

# PUBLICSECTOR

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**FREE & FRANK - WHY IT MATTERS**  
**PRIVACY - GETTING IT RIGHT**

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Free & frank - why it matters



Battling to get ahead



A common wealth - a common future



Free & frank & fearless

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By IPANZ President Dr Jo Cribb

If we were able to transport ourselves back to the town or city we live in now five decades ago and talk to those around us, we would probably identify some core values amongst those we talked to – an expectation that people were kind to each other, were decent, worked hard and looked after those less fortunate. Fast forward to today, and we still relate to these values. But how they are expressed has changed. One example is how our definition of what is 'decent' and 'indecent' has changed. The experience of being an 'unwed mother' 50 years ago (something that was often surrounded by shame or secrecy) is quite different today.

At IPANZ we have been asking ourselves how this progress of changing social norms impacts on core public service values. We have decided that for the next three years one of our work streams will focus on understanding what the core values of the

public service actually mean in practice in the 21st century.

There are a range of values that we hold dear that are overtly expressed in the state sector legislation and woven into the fabric of our service. We can all name them – providing free and frank advice, being politically neutral, and working in the best interests of our communities. Currently there are questions about how well we are upholding the ideal of 'free and frank'. Chris Eichbaum's recent research showed that many public servants think we aren't, and there are active work programmes within the public service aiming to resurrect confidence that, indeed, officials do provide Ministers with free and frank advice.

This year IPANZ has decided to focus on the value of stewardship. The expectation that Chief Executives will ensure that the responsiveness of their agencies to the immediate needs of the government of the

day does not swamp the need for agencies to be sustainable in the medium to long term was included in the State Sector Act in 2013. We are interested in what stewardship will and should look like over the next decade and beyond. We want to ensure this value does not get swamped by the urgent issues of the day.

Our plan is to start with a stocktake of current thinking and initiatives around stewardship. This is underway at present. We then plan to use this as a catalyst for conversations. We will use a range of mechanisms to engage and invite you to be part of the thinking and debate. We also hope this journal issue focusing on public service values starts you thinking. Just what do we need to do now to ensure our agencies and our public management system thrive in decades to come?

**Dr Jo Cribb**  
President

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## Free & frank: taking the temperature



**Chris Eichbaum**

Over the course of 2017 my colleague Professor Richard Shaw of Massey University and I undertook a survey to take the temperature of one key aspect of the public service culture in New Zealand – the degree to which it was politically neutral and unencumbered in discharging its responsibilities. We were greatly assisted by IPANZ in this, which circulated an invitation to participate through its contacts email list.

One of our principal research interests over the last decade has been occasioned by the growth in the numbers and influence of political staff. We surveyed Ministers (and senior public servants and political advisers themselves) in 2005 and found a system in which the place of political staff was not contested, but their influence and actions were a cause of concern. At their best they could complement the work of the politically neutral public servant, but at their worst they could compromise the integrity of government and governance. Nicky Hager's book *Dirty Politics* provided clear evidence of the latter. But there was evidence from other quarters as well, with a report by the Inspector General of Security and Intelligence revealing actions by political staff in the Prime Minister's Office and by senior officials within the intelligence community that brought little credit on either group. Cheryl Gwyn's report noted the absence of any code of conduct for political staff and she recommended that written guidance be provided for such staff where they were dealing with intelligence material.

Interestingly, our own research has shown very high levels of support for a Code of Conduct on the part of public servants in 2005. By 2017 these levels of support were even higher. We were pleased when in September last year the State Services Commissioner produced a Code of Conduct for political staff.

The adjective 'constitutional' is an important one when it comes to describing the responsibilities of our public service. It has gone largely unnoticed, but the

State Services Commission now uses that adjective as a matter of course. That is a most welcome development because it reflects the fact that the NZ public service forms part of the fabric of our Constitution. It is welcome because relevant legislation and important documents like the Cabinet Manual form part of the textual fabric of our Constitution. And it is welcome because it reminds us that in discharging constitutional obligations, public servants are obliged to 'speak truth to power', to be responsive and to be responsible, to be stewards of an institution that is more enduring than the government of the day.

In delivering the address at the 2017 AGM of IPANZ, we noted that concerns had been expressed, not simply about the influence of political staff, but about issues that were much more systemic.

In 2017 we asked our respondents two questions that were not included among our questions in 2005. One of these invited an assessment of the degree to which there had been a change in the extent to which public servants were providing 'free and frank' advice. A clear majority of our respondents - 53% - indicated that they agreed with the statement that in 2017 public servants were less likely "to provide a Minister with comprehensive and free and frank advice". Just under 25% disagreed.

