

GOVERNMENT

DEMYSTIFYING THE STATE

Tony Burton

Foreword by Oliver Hartwich



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About The New Zealand Initiative

The New Zealand Initiative is an independent public policy think tank supported by chief executives of New Zealand businesses. We believe in evidence-based policy and are committed to developing policies that work for all New Zealanders.

Our mission is to help build a better, stronger New Zealand. We are taking the initiative to promote a prosperous, free and fair society with a competitive, open and dynamic economy. We are developing and contributing bold ideas that will have a profound, positive and long-term impact.

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The house of illusions is cheap to build but drafty to live in.

A.E. HOUSMAN. LECTURE AT UNIVERSITY COLLEGE, LONDON (1892)

Until we realize that we are choosing between social arrangements, which are all more or less failures, we are not likely to make much headway.

RONALD COASE. "THE REGULATED INDUSTRIES: DISCUSSION",
AMERICAN ECONOMIC REVIEW (1964)

[For Mr Woods] what mattered was that these leaders had character, and character was made of values ... But the people who got the badges were the ones who were not just loyal, respectful and initiative-taking, but also talkative and good at sports, and liked to fetch Mr Woods's coffee (six cups a day).

MADISON HAMMILL. "THE NEW LEADERSHIP",
IN SPECIMEN, PERSONAL ESSAYS (VUP. 2020)

Foreword



When students begin their studies of economics, they often take everything at face value in their introductory textbooks. There are consumers seeking the biggest

bang for their buck. There are firms aiming to maximise profits.

And, of course, there are politicians and bureaucrats whose sole purpose is to make the whole system run more smoothly for everyone's benefit.

Such naïveté, however, rarely survives the students' first encounter with public choice theory (let alone the reality of working within a ministerial bureaucracy). Individuals always act to maximise their own utility, no matter whether in the marketplace or in a ministry. That is the basic insight of public choice theory.

Or, as Depeche Mode once sang, "People are people."

Sometimes pop music really delivers deeper truths. People who are selfish in their personal lives do not magically become selfless when they enter public service.

Tony Burton has given this reality considerable thought. His report, *Demystifying the State* offers readers an insightful exploration of New Zealand's machinery of government.

Drawing on his experience within the system, Tony strips away the mystique surrounding the state. And guess what: once he has done that, we see a profoundly human institution. Except 'human', in this context, should be read as 'multi-faceted' at best ... and 'deeply flawed' at worst.

Tony examines people's motivation in the public sector. He challenges the idea that bureaucrats are driven solely by noble motivations like a spirit of service.

His report also introduces the concept of 'institutional mismatch' to explain policy failures. This refers to situations where government institutions are ill-suited for their intended tasks. It is not just that government is sometimes failing. It is more that government, under some institutional settings, cannot possibly succeed.

Throughout his report, Tony emphasises the many limitations of the state. But as he points out, these limitations are all too often overlooked.

As a localism advocate, I find Tony's analysis particularly compelling. The problems he points out – like the widespread lack of accountability and information issues – often arise because of remote government structures. Bringing government closer to the people could thus be part of the solution.

Demystifying the State helps us to understand the state for what it is, not what it would be in an ideal world. That said, it also gives us ideas on how it can be improved.

To borrow again from Depeche Mode, such improvements are about figuring out why people inside and outside the state apparatus "should get along so awfully."

I look forward to reading more about this in the sequel to the current report.

Dr Oliver Hartwich

Executive Director, The New Zealand Initiative

Introduction

Among the stories of the New Zealand state's treatment of victims of child abuse in state care in the 1970s are adults who did what was right: The people who reported the abuse when told about it, Ministry of Education archivist Di Dickson who revealed employment records of abusers had been destroyed, and Detective Senior Sergeant Tusha Penny who discovered that the delaying tactics employed by state lawyers meant one of the worst abusers had died before they could be brought to justice.¹ The Detective Senior Sergeant wrote the only meaningful apology from a state employee:

I appreciate ... you have not been treated adequately by police and I would like to discuss this with you and offer my apologies. I do not wish to have contact via email as I believe that you are owed more than that and at the minimum I would like to actually speak to you on the telephone.²

In fulfilling her promise to meet, she acted as expected by those claiming expertise on the state.

These expectations are evident in an undergraduate text written by Geoffrey Palmer, former Prime Minister and long serving Professor of Law, who described public servants as “unsung heroes ... that actually make the system work”.³ Similarly, Jonathan Boston, Professor of Public Policy and former Director of the Institute for Governance and Policy Studies at Victoria University Wellington (VUW), wrote; “[public servants are] influenced by such things as credibility, integrity, duty, professional standards, and doing a good job. Invariably, too, they have a wide range of policy preferences, and often these are strongly held.”⁴

And, in his capacity as Public Service Commissioner, Peter Hughes, former Professor of Public Management and Head of the School of Government at VUW, claimed

Without exception, all the [public servants] I met were focused, committed and passionate about making a difference in our country.

This is an important part of what I call the spirit of service and it is alive and well in our public service.⁵

So, what did most of the heroes, the people with strong policy preferences and the committed and passionate people do when accusations of abuse in state care were made?

In one case, an abuse victim reported the abuser to managers. The managers told the abuser who had made the allegations, with the consequence that:

After I came back ... [the abuser] hit me up about that letter accusing him of interfering with us ... He pushed me and I pushed him back and then I just flew into him ... It was a full-on brawl. I went down and then back up again ... Then I got referred to the principal for my violent outburst. I was sent back to [the psychiatric hospital].

How did the senior leaders of the Ministry of Social Development (MSD) act after examining the testimony of several dozen complainants, and after it had been found that their own “keeping of records has been negligent to the point of criminality”? They issued the statement: “Due to insufficient information the Ministry does not accept this allegation.”⁶

What motivated this response?

The publicity from such litigation would be likely to be highly prejudicial to the Department [of Social Welfare] and could have a detrimental effect on public confidence in the Department,

could act to encourage other potential litigants to issue proceedings against the Department not only in respect of the Lake Alice claims but in other similar factual situations.⁷

It is hard to disagree with Aaron Smale, the journalist at Newsroom who has done most to ensure the victims are heard, when he notes,

... denial of responsibility is a key to understanding the Crown's behaviour and treatment of victims of state abuse. ... The state's pattern of behaviour [over 50 years] suggests it would rather cause further harm and trauma instead of taking responsibility and upholding the law... And that behaviour and those decisions are being carried out not by an abstraction called the state, but by individuals in positions of power.⁸

In fact, what is striking is how career enhancing it was to protect departments at the expense of victims of state child abuse. State lawyers have become judges, department chief executives have received state honours, and Peter Hughes, whose Ministry of Social Development hired private investigators to harass the relatives of people reporting abuse, was made head of the public service.

Smale identifies the inherent conflict of interest between operational organisations and the departments that supervise them. It is hard to disagree with Smale's prediction that "The state will continue potentially being an abusive parent to thousands of children because there are no consequences for doing so."⁹

This essay is the first of two about reforming the New Zealand state. This first essay is about the state as it is, the second will be on improving the state.

When I worked for the state, it seemed that, for many, the state acts like a Rorschach Test. The original Rorschach Test was an amorphous

printed blob that psychologists asked their patients to discuss. Any patterns the patients claimed to see were projections of patients' feelings and fantasies.¹⁰ The accretions of history and personality that make up the state's institutions seem to have a similar effect.

This reflection was prompted by dissonance between what I saw around me and expert theories. The people I knew were decent people with career ambitions, carrying out a sometimes challenging job. As in most jobs, some are selfless. As in most jobs, such people are rare. Typically, the people I knew were well-rounded, with family, friends, hobbies and interests. They managed their time and energy by putting the job in one compartment of their lives. This creates limits on what the state can do. These limits are not a failure. Ignoring them is.

The first three chapters describe this state, starting with examples of individual tasks for the state in Chapter 1 illustrative of *the good*, *the bad*, and *the ugly* experiences of the very ordinary, former middle-ranking New Zealand public servant writing this essay. They are chosen to avoid extremes, such as the treatment of victims of abuse in state care. Although I did not work on the response to child abuse in state care, I have no doubt that I, and most of the largely decent people around me, would have acted no differently. Chapter 4 will explain how understanding the normal working of the state provides an insight into its extreme examples.

This is similar to the approach advocated by anthropologist turned *Financial Times* journalist Gillian Tett. As a financial journalist in the early 2000s she grasped that risks were building in the financial system by spending a lot of time around bankers "in their natural habitat" and asking what were they *not* talking about.¹¹ The people she observed were hugely knowledgeable and had every incentive to use their knowledge, but "their view tended to be restricted to whatever sat beneath their noses too; the world oddly opaque

to *insiders*” (italics added). Worse what they discussed was “swathed in so much jargon that it was difficult for an outsider to make sense of what is going on”.¹²

Chapters 2 and 3 will show how metaphors like “frontline worker” and jargon like “machinery of government” play the same role for the state. Like financial markets, the original purpose of metaphors and jargon was not to obfuscate, though some insiders are undoubtedly happy it has that effect. Regardless of intent, what this language does is mystify the workings of a human institution. Just as banks had to reassess their assumptions to learn from the GFC, demystification of the state’s workings is required for reform of the state.

Part of this demystification is grounding discussion in specific dates, places, histories, people and policies. Unfortunately, the state is so large, with more than 460,000 people working for close to 3,000 entities, that some abstraction is a necessary evil.

Chapter 2 discusses the individual entities of the state. For all the human messiness of their design they are not Rorschach blobs. The metaphor ‘DNA of the State’ from economist Marianna Mazzucato provides a better intuition.¹³ DNA limits but does not determine what a biological organism can do. Chapter 2 identifies this ‘DNA of the state’ as it determined Hobson’s first state in 1840 and current departments. These state entities cannot be understood in isolation. They are elements of an environment where they independently interact. Chapter 3 argues this makes the state more an ecosystem than machine.

Chapter 4 summarises the key themes of hierarchy, motivation, accountability and information from the first three chapters. These institutional limits are sometimes ignored and sometimes described as “government failure”. Government failure is real enough, but is less

helpful as an approach for understanding what the state can do. The chapter argues a more useful approach is to distinguish institutional deficits, the gaps in what institutions do, from more fundamental limits of the state.

Chapter 5 applies this framing to tools and managerial approaches for improving the state. The tools approach is more about institutional deficits. Properly developed tools can improve how the state operates, but they do not address fundamental limits.

The second part of Chapter 5 highlights how the 2020 Public Service Act’s managerial approach, based on Public Service Motivation (PSM), has created new deficits. A clue to its failings lies in the feudal tones in the quotes above. Replace Palmer, Boston and Hughes with “Lord Grantham”, and it is no stretch to imagine those words in an episode of *Downton Abbey*. The Public Service Act embeds such feudal thinking, including explicit reference to spirits, in New Zealand law.

The essay concludes that the state ecosystem needs deeper structural change. This will be the focus of the second essay.

Two notes on nomenclature. Throughout this essay the term ‘officials’ refers to people who write cabinet papers, develop policy, run departments, assess benefit applications and so on. This essay is primarily about officials. Their equivalents are parodied in the TV series *Yes Minister* and *Utopia*, and outside of government they are often called bureaucrats, mandarins, pen-pushers, and so on. A much wider group of people are ‘state employees’, that is, people paid by the state to do a job for the state. This essay is not about the legal nuances of employment, so ‘employee’ includes contractors, such as General Practitioners, who work for the state and whose main income comes from the state. Whatever the technical legal term, they are ‘employees’ by any other name.

The terms 'incentive' and 'motivation' are near synonyms. Economists treat the two words as synonyms.¹⁴ However, there is another meaning of incentive which refers only to extrinsic motivations. The discussion of public choice by non-economists suggests they find this confusing. This essay uses 'motivation' as a general term for all psychological drivers of action, from the grubbiest version of self-interest to the purest form of altruism. 'Incentive' is used in the narrow sense of extrinsic motivation. There is no deep philosophical claim in this, simply an attempt not to let labels distract readers from the essay's content.

CHAPTER 1

Three tales of life in the Wellington government village

The Victoria University, Wellington (VUW) School of Government is in a non-descript tower next to the Lambton Quay bus terminus. Just over a narrow road lies a delightful nineteenth century low rise building that originally housed the entire government, including cabinet rooms. It is now VUW's School of Law. On the opposite side of Lambton Quay is the Beehive and Parliament Buildings. Continue down Lambton Quay and the first right is Bowen Street. A hundred metres further, the first junction has a cluster of ministries that include the Public Service Commission, well concealed from the public behind the security of the Reserve Bank building. Take the left turn onto The Terrace and, apart from coffee shops, every other building up the hill seems to include a ministry or provide a service for government. If you go along Lambton Quay or up to Thorndon, most of the rest of the Ministries are on side streets. Government in New Zealand really is a village.

The three tales told here are examples of *the good*, *the bad*, and *the ugly* of work in the government village. They are chosen for their ordinariness and to ground discussions of the state in the challenges faced by the people who do the state's work.

The good: the Housekeeper's Tax Credit

In 2011, four people from Treasury, the Inland Revenue Department (IRD) and MSD were presented with a paper in a bland meeting room—functional table, functional chairs and dull, slightly grubby, pastel plaster board walls—the mitochondria of government departments. The

group had been asked to advise ministers on payments and tax credits to improve targeting. I was the person from Treasury. The paper was about three palpably outdated allowances that together cost \$35m a year.¹⁵

The most egregious was the 'Housekeeper's Tax Credit'. The credit was devised in the 1960s to help men stay in work if their wives were unable to look after preschool-age children. (Yes, it was that sexist.) By 2011, the Housekeeper's Tax Credit had become a childcare subsidy, targeted at two income, middle- and upper-income families. The likelihood of receiving the payment increased with income and the typical (modal) recipient was a family in the top 10% of family incomes.

In fact, the payment was so targeted at the comfortably well-off that among the recipients of the payment were the kind of middle-ranking public servants who get asked to look at payments and tax credits to improve targeting. Two of the four people in that room received the payments at the time, and the other two were likely to receive it over the next few years. Abolishing that tax credit would make all four of us worse off financially.

The four people were given the task because they understood payments and their targeting. Someone joked about this consequence. The payments were not well known. It would have been trivially easy for us to omit them from the advice for ministers, or to have discussed them in a way that made ministers wary of abolishing them. To my knowledge, no-one took those possibilities seriously.

From memory, the dominant mood of the discussion was a sense of relief. We had been commissioned to include a range of reform options and had been struggling to find a “rats and mice” option (our phrase for small changes) large enough to be meaningful. An option to abolish these payments properly rounded off the range of options for ministers’ consideration.

If asked why we presented that option, I suspect we would all have mentioned professionalism. Both the ministers and, with one exception, the senior ministry managers were pleased with the range of options in the paper. Ministers ultimately rejected the more ambitious options and chose the option that included abolishing the Housekeeper’s Tax Credit. Though this paper was too minor to be the specific reason for promotion, all four of us later received promotions and the associated pay rises for being good professionals in our jobs. From those promotions, we earned far greater amounts than the benefit payments.

The Bad: the Mayors’ Taskforce for Jobs target for 15- to 19-year-olds

The Mayors’ Taskforce for Jobs (MTFJ) was set up in 2000 to coordinate local government initiatives to reduce unemployment. In 2004, the MTFJ agreed a goal for everyone aged 15 to 19 years to be in employment, education or training or “other activities contributing to their long term wellbeing” by 2007.¹⁶

The metric Not in Employment, Education or Training (NEET) is internationally used as an indicator of how well young people transition from education into work. A moment’s thought about what it would take to have no-one be NEET and assuming “activities contributing to long term wellbeing” is meaningful, makes it clear this is not a plausible target. For instance, what measures, short of introducing some form of work conscription enforced by the police, would be needed to stop parents financially

supporting unemployed children who surf, or otherwise waste their time in the way teenagers do? And any parent of a teenager knows, ‘attendance’ at an activity may or may not be practically different from doing nothing at home.

Therefore, it may come as a surprise that in 2004 the government of Helen Clark adopted the MTFJ goal as a government target. As was typical of MSD at the time, it was not thought necessary to explain to those working in the Ministry’s Bowen Street offices what led the government to adopt the target. The rumour was an overly sycophantic senior adviser in MSD gushed to the Prime Minister that the target could be achieved without consulting others. By the time the mistake was realised, the Prime Minister had already planned an announcement and the Chief Executive did not want to tell her a mistake had been made. Therefore, the target became government policy.

Even more astonishing, MSD claimed to have achieved this target in December 2006. It was claimed with uncharacteristic modesty, at a press briefing that no minister attended and then tucked away in an endnote of a minor subsection in MSD’s 2008 Briefing to the Incoming Minister.¹⁷ Tellingly, there were no international accolades for what would have been a truly unique achievement. The current website of the MTFJ does not mention the target.

The inherent humour of the situation should not hide that NEET is an indicator of

The most vulnerable—those with a poor education, ill health or social problems, and/or a migrant background—are most likely to find themselves without work, quality education or training opportunities. Over two-thirds of all NEETs (...) are inactive, i.e. not even looking for work.¹⁸

These are the young people whose alienation leads to mental illness, suicide, homelessness,

teen pregnancy and crime. Even Tudor England—not known for its compassion—had state interventions designed to help what would now be called NEETs.¹⁹

It matters if government thinks there are no NEETs. At the minimum, it is reasonable to direct resources to others in need. In government, belief in the implausible has real consequences.

So, what lay behind the Ministry's claim? An MSD paper for the Minister of Social Development, written on April 27, 2007, asserted that:

... an appropriate indicator of whether the shared goal is being achieved is the number of 18- and 19-year-olds on Unemployment Benefit for longer than 13 weeks who are not engaged in an agreed activity or under intensive case management, because this:

- measures whether young people are failing to make a successful transition towards economic independence and wellbeing
- focuses on those who are not engaged in work, education or training when they ought to be, rather than those who have only short periods of inactivity as part of a successful transition process, or who are disengaged for a good reason (e.g. severe illness).²⁰

The “13 weeks” refers to an administrative rule that interventions start after it is evident that a person is struggling to find work. In other words, success at achieving a target for everyone between the ages of 15 and 19, was being measured by the number over 18 year-olds on unemployment benefit doing activities they were already required to do. The only commitment was to intervene with a group of people who should already have received an intervention.

In answer to the obvious question about those excluded, the paper notes:

... officials from the Ministry of Education and the Ministry of Social Development are collaborating to produce a plan so that:

- after July 2007, the details of every 15-year-old who receives an early exemption from school will be passed on to appropriate people within local Work and Income offices
- Work and Income is informed of every 16- and 17-year-old who leaves school
- all school leavers are monitored, with those in need referred to local services that can guide them towards the options appropriate to their individual circumstances
- a pilot scheme is developed to allow children to participate in Youth Training or Training Opportunities funded courses while remaining at school.²¹

Note that none of this refers to counting the 15- to 17-year-olds who are NEET. All the actions are for government agencies, who are not asked to count how many youths might have been missed by interventions. Despite this, the paper concludes:

...the [actions] above ensures any identified young person between the ages of 15 and 19 years can be directed to meaningful activity, where it is appropriate to their long-term economic independence and wellbeing.²²

To properly understand this statement, consider the kind of young people who have “poor education, ill health or social problems, and/ or a migrant background”. They are the reason we have the NEET measure. This group would probably include youth with disabilities, teen sole parents, those who are long-term truants from school, those with mental illnesses, those involved in petty crime, drugs or gangs and those in a youth justice prison. These are the young people going beyond teen difficulties to have lives that are seriously derailed. These are the people the proposed measure of NEET excludes by design.

