with integrity.

State Sector Act 1988

The relatively settled Public Service bequeathed by the 1912 Act, and perpetuated by the 1962 Act, was radically reordered by the 1988 State Sector Act and associated reforms, which changed the shape of the Service and to some extent also changed its culture.

The State Sector Act dispensed with the multi-member Commission, replacing it with a State Services Commissioner and Deputy State Services Commissioner. Notably, it gave Ministers a defined role in appointments of departmental chief executives, and made a shift away from a ‘career service’ by removing concepts of ‘permanence’; appointments were opened up to all comers, and scope was increased for non-Public Service Ministerial advisers, consultants and contractors.

Much of the Parliamentary opposition to these reforms in 1988 focused on the risk of politicisation of the Public Service through Ministerial involvement in appointments (and even the threat of patronage) harking back to ‘the bad old days’ before 1912.

In the event, the 1988 Act gave Ministers a degree of influence in top appointment processes that was reasonable (given their overall responsibilities for the efficiency and effectiveness of the government system, and their legitimate concern to see their programmes were implemented) and made this role transparent. With one notable early exception, Ministers have accepted the State Services Commissioners’ appointment recommendations.

A changing world

The ‘cultural changes’ of most significance probably proved to be those flowing from the movement away from the concepts of a career service – and from the profound changes in the

shape and size of the Public Service.

The stability of the Public Service for seventy years after the 1912 Act reflected the gentle pace of change in the world of public administration throughout that time. Thereafter, the world began to change rapidly with new economic and demographic realities, changing community values, changing labour markets, sweeping impacts of the IT revolution, and of the 'news media' revolution, the Official Information Act, increasing questioning and challenging, and a new and volatile political landscape (with increasing numbers of public servants/former public servants crossing the border into active politics).

This was the setting in which the Public Service operated during and following the reforms of the 1980s and early 1990s.

The Public Service today

The basic elements of the 'traditional' politically neutral Public Service remain intact nevertheless: acknowledging the role of Ministers' in the appointment process, appointments continue to be made by the independent Commissioner. With one exception, there is nothing to suggest any appointment since 1988 would have been different if Ministers had not had the role given them by the State Sector Act.

Fears that top appointments, and hence the Public Service, might become politicised, have not been realised. The boundary between 'political' and 'administrative' functions in conduct of the Government's business remains clear. There seems little doubt, however, that friction has become more intense at the points where the two sets of interests meet - for example:

1. 1. Increased emphasis on personal performance of chief executives
1. 2. Increased interests in and criticisms about inputs, pay and benefits
1. 3. Increased exposure of public servants to criticism (including public criticism from Ministers and politicians); and reduced anonymity
1. 4. Increased pressures to advocate and explain on behalf of Ministers
1. 5. Widening roles of 'ministerial (political) advisers' – especially where these have authority to 'direct' chief executives and staff, and to complicate flows of 'free and frank' advice.

Conclusions: the Commissioner's role

Perhaps the clearest way to appreciate the importance of the State Services Commissioner's role is to consider whether a practical and acceptable alternative to it exists.

What would be the effects if Ministers appointed departmental heads? What would be the implications for departments if departmental heads came and went with every government? How far down into departments could political appointments be tolerated? How, in practice, would a 'cut-off point' work? Would politically appointed officers be expected to do the political work of the Minister and the Government?

What would be the effects, on the other hand, if the Public Service were 'neutral' to the extent that it operated a step detached from the Government, as an institution answerable to a higher

authority? How would Ministers be able to see that their government's policies were implemented and its priorities were met? How could they be accountable for their departments?

The country's early experiences of a politicised Public Service demonstrated that long term good government depended on a stable and competent Public Service able to run the basic services of the State day in and day out, as governments came and in due course went; and able also to support and respond with loyalty, commitment and professionalism to each government as it prepared and implemented the set of policies that distinguished it from its opponents. Such a Public Service needed, by definition, to be politically neutral.

The need for a stable and competent Public Service under the control of an independent Commissioner has been accentuated in recent years by an operating environment of increasing complexity: rapidly unfolding global threats and opportunities, a multitude of major problems and risks at home and abroad – and a changing political landscape.