### All not well

The evidence is clear that the perception was one that all was not well in the State of Aotearoa/New Zealand. As we now know, 2017 would see a change of government. I find it instructive to contrast what our respondents were telling us with the recollections of a junior Minister from the former Government. In an article on the Newsroom website, the Hon Peter Dunne reminisces that, "as the previous Government's Better Public Service targets shaped the agenda, the relationship had been shifting to a more collaborative one where officials were working more actively and laterally across traditional departmental boundaries..." This 'golden age' is contrasted with what Dunne alleges is an environment, now, in which officials are being marginalised, in which Cabinet Ministers take all decisions unto themselves. The 'cause célèbre' here is of course the Government's decision regarding oil exploration. Dunne incorrectly asserts that there is no paper trail. It has now become clear that Ministers were provided with advice before that decision was taken. On one point I do agree with him, and have gone on the record noting my concern that there be no repudiation of Westminster fundamentals by way of the political appointment of senior public servants. At the end of the day, public servants know that the Government of the day gets to decide, whatever the advice it

receives. And at the end of the day, astute Ministers know that policy outcomes are the product of a process that links aspiration with implementation. Contra the view of Peter Dunne, one does not need to go far to find a true sense of partnership between public servants and Ministers. But readers, and more specifically those who are involved with the provision of advice to this Government, know what is going on. It is not beyond the realms of possibility that, through organisations like IPANZ, those public servants will, at some point in the near future, be invited – on a confidential and anonymous basis – to share their assessments.

For my part, I waited with heightened expectation for an indication as to what kind of 'doctrine' would inform public administration under this new Government. There are signs that we may not be waiting too long. Westminster is about institutions, conventions, accountabilities, and an ethos. Like so many other aspects of public administration, our Westminster legacies and present realities are founded on a platform of values. We could do well to reflect on what those values are, and what they mean for Aotearoa/New Zealand in 2018 and beyond.

*Chris Eichbaum is Reader in Government and Associate Dean (Learning and Teaching) at Victoria University of Wellington.*



## CONTRIBUTIONS PLEASE

Public Sector journal is always happy to receive contributions from readers.

If you're working on an interesting project in the public sector or have something relevant to say about a particular issue, think about sending us a short article on the subject. While we will always look at well written pieces on any public sector subject, it would help if your article touched on or related to one of the journal's quarterly themes.

### Themes for 2018 are:

**September:** Public administration reform

**December:** Open issue

Contact the editor John O'Leary at [johntoleary@hotmail.com](mailto:johntoleary@hotmail.com)

## FREE & FRANK – Why it Matters

**As a term, ‘free and frank’ is the equivalent of a household name across the public sector – and like many other household names, despite being frequently mentioned, it is not necessarily well understood. Here, CARL BILLINGTON takes a closer look at the convention of free and frank advice, why it matters to both ministers and public servants, and what it means for the future.**



### Understanding the terms

In December last year, the State Services Commission published its Guidance on Free and Frank Advice and a new Code of Conduct for Ministerial Staff<sup>1</sup> that reconfirmed and clarified the expectation for public servants to provide, and ministers to receive, advice that is free and frank.

Add to this SSC’s appointment of a Deputy Commissioner, Integrity, Ethics and Standards and New Zealand’s participation in the Open Government Partnership [see sidebar story] and the expectations of openness, transparency and integrity have never been more explicit.



**Andrew Kibblewhite**

While the expectations are clear, what does free and frank mean in practice?

Andrew Kibblewhite, Department of the Prime Minister and Cabinet (DPMC) Chief Executive, explains.

“Free means providing the best advice and not withholding any evidence or information – telling ministers what they need to hear, not what we think they would want to hear. It’s free, unfiltered advice.

“Frank means being completely candid about the pros and cons involved, not pulling our punches in that analysis. It’s about an impartial critique of the opportunities and risks.

“It still needs to be delivered respectfully - with professionalism and courtesy, but it should openly represent the best of our advice and analysis,” Kibblewhite says.

Although free and frank advice is sometimes portrayed as a point of tension for public officials, it’s actually one of the cornerstones of the relationship between state servants and ministers.

### Protected space and public debate

In their recent *Policy Quarterly* article<sup>2</sup>, Chief Ombudsman Peter Boshier joins Andrew Kibblewhite in a shared discussion that highlights the critical

role of protecting free and frank advice in early-stage discussions with ministers.

As Kibblewhite explains, “It’s the kind of conversation where officials need to be able to say to their ministers, ‘You know this policy or initiative you have – or you’re looking at? We think there are some fundamental problems with it and we want to tell you why.