Youth with illness, disability or drug problems generally do not receive unemployment benefit.²³ Likewise, for sole parents. Those meant to be at school are ineligible for benefit, as is anyone in a youth justice facility. Of course, others may simply not claim, including those barred from benefit for eligibility reasons.

There is clearly something limited in this measure of achieving the Mayors' target, but even commonly used statistics like Gross Domestic Product (GDP) have limitations.²⁴ Part of the role of officials is to provide technical advice, such as determining which of the imperfect measures available is the best in the circumstances. The reader is invited to imagine where exactly it sits on a spectrum of limitations ranging from the Treasury's use of GDP in budget projections, through the stretched statistics that are commonplace in advertising, to the outright lies of those selling Ponzi schemes. In the text below the phrase 'grossly inappropriate' will be used.

Here is probably the place to add that, I'm sorry to say, I was part of the team that wrote the paper defending the grossly inappropriate statistic. What this means in terms of the professionalism mentioned in *the good* will be discussed in Chapter 4. For the moment, the more interesting question is what are the consequences of using such a grossly inappropriate statistic? This is not a subtle, difficult to understand issue. The intent of the MTFJ was clear. The limitations of the proposed indicator are intuitively obvious. Surely the ministry's proposal faced a stiff challenge?

On December 10, 2007, the Cabinet Business Committee agreed the target had been achieved and a press statement released along the lines of the quoted words above.²⁵ The Mayors and a group of ministers that included Ruth Dyson (Minister of Social Development) and Michael Cullen (Minister of Finance) met the following day at the Beehive. Agenda item 3 included the following statement:

Through collective efforts, based on the agreed measure, we have achieved a desired outcome within the shared goal set by Government and the MTFJ.

The number of young people aged 18-19 years receiving an Unemployment Benefit for longer than 13 weeks on 7 December 2007 was less than 250. Further, there were no young people in this group who were not in agreed activities and being intensively case managed. This is a reduction of 96% compared to monthly averages in 2002 (6,600), and is an indicator that more young people today are making successful transitions from school to other activities.²⁶

The Ministry held a press conference that no ministers attended. They were careful not to push their luck by trumpeting the "achievement", hence the last mention of the achievement is the footnote to the 2008 Briefing to the Incoming Minister mentioned above.

Looking back after fifteen years, what is most striking is how the Mayors' Taskforce itself reacted. This was a taskforce initiative, backed by much high-minded language about communities and their young people being the future. I would like to report on long, agonised debates where the Mayors were bullied and coerced by the ministry into debasing their initiative. However, there is no evidence this happened. They merely nodded it through at the December 11 meeting and participated in the photoshoot as usual.

The Ugly: Winston Peters versus the Ministry of Social Development²⁷

In April 2010, a man turned 65 and went to his local Work and Income office to apply for New Zealand Superannuation (NZS). It was granted at the full rate for a single man. In June 2017, his partner also turned 65 and applied for superannuation. When Work and Income compared the forms, they had inconsistent

information that implied the man might have been overpaid for seven years. A letter was sent, and the man met staff from Work and Income on July 26, 2017. The man apologised and on July 27, 2017 repaid the amount he had been overpaid. Work and Income closed the case.²⁸

In what follows, it is important to understand that around two-thirds of the large fraction of a million people who are working age beneficiaries have a debt to Work and Income.²⁹ In discussions of political accountability, it makes sense to distinguish ‘policy’—the minister’s responsibility—from ‘operational’—the ministry’s responsibility. Beneficiary ‘debt’ is a paradigm example of the operational work of the public service. Dealing with beneficiary ‘debt’ is the day job of Work and Income staff in the way dealing with children being unkind to each other is the day job of teachers, Friday and Saturday night drunks the day job of the police, and referring patients to hospital is the day job of GPs.

Except, not in this case. The man who had to make the repayment was Winston Peters, leader of the New Zealand First Party. As Peter Hughes, Public Service Commissioner noted, how the government welfare system dealt with a

... very senior and powerful politician [who] had been overpaid a benefit over many years ... raised a potential concern about special treatment, bias or interference in the MSD’s processes for dealing with the overpayment. The integrity of the public service was in issue.³⁰

So, how did the New Zealand government ministry handle this routine, open and shut case to ensure Mr Peters had the same treatment as any other person? You may remember the children’s nursery rhyme about an ‘old lady who swallowed a fly’, she swallowed increasingly larger animals until she ‘swallowed a horse / she’s dead of course.’

Like the rhyme, when the old Work and Income clerk discovered the inconsistency she told her

manager. The manager rang her regional director, who rang another regional director, who rang MSD’s national office, who rang a deputy chief executive, who rang MSD’s Chief Executive, who rang a deputy state services commissioner, who then told the State Services Commissioner and eventually ministers were informed.³¹

The case was improperly leaked. Of course.

Predictably, Winston Peters sued for breach of privacy. What is fascinating is not the legal case and subsequent appeals, all lost by Peters, but the rare glimpse they provide into the ordinary operation of the state and how little accountability there is for senior officials. Unlike gaming the Official Information Act, there are meaningful consequences for obstructing the courts. If a chief executive does not write down why they acted as they did, they still need to publicly justify their actions. This appears to have improved transparency. It is an indictment of New Zealand academia and journalism that the mystical claims about the state quoted in the Introduction have not been compared to the realities described in Judge Venning’s judgement.

To start, this case is about whether or not a government department breached its duty to “keep the details of the payment irregularity confidential.”³² As the judge makes clear,

Mr Peters had a reasonable expectation that the fact of the payment irregularity would be kept private, to the extent it would not be discussed other than for a proper purpose and/or would not be disclosed to parties who did not have a genuine need to know about it.³³

Depressingly, no-one in court appears to have questioned what “need to know about it” might look like for recipients who are not Winston Peters. The judge just accepted the Crown lawyer’s claim that “because of the sensitivity around Mr Peters’ profile” it was reasonable to pass the case to the regional director.³⁴

On average, there are about 20,000 people claiming benefit in each of Work and Income's regions. It beggars belief the handful of regional directors regularly conduct the first interviews for open and shut cases of Work and Income debt.

So, what does "special sensitivity" mean here? We know for certain it is not case specific complexities or legal precedents. It appears to mean that the "same treatment as any other person" for a well-known politician is the special treatment of having the case handled by a high-level Work and Income manager!

In fairness to the regional director—who comes across as open, efficient and highly competent—she did all the heavy lifting in ultimately resolving the case. Indeed, these attributes make her unique among the flock of senior officials involved with the case.

From the second regional director contacted to the Deputy State Services Commissioner, these officials all had years, or even decades of experience and yet they responded to Winston Peters' routine overpayment case by offloading it to someone more senior, until the case reached the head of the entire New Zealand public service and could go no further among officials. Information about the case was then passed onto ministers.

At such vaunted heights of the system, the issue changed. The mundane management of a Work and Income overpayment became ensuring the "integrity of the MSD's administration of the benefit system" for MSD's Chief Executive.³⁵ For the State Services Commissioner it further expanded to "[t]he integrity of the public service was in issue".³⁶

There is another point where the court's lack of curiosity about the realities of the public service is significant. The case was about a breach of tort. These are civil situations where someone or some organisation breaches rights when there is

no contract. An example might be the privacy risks created by senior managers who establish a culture whereby a mundane case is dispersed through the organisation until it reaches the organisation's most senior people.

Most readers of this essay will have seen people working for government—teachers, nurses, policemen—deal with situations far more challenging than conducting a routine, bureaucratic interview with a politician. I have seen Treasury vote analysts, a year or so out of university, challenge ministers and their departmental chief executives on information provided in budget bids worth hundreds of millions of dollars.

In that context, the behaviour of the Work and Income staff is strikingly servile. It is entirely reasonable to ask whether the Work and Income staff culture created by senior managers contributed to the case being passed to so many people that the risk of a leak was significantly increased? Unfortunately, this question was never asked.

Instead, the case became embroiled in a discussion of the 'no surprises' principle. The principle is intuitively easy to understand if the state is thought of as a workplace. For example, imagine you collaborate extensively with someone from another organisation only to discover that they spread information about you that was so damaging that it jeopardised your job. It would be unsurprising if you stopped trusting them. It is common for officials to have information that could damage their minister, and they are sometimes legally obliged to make that information public. 'No surprises' is a commonsense approach to working relationships that requires departments to warn ministers about information that might become public knowledge.³⁷

In the bear-pit of politics, any information could, in some context, potentially damage a minister's reputation, so 'no surprises' has limits,

... there is a distinction between a matter which relates to a function or power that officials are required to exercise independently of the Ministers and matters which do not relate to a function or power required to be exercised independently of the Minister. In the second case, the key factor will be the significance of the matter within the Minister's portfolio responsibility. ... Ministers should be informed promptly of matters of significance within their portfolio responsibilities, particularly where they may be controversial or become the subject of public debate.³⁸

As Judge Venning notes, for

...a briefing on a 'no surprises' basis, the issue should be a matter of significance within the Minister's portfolio. The fact that a recipient of NZS had been overpaid, and that the MSD had investigated it and was satisfied there was no intent to mislead it, obviously, would not justify a briefing.³⁹

So, what justification could there have been for telling ministers about Winston Peters' superannuation application? This is where integrity comes in, both of MSD's administration of the benefit system and the public service. Only if this personal mistake had wider significance could it justify ministers being briefed.

The problem the defendants had is the lack of contemporary evidence that Peter Hughes or the department chief executives considered the issue of integrity at the time. To anyone who has worked as an official, this situation is bizarre. This was not a situation whose significance only became apparent later. If ministers were informed of the overpayment to Winston Peters because the integrity of the system was at stake, then system integrity would have been front of mind at the time.

In fact, the Chief Executive of MSD and an associate State Services Commissioner wrote file

notes, short personal notes that are put on file to record an event if there is no other record. Both mention 'no surprises'; neither makes any mention of integrity.⁴⁰

The core of accountability in government bureaucracy is recording decisions. We know why Work and Income closed their file on the overpayment to Peters because the Regional Director handling the case recorded her decision and noted why she decided as she did. We know in even more detail why Judge Venning made his decision because he wrote 35 pages detailing the evidence, the precedents he used, and how that fed into his decision. Right or wrong, we know why these officials acted as they did. This makes them accountable for those decisions. This sounds bureaucratic because it is bureaucratic, but the alternative is unaccountable decision-making by unelected officials.

Contrast this with the behaviour of the head of the public service. There is no suggestion that Peter Hughes misled the court with his evidence, but unlike other officials, he did not do the most basic action essential for public service accountability. There have been no consequences for that omission.

In fact, the witness for senior public servants at the trial went even further. Maarten Wevers, a former Public Service Chief Executive and long-time colleague of Peter Hughes, claimed these assessments are "judgment calls that reasonable and experienced chief executives could reach different decisions on without being wrong."⁴¹ He made no comment either way whether it was right or wrong to record reasons. In effect, decisions are at the whim of individual chief executives.

To understand the force of Wevers' evidence, think about the medical, educational and legal interactions everyone has with the state, including politicians. In effect, Wevers has suggested, in the context of a case where a department egregiously dispersed personal information in

a manner that led to it being leaked to the public, that a departmental chief executive is entitled to do whatever they want with information held by a department. It is not difficult to imagine situations where this might undermine democratic accountability.

Judge Venning was in a quandary. It was a close call for Hughes and the other officials. Their *deus ex machina* was the coincident, highly publicised case of Metiria Turei. Just before Peters' case was leaked, Turei lost her position as co-leader of the Green Party when she defended a fraudulent application for a benefit payment.⁴² The judge is explicit that if it were not for that context "I would have found that ... it was unnecessary for the 'no surprises' briefings to have identified Mr Peters."⁴³

As with the previous example, what is surprising about this case is how little comment it raised. Judge Venning's summary is a model of plain writing. The case was publicised in the media. Yet it appears to have faded into obscurity. The author of *Democracy in New Zealand: A Survival Guide*, a law professor with a consultancy specialising in 'public law', shows no interest in the case's implications for democracy or the public service.⁴⁴

When the Peter Hughes-run State Services Commission successfully lobbied for the 2020 Public Service Act, a law that gave discretion over principles and values of the public service to him as Commissioner, the case was not raised in Parliament, nor given a single mention in VUW's academic journal issue on the Act.⁴⁵ Hughes was even allowed to write the journal issue's introduction "to contextualise and set the tone for subsequent debates".

The tales in this chapter illustrate the complexities of life in the government village for individuals. *The good* shows the ambiguity of 'altruism' and 'self-interest' in real institutions. *The bad* shows that being clear about a policy's objectives and relevant information about success are not enough to improve how government operates. Finally, *the ugly* shows the weakness of accountability in state institutions.

When policy objectives are not aligned with organisational objectives, as frequently happens, what emerges may or may not reflect the intent behind the policy. The next chapter looks further at state organisations, and Chapter 3 at the ecosystem of these state organisations.

CHAPTER 2

The DNA of the New Zealand state

The Wellington government village was not the first government village in New Zealand. Māori institutions existed across New Zealand for more than half a millennium prior to European settlement. The modern New Zealand state started as an outgrowth of British colonial administration in Australia. Like most states, New Zealand's state institutions predate our democratic institutions. In our case, they served the colonial administration of the Governor-General after the signing of the Treaty of Waitangi in 1840 and gradually came under democratic control in the decades after democratic representation was formalised in the 1850s.⁴⁶

The first attempt to house this administration was in what is now a park between Auckland's Princes and Symonds Streets. It "had 16 rooms and cellar space for 600 bottles of wine, but not even some additions designed by the governor himself could make it warm or comfortable and burned down on 23 June 1848."⁴⁷ The colonial mansion that replaced it is currently Auckland University's staff common room.⁴⁸

The administration that used this building was a classic Weberian state, with claim of monopoly over legitimate force within a given territory and a prototype Weberian bureaucracy, compartmentalised by expertise and responsibilities.⁴⁹ Of course, this claim of legitimacy is highly contested in modern New Zealand, but whatever the current interpretation of the Treaty of Waitangi, the state since the 1840s acted as if it had this monopoly.⁵⁰

At the start in 1840, this meant

[A] Public Service [that] consisted of a Governor-General's Establishment, Colonial Secretary's Office, Attorney-General's Office, Customs Department, Survey Department, Protectorate

of Aborigines, Post Office, Harbourmaster's Establishment, Colonial Surgeon, Colonial Surveyor, Storekeeper, Police and Gaols, Court, Treasury and Public Works Department. These agencies employed 39 men...⁵¹

The state was Governor Hobson and his successors claiming legitimacy with people acting for him. That is, the New Zealand state was constituted as one person telling another group of people what to do.

By 1865 the state had moved to Wellington and soon built the low rise building opposite Parliament that is now VUW's School of Law. By the early part of the twentieth century the Governor-General was no longer in the government village, nudged into a lovely park in Wellington's Mount Cook suburb as the state increasingly derived legitimacy from the elected House of Representatives. In the process, the state vastly expanded its permanent institutions. This Chapter describes the DNA of these institutions.

About us

When New Zealand's public service departments describe themselves in the "About us" sections of their websites they usually start with a statement of "role, purpose and work", then list their ministers and executive.⁵² They self-describe as a job with a hierarchy to do the job. The hierarchy starts with legitimate officials who oversee permanent officials who are themselves in a hierarchy over other permanent officials.

There are three groups of permanent officials each with distinct functions that became more distinct and specialised as the number of state employees expanded. The first group are the

people who organise and manage institutions of the state. Second, those providing expert advice on state policy—in the public service of the 1840s this included the Attorney-General and a person running the Treasury. Finally, the largest group of permanent state employees, those who implement policies. In Hobson's time this included employees in the post office, gaols and public works. Each group is discussed below.

State entities differ in their relationship with legitimate officials, and consequently have different mixes of the organisational, advice and implementation functions. In this section, New Zealand Treasury provides an example of a state entity. The Treasury was part of Governor William Hobson's first administration and is now situated at the crossroads of Bowen Street and The Terrace, in the centre of the Wellington government village. It is a relatively compact, human sized organisation, albeit with fifteen times more officials than the entirety of Hobson's administration.⁵³

Legitimate officials

Treasury currently has seven ministers, with the Minister of Finance, Nicola Willis, responsible for most of Treasury's work.⁵⁴ Like her predecessors, Nicola Willis has no background in either economics or finance.⁵⁵ Willis has a 'Ministerial office' of around ten to twelve staff answering to her directly. While the Prime Minister has considerably more in the 'Prime Minister's Office' (PMO), other ministers have fewer staff.

Another group of officials appointed by ministers are board members of state organisations. The role of board members is to ensure the state organisation is well run.⁵⁶ A glance through lists of the board members of state organisations will show that many are experienced and highly qualified.

There are a huge variety of boards for state organisations. Those boards appointed by ministers are for the larger organisations. Even these vary from

the KiwiRail board that is similar to the professional board of a large private sector company, to the boards of organisations like Heritage New Zealand that are difficult to distinguish from sinecures.⁵⁷

A key difference between staff in ministers' offices and board members is that the minister's staff work for the minister, while a board member's role is more independent of the minister.

There are around 30 ministers, a 1000 members of ministers' offices and around the same number again appointed to boards. This is half of one percent of the people working for the state. (See Box 1 at the end of Chapter 2.)

Organisational officials

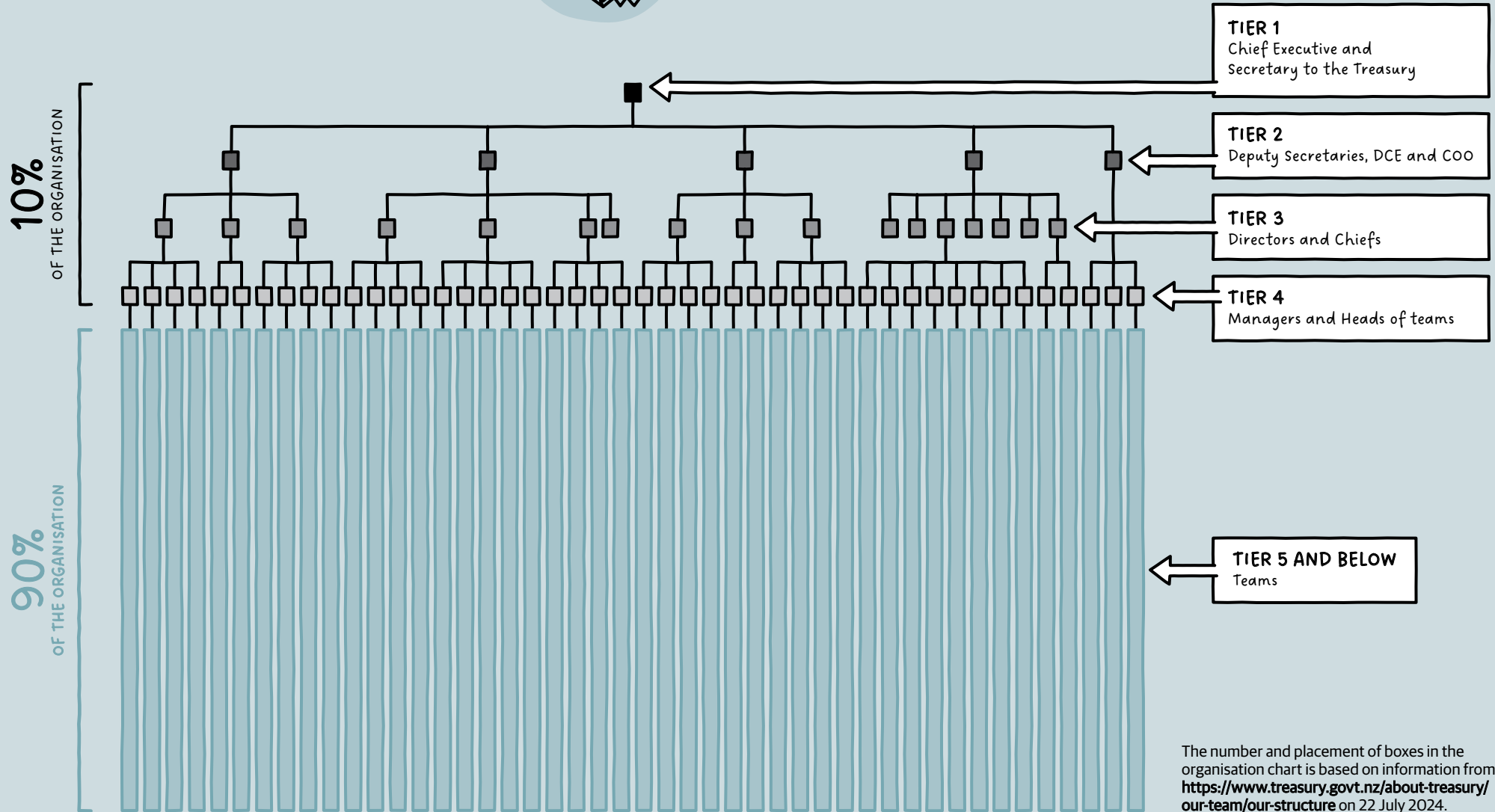
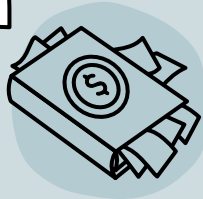
The expertise Nicola Willis needs is supplied by permanent ministry officials. In the public service of the 1840s, Treasurer George Cooper used his experience managing customs in Australia, though according to the Dictionary of National Biography "Shortland, the colonial secretary, was brusque, tactless and incompetent. George Cooper ... was even more unsatisfactory."⁵⁸

The last incumbent, Dr Caralee McLeish, while also from Australia, is a certified accountant with a degree in economics and a PhD in finance who has worked for or run a range of organisations with an economics or finance role.⁵⁹ It would be hard to imagine anyone more qualified to do her job.

Figure 1 below shows the upper tiers of the organisation Dr McLeish ran, as described on Treasury's website.⁶⁰ The reporting lines in Figure 1 show the hierarchy of who is managed by whom, up to Dr McLeish. Treasury operates by one group of people 'acting through' another group of people, whether that is legitimate officials acting through state employees; senior managers acting through their organisations' employees; managers acting through someone in their team; or the Treasury as an entity acting through other entities.

NEW ZEALAND TREASURY, 2024

"A relatively compact, human sized organisation, albeit with fifteen times more officials than the entirety of [first Governor General] Hobson's administration."



The number and placement of boxes in the organisation chart is based on information from <https://www.treasury.govt.nz/about-treasury/our-team/our-structure> on 22 July 2024.

For instance, the Treasury Secretary regularly goes before the Finance and Economics Committee (FEC) in Parliament, where she can be asked any question the members of the committee feel is relevant to the Treasury's work. In preparation, the Secretary's office sends requests to staff for updates to a briefing; a few years ago, this comprised three thick lever-arch files. Even though Dr McLeish is probably more expert in some of Treasury's topic areas than those providing information, her expertise is background experience, not the job itself. For her FEC appearances, the job is discussing the files' contents, a task similar to any undergraduate cramming for an exam, though she will have been more diligent than most undergraduates, and the people conducting the exam, the MPs on FEC, are usually less knowledgeable than the Treasury analysts providing her information.

Dr McLeish and the other people in Figure 1 are helped by people with specialist organisational skills, such as human resources (HR), IT, communications and so on. For instance, Treasury's work on Climate Change is managed by a person who reports to the Director of the Growth and Public Services, who is also responsible for teams covering Natural Resources, Regions Enterprise and Economic Development, and Communities Learning and Work. In turn, they report to the Deputy Chief Executive for Economic Strategy, Economic Policy, Regulatory Strategy, Macroeconomic & Fiscal Policy, Modelling Research & Forecasting, Tax Strategy, Financial Markets, and International.

On average the managerial and other organisational roles in public service departments account for a third of all staff.⁶¹

The reporting lines structure the top-down motivators of people working for the organisation by determining promotion, annual review and content of work. Inside the organisation, a great deal of managerial time is spent meeting people

at the same hierarchical level. Treasury's website notes the Senior Leadership Team of people with the word "secretary" in their title, and a committee for the tier below with the word "director" in their title.⁶² There will be other formal and informal meetings around topic areas and tier levels.

It is hard to overstate for those unused to officials' culture, how much hierarchical level infuses these horizontal meetings. Typically, people introduce themselves at the beginning of each meeting with their hierarchical level along with their team or organisation. I have been at a meeting where someone stormed out when they realised others at the meeting were lower in the hierarchy. One reason to be sceptical about the 'Public Service Motivation' academic literature, to be discussed in Chapter 4, is how little it mentions this culture of hierarchy among officials.

So, what are those running a government ministry motivated to do when they act through others in these meetings? Intuitively, the role of permanent officials is to implement what legitimate officials wish to do within legal constraints. That intuition is incorrect. Permanent officials have an amorphous 'stewardship' role that includes implementing legitimate officials' wishes, along with many other elements.

The stewardship role is renowned for being difficult to pin down in practice.⁶³ Intuitively, the state has many functions that do not change with a change in elected government. Think courts, the police, the health and education systems and so on. Thus, the role of permanent officials is to look after, or be the steward for, these systems.

The practice of stewardship is far wider and more ambiguous than such intuitions imply. For instance, section 32 of the 1988 State Sector Act states that department chief executives are responsible for ...

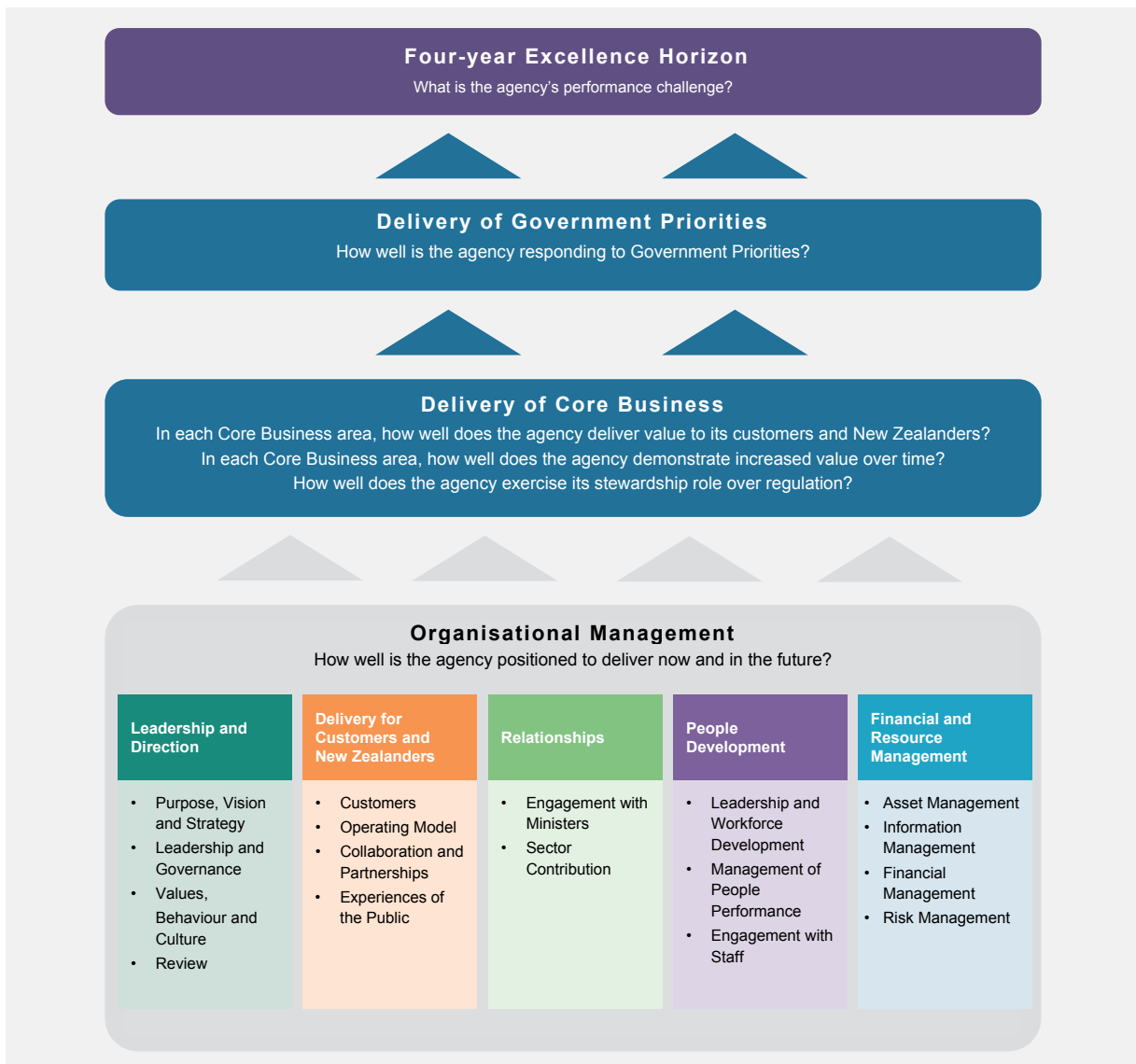
...the stewardship of the department [...] including of its medium- and long-term sustainability, organisational health, capability, and capacity to offer free and frank advice to successive governments; and the stewardship of: assets and liabilities on behalf of the Crown that are used by or relate to [...] the department; [...] and the legislation administered by the department.⁶⁴

What such an amorphous role might mean in practice, and how it is balanced with the priorities of the legitimately elected officials, is vague. It is easy enough to find these priorities

in the annual reports of departments. The 1988 State Sector Act sets out how legitimate officials communicate these priorities to permanent officials. Over the years this has been supplemented by explicitly political initiatives, such as the ‘themes’ of the Clarke government and ‘Better Public Service’ programme of the Key government.⁶⁵

So, how are these balanced against the other roles? The Performance Improvement Framework was the most recent tool that New Zealand departments use to assess if an organisation is performing well. It is summarised in Figure 2 below.⁶⁶

Figure 2: The Performance Improvement Framework, 2015⁶⁷



Four of the five criteria for assessing organisational performance are about delivering organisational outcomes. Despite this diagram showing these criteria driving “delivery of government priorities”, a look at the questions that identify performance show even these are assessed by questions along the lines of “Are the critical priorities defined at an intermediate outcome level, impact level or output level?” and “Has the agency committed the appropriate resources and effort to the priorities?”.⁶⁸ When understanding the outcomes of their actions, departments assess themselves by asking if their process were good.

This is what we observed in Chapter 1. While all three examples had clear organisational motivators, in *the bad* example, a measure to assess the MTFJ target was chosen that enhanced the reputation of the organisation. ‘Stewardship’ is so vaguely defined, it is unclear if acting in this way is proper stewardship or not.

Advisory officials

The branches in Figure 1 show how tasks are organised to cover the breadth of activities expected of an agency. Figure 1 itself shows the 10 percent of Treasury staff who manage Treasury’s work. Policy advisers both provide expertise for the organisation and draft almost everything attributed to a minister, from cabinet papers to ministerial letters. For example, a letter sent to a minister is typically passed to a particular department by staff in the minister’s office, who pass it to junior analysts to draft a reply, which is then negotiated with staff in the minister’s office. Before the reply is sent, it may or may not be seen by the minister. Although correspondence may look as if personally signed by the Minister, ministers have a signature stamp which for routine correspondence they can delegate to their staff.

For more formal papers, staff with an organisational role ‘sign out’ what is seen by people outside the organisation. Sign out is both

a form of quality assurance and a way to ensure the content of documents aligns with other work the organisation is doing.

Policy advisers also link legitimate officials, who may have no experience of government, with the reality of what government can and cannot implement. As explained in Box 1, policy advisers make up around 12,000 of the roughly 460,000 people working for the state sector; about two to three percent. Most of these advisors, and their layers of management work in close proximity in the 40 or so public service and non-public service departments and entities in the Wellington government village.⁶⁹

Implementing officials

Finally, around two-thirds of those working for the state implement policy. As will become clear this is not the same as ‘frontline workers’, although it does include people who usually come to mind when that phrase is used.

There is a huge range of implementors. Some are directly employed by the state, like Treasury’s Debt Management Office. This manages government debt, including buying and selling government debt. Treasury also devolves many tasks to 39 specialist entities, where the ministry has responsibility for “providing advice to Ministers on the performance of companies and entities that are required to operate as commercial businesses or to meet mixed commercial and social objectives.”⁷⁰ These entities range from the government’s shareholding in the private company Air New Zealand, to oversight of Education Payroll Limited, the old fashioned bureaucracy that manages the task of paying teachers in New Zealand’s state schools.

Where is the frontline?

One of the strange-if-you-think-about-it metaphors applied to the state is ‘frontline staff’.

The original frontline was between opposing armies intent on killing each other. The frontline staff did the killing. The implication of applying this term to doctors, teachers and other state employees should be a source of grim humour, but like all clichés, overuse has bleached the phrase of real meaning. It seems the intention is to distinguish two types of state employees: people we like and admire, and ‘bureaucrats’.⁷¹

It is hard not to like and admire the two unarmed police officers who faced down a heavily armed mass murderer in Christchurch 2019.⁷² There are many others—those teachers, nurses, border staff, and so on—who in their day-to-day work make New Zealand a better place.

New Zealand writer Fiona Farrell’s experience of the Canterbury Earthquake Recovery Authority (CERA) leadership provides a paradigm example of ‘bureaucrats’. As a resident of Christchurch during the 2011/12 earthquakes, Farrell went to

... meetings [where the CERA] CEO Roger Sutton explains that red zoning is necessary because ... There is risk of serious harm in future quakes. Your health and wellbeing are CERA’s priority.

“But what if we don’t mind waiting another eighteen months?” asks a homeowner... If you wait, says the CEO, you will likely find yourselves without sewerage, water or postal delivery. They will be disconnected. And should you change your mind in the future and decide to sell, you will have to sell at the current market value, which will be less than the government’s offer.

“And what if my land is remediated and it becomes possible to build on it once more?” asks a landowner. “Could we have first right of purchase at a reasonable price?” No, says Mr Sutton. You can’t.⁷³

The problem is that attempts to distinguish people we like and admire from bureaucrats do

not bear scrutiny. For instance, the New Zealand police’s central control centre is in the midst of the Wellington government village. Its huge screens, AI monitoring of social media, access to CCTV pictures from across the country, and high-tech communications are reminiscent of a science fiction film. The staff there coordinate police responses. Does that make them frontline or backroom?

Similarly, Treasury’s Debt Management Office regularly interact with the public in a high pressure, high-stakes environment, where mistakes might impact the life of New Zealanders through higher taxes or reduced services. They are similar to many officials, from those administering the Official Information Act (OIA) to the Creative New Zealand staff who manage funds for the Arts, who have desk jobs delivering services directly to the New Zealand public.

In September 2014 a gunman murdered two people at the Ashburton Work and Income office, the receptionist and a case manager.⁷⁴ That this was a bureaucratic job does not stop it being frontline, by any definition.

The underlying problem is frontline versus back office is too simplistic a way to understand any large organisation, for at least three reasons.

First, many people trained for frontline tasks actually spend their time administering the organisation. For high-profile examples, think of Ashley Bloomfield or the Commissioner of the New Zealand Police, Andrew Coster. In fact, throughout the system there are people with specialist job experience doing office based organisational jobs. If we want the staff running state services, like health and education, to have practical experience of those services, then this is unavoidable.

Second, many services the state delivers are delivered by people sitting behind desks in mundane offices. In the modern world that

would be entirely unsurprising if it were not for the metaphor “frontline services” and the dramatic images it conjures.

Finally, the distinction glosses over the practical reality that to have people we like and admire doing what we like and admire, they need to be paid, their workplaces maintained, have the right tools for the job (operating theatres, vehicles, etc), well thought out policies to implement; and they need well-run organisations to make best use of their skills. Trite as it sounds, bureaucrats are crucial to putting the people we like and admire in positions to do good. In both private and public sectors, no invisible hand writes staffing rotas.

To summarise, the DNA of the state has two elements:

1. The foundational relationship of the state is one of hierarchy with legitimate state officials acting through a larger number of permanent state employees.
2. State employees are in a hierarchy with organisational officials acting through advisory and implementing officials.

Governor Hobson and his establishment of 39 people staff has become Figure 3 in Box 1 below. The breadth of activities undertaken by the state is spread across around 3,000 organisations.⁷⁵ The relationship between these organisations is the state ecosystem discussed in Chapter 3.

Box 1: Officials

Figure 3 below summarises the state. The figures quoted are ballpark estimates to give a sense of scale:

- Around 30 of the 120 elected members of the New Zealand House of Representatives are Ministers.⁷⁶
- Ministers choose the Chief Executives of the approximately 40 government departments in a complex process led by the Public Service Commissioner. The choice is largely made by the Public Service Commissioner, but Ministers provide guidance and can veto suggestions by the Commissioner.⁷⁷
- Around 2,000 people are chosen by ministers to work in the state. These are approximate estimates by the author because there is no central figure. The estimate is based upon the number of entities and typical number in each entity:
 - Around 1,000 people have roles in the Minister’s office in the Beehive
 - Another 1,000 are appointed by Ministers to the governance boards of Crown entities (e.g. KiwiRail and Heritage New Zealand)
- For permanent officials:
 - Applying the public service proportion of organisational to other staff, around a third of state employees have an organisational role.⁷⁸ That accounts for around 150,000 people.
 - Estimating the number of policy advisory officials is a challenge because there is no clear professional demarcation. It is also common for the job title “policy analyst” to be applied to people doing administrative work. The Public Service Commission estimates there are 12,000 policy advisors in government departments (the ‘public service’). This excludes those in Crown entities like Accident Compensation Corporation (ACC) and the Tertiary Education Commission who provide policy advice. An estimate from the Public Service website shows slightly less than 29,000 public servants working in Wellington.⁷⁹ An estimate of approximately 12,000 is used here.
 - The remaining 300,000 state employees implement policy. The scale of the modern state is such that this includes entire industries, with state education and health sectors employing more than 145,000 and 95,000 respectively.
 - In Figure 3 those working for local government are included in organisational and implementation officials.

Figure 3

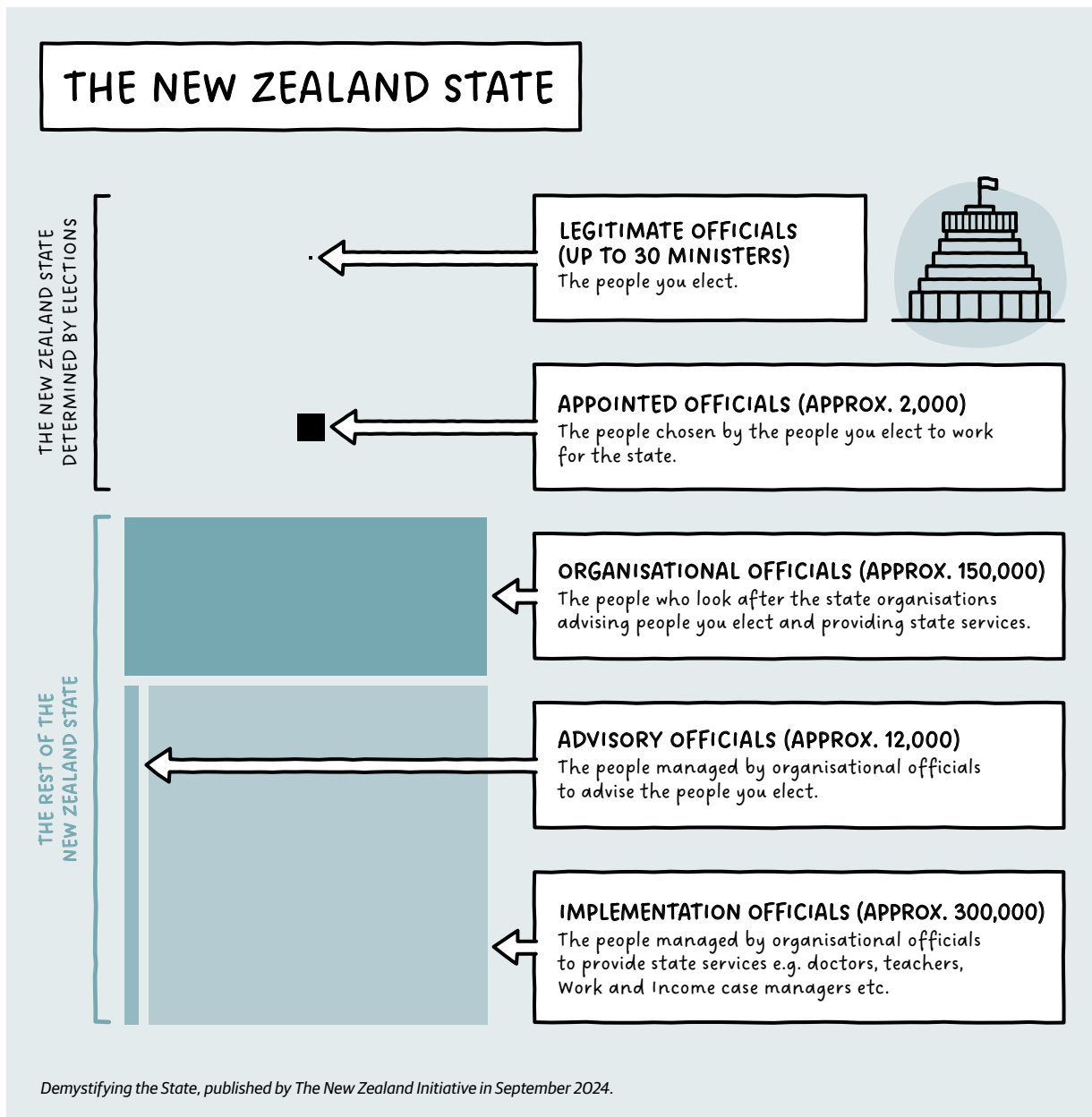


Figure 3 is drawn to scale.

CHAPTER 3

The state ecosystem

The area on the Molesworth Street side of Parliament is pleasant, a small lawn with a children's playground and a minimum of the pretentious monuments that normally adorn such places. Past Hill Street is the cathedral, and Molesworth Street becomes more concrete and glass, functional except for a peculiar statue just before Pipitea Street. It is weird on several levels: the figure is wearing vaguely medieval English clothes; the less than sporting figure stands outside New Zealand Rugby House; and the list of achievements on the plinth begins with membership of the Privy Council and Freeman of the City of London. Then, seemingly as an afterthought, it notes twelve years as New Zealand Prime Minister and a stint as Governor-General.

As the state expanded in the late nineteenth century, it became clear something in the way the state was organised was not working. This coincided with 'recolonisation', when New Zealand institutions increasingly adopted a "state of mind where we considered London the cultural capital of New Zealand".⁸⁰ The State Services Commission (SSC) was set up to deal with the something not working by removing Seddon sympathisers among permanent officials and modelling the state as closely as possible on the Whitehall civil service. It was so successful it was made permanent in 1912.⁸¹

New Zealand Rugby House previously housed the SSC. The statue outside is of Keith Holyoake, the Prime Minister at the height of the state's role in New Zealand life, the time between Savage extending the state's economic and welfare roles in the 30s, and Muldoon's Think Big initiatives that ended the illusion of state economic competence. In Holyoake's time (the early 1950s to mid-1970s) the SSC employed all

public servants to create "an extreme form of protected career bureaucracy, self-sustaining and self-regulating". Its senior appointments were made by a committee of insiders nicknamed the 'college of cardinals' in reference to the conclave that chooses the Roman Catholic Pope.⁸²

The reform process that followed the financial crisis of the early 1980s saw the SSC sidelined by the Treasury. By 2010, SSC's remaining staff rattled round the Molesworth Street building like the elderly last survivor of a formerly wealthy family who owns the old family home but little else.

This chapter describes the ecosystem of the state by building on Chapter 1's individual perspective and the description of organisations in Chapter 2. The first section challenges the 'machinery' metaphor for government, the second describes the horizontal links between entities. The final section discusses the tacit knowledge 'held' by the system.

The illusion of mechanism

Those familiar with academic discussions of the state from books like the Palmer and Palmer-Steads' 2022 introductory textbook or Rose Cole's chapter in Hayward, Greaves and Timperley's 2021 textbook for future Masters in Public Policy, will be familiar with the Public Service Commission (PSC) approach to state entities, summarised in Figure 4 below.⁸³

Figure 4 is reminiscent of a schematic for a circuit board and very much in the spirit of government organisations being the 'machinery of government'. The PSC website offers flow

charts, tool kits, guidance and a multiple-choice questionnaire for deciding the form of an agency. Key perspectives to consider include accountability, performance and implementation.⁸⁴

A more academic version of this ‘form follows function’ approach can be found in the application of transaction cost economics by former Treasury Secretary, Murray Horn.⁸⁵ On this view, the different organisational forms become the way legitimate officials embed any reforms, so that the

... predictive power of the economic approach to organization rests on the assumption that competition between different organizational forms is vigorous enough to ensure that only the most efficient survive ... The development of public sector organizations is not shaped by market competition ... Rather, legislators decide

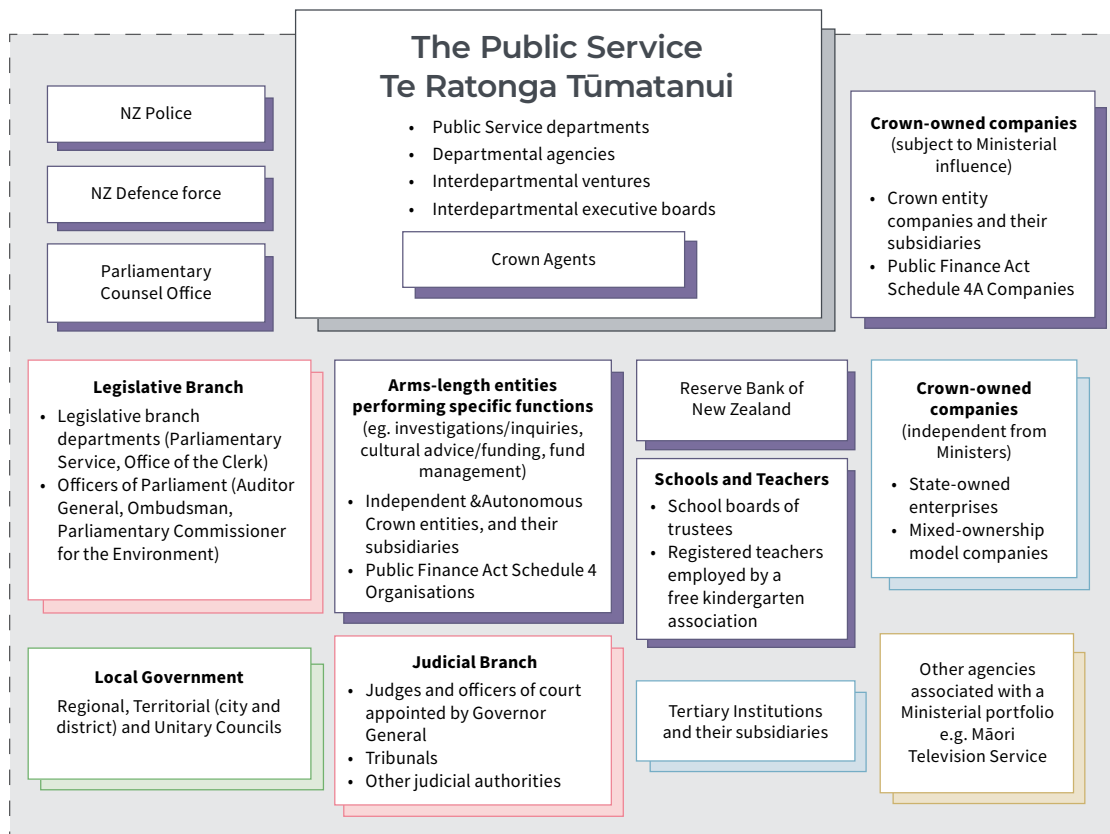
how public sector activity will be organized, and these decisions have to meet the test of electoral competition over time.⁸⁶

The PSC’s approach is intended to push back against Horn’s analysis because they believe it encourages bad practice that add unnecessary complexity to the state sector.⁸⁷

It is important to be clear that adding or reintegrating organisations does not remove hierarchy. It is just a different way of formalising that hierarchy. More entities and public reporting by entities has the potential for more open government—if anyone bothers to read the material produced. The discussion in the remainder of this section suggests it is an open question how much changes in practice, and the degree to which this change is controlled by those initiating the change.

Figure 4

The Public Sector | Te Rāngai Tūmatanui



Treasury's upside-down tree organisation in Figure 1 is one of a grove of close to 40 departments, each with a similar structure. To create a new organisation from a department, such as the Ministry of Regulation, a metaphorical branch is usually snipped off and transplanted, sometimes with branches grafted from other organisations, with specialist organisational staff (e.g., HR, ICT etc.) added to meet perceived specific needs of the new organisation. In other words, the new Ministry will be formed by snipping off a bundle of twigs from Treasury, combining it with a new section for reviews, and fertilising it with organisational staff from the chief executive down.

After 184 years of this process, Governor Hobson's sapling state, housed in one building, has evolved into an ecosystem of nearly 3,000 symbiotic organisations spread across New Zealand. In fact, there are so many, the PSC is unsure of the total.⁸⁸

All the organisations have a specified legal separation from, and reporting requirements to, legitimate officials. All but a small fraction employ organisational officials acting through some mix of advisory and implementing officials. Figure 4 groups these organisations by the legal reporting requirements the PSC administers.⁸⁹

Around 2,000 organisations are educational institutions, ranging from schools to universities. The remaining 1,000 range from Te Whatu Ora, employing the entire state health system with a \$26bn budget, to the 20 reserve boards, some of which have no employees and budgets of a few thousand dollars. There are also just over 200 local councils and boards.⁹⁰

The first clue that this machine approach is not informative is how loosely related organisational form and purpose are in practice. While some entities, like schools and the main public service departments, align form and function, this is not typical. For instance, all financial beneficiaries of

the state fill in application forms. The design and assessment of each form depends on the type of benefit being applied for. For example,

- A personal financial beneficiary of the state will apply to a Work and Income office run by the public service department, the Ministry of Social Development;
- An arts sector financial beneficiary will apply to the Autonomous Crown entity, Creative New Zealand;
- A tertiary education financial beneficiary will apply to the Crown agent, the Tertiary Education Commission (TEC); while
- A potential financial beneficiary for a community project might go to the Unincorporated Trust under the Public Finance Act 1989 Schedule 4, the New Zealand Lottery Grants Board.

This diversity raises questions. Do tertiary education providers need more protection from politicians and government departments than, say, vulnerable sole parents receiving welfare benefits from Work and Income? If the Lottery Grants Board is more arm's length because its funding is peculiar, why is the Accident Compensation Corporation (ACC) and its peculiar funding system less independent?

A rummage in the history books will likely provide far more informative answers to these questions than an analysis of the forms of state entities.

A second clue to the inaccuracy of the machine metaphor can be found when we delve more deeply into the entities themselves. The main operational entities for implementing education policy are schools. Each school is a Crown entity. Each of these has a large degree of independence and its own governance board. Implementation of health, however, is more complex. GP practices privately contract to supply most primary care, and hospitals provide most secondary care. Unlike schools, hospitals are part of larger entities, most recently the national health entity, Te Whatu Ora.⁹¹

If form follows function, what is it about schools that make them easier to run as independent state entities, while primary care is delivered by contractors, while the management of hospitals is unable to survive unless it is part of a larger state organisations?

This issue of scope can apply to whole sectors. For example, consider the Ministry of Health, which on the surface is well defined. At the inception of the New Zealand welfare state in 1938, the functions of the Ministry of Health were part of a reform that also created the forerunner of MSD. To this day, the latter administers the Supported Living Payment for the long-term ill or disabled and the Disability Allowance.⁹² And, of course, a parallel system was set up in 1974, run by yet another Crown entity, ACC. ACC collects additional levies, provides welfare payments and commissions health interventions for those who suffer an accident.

Yet, this is not where the arbitrariness ends. It is a cliché of public health discussions that we have an ‘illness service’ that addresses illness rather than promoting health. Typically, an illness service is estimated to only account for about 20% of the population’s health.⁹³ In other countries this has influenced how state-supplied health services are run. In the UK, public housing was originally a public health initiative to replace slum housing so the minister of health was also housing minister.⁹⁴ What stops New Zealand treating housing policy as a health service, with Kāinga Ora and the Ministry of Housing and Urban Development becoming branches of the Ministry of Health?

The point here is not to advocate for a particular reorganisation. Similar challenges could be made to many state organisations. It is often convenient to have multiple entities, partly because it helps manage the state’s workload by splitting it up, and partly because entity reporting requirements create greater transparency. But how tasks are

distributed between entities is largely arbitrary, based on administrative convenience, much like the way people are split by row number when boarding a plane.

The final clue that something important is missing is in the location of the entities. It makes sense for entities with a direct ministerial relationship to be based in the Wellington government village. This includes the organisations that run Parliament, public service departments like Treasury, and some non-public service departments and Crown entities, like New Zealand Police and ACC, respectively. Likewise, some entities need to be geographically dispersed to service particular localities, most obviously schools, hospitals and courts.

If the only attraction of the Wellington government village is formal proximity, and possibly the availability of a particular workforce, it is a puzzle why so many state organisations are also based there. For instance, why is the Earthquake Commission (EQC) in Willis Street, close to the Unity Books edge of the government village, and not somewhere considerably cheaper (and less earthquake prone) than Wellington’s CBD? A similar question could be asked of Creative New Zealand, based just off Courtney Place; or the Outdoor Access Commission, whose purpose is to “work with communities to develop a comprehensive and safe network of tracks, trails and public access across New Zealand”,⁹⁵ yet is based in the same decidedly urban and unproblematically accessible part of Wellington?

Again, the point is not to advocate for state organisations to be dispersed, but that formal entity descriptions are little help in understanding the entities. Clustering in the Wellington government village suggests some powerful informal processes are also at play, even when proximity to legitimate officials contradicts the reason for the entity’s existence.

Informal links

When the horizontal links between people in different entities are considered, the state truly resembles an ecosystem. Interestingly, academic descriptions of the state say little about informal links, some of which can be just as formal as the entities themselves and for many policy purposes far more important. There is a reason why the government village has so many coffee shops.

It is an open secret that the eight to twelve cabinet sub-committees, ‘cab committees’, do most of the executive work of government. Elected officials in the cab committees are expected to read officials’ papers and have some idea of the policy detail. Except for the highest of government priorities, the cab committees set the policy agenda, and the membership determines a cabinet member’s influence; it is where most of the disagreements—political and practical—are thrashed out.⁹⁶ It is also where officials exert the strongest influence on the political process.

Each cabinet committee has an officials’ committee to help organise them. It is hard for outsiders to grasp just how much paperwork is generated by tens of thousands of officials. Some of what is put to paper is not relevant to legitimate officials, some is overlong or overly technical, and some needs more development. And some is just not very good. These officials’ committees are the crucial mechanism for ensuring functional decision-making in government.

Which officials regularly meet ministers varies across agencies. Normally, it is staff from the apex and upper tiers of Figure 1. Therefore, organisational officials have a veto on other permanent officials’ advice. In departments, this is called ‘sign off’. In my experience, how this veto is used depends on the agency. The New Zealand Treasury, for example, tends to defer to the expertise of its staff when meeting the Minister of Finance, so the veto is used infrequently; while the MSD of the 2000s thoroughly

choreographed meetings with ministers to promote organisational priorities. When experts were permitted to join meetings, they were vetted to ensure support for organisational priorities. Other departments have their own norms.

The thinking that is fed into the papers is itself part of department processes, as happened with *the good* example in Chapter 1. This will include meetings with individual ministers, external consultation, and so on. It is easy to joke about meetings about meetings and the mountains of paper they produce. Unfortunately, there is no magic spell (or AI app) that translates thought into a form that ministers can use for decision-making. The information, often presented in complex jargon, must be gathered by officials from academic and other expert reports. It must then be evaluated, summarised and have practical realities properly assessed so decision makers have the information they need to make informed decisions. This is what “evidence based policy” and “joined up government” would look like in practice.

Again, note that organisational officials are the gatekeepers for this process. If, for instance, the advice in *the good* example had been more challenging for the organisation, say recommending fewer Work and Income case managers, then those gatekeepers might not have been so friendly towards the proposal.

To reiterate, both formal and informal processes constitute functional government. This is where the ideas of academics, politicians and others enable officials to create practical policy proposals for ministers. What officials do is the boring stuff that does not make the news, or get academics promoted, but is crucial in making a policy a reality in New Zealand.

However, the state is a human institution and very few human institutions are defined by formal processes. The formal processes are a framework for the informal relationships that dominate how the state operates in practice.

Its very nature makes it is hard to pin these down except in specific examples, but its crucial role is a reason why the slicing, dicing and recombining of state organisations often has little impact on what happens in practice.

For instance, three of the four people working on the Housekeepers' Tax Credit in *the good* example had worked together on and off for several years. We were part of one of the many policy cottage industries in the Wellington government village. In our case, the industry employed about a dozen people to advise on the interaction between the welfare and tax systems and, thus, bring some reality to the declarations of new Ministers of Social Development that they have discovered the magic to "make work pay". To understand the issues requires the maths skills of a numerate high schooler plus skill with spreadsheets and knowledge of the tax and benefits rules. The first of these tends to create the greatest problems.⁹⁷

The shared work history helped us work together. We shared a language of abbreviations, like EMTR, shared detailed knowledge of benefits, memories of previous discussions of reform, awareness of helpful documents and where the challenges to 'managing upwards' would be. For officials to deliver on this kind of work requires non-hierarchical relationships that weaken the role of organisational hierarchy in the state ecosystem.

The presence of specific individuals may also influence the outcome of the state's work, policy advice and policy implementation. For instance, if different people in the same position and with similar technical skills were to discuss the Housekeeper's Tax Credit, the advice they suggest might differ enough it would not be passed on to ministers.

The policy outcomes are not random. The structure of the organisations matters with individuals involved in processes responding to real constraints like financial limits, skills, and

physical resources. However, they are contingent on specific context. The outcome of ideas generated outside the state, however ambitious, is the result of individual actions in the particular state workplaces that converted the idea into a policy. The "policy of the government of New Zealand" is simply an accretion over time of these individual actions.

Tacit knowledge

Looking back at documents informing Chapter 1, I was struck at how little there was in the documents of what had informed officials' thinking. Hayek uses the term "tacit knowledge" for this information.⁹⁸ A more common term is 'institutional knowledge'. This information shapes the advice and practice of the state ecosystem but is informally held until used, and even then, may not be made explicit.

To understand why tacit knowledge is so important, imagine you are an official in one of the ministries working to deadlines, maybe just hours or days away, in an environment of both hierarchy and informal links, and where numerous people may have a veto on the substance and expression of advice for ministers. Finding ideas and analysing evidence are a small part of the task. The bulk of the task involves collaborating with others, through discussion and document drafting, and overcoming hurdles in the system. Without some shared understanding and working assumptions, it would be impossible to reach timely agreement.

To illustrate the breadth and importance of tacit knowledge, five types will be described here. This list is not meant to be exhaustive, and they all overlap. The types are the 'quietly ignored', 'fakelore', 'organisational realities', 'practice knowledge', and 'personnel information'.

The quietly ignored

The quietly ignored is information that helps shape policy but is rarely made explicit.

Sometimes this is because those outside the state are not interested in ‘bureaucracy’, at other times departments prefer to keep the information in-house.

One example is metrics of budget deficit and surplus, i.e. the difference between government income and spending. Government spending and income are large numbers; in 2023 they were \$159bn and \$152bn, respectively.⁹⁹ Tax receipts and spending have different annual patterns. These patterns vary each year and are not entirely predictable. On any day there are deficits and surpluses as tax income and spend wobble around. The day job of accountants in Treasury is managing these issues, and they do such a good job few people notice—except Ministers of Finance.

On a specific Budget Day, the Minister of Finance has to announce whether there is a surplus or deficit. The tacit knowledge here is that the announced surplus or deficit figure has roughly the status of a family bank balance that goes up and down as bills are paid. What matters for the economy and government solvency is total debt, and whether the deficit is going up or down in the longer term. The Budget Day figure itself is a communications device for politicians and pundits to talk about these real budget issues.

Most people will respond to the last two paragraphs with a shrug. This knowledge is tacit because it is dull. A less dull example, perhaps, is illegal drug use among welfare recipients.

When this issue is raised, MSD respond with a figure that is vanishingly small.¹⁰⁰ However, that figure is for the number of job applicants who fail compulsory drug tests in job interviews set up by Work and Income. Work and Income does not mention that it tells the people it sends for job interviews when they will be drug tested. In other words, the vanishingly small figure is the number of people who continue taking

illegal drugs even when told they will be tested for drugs. Whatever else that figure tells us, it says little about the incidence of drug taking among beneficiaries.

Policy fakelore

The term fakelore was coined by historian Richard Dorson to describe manufactured folklore that is deliberately misrepresented as genuine.¹⁰¹ Policy fakelore are assertions or misrepresentations that have become accepted wisdom despite always having a tendentious relationship with fact. Policy fakelore is ubiquitous, but particularly in areas like welfare policy where prior beliefs tend to weaken evidence standards.

A good example of fakelore is that “families and whānau facing multiple, persistent disadvantages are likely to need multi-faceted support across a range of areas”.¹⁰² This quote is taken from an article that is typical in providing detailed evidence on multiple, persistent disadvantage itself, but is more sketchy on the evidence for multi-faceted support. For instance, although the article draws on the Productivity Commission’s report into social services provision, it neglects to highlight their key recommendations, which were the gathering and use of data, early intervention and better management of the services. The Productivity Commission is implying that multiple interventions are the result of this poor management of resources by government agencies, not a desirable approach.¹⁰³

A more subtle example is the class size debate. The figure used in debates is essentially the Ministry of Education’s school funding formula so that schools with more children get more funds.¹⁰⁴ This is a sensible approach to funding. What it is not is an indicator of the number of children per classroom. The claim of a link between the number of children in a classroom and the figure used in the funding formula is policy fakelore.

Organisational realities

Organisational realities inform how the state operates. Like practical knowledge discussed below, those outside the state notice the effects in ways the state operates.

For instance, one reason people like to work for Treasury is that governments tend to choose highly competent people to be Minister of Finance. This Minister will likely read and understand advice, and engage with policy issues. It is also far more likely a Minister of Finance will be an intellectual leader in their own right, like Michael Cullen and Bill English. Departments that can expect to have such people as ministers will have a different environment. The work will be more interesting, and, in turn, this influences the people who choose to work for Treasury and shapes the Treasury's management culture.

This combination of good ministers and high expectations is one reason policy tasks are given to Treasury. It has also been why fiscal concerns are so dominant in policy discussions.

Some organisational realities are more negative, however. In her third term of office, Helen Clarke's government created budget 'themes' to encourage cross-government policy. Each theme was administered by a different ministry, one of which was MSD.

Despite the intent of the themes, MSD told its staff they were only to do substantive work on the theme administered by MSD. Work on other themes was restricted to the minimum required by compliance. I have no idea where these instructions originated. It is possible they came from a minister, the Chief Executive or someone lower in the hierarchy. The management culture was not one where senior departmental staff felt the need to explain decisions to those implementing them. The directive constrained how the themes operated, which reduced the government's ability to effectively integrate welfare policy with other policies.

Practice knowledge

The practice knowledge is institutional information that individuals use to inform how they work and provide advice. Academic attempts to describe this include 'deliverology' and Scott and Baehler's book on policy, both discussed in Chapter 5. Unlike the academic version, however, real practice knowledge is considerably more specific.

For example, the heuristic 'The Cab Committee process is always slower than you think it will be' probably has few consequences outside the state, but is crucial for timely delivery of work. Another of greater significance is 'At least 40% of a manager's time should be spent managing upwards'. Managing upwards means making a team's work acceptable to the ministry's hierarchy. A glance back at Figure 1 makes it clear how much this might dilute practical policy realities before issues get to decision-makers.

Perhaps the single most important heuristic is sometimes called the 'sniff test', or as I thought of it, the 'look out the window test'. Typically, after reading anything that might be important, I would lean back and look at what I could see of Lambton Quay or the Terrace, and ask myself whether what I had just been read was plausible. It sounds trivial, but is extraordinarily powerful in policy. Just as being disturbed when reading a novel breaks the pleasant spell of fiction, physical movement and a glance away can break the spell of tales told by academics, officials, and others trying to influence policy debates.

Personnel information

Finally, personnel information is information about named people. Inside the state, as with any employer, much effort is put into choosing who does which job. Entire teams are devoted to this task. This makes sense. Caralee McLeish, for example, is not just a Secretary to the Treasury, she is a person with skills, knowledge and experience that will influence how she did

her job. This will be true of the tens of thousands of other individuals whose personal skills, knowledge and experience influence how they do their job.

This form of tacit information is repeatedly discussed inside organisations, yet forms surprisingly little of the debate about policies. How often have those proposing a policy in the education or welfare system asked if the relevant ministry chief executive and their deputies are capable of delivering the proposal?

These are uncomfortable questions. One reason they are not discussed became apparent to me when writing Chapter 1. As noted earlier, the state is a human institution so, to fully describe the experience of working for that institution must involve writing about specific people. For those who do not have Winston Peters' resources, the financial consequences of defending a civil defamation case are ruinous, irrespective of the truth of any claims. This means the threat of legal action is a huge barrier to informed debate on why civil servants, or senior academics, acted as they did. Or more precisely, there are no problems when complimenting achievements, but huge financial threats when identifying failures. Unsurprisingly, personal achievement and acts of self-sacrifice are far more commonly discussed in public than failure and career-driven selfishness.

More surprisingly, less personalised questions are also commonly left unanswered. For instance, Work and Income is primarily a benefit payment system. Does that mean the skills of its staff make it unable to deliver the 'development' it is meant to deliver? In other sectors this would be an obvious question. It would seem bizarre if, for example, BNZ was asked to commission care services for people with disabilities. So why, when Work and Income commission these services, is there not the same reaction?

To be clear, the claim here is that these forms of tacit knowledge matter because they inform how the state works. The state could not work without some form of tacit knowledge. However, like all untested folk wisdom it is a mix. It will include useful practical experience, sometimes far superior to 'expert' opinion. The equivalent of knowing willow bark has medicinal properties without knowing about aspirin. Unfortunately, this will be mixed in with intermittently useful aphorisms like 'a stitch in time saves nine' and downright bad ideas, the policy equivalent of performing trepanation to release the evil spirits believed to cause migraines.

Worse, good ideas may be dismissed for bad reasons. How often has a good idea failed a sniff test because the test was carried out by people whose work perspective is constrained by The Terrace, Molesworth Street and Lambton Quay? And how much money is wasted when people in the state work around institutional realities like poor performance rather than try to change them?

Extended lines of hierarchy increase the potential role of tacit knowledge in decision making. As information is passed up the organisational hierarchy it is summarised to help manage the workload. Any information about specific circumstances is selected to illustrate the summaries. Tacit knowledge thrives in such an environment because it is difficult to spot in these summaries.

The limits of accountability

The state's DNA is top-down: A group of legitimate officials tell those in state institutions what to do, who in turn tell others to do what is required. However, the state is shaped by informal links and tacit knowledge. This combination sometimes delivers better outcomes. Dealing with a global pandemic is a good example.

However, if the upper parts of the permanent state hierarchy choose to ignore reality, for instance, by focusing on the organisation itself rather than those it was created to serve, then they can continue require change by elected ministers.

So how is the state scrutinised? Direct employment relationships within institutions provide personal accountability, and the relationship between a department's minister and chief executive has an element of employment relationship. This will be discussed in more detail in Chapter 5, but an underlying challenge is that a minister's interests lie in showing their ministry is a success. As *the bad* example in Chapter 1 shows, this limits the value of ministerial scrutiny.

Another formal accountability mechanism is the Parliamentary select committee. That is, cross-party Parliamentary committees of MPs, some very senior and with specialist knowledge, who might hold the state accountable, even when the government is run by their own party.

The wonderful *Blunders of our Government*, by British academics Anthony King and Ivor Crewe, shows what is possible.¹⁰⁵ As the title suggests, the book is about large-scale mistakes in implementing government policy in Britain. From a New Zealand perspective, the amount of information available to the authors from Parliamentary select committees is striking. It is interesting to speculate what such committees might have revealed about the failure of officials in the Christchurch rebuild, the Foreshore and Seabed debate and the management of the COVID response. Unfortunately, New Zealand's equivalent is not remotely as robust or credible.

Some form of scrutiny might be provided by the Ombudsman or Commissioners, such as the Children's Commissioner. Their powers, however, are purely bureaucratic. For instance, neither the Children's Commissioner nor the

Ombudsman would be able to have departmental chief executives or their staff sacked over the handling of the abuse of children in state care. As the Public Service Commissioner employs those watching the state, the power probably lies the other way round.

Winston Peters showed how legal oversight and investigation, backed by laws on contempt of court, can be revealing. The "game of hide and seek" that is the hallmark of nominally open government in New Zealand was not possible.¹⁰⁶ This draws out the role of access to information in accountability. Unfortunately, the courts cannot continually take this responsibility. Few people have Winston Peters wealth and appetite for litigation, so much information remains unavailable.

Finally, there are other independent reviews. As noted earlier, Aaron Smale, a Newsroom journalist, has written extensively on the abuse of children in state care quoted in the introduction. A few other writers, e.g., Nicky Hager on defence topics and Michael Reddell on the Reserve Bank, have also written extensively on officials in an attempt to hold them to account. It is fair to say, this is a shallow pool. Neither the MTFJ target, nor Justice Vennell's judgement on the leak of Winston Peters' information were followed by hard questions regarding how officials operate despite both being covered by the media at the time.

However, there is a deeper reason that information difficulties are endemic to the state. As the economist F.A. Hayek argued, it is hard to ask the right questions if it is unclear a question should be asked.¹⁰⁷ Why would the team preparing Winston Peters' case in 2020 be knowledgeable about the debt of welfare beneficiaries? To anyone who has worked on welfare policy and read accounts of long-term beneficiaries dealing with debt to the welfare system, it is glaringly obvious that the response to Winston Peters debt was probably unique.

But Winston Peters is wealthy enough to find \$17,000 overnight to reimburse an overpayment. Why would his legal team, however diligent, spend time researching the experience of those in poverty unless they already knew the question they were trying to answer?

The key danger of the myth of mechanism is the false sense of control it gives legitimate officials and the people who elect them. The belief that legitimate officials have that level of control means policy discussion is misdirected towards legitimate officials and away from the limits of the state itself. The next chapter summarises the limits described in Chapters 1 to 3 and describes a framework for understanding them. Chapter 5 applies this framework to approaches to improving the state.

CHAPTER 4

The ecological limits of the state

Getting an overview of the Wellington government village seems easy enough. Wellington is defined by hills and valleys. The government village is in a low-lying area by the shore with plenty of hills overlooking it. Most obvious is the Lookout on Mount Victoria. To find it, follow the shoreline from the government village to Te Papa, then walk up the hill, following the signs to the Lookout.

The view is stunning, even if it's not one of Wellington's proverbial 'good days'. However, it is surprisingly difficult to identify individual buildings, even the most obvious like the Beehive. To find the Beehive, I needed to use the board they provide at the Lookout—a labelled map of the skyline. Even then, all I saw was the top floor, not the beehive shape of the building. The people and streets are entirely hidden in the forest of tall buildings.

In truth, naming it a 'Mount' is a bit of a stretch, it is more a 'conveniently placed rise'. Much higher is Polhill, reached by walking up Willis Street and carrying on up through Brooklyn, then up and up until you reach the Brooklyn wind turbine. This is undoubtedly a hill. The view here is also stunning (and the best place to watch the dawn over Wellington harbour).

However, from here, the government village is even more obscured. Not only is it hard to find particular buildings, but the bushland around Polhill obstructs the view. In photos of views from both Mount Victoria and Polhill, the buildings seem to merge together. It is difficult to spot if a line is the feature of a building or the gap between buildings. Overall, the content of the picture is shapeless. Like a Rorschach blob.

This chapter is a more abstract discussion of the state and its limits than the previous chapters. Abstraction in this context fails when it involves a perspective so distanced from the subject that all meaningful detail is lost. It works when it is like an econometric model to understand what drives rent increases; or Gillian Tett's work mentioned earlier that is based on close observation.¹⁰⁸ Grand theories that make a virtue of 'staying out of the weeds' and have visions of 'spirits of service' are an obstacle to understanding.

Chapter 4 begins by identifying four themes from previous chapters: Hierarchy, motivation, accountability and information, the most important of which is motivation. The following section discusses Public Service Motivation, the dominant approach in New Zealand, while the final section considers these themes as limits of the state. They become government failures when the state ignores or does not properly manage these limits. The concept of institutional mismatch will be introduced in this chapter and in Chapter 5 it will be applied to prominent approaches to reforming the state.

Limits to the state

As suggested in the quote from Ronald Coase in the epigram, the starting point for useful discussion of human institutions is their limitations. The previous chapters reveal four themes for the state's limitations.

First is the role of **hierarchy**. The state sector is not unique in having hierarchy. What is unique is that there is no alternative within the state sector. There is no equivalent of sole traders,

partnerships, co-operatives or pure voluntary organisations. When the state ‘partners’ with other organisations, it means the state allows other entities to have a role in what the state is doing. That permission is contingent, it can and is revoked at the fiat of state entities.

Hierarchy constitutes the state, it is part of its DNA. In *the good* example, hierarchy worked. Managers and others supported the advice generated by subject knowledge specialists. The quality of work would have been irrelevant if it had not been agreed by the organisational hierarchy and then by ministers. *The bad* and *the ugly* are examples of hierarchy acting in less benign ways. The operation of hierarchy, rather than the normative desirability of the outcome, determined how the state acted. However, hierarchy does not act like a lever wired to an institutional mechanism. What happens in practice is mediated by other formal and informal features in the state ecosystem.

The second theme, **disengaged motivation**, follows directly from hierarchy. The state is about acting through other people. Our elected ministers never build houses, increase benefit payments, educate children and so on. Instead, they take an action that leads one person to tell another to act, this chain continues until people who ministers have never met, dig foundations, change the amount in someone’s bank account, talk to children in a classroom, etc.

Those involved in this process are necessarily disengaged from the content of the policy. That I would happily defend the policy advice to end the Housekeeper’s Tax Credit, because the tax credit was inequitable and ineffective, is as irrelevant as the colour of the paint on the meeting room walls. Here, disengagement helped the system work better.

Such disengagement, however, also led to *the bad* example. The measure chosen to gauge success in reaching the target does not bear scrutiny, not

least because the use of it might have harmful consequences for the vulnerable people the policy was intended to help. Yet, in acting as another person’s instrument, the participants received organisational recognition for their work. The officials’ attitude to the resulting advice here was just as irrelevant as the officials’ attitude to the advice offered in *the good* example.

Disengagement is such a dominant feature that it resulted in the comedy of *the ugly* example. A routine case was escalated to the pinnacle of the public service, with an ensuing court case, because what mattered was the organisational reality of acting as another person’s instrument. Again, the attitude of those lower in the hierarchy toward the content was irrelevant to what motivated action.

A third theme is the **role of information**. Officials spend their days in offices, mostly dealing with other officials in similar offices. While they need relevant information from outside to provide policy advice, they compensate for the limits of available information with various forms of tacit knowledge.

The Housekeeper’s Tax Credit Allowance survived so long because, in the thicket of rules and their application that make up the benefit system, it was hard to know who receives welfare payments. Likewise, both an 18-year-old having a few months off to surf before varsity, and a 15-year-old drug addict are classified as “15- to 19-year-olds not in Employment, Education or Training”. Meaningfully distinguishing between them requires information that is genuinely challenging to collect for those making decisions. The story of the MTFJ target is an example of what happens when relevant information is not applied to understanding policy.

The reliance on tacit information contributes to the fourth theme, **lack of accountability**. For officials in *the good* example, accountability is not a problem. Unfortunately, officials are no

different to anyone else in their mix of possible behaviours. Accountability and its potential consequences matter when that mix includes more questionable behaviours.

The problem is the lack of consequences in long hierarchical chains, particularly for senior officials. The lack of accountability noted by Aaron Smale is just one example of a much wider issue. In a hierarchical system, there needs to be robust accountability institutions. New Zealand's institutions are simply not robust enough.

Of the four limitations discussed above, motivation stands out as the most fundamental. Professor Elizabeth Stanley, one of those whose work led to the Royal Commission of Inquiry into Abuse in Care, has noted ten strategies of “organised ignorance-making” by agencies in response to the abuse claims. Among many, many others, these include MSD admitting “we didn't do our best work” unavoidable problems with data collection from the police, and claims that improved processes show agencies have already responded appropriately.¹⁰⁹ Whether these are genuine explanations or disingenuous attempts to deflect accountability depends on the motivation of the people in the agencies that offered the reasons.

How the people in an institution implement hierarchy, use information and hold others to account depends on how they are motivated to act. This is what it means to describe the state as a human institution. Although reforming the state is not as simple as ‘fixing’ motivation, if motivation is not aligned with the intent of proposed reform, as Chapter 1 suggests, reform will fail.

Far, far worse is to assume away the issue with a “public sector motivation” as the academics whose ideology has been adopted by the Public Service Commission have done. This is discussed in the next section.

Motivation

Consider last year's change of government in New Zealand and what it has meant in practice. Parliament was dissolved on September 8, 2023 and on November 27, 2023, the new government was sworn in. This led to one group of people who had worked in and around the Parliament building to remove their belongings from the functional Beehive offices allotted to ministers' staff, send them down the cramped lifts, and carry them through the Parliament foyer (where tourists start their tours) and along the beautiful wood lined and portrait heavy corridors of the Parliament building to new pleasanter offices. The reverse happened for another group of people—the new government's staff. Staff on work contracts with previous ministers will have lost their jobs, as new ministers mostly bring new people with them into the building.

As noted earlier, most documents attributed to ministers are written by permanent officials, and not the minister or minister's staff. All policy implementation is carried out by permanent officials. Documents for the new government, including politically contested policies—such as Three Waters, repealing smoking prohibition, and beneficiary sanctions—were largely written by permanent officials who, less than three months previously, were writing papers supporting these policies. Moreover, implementation of these different policies will also largely be carried out by the same people who would have implemented the policy under the previous government.

The public discussion of politics tends to focus on policy differences between parties so probably gives a false impression of how much changes when the elected government changes. It is also important to recognise much policy analysis will be unchanged, even if new ministers would choose different options. Nevertheless, no public servant owns the work they have done. Some officials left their desk one evening expected to work on one policy direction and returned the

next morning to the same desk being expected to work on a different policy direction.

Take a moment to reflect on that. Those outside the state tend to believe the challenge for permanent officials is a political or ethical one. This will be true for some. More generally, however, policy work is a complex task, requiring collaboration with many people, commitment and hard work extending over months or even years. People who are deeply involved are naturally heavily invested in the task itself. Achieving success can lead to both personal and professional recognition.

All of this can be lost with a single dismissive sentence from the upper end of the hierarchy. Similarly, a change of government, change of minister within the same government, or even change in upper-level managers within a ministry can have the same effect on years of work. This is one practical consequence of the state functioning as a hierarchy that ‘works through others’.

Sir Humphrey Appleby, the lead public service character in the British TV series *Yes Minister*, described what this means:

...if I believed in all [politicians’] policies, I would have been passionately committed to keeping out of the Common Market and passionately committed to going into it ... On Capital Punishment I would have been a fervent retentionist and an ardent Abolitionist, I would have been a Keynesian and a Friedmanite, a Grammar School Destroyer and Preserver, a Nationalisation Freak and a Privatisation Maniac, but above all, I would have been a stark, staring, raving Schizophrenic!¹¹⁰

What is striking about the academic debate on officials’ motivation is how depersonalised it is. It follows the ‘people-we-like-and-admire versus the bureaucrats’ framework, or as economist Julian Le Grand summarised, it’s between ‘knights and knaves’. As he puts it:

In our terminology, knaves can be defined as self-interested individuals who are motivated to help others only if by so doing they will serve their private interests; whereas knights are individuals who are motivated to help others for no private reward, and indeed may undertake such activities to the detriment of their own private interests.¹¹¹

Le Grand is not claiming those working for the state are either knights or knaves. He is describing academic theories, not the officials themselves. From the academic hilltops overlooking government villages, it appears the human complexity of officials is hard to see.

Le Grand puts himself and other economists in the ‘knaves’ camp with the caveat that private interests are not necessarily selfish, or about personal financial and other rewards. In line with Public Choice Theory (see Box 2), an altruist who lobbied for a policy that made them financially worse off would be acting on private interests in Le Grand’s sense if what motivated them was personal.¹¹²

In New Zealand, the predominant approach to officials’ motivation is the ‘knights’ approach of Public Service Motivation (PSM). Much as the Treasury of the 1980s self-identified with a range of managerial and economic theories, the now dominant PSC self-identifies with the PSM approach.¹¹³

The 1990 seminal paper on PSM by Perry and Wise was written to challenge the rise of public choice theory

... which is predicated on a model of human behavior that assumes that people are motivated primarily by self interest ... Extrinsic rewards controlled by one’s supervisor are now seen as a major means for directing and reinforcing managerial and executive behavior. These related trends stand in opposition to the view that public service motives energize and direct the behavior of civil servants.¹¹⁴

Box 2: Public Choice Theory

Public Choice Theory is a branch of economics that applies economic principles and methodologies to the state. Political processes and governmental actions are viewed through economic reasoning. The theory provides a framework for understanding not just the idealised workings of government policies and institutions, but also their real-world functioning and challenges, emphasising that political decisions are often influenced by similar motivations and constraints as economic decisions.

Two of the most prominent figures associated with Public Choice Theory are James M. Buchanan and Gordon Tullock. Their collaboration, particularly the publication of *The Calculus of Consent: Logical Foundations of Constitutional Democracy* in 1962, is often cited as a seminal work that laid the groundwork for Public Choice Theory.¹¹⁵

The key assumptions of Public Choice Theory:

- 1. Rational Actors:** Public Choice Theory assumes that individuals in the political sphere—be they voters, politicians, or bureaucrats—act rationally, seeking to maximise their own utility, which can include power, wealth, political goals and personal satisfaction.
- 2. Government as a Market:** It conceptualises political decisions as market transactions. Politicians are viewed as 'sellers' of policies, while voters and interest groups are seen as 'buyers', negotiating through the political process to achieve their own interests.
- 3. Incentives and Behaviour:** The theory examines how the structure of political institutions and the rules of the game shape incentives and, consequently, behaviour within the political process. This includes analysing voting systems, the role of interest groups, and the behaviour of bureaucracies.

4. Collective Action and Free-Rider Problems:

It addresses issues related to collective action, such as the difficulty in organising dispersed groups with common interests and the problem of individuals benefitting from a collective good without contributing to its provision (free-rider problem).

5. Principal-Agent Problems:

Public Choice Theory looks at the challenges arising from the principal-agent relationship in politics, where elected officials (agents) may not always act in the best interest of their constituents (principals), due to information asymmetries and differing incentives.

6. Government Failure:

While economic theory often discusses market failures, Public Choice Theory introduces the concept of government failure, highlighting how government interventions can also lead to inefficient outcomes due to the self-interested behaviour of political actors and institutional flaws.

7. Rent-Seeking Behaviour:

The theory analyses how individuals and groups may expend resources to influence political decisions or secure government grants and favours that benefit them economically, potentially at the expense of the general welfare.

By applying these principles, Buchanan and Tullock provided a new perspective on political processes, emphasising the similarities between economic and political decision-making. They argued political systems can be analysed and understood through the same principles that govern economic markets, leading to insights into the nature of government, the behaviour of political actors, and the design of political institutions.

They note state employees have a variety of motives that include rational self-interest, norm-based motives and affective motives that involve emotional connection.¹¹⁶ At a high, looking from the hilltop, level this framework sounds reasonable. It is in its detail that the strength of Perry and Wise's assumptions becomes clear.

Perry and Wise are keen to stress PSM does not claim public servants are entirely altruistic, so they start with the rational self-interest of "Participation in the process of policy formulation", "Commitment to a public program because of personal identification" and "Advocacy for a special or private interest".¹¹⁷ These motives are self-interested in the sense of self-regarding, not other-regarding, but all refer to the job.

For Perry and Wise, PSM is a descriptive theory that might be applied in HR policies, including recruitment and selection.¹¹⁸ This makes the conspicuous absence of reasonable self-interested motives like pay, conditions, employment security, and career progression all the more surprising. A more natural label for Perry and Wise' rational self-interest would be 'job satisfaction'.

Likewise, norm-based motivations are "A desire to serve the public interest", "Loyalty to duty and to the government as a whole", and "Social equity". While affective motives are "Commitment to a program from a genuine conviction about its social importance" and "Patriotism of benevolence".¹¹⁹

For them, the only self-regarding motive of the weekday throng of people walking between the offices and coffee shops on Wellington's Terrace, and Bowen and Molesworth Streets is work satisfaction. Otherwise, they are occupied by the process of policy formulation, the desire to serve the public interest, loyalty to duty and government as a whole, and social equity. A sort of benign zombie, albeit not always with the same priorities as their employers.

Puzzlingly, academics who work on or near Lambton Quay also see these benign zombies on Wellington's streets. Compare Perry and Wise's view with this from Professor Boston of VUW:

[public servants are] influenced by such things as credibility, integrity, duty, professional standards, and doing a good job. Invariably, too, they have a wide range of policy preferences, and often these are strongly held.¹²⁰

Or from the Public Service Commissioner and Rodney Scott, the Commission's Chief Policy Advisor, for whom "putting the needs of others first", "having a higher purpose", "acting with humility"¹²¹ are seen to overlap with a 1996 refinement of PSM to "attraction to public policy making, civic duty/commitment to the public interest, compassion, and self sacrifice".¹²²

The 2016 literature survey by Ritz, Brewer and Neumann found 323 studies with PSM as a starting point. All were based on asking people about their motives, although the questions were asked in different ways.¹²³ However, any comparison between what people say and what they do is rare; in the few cases evidence of action was typically collected by asking subjects if, for instance, they donate to charity.¹²⁴

In fairness to the review authors, they note the shortcomings, challenging the Hughes and Scott interpretation by noting that,

... people often misconstrue public service motivation as a purely altruistic concept. What they fail to account for is that individuals often perform meaningful public service for rational, self-interested, or instrumental reasons ... Self-serving motives are an important part of public service, and they play an important role in an institutional environment characterised by competing policy interests and bureaucratic politics.¹²⁵

For the avoidance of doubt, there is strong empirical evidence that people working for

the state do not act like benign zombies. For instance, a survey by Propper and Wilson (2002) concluded public sector workers work harder and produce more output when they have a financial incentive.¹²⁶ In doing so, they also game quality and timing to maximise financial rewards, often in ways that undermine organisational objectives. To understand just how cunning this can be, Croxson, Propper and Perkins' paper on how British GPs manipulated the incentives in a 1990s policy change is a fascinating case study.¹²⁷ Perry and Wise's zombies, benign or otherwise, they are not.

To understand the limits of the PSM approach, consider two studies, one from New Zealand by Scott and Macaulay in 2020,¹²⁸ and a considerably more methodologically robust study by Buelens and Van den Broeck in 2007.¹²⁹ Both highlight aspects of the naivety of the PSM approach.

Scott and Macaulay's study intends to "be useful for practitioners aiming to create a more cohesive agency, interagency, identity".¹³⁰ Initially it clarifies the concept of 'spirit of service' by describing it as a "boundary object—a construct that maintains plasticity of meaning across intersecting social worlds, while having sufficient commonality of meaning to facilitate agreement".¹³¹ That is, the concept has no fixed meaning. So, as the Public Service Commissioner put it "we might each talk about it in different ways, at some level I think we're talking about the same thing".¹³² (The importance of the "I" in this quote will be taken up in Chapter 5.) Here, consider the second part of the paper, a discussion of what this quest for meaning entailed.

In March 2014, the chief executives of every New Zealand government department and three other larger agencies attended a 'two day strategic retreat' in the pleasant Wairarapa wine country near Martinborough, staying at the Brackenridge Country Retreat and Spa.¹³³ Scott and Macaulay explain that,

Late on the first evening, and in a burst of enthusiasm, the chief executives spontaneously decided to write down a series of commitments about how they would work together as collective stewards of the public service ... The evening was deemed a success, and chief executives agreed to repeat it in six months ... now in the fifth year, meet four times per year. The decision to increase from twice per year to four times per year was made by the chief executives themselves. The chief executives have a perfect attendance record ... with no substitutions allowed.¹³⁴

At the time the article was written, the chief executives' sacrifice had shifted from *one* two-night retreat in 2014 to *two* overnight retreats and *two* single day retreats per year, totalling "41 full days and 14 nights" by 2020. The fruits of that first meeting being nine lines that included thoughts like "See past any barriers and make what needs to happen, happen" and "Prioritise our biannual State Services Leadership meetings".

Between meetings there were various groups and subgroups of the chief executives that generated feedback on the words used in this initial discussion. The only outcome mentioned by Scott and Macaulay was a name for the group: "State Sector Leadership Team". For any other result of all this highly paid activity, it is necessary to take at face value the claim by the chief executives that they "have been unanimous in their claims that identifying as part of a leadership team has resulted in changed behaviours".¹³⁵

Two elements of this article are indicative of the strength of assumptions in PSM. First, the unctuous response to New Zealand's highest paid, unelected officials spending six working days a year on a spa retreat in wine country is telling. In particular, the hidden assumption that if participants believe the event made a difference to state services it must have made a difference.

It is not necessary to have Gillian Tett's anthropological training to suggest some questions are not being asked, not least why is it inconceivable that private enjoyment might be a primary motive for joining an event where the only tangible result is a PowerPoint slide of vacuous aspirations?

The second assumption, that a “new social identity” among the 30–40 spa attendees provides all 60,000 officials and beyond with opportunities for the “development of social identity”, “development of the New Zealand public service”, and “allow[s] different people from different agencies at different levels in their career path to assess their own commitment to public service”.¹³⁶ This is taking “acting through others” beyond a managerial relationship to an Orwellian claim that the senior leadership of state organisations control the private thoughts of those who work for them.

Buelens and Van den Broeck (2007)'s study is several degrees superior. It studies work motivation in the public sector using a design with clear hypotheses, a non-public service comparison group, rigorous analysis and a rounded perspective on officials' motivation.¹³⁷ Buelens and Van den Broeck are testing rather than assuming the benign zombie hypothesis.

The authors surveyed Belgians working in both public and private sectors. They were asked to state how much they agreed with a variety of statements potentially relevant to work motivation. They also collected social and demographic data about the participants. Using regression analysis, they found people working for the public sector expressed less interest in salary than their private sector counterparts. They also found evidence of lower engagement with work, including working fewer hours, than private sector workers. Unsurprisingly, as a result they had fewer work/life balance issues. The analysis also found demographic factors tended to be more important in participant motivation than whether they worked for the public or private sectors.

However, the authors' rigour highlights the weakness of PSM research. First, PSM results are based on what people say motivates them. Buelens and Van den Broeck asked respondents how much “A high salary is important to me” reflected their motivation. The responses showed that people working in the public sector gave this a lower score than those working in the private sector, so the authors concluded public sector workers care less about financial aspects of their job.

The problem is obvious when considering the examples in Chapter 1. What is at stake for officials is some combination of financial reward, organisational and peer recognition, intrinsic interest of the task, managing career risk, organisational loyalty, and personal values.

It is tempting to describe this as ‘mixed motives’, as if each motive is a distinct vegetable in a salad. That is not true of the Chapter 1 examples. The rewards there are simultaneously organisational recognition and financial benefit. Pay was part of the signal for organisational recognition, because it would have been hollow to have solely non-financial organisational recognition. That motivators can be analytically distinguished—and skilled researchers like Carol Propper have empirically demonstrated specific motivations—should not be confused with practical distinction in workplaces.

Responses to a PSM survey are choices about which description the respondents like most. In that, they are more like statements of identity. People in the public sector identify with non-financial descriptions of organisational recognition, while those in the private sector are happier with financial descriptions. In other words, and remembering job positions are described as ‘roles’ to be ‘performed’, the evidence is that participants in PSM surveys perform as their employers would like when answering survey questions. It is quite a stretch to claim different survey responses show different workplace motivation.

Second, PSM theorists make little attempt to describe the content of norm-based motives, such as “Loyalty to duty and to the government as a whole” mentioned earlier by Perry and Wise. Consider *the bad* example in Chapter 1. Does proposing the inappropriate statistic for the MTFJ target show such loyalty? While on one hand, a state organisation with a democratically elected minister wanted the paper written using that statistic, on the other, the consequences might lead to some of society’s most vulnerable youths getting less help. Both actions are pro-social in the sense of responding to wider norms. The problem is that following the principle “Loyalty to duty and to the government as a whole” is no help in deciding what to do.

PSM lacks the commonsense distinction theorists of social capital make between, say, being part of a drug gang and doing volunteer work. Membership of both groups is pro-social and involves following group norms, but the ethical consequences are different.¹³⁸

More generally, when should a person in the state ecosystem follow its norms? The essence of norms-based thinking is that the individual does not pick and choose when they follow the norm. Their personal motivation is subsumed, otherwise they are acting on a rational assessment, even in Perry and Wise’s framework. Perry and Wise appear entirely oblivious to the idea that people working for the state may be rewarded for following unethical norms. They even use J. Edgar Hoover as an exemplar of devotion to duty. Nowhere do they note any potential ethical ambivalence in the person who, among other things, used his position as FBI director to undermine the civil rights movement in the 1950s and 60s.¹³⁹

This is the force of the comment I made in the introduction: “I, and most of the largely decent people around me, would have acted as others did” towards victims of state care abuse. Officials continually take actions someone believes unethical. Policy discussions from benefit rates

to environmental protection to workplace health and safety policies and beyond are claimed to be ethical decisions. In New Zealand, even the choice of tree species to plant in response to climate change has been claimed to be an ethical issue!¹⁴⁰ Since there is no suggestion the senior officials identified by Aaron Smale acted illegally, how was the ethical disquiet about the treatment of victims of abuse in state care different from the political noise officials hear all the time?

Like most officials, I would have worked to the organisational norms that led to the bullying of victims of abuse in state care. To uphold the norms more senior state officials insisted upon, I would put aside any personal distaste, just as I put aside other personal motivations when considering the Housekeepers’ Tax Credit. When people commend the virtues of an independent public service, they are commending both of these actions.

This issue will be explored further in the section in Chapter 5 on the 2020 Public Service Act. For now, it is worth noting how the PSM approach does not specify how abstract principles like “Loyalty to duty and to the government as a whole” should be put into practice.

To understand what does happen in practice, consider *the bad* example in Chapter 1. How does the loyalty principle apply to choosing an appropriate target measure for the number of young people not in employment, education or training?

The organisational hierarchy is tasked with balancing the different organisational objectives shown in Figure 3 including the organisation’s role in “government as a whole”. If the organisational hierarchy decides a proposal is not consistent with “government as a whole”, then for all organisational purposes the proposal is not consistent with “government as a whole”. PSM implies obeying organisational hierarchy in this way, whatever action is entailed, constitutes public service.

To summarise this discussion of motivation. The framing of knights and knaves is misleading. Officials are both knights and knaves by external standards. Even if officials are the benign zombies hypothesised by Perry and Wise, it does not explain how they behave, or offer a useful approach to improve the state. The next section suggests a better approach.

Limits, deficits and mismatch

This section argues that a developed version of Furton and Martin's concept of institutional mismatch is a better approach than the knights or knaves method to understanding the state ecosystem. The section begins with an intuitive example and then explains how the concept of institutional mismatch, as a consolidation of institutional and public choice economics, is a better way to understand the limits of the state. It will be used to explain the limits of suggested reforms for the New Zealand state in the following chapter and will form the basis of the follow up to this essay, *Reforming the State*.

Imagine Victoria University, Wellington realised it had a gap in its offerings and needed to offer a paper on the language and culture of Vietnam. The new course would require hiring faculty, building facilities, administrative and other support, and probably a link with organisations in Vietnam. Although a lot of work for some, overall, university staff, career structures, facilities, organisation, students and all of the rest that makes VUW a university, would largely remain unchanged. If, on the other hand, the course was funded but not delivered, this would be a failure of delivery by the university.

Other examples, such as offering a medical degree, would require more change, probably including a new faculty of medicine and buildings. But, as a result, the university would become a larger version of itself. Again, if the

degree could not be delivered, this would be considered a failure of delivery by the university.

Alternatively, is providing preschool education equivalent to expanding the range of undergraduate subjects? In fact, VUW does provide preschool education for the children of staff and students. The preschool staff are Early Childhood Education (ECE) teachers, not lecturers, and funding is through ECE fees and subsidies. The preschools do not use the university's extensive lecture theatres, labs or library facilities. The university has made a physical space available for an entirely different institution to be run as a campus facility.¹⁴¹

Of course, this is entirely sensible. Unlike a gap in undergraduate provision, provision of ECE is beyond the limits of what universities do as a university, so were the university obliged to lecture to preschoolers there is little doubt the institutional mismatch would convert the currently positive Education Review Office (ERO) reports on the VUW preschools into something more scathing. Thus, the university would fail because it had been obliged to treat preschool education as a form of undergraduate education. An institutional mismatch would have led to poor delivery.

The concept of institutional mismatch comes from thinking more deeply about what economists mean by government failure. Government failure, as a term, reflects the intellectual origin of the idea as a response to market failure.¹⁴² Market failure occurs when the assumptions that show markets are at least as good as alternative approaches are untrue. Most obviously, public goods and monopoly. There are also circumstances where these assumptions are true, but the outcome does not meet some normative expectations. The obvious example being highly dispersed incomes.¹⁴³

In what circumstances are either claim of market failure equivalent to viewing universities as 'failed preschools'? The institution of the

university can be applied to one area of education and the preschool to another. They are both defined by limits. Within their limits they can be effective. Outside those limits, not so much. When economists discuss markets, they describe operating unsuccessfully outside those limits as failure. As the Coase epigram notes, and is more explicitly argued in Demsetz (1969) and Coase (1992),¹⁴⁴ the real choice is not between institutions that work and others that do not work, but between highly limited institutions that frequently operate outside their limits and, therefore, frequently ‘fail’. This claim of failure can be tendentious when it is forgotten that, to misquote Churchill, the task is to find the worst possible institution, except for all the other options.

Some readers may think the previous paragraph is an argument for state intervention. There are circumstances when it will be.¹⁴⁵ But the state is just as much a highly limited institution that frequently fails, as Chapter 1 illustrates. In fact, paradigm theoretical examples of market failure are typically managed by local non-state institutions.¹⁴⁶ As Elinor Ostrom demonstrated, even the commons, whose ‘tragedy’ is quite literally the textbook example of market failure, is typically resolved by local institutions.¹⁴⁷ State intervention is frequently a clumsy way to do what local people have always done of their own accord.

This is where institutional mismatch comes in:

In all the cases [of market and government failure], the rules are wrong. Those rules may be the result of private choice, public choice, or (most frequently) some combination of the two ... Failure is an appropriate term when comparing the outcome of real institutions to some ideal. Our intention in using ‘mismatch’ is to build a comparative element into the foundation of institutional evaluation. Compared to compelling normative ideals, institutions often fail. Practically, however,

failure is uninteresting if a superior and feasible institutional arrangement is not available.¹⁴⁸

The biggest single advantage of this approach is that the starting point is not “market versus state”.¹⁴⁹ These are institutions among many others. Treating them as the only template options is creating the conditions for ‘unintended consequences’ and ‘mission creep’, as these institutions are applied outside their limits and any problems are dealt with by further misapplication of an inappropriate template.

For the narrower purpose of this piece, it shifts debate on the state from idealised models to understanding the specific institution, the one in New Zealand whose ecosystem of entities is centred in Wellington’s government village. Any improvement of the New Zealand state is a reform of that ecosystem. That is, reducing the mismatch, making the institutions less of a failure. The next chapter discusses potential reform in more detail. Before doing so, it is helpful to use the example at the beginning of this section to clarify what limits, deficits and failure mean in this framework.

The potential gaps in VUW’s offering are in a spectrum. Logically, it would be possible for the university to use its lecture theatres and academic staff to provide a preschool. However, it is the practical barriers, the ‘transaction costs’, that make it preferable to have an alternative institutional approach. This is an idea explored in Horn (1995).¹⁵⁰ According to Horn, the different types of entity in the state minimise transaction costs, but doesn’t explain why minimising transaction costs would drive how the state organises itself. In Chapter 3, it was argued that our observation of state entities suggests they evolve through accretion rather than design.

Nevertheless, the key insight in Horn’s analysis is the role of transaction costs in institution formation, as long as ‘cost’ is understood to be

much broader than financial costs. In particular, there is a qualitative difference between dealing with a gap that it is within the capabilities of the current institution and one that only a different institution could overcome. The first is a deficit, the second a limit.

For the university as an institution, a deficit includes courses that it might provide but does not. Chapter 1 showed a substantial deficit in the state when there was no consequence to the Public Service Commissioner confessing he made no record of a decision on “The integrity of the public service was in issue”. While a reform to remove the deficit does not fundamentally change the institution, it may come with significant financial costs, equivalent to adding a medical school to a university.

Overcoming a limit, however, is institution changing. The equivalent of converting a university into a pre-school or creating state entities that have their own legitimate representatives. While the financial consequences are important, it is the non-financial transaction costs that are more important. The argument in the previous section was that impersonal behaviour is a limit of the state. Both the benign action of ignoring a financial incentive and the unpleasant bureaucracy of CERA, are constitutive of the state. Removing the unpleasant will be at the cost of removing the benign.

Of themselves, neither limits nor deficits imply failure. There are good reasons why VUW does not have a medical school or convert itself into a preschool. However, it is a failure when a Public Service Commissioner is not held accountable for basic administrative good practice.

There is a need for a concept of failure when trying to understand if institutional arrangements can be improved. Two possibilities are suggested. One compares institutional arrangements with theoretically defined benchmarks.¹⁵¹ The second is to compare the current institutional arrangement with a plausible alternative.¹⁵² The latter option has the advantage of avoiding the nirvana fallacy, the policy equivalent of letting the perfect be the enemy of the good by pursuing unobtainable objectives rather than pragmatic change. Both options are worth retaining, as long as it is remembered that mismatch is not necessarily either kind of failure.

CHAPTER 5

Tinkering with the old-style state

One gem of an activity for lovers of New Zealand history are the Saturday guided tours of the Old Government Buildings, the low rise that is now Victoria University's School of Law. On the front lawn is a statue of a man leaning into the Wellington wind. With his crumpled suit, briefcase under one arm and coat under the other it would be the perfect marker for a Tomb of the Unknown Bureaucrat (sadly, it is not).

Perhaps because the building is now a law school, the inside retains a Dickensian air. It is possible to imagine young men in starched high collars scurrying behind older starched men striding importantly between meetings to plan a Better Britain in the South Pacific.

On the ground floor is a peculiar room with metal security doors and the remains of a rail track on the floor. It is just a storage cupboard now, but in the nineteenth century it was possibly the most important room in the building. It was where the financial and legal records of the New Zealand state were stored.

In the age of thumb drives that hold libraries of information, it is hard to imagine a time when losing files could mean losing all record of government actions. At that time 'opening the government's books' was not a metaphor. Ledgers recorded government financial transactions. To know if the New Zealand state could pay its bills, these ledgers had to be opened. Losing those books could have wide financial consequences for the New Zealand state, hence the precautions.

The need for thorough record keeping remains, but the tools for doing so have radically improved. The most enduring innovation of the 1980s financial reforms was accrual accounting. Government

accounts now record financial commitments when they are made, not when the money is spent. This simple change limits 'off the books' financial commitments. Accrual accounting is the reason the New Zealand state regularly receives international accolades for financial management.¹⁵³

Looking at such change makes it reasonable to look at other aspects of government and ask if they too could be improved? Is there a reform that would make Fiona Farrell's experience of the state as anachronistic as protecting paper records in a safe is now?

The first section of this chapter suggests that, broadly, there are three approaches to reforming the state. One, the *structural* approach, will be central to the follow-up to this essay, *Reforming the State*. The remainder of the chapter explains why the other two approaches do not address institutional mismatch. The *tools* approach has the potential to deal with institutional deficits, while the *managerial approach* in the 2020 Public Service Act has probably made the state worse.

Three approaches to reforming the state

The previous chapter argued that the individual behaviours described in Chapter 1, *the good, the bad and the ugly*, are constitutive of the state. They are a limit, as is hierarchy. The 'DNA of the state', described in Chapter 2, provides the underlying structure of the state, with hierarchy at its core. This DNA defines different organisations whose interactions create a state ecosystem. Informal relationships are crucial to its practical functioning. This means the state is not like a machine where a properly calibrated lever gives predictable results. Interdependent

processes interact, sometimes predictably, sometimes not.

Understanding these limits is a step towards feasible reforms. The remainder of this section considers approaches to reforms.

Structural Approach

A structural approach changes the motivation in an organisation. In the language of Chapters 2 and 3, it is about changing the DNA of state institutions to improve the ecosystem of organisations that result. For instance, by making it inconceivable that a metric for measuring NEET would be proposed that was grossly inappropriate, or having a Public Service Commissioner make a decision about the ‘integrity of the public service’ without recording the reasons for the decision.

Structural changes are likely to be deep and have great potential risks. If there is one country in the world where the dangers of trying to engineer ecosystems is understood, it is New Zealand. The people who introduced possums, stoats and the other exotic species neither understood the complexity of the system where the exotic species came from, nor New Zealand’s ecology into which they were introduced. The result had an unpredictable, and sometimes devastating, impact. If this analogy holds true, it is reasonable to be cautious about the structural approach to reform, not least to reduce the risk of the state-reform equivalent of introducing stoats to deal with rats!

The remainder of this chapter will discuss the limits of the two non-structural approaches to explain why structural reform should be seriously considered, despite those risks. The second essay, *Reforming the State*, will primarily be about options for structural change.

Tools approach

The tools approach starts from the perspective that the state would operate more effectively if specific techniques, policy “tools”, like citizens forums or contracting out, were used. Accrual

accounting is a good example of an effective tools approach.

Anyone professionally obliged to follow organisations like the Australia New Zealand School of Government (ANZSOG), or has public policy subscriptions on LinkedIn, will be bombarded with claims that new tools to transform the state not only exist but, for a reasonable consultancy fee, can deliver a paradigm shift in YOUR organisation. For those sceptical of these claims, there are further consultants in the penumbra of Wellington’s government village providing guides on how government organisations “learn what shifts you can make to your communications to avoid bringing these unhelpful mindsets to the surface”.¹⁵⁴ They will also, for a reasonable fee, provide further help removing these unhelpful mindsets from your organisation.

The vast majority of these claims could kindly be described as faddish, although less kind epithets may be appropriate. Of course, new technologies have always attracted faddists, yet GPS, smartphones and replacing paper ledgers with spreadsheets really are improvements. So, could a tools approach reduce institutional mismatch between what the state does and what some want it to do?

The next section provides examples of tools that are certainly not faddish and have evidence of success. However, it will be argued that they rely on the structure of organisations applying them well. They can fix deficits, not reduce limits.

Management approach

Another alternative is to argue for a management approach. Government employs hundreds of thousands of people in a vast array of tasks. Anyone who has worked in a large organisation will have seen how changes in managerial approach alter effectiveness.

The final section of this chapter discusses the currently fashionable version of a managerial

approach built on PSM and a vague concept of 'leadership'. The 2020 Public Service Act. If managerial approaches have a role in reform, this is not the approach that reduce institutional mismatch.

Applying tools

The most straightforward tools approach are 'how to' guides. These are written for a policy practitioner to use when they have a problem or are looking for a way to address an issue. This includes the New Zealand standard text by Scott and Baehler, *Adding Value to Policy Analysis and Advice*,¹⁵⁵ and the manual for Michael Barber's "deliverology", *How to Run a Government*.¹⁵⁶

Both are great books, not least because they make clear just how unzombie-like it is necessary to be when working on policy. Both books, Barber explicitly, try to deal with the public service culture where,

... when asked for a plan, civil servants would jump to it ... and they would come back a few weeks later with something more like an essay, often well written and, if they were lucky, decorated ... with the occasional number. It just required the glossy cover to round it off."¹⁵⁷

That is, how to deal with the MSD culture that generated *the bad* of Chapter 1, albeit MSD made greater use of colour printers and A3 summaries.

Scott and Baehler are writing for people inside the Wellington government village and provide a guide for a

... crafting approach to the nuts and bolts of policy analysis and advising ... This means assembling frameworks, processes, and tools ... It means openness to contributions from outside the policy system ... It means abandoning the default assumption that government knows best.¹⁵⁸

It assumes the adviser has an attitude like *the good* in Chapter 1 and needs a 'How to' guide to get the best from the state within its institutional limits.

Barber, on the other hand, is writing for the people in the government village who want to turn policy into action. He is far more ambitious in describing practical ways of "getting things done".¹⁵⁹ Each chapter of his book is focused on "proposals", "paradigms", "techniques", "means" and so on. The result is a list of practical steps to deliver a policy.

Like this piece, he contrasts the institutional mismatch between those for whom the state can do anything with more resources, and the reality of what the state does with the resources it has. His examples challenge the benign zombie model, or "trust and altruism" as he more kindly describes it. For example, even after a largely successful reform process had begun in the Punjab district of Pakistan, he

... did stumble across one school where thirty or more children aged from four to ten were locked in a school compound but out of the classrooms ... Soon enough the headmaster came running; he had been relaxing in his house nearby.¹⁶⁰

The limitation of his perspective is it assumes there is motivation at the top. It is a 'how to' manual for someone like himself who is called in when a legitimate official wants reform of permanent officials.

For instance, Chapter 3 of *How to Run a Government* is on strategy. He lists the five strategy paradigms, ranging from "trust and altruism" to "privatisation", and discusses the evidence for each and their limitations. He appraises the role of "stewardship" and the "startlingly obvious point: someone at the centre has to oversee [the strategy] in its entirety and secure its long term interests".¹⁶¹ Each of these strategies is a tool that

... can work in certain circumstances, though some are less likely to work than others. Choosing between them will in part be a question of ideology and in part a question of the nature of the challenge or the goals.¹⁶²

He then offers a guide to the circumstances when different strategies may be more appropriate. How to use the toolbox is left to the user.

But, without the committed steward the approach fails. In the Punjabi school example, Barber was able to go to a deeply committed Minister and show them pictures of “Children without facilities” and “Facilities without children”. The steward was happy to use these pictures to embarrass local officials into action.¹⁶³

To give a sense of what happens without that commitment, consider another tools approach, the 1980s reform of state institutions in New Zealand. The reforms of the mid-1980s focused on divesting the state of economic functions.¹⁶⁴ Of interest here are the second tranche of reforms for organisations likely to stay inside the state: the State Sector Act 1988, the Public Finance Act 1989 and the Fiscal Responsibility Act 1994.¹⁶⁵ The key elements of these reforms were:¹⁶⁶

- Modernising the role of departmental heads so they became chief executives, responsible to the minister for their department,
- Defining performance and changing financial management and reporting, including shifting from a focus on inputs—like staffing and finance—to outputs; i.e., what the department did with the resources,
- A performance management framework for chief executives that included greater financial freedom and bonuses for high performance,
- Restructuring organisations to increase transparency and clarify roles, including splitting up policy and implementation entities,
- The setting of cross government strategic objectives,

- Codifying expected behaviours of officials,
- Codifying the role of delivery agencies, ‘Crown entities’.

Each of the listed items is a high-level description of one or more tools for improving the performance of departments. For instance, the role of head of department remained largely unchanged; however, the substance of the role was modernised with tools like five-year contracts, changing the recruitment process, and a performance management framework.¹⁶⁷ An equivalent list of tools can be found for each element of the reform.

However, what did not change in the listed reforms was the structure. New entities were created—the ‘machinery of government’ was changed—to clarify where responsibilities lay. This meant the equivalent of Figure 1 for many entities had branches cut from departments and declared separate entities, while responsibilities and expectations along the branches that were previously managerial became contractually defined. Overall, the hierarchy of the state ecosystem remained unchanged.

Ironically, what happened subsequently is predicted by Michael Barber when he discusses how contracting out is treated by civil servants as a way to divest unwanted responsibilities, rather than a way to sharpen accountability.¹⁶⁸ As the Auditor-General put it in 2023:

The financial statements of the Government ... are prepared on a timely basis, to appropriate accounting standards, and present the information in a manner that I consider to be fair and materially correct...

[However] ... We continue to see reporting that points out how busy public organisations have been rather than what they have achieved and what impact they have had on the outcomes the public is interested in. Reporting often gives little useful information for either the

public or Parliament to effectively scrutinise the performance of these public organisations. There are few other areas of our lives where we would accept paying for services with no comprehensive understanding of what we received for the money we spent.¹⁶⁹

In other words, state organisations report accurately and fairly where there is no ‘wriggle room’ (e.g., the financial accounts), but provide little useful information on what the money has been spent on. The weaknesses highlighted by the Auditor-General were:

- Measures, either quantitative or qualitative, that are not meaningful or comprehensive (for example, the percentage of contracts monitored against their milestones).
- Gaps in measuring what difference is being made (for example, how funding and activities are resulting in improvements in regional productivity, quality of education, or resilience of the roading network).
- Poor measures for assessing the stewardship, oversight, and monitoring functions of departments.¹⁷⁰

Some 35 years after the reforms Graham Scott describes, *the bad* of Chapter 1 is the norm for the New Zealand state.

Thinking about the state ecosystem makes it easy to understand why this tool failed. First, the contracts are between two people, the Minister and Chief Executive, who both have a vested interest in announcing their ministry has been a success. The measurement of busy described by the Auditor-General may be useless for improving impact, but is perfect for the task of announcing success.

Second, the contract is one relationship in the complex web of relationships that forms the system. The career advancement of staff in the second and third tier of Figure 1—Deputy Chief Executives and the Directors—depends on the

Public Service Commissioner (or State Service Commissioner in 1988). How important this has been appears to have varied over time. Obviously, assessment by the chief executive is relevant, but only as an element of others’ assessments who are not a party in the contract between Minister and Chief Executive. It is tacit knowledge of this reality that drives poor implementation.

Some sense of these system pressures is visible in the Auditor-General’s report, where below those damning lines about poor performance, he felt obliged to contradict his own assessment by including a wriggle room statement that “in our experience, the public sector generally performs its responsibilities diligently, with integrity, and with a genuine concern for the welfare of all New Zealanders.”¹⁷¹

The tool to create clarity did improve information, but better information has merely improved the Auditor-General reports on the limits of the state, rather than what the state does. The problem is that once the steward of reforms has moved on, the tools become disconnected from proper motivation and accountability.

In New Zealand discussions of the state, both tools for the 1980s reforms and deliverology count as ‘neo-liberal’, despite the latter being part of a programme to embed an expanded role and size of government. Could tools from a different approach be more effective?

Max Rashbrooke’s *Government for the Public Good* is more explicitly left/right political than the works discussed above. Its purpose is to offer a case for expanded, active government. He argues for a “liquid government” that is not the old-style government Farrell experienced “at its traditional worst: remote, unaccountable, expert-controlled rather than expert-informed, doing things to citizens rather than with them”.¹⁷²

‘Liquid government’ draws on techniques that attempts to achieve the improved services

that were the objective of the 1980s reforms through greater community participation in government.¹⁷³ For example, a process run by the city of Seattle that encourages participation and citizen deliberation¹⁷⁴ is offered by Rashbrooke as a good practice example of “participatory neighbourhood planning ... empowering local groups to develop their own plans”.¹⁷⁵

There is no reason to doubt Seattle’s city council wanted to involve local people, but what did that mean? The city initiative was intended to improve the planning process by better involving local citizens. Nevertheless, there was “clear oversight by the city government” that included determining the process followed, and each neighbourhood had an unelected official as “neighbourhood development coordinator” who implemented much of the consultation. The analytical toolkit focused on information the unelected officials thought relevant, and these officials ran a process “to prevent the usual suspects from dominating residents groups”. Groups deemed by officials to have “excluded particular communities” would lose funding. Even after all of that, whatever local people submitted was “reviewed by officials to make sure it was consistent with the citywide plan”.¹⁷⁶

In other words, how well the process reflected the views of citizens depended entirely on unelected officials. Citizens had a voice, but officials set the agenda, decided what an appropriate input was and had a power of veto. It is not the people contributing, or the process that determines the outcome, but the willingness of officials to implement and review it as intended. Like the 1980s reforms it has improved available information. What that means in practice depends on finding another means of overcoming the problems that made government “remote, unaccountable, expert-controlled” in the first place.

The same applies to other recommendations in the book. For instance, the first half of

Chapter 11 on inequality justifies interest in inequality, and the second argues for three kinds of tool to reduce it: labour laws, more taxation and welfare payments.¹⁷⁷ The tools suggested include worker representatives on CEO remuneration panels, adapting welfare system rules to stabilise the income of those on variable hours work, and stronger enforcement of laws on who counts as a permanent employee to increase income security.¹⁷⁸ All of the outcomes are mediated by detail in the control of officials, although taxation probably less so.

In summary, the tools approach can deal with deficits where motivation, information and accountability are aligned, and the tool is a means of implementing the change. For example, creating a Department of Vietnamese language and culture in a university in response to a recognised demand for the courses. What a tools approach does not address, however, is institutional mismatch. Applying a tools approach in such situations leads to government failure on both definitions offered in Chapter 4.

The new leadership

When the Public Service Bill had its first reading in Parliament on November 21, 2019, Judith Collins thought the Parliamentary debate “sounds awfully as though peace has broken out” between parties.¹⁷⁹ The Hansard (Parliamentary Debates transcript) suggests she was right. Nick Smith for the National Party mentioned efficiency and accountability, but his only real pushback was on the rushed timetable.¹⁸⁰

The debate was punctuated by statements of support for the public service, along the lines of Mark Patterson of New Zealand First’s comment “we’re incredibly well served by some very, very capable people.”¹⁸¹ A question unaddressed by any contributor was whether the bill actually helped those capable people.

There was less agreement in the submissions to the select committee.¹⁸² Aside from points specific to pressure groups (the Council of Trade Unions wanted more involvement of trade unions, the Human Rights Commissioner wanted more mention of human rights, etc), submissions were numerically dominated by a letter-writing campaign opposing the bill's token gesture towards the Treaty of Waitangi. Other themes were the short timeline for passing the bill and worries about the proposal to concentrate power in a single Public Service Commissioner.

Surprisingly, in the midst of the pandemic response and during the heavily curtailed and crowded 2020 Parliamentary session, an Act of no urgency and of no relevance to the COVID response went through second and third readings under urgency. It received royal assent on August 6, 2020.

Without doubt, since the Act was passed there has not been increased satisfaction with way the state operates. This section describes the Act and argues the reform failed because it increased institutional mismatch.

The 2020 Public Service Act (PSA 2020)

The key benefit of the State Service Act 1987 was increased transparency, and the potential for elected representatives to have more control of the state by requiring state organisations to be open about what their employees did. Specifically, each ministry now had to agree with its minister what it would deliver. Each chief executive was individually responsible for their ministry's performance and the minister was accountable to the electorate for the success or otherwise of policy.

The Parliamentary debate on the Public Service Act suggests this system had increasingly fewer friends. Surprisingly, some of its strongest critics have been ministers. As early as the 1990s, Simon Upton, a National Minister for State Services, commented: "We are expected to be energetic

and well-informed purchasers, monitoring output delivery, and bringing particular sanctions and pressures to bear as required."¹⁸³ If the 2020 Public Service Act has been inspired by the desire for ministers to be less energetic and well-informed, then it has achieved its objectives.

The General Policy statement for the bill has five elements that:¹⁸⁴

- establishes the purpose, principles, and values of an apolitical public service, as well as its role in government formation,
- recognises the role of the public service to support the Crown in its commitment to its relationships with Māori,
- provides a more flexible set of options for organisational arrangements to support the public service in better responding to priorities and joining up more effectively,
- increases interoperability across the public service workforce and preserves the future public service as an attractive and inclusive place to work,
- strengthens leadership across the public service, and provides for system- and future-focused leadership.

The two key innovations are first, the reinvention of a Public Service Commissioner who "acts as the Head of Service by providing leadership of the public service, including of its agencies and workforce and by oversight of the performance and integrity of the system."¹⁸⁵ This is implemented through the requirement to: "establish and lead a public service leadership team so that public service agencies work as a system to deliver better services to, and achieve better outcomes for, the public"¹⁸⁶

The second innovation is to set in legislation the purpose, principles and values of the public service. The purpose is:

The public service supports constitutional and democratic government, enables both

the current Government and successive governments to develop and implement their policies, delivers high-quality and efficient public services, supports the Government to pursue the long-term public interest, facilitates active citizenship, and acts in accordance with the law.¹⁸⁷

Those familiar with corporate ‘mission statements’ will recognise antecedents of this clause. The Act claims to operationalise the mission statement through five principles:¹⁸⁸

- a. to act in a politically neutral manner; and
- b. when giving advice to Ministers, to do so in a free and frank manner; and
- c. to make merit-based appointments (unless an exception applies under this Act); and
- d. to foster a culture of open government; and
- e. to proactively promote stewardship of the public service.

This is followed by further paragraphs that include a boilerplate paragraph about engaging with Māori; an insert paragraph about “spirit of service to the community”, followed by a subpart about “values”.¹⁸⁹ How the spirit relates to either principles or values is unclear.

What we know is that these “public service values are given effect to only through minimum standards set by the Commissioner”.¹⁹⁰ The values themselves are unremarkable:¹⁹¹

- a. Impartial – to treat all people fairly, without personal favour or bias,
- b. Accountable – to take responsibility and answer for its work, actions, and decisions,
- c. Trustworthy – to act with integrity and be open and transparent,
- d. Respectful – to treat all people with dignity and compassion and act with humility.

Understanding the relationship between these values and the spirit of service and principles is more of a challenge. The Public Service

Commission websites are unhelpful.¹⁹² The VUW Policy Quarterly special issue on the Act is no more helpful. Indeed, it is so sycophantic towards the Public Service Commissioner, who had been publicly lobbying for the Act since the Commission’s Briefing to the Incoming Minister in 2017, that he was invited to write the introductory article explaining the role of the Act.¹⁹³ Only a token article by Simon Chapple offers any analysis.¹⁹⁴

What we can know with great certainty is that the importance of the Public Service Commissioner’s leadership cannot be overstated. We know this because the Act tries very hard to overstate it. The words ‘leader’ or ‘leadership’ are mentioned 71 times in the Act’s 58 pages of the Act’s text (excluding schedules).

In the paragraph that describes the leader’s role, the L-word is mentioned twice and then its functions are described. They include “establish and lead a public service leadership team”, “setting standards and issuing guidance” for the rest of the system, “working with” others in the system to develop their workforce, acting as employer to those in charge of all other departments, advising on which departments should and should not exist, and, as an afterthought, doing other activities the Prime Minister directs.¹⁹⁵ There can be no doubt who is meant to be in charge.

Despite this, in the long list of definitions under paragraph 5, where space is found to define “medical practitioner” and “remuneration” (both what would be expected), there is nothing on ‘leader’ or ‘leadership’. Like so much else, this is also left to the new Commissioner to decide.

The centralisation this creates is made clear in the discussion of the public service leadership team. Remember, the Commissioner advises on who is qualified to be a public service chief executive, is in charge of who is proposed, runs the selection process, and once selected, is their employer.

The Commissioner is also responsible for advice on whether or not a department should exist.

So, who is on this leadership team? Paragraph 59 clarifies this:

- a. all chief executives of departments; and
- b. the 2 Deputy Commissioners; and
- c. 1 or more persons from 1 or more of the following categories, as the Commissioner thinks fit:
 - (i) chief executives of departmental agencies,
 - (ii) functional chief executives,
 - (iii) chief executives of Crown agents,
 - (iv) the Commissioner of Police,
 - (v) the Chief of Defence Force.

Note the inclusion of two deputy commissioners and the discretion to pack the committee with others as the Commissioner desires. This ‘leadership team’ is not even an advisory committee. It is an echo chamber.

A version of Figure 1 for the state as a whole would now have the Public Service Commissioner at the top, and each branch a department headed by a chief executive. This allows ministers to be ‘less energetic and well-informed’ by interposing a layer, the Public Service Commission, between the ministers and the departments meant to support them.

The departmental chief executives are not so lucky. The Commissioner is now in charge. The Commissioner “acts as the Head of Service by providing leadership” and “oversight of the performance and integrity of the system.”¹⁹⁶ The role of a department chief executive, with all its highly public delivery of what Ministers and the public care about is left pretty much the same in the new Act.¹⁹⁷

Is this replaced by other forms of accountability? Like every departmental chief executive, the Commissioner is obliged to provide annual accounts.¹⁹⁸ However, the Commissioner is also

required, once every three years, to provide a public “briefing on the state of the public services”. To forestall any risk this might create accountability: “The subject matter must be *selected by the Commissioner* and take into account the issues that the *Commissioner considers* are of significant public interest” (italics added).¹⁹⁹

There is a subsection that lists what ‘may’ be included, but the clause has been written to mitigate any risk the unelected Commissioner would be required to discuss what elected representatives may want to have in the report.²⁰⁰

Implicit in the Act, but explicit in discussions of PSM, is that accountability is no longer needed because it has been replaced by the legislated statement of purpose, principles and values.²⁰¹ This places considerable burden on the principles because these are essential for the public service to achieve its purpose according to the Act. These are considered in more detail in the next section.

What does the Act change?

One of the most fascinating aspects of the documents produced by the Public Service Commission on the PSA 2020 is how few practical examples they contain. In the discussions of department chief executives described in the previous chapter, the closest to an example of changed behaviour they came up with was the use of the collective pronoun “we”.

On the Public Service Commission website there is a page that provides high-level summaries.²⁰² This is backed by a commitment that:

Public Service values are given effect through minimum standards set by the Public Service Commissioner. Minimum standards may be binding on public servants as terms of their employment. Behaviours inconsistent with minimum standards would be addressed through employment management processes within an agency.²⁰³

There are further fact sheets found through the links to referenced sites, but they provide little guidance that would be useful for the problems in Chapter 1.

Practical principles are best understood by seeing how they are used and considering the changes that occur when they are applied. Consider *the bad* in Chapter 1. How would the spirit of service, principles and values change what happened?

For instance, does the new Act require a chief executive to fully describe the limits of the measure used and advise the government that the Mayors' target, as originally stated, was not going to be reached? It would be politically neutral, free and frank advice. However, the principle of stewardship requires the chief executive to balance any such openness with potential consequences for the credibility of both minister and ministry. Deciding the balance of these would be entirely up to the discretion of the Public Service Commissioner.

Another option would be to accept the target will never be reached, but explicitly use it as an aspiration to motivate more action and resources for vulnerable young people. This would be a good example of the Public Service Act's purpose statement of "enabl[ing] ... governments to develop and implement their policies, deliver high-quality and efficient public services, [and] support the Government to pursue the long-term public interest".²⁰⁴

When the agency fails to reach the target, it would ensure there was no complacency about what was being done for vulnerable young people. But, of course, this is not free and frank advice and, like the first option, risks the credibility of the agency. Deciding the balance of these would be entirely up to the Public Service Commissioner's interpretation.

Less idealistically, the ministry could have downplayed the target. This would not be

the first time a ministry was tasked with implementing a policy they had good reason to believe impossible to implement. Moreover, ministers sometimes find ways to give responsibility for difficult objectives to their ministry as a way of managing the politics of a policy. In the forest of initiatives generated by social agencies, it is often easier than an observer might think for promises and targets to be lost.

This would be a politically neutral approach that stewards the ministry's resources to places they are more likely to make a difference. It is obviously not open government or free and frank advice. While not ideal, this approach would not make the situation any worse for vulnerable young people; it minimises the bad consequences of a bad target. Again, deciding the balance would be entirely in the hands of the Public Service Commissioner.

Alternatively, of course, the ministry could do what, in fact, happened: choose a measure that has similarities with the target where, if not examined too closely, success could be guaranteed. This option is the one most likely to mislead decision-makers into believing youth disengagement was no longer a problem and, potentially, has the worst real-world consequences. Would this be ruled out by the public service principles?

No. Even commonly used statistics like unemployment rate and GDP have limitations. Part of the role of officials is to provide technical advice; such as which imperfect measure is the best in the circumstances. Furthermore, the credibility gained with ministers for getting around a foolish commitment may enhance stewardship by showing flexibility. It demonstrates the public service value of being responsive to ministers. Of course, achieving the target as measured would not be meaningful, but then the target itself was not meaningful. Deciding the balance of these would be entirely the Public Service Commissioner's responsibility.

To summarise, the values, principles and spirit of service are an implementation of Perry and Wise's hierarchical organisational norms, discussed in Chapter 4. They are most similar to the 'lines' and 'talking points' that comms departments develop for ministers and senior officials to discuss with the media. These act as a cheat sheet that keeps an organisation's messaging consistent.

The other effect is to strengthen the hierarchical role of the Public Service Commissioner. In effect, the Act grants the Commissioner autonomy to decide what constitutes a good job for an official, and empowers the Commissioner to determine whether or not what happens is what the Commissioner defines as a good job.

The Act does not address institutional mismatch or deal with deficits. Given it is embedded in the PSM approach, it is not intended to. In Madison Hammill's essay *The New Leadership*, from which their epigram is taken, Mr Woods is a teacher whose "language around 'values' and 'service' engages more in social performances than actual empathy".²⁰⁵ He was ultimately forced by parents to curb his approach. The 2020 Public Service Act insulates the Public Service Commissioner from any equivalent of such pressure.

What this analysis suggests is that the complexity of the state ecosystem means tools and managerial approaches are ineffective ways to change the system as a whole. To make a system change requires a structural approach based on reorganising the DNA of the state. What this means in practice will be addressed in the second essay to be released later this year.

Conclusion

The state is not an abstraction, it is people at work. Entirely corporeal individuals, in specific geographical locations, doing activities for which they are paid. This essay started each chapter with a description of the place where the New Zealand state happens.

The first three chapters described the state, moving from an individual to an institutional and then a system perspective. The metaphor 'DNA of the State' provides an insight as to how nearly 3,000 individual organisations relate and interact with each other to form an ecosystem.

From that perspective, it becomes easier to discuss how institutional mismatch can occur. We do not think a local dairy should build planes, a primary school provide university courses, or a hospital become a nightclub. Each of these would be what Furton and Martin call an institutional mismatch. Like a dairy, a primary school or a hospital, the New Zealand state is a workplace with limits. The failure lies in decision-makers ignoring those limits and mismatching it to important tasks.

Demystifying the State is the first part of a project to deal with that mismatch and propose reforms for the New Zealand state. The second report, *Reforming the State*, will use the metaphorical DNA of the state described in Chapter 3 to describe alternative institutions with the potential to remedy that mismatch. As argued in Chapter 4, the alternatives will be more or less failures, but overall, less of a failure than current arrangements.

The key elements in *Reforming the State* will be:

- A framework to explain potential reforms based on the DNA of the state proposed here.
- A comparison with other countries.
- Four potential reforms:
 - Decentralisation of control and management of spending to New Zealand regions
 - Greater political accountability of state organisations
 - Reform of the pure 'politically neutral' model of the state
 - A set of smaller, more incremental reforms that achieve some of these proposals.

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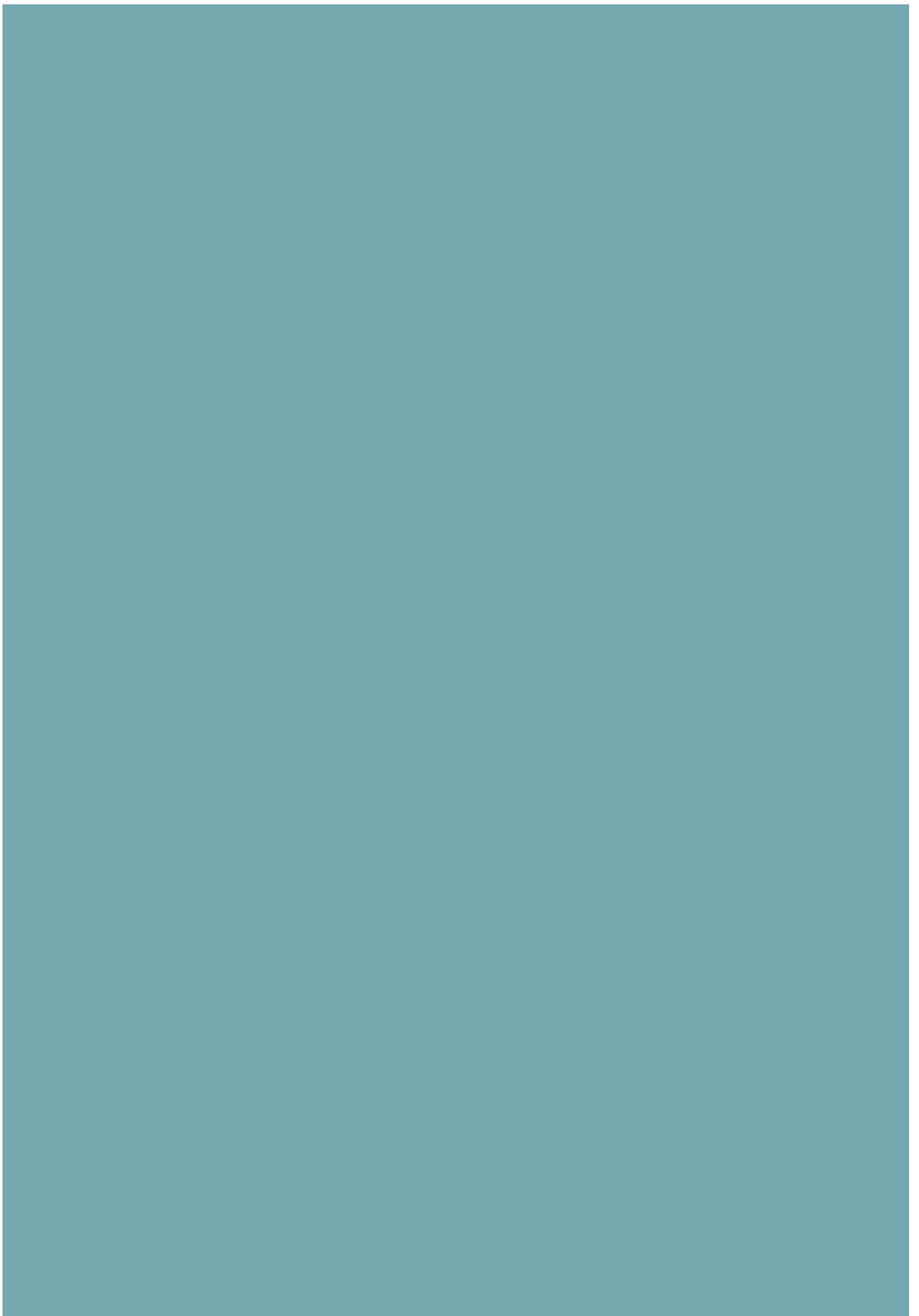
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For some, the New Zealand state are “unsung heroes” who “without exception are focused, committed and passionate about making a difference in our country”. They feel the need to evoke an otherworldly entity, a “spirit of service to the community” to explain how people working for the state behave.

Others see a different side.

This report unpacks why there are such differing views of the state. It is the first of two on the New Zealand state and how to reform it. This report analyses the state as it is now, starting with the good, the bad and the ugly of officials’ behaviour and the ecosystem of organisations that make up the very human institution.

The institution that emerges is sometimes useful, but predictably limited by hierarchy, disengaged motivation, information limits and lack of accountability. These limits create a potential mismatch between the institutions and what they are asked to do. Those well served despite those limits seem inclined praise the institution. For others the experience is more mixed.

Potential reform of the state needs to focus on better managing these limits. The limits themselves are not a failure. Ignoring them is.

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