“That conversation is so important. You don’t want there to be any blockers or disincentives for ministers to seek that out or for officials to feel confident providing it.”

**“Ministers are here to do things; public servants are here to help ministers do the best things. The provision of free and frank advice is a fundamental part of that.”**

In the *Policy Quarterly* article, Kibblewhite and Boshier observe that this discussion is essentially about holding two key principles in balance: the need to provide a protected space in which ministers can benefit from free and frank advice from their officials, and the need to provide the public with timely access to official

<sup>1</sup> <http://www.ssc.govt.nz/node/10621>

<sup>2</sup> Kibblewhite, A. & Boshier, P. ‘Free and Frank Advice and the Official Information Act: Balancing competing principles of good government.’ *Policy Quarterly*, Volume 14, Issue 2, p3. (May 2018)

information, so they can participate in decision-making processes and hold the elected government accountable.

“Politicians are motivated by a range of things, including winning the next election, but every politician I know is motivated by the opportunity to solve problems and make a difference on behalf of New Zealanders,” says Kibblewhite.

“Ministers are here to do things; public servants are here to help ministers do the best things. The provision of free and frank advice is a fundamental part of that.

“Most officials believe in free and frank advice. But when the advice dominates the story more than what ministers decided – when that story is published without the context, and by someone with another agenda, it can naturally make people a little reticent.

“For this to work, we need to make sure people understand the value and the obligation of transparency, while at the same time reducing some of the uncertainty about what will and won’t make it into the public domain. We need to ensure there is an appropriate amount of private space between ministers and officials for a free and frank exchange of views.

“The Chief Ombudsman has, quite rightly, been very diligent in ensuring that private space is relatively limited. However, within those limits, it needs to be protected.

“What Peter Boshier has helpfully clarified in the last few months is that the convention of free and frank advice, and the protections that go with it, should predictably apply to those early conversations where the advice may need to question aspects of the pervading wisdom, or pose a range of potential options that haven’t been explored or researched yet.

“If ministers and officials know they can have that conversation in private, it is much more likely to happen. And that is a very good thing – it’s important for stewardship,” Kibblewhite explains.

“It’s about giving our public servants confidence and clarity about what conversations can happen in a protected space, as well as certainty about when they need to open the door for the public to join the discussion and debate as part of the decision-making process.”

### Enthusiastic integrity

Suzanne Snively, Chair of Transparency International New Zealand, reflects on the issue of free and frank advice, and SSC’s recent activities to strengthen these provisions, with great optimism.

“We’ve made the statement that free and frank advice is core to the public service, but now it’s being backed up at the highest levels across the board.

“Internationally, I don’t know of any other governments that have set expectations and guidelines for public officials as explicitly as we have. It’s genuine leadership – the steps we’re taking wouldn’t even occur to public officials in many other jurisdictions.”

Talking with Snively, you pick up a genuine excitement about what is happening in this area – an excitement that seems to be shared by many others across the public sector.



Suzanne Snively

“Everywhere I go I’m seeing public sector officials happy in their jobs. It’s early days and we’re potentially still in something of a honeymoon period, but people are enthusiastic about being empowered to provide free and frank advice.

“It’s not just a promise to the public but also a sign of respect to public servants who are devoting their careers to serving the interests of their country,” Snively explains.

“The return to the concept of public officials as servants of New Zealanders has been growing for a while. We’ve got some fabulous public servants out there who set the tone at the top. We’re so lucky with this aspect of public sector leadership - it isn’t like that everywhere, and it hasn’t always been like that for us.”

In their *Policy Quarterly* article, Kibblewhite and Boshier observe that the way our government was originally designed, following the Westminster style, was that official information should remain secret unless there was a good reason for releasing it.

This stance was embodied in New Zealand’s 1951 Official Secrets Act, and further reinforced by the Crimes Act, making it an offence to release information without approval. When the 1982 Official Information Act came along, it turned the previous way of thinking upside down with the principle that official information should be made available unless there is good reason to withhold it.

It would be hard to underestimate how significant these changes were.

Snively recalls, “Back when I worked in government agencies, we would often have a meeting with our minister on Monday, and officials would go away and write the briefing the minister wanted by Thursday. As a result, it may have been well received but the advice wasn’t evidence based. During the short time available to write a paper, the case to support what the minister wanted often wasn’t as robust or well researched as it should be.

***“We’re having conversations right across the State sector in a meaningful way, and that’s creating a positive spiral as new ideas for transparency are tested and the benefits are being shown to outweigh the costs.”***

“Today, I see a lot of ministers who demonstrate respect for the heads of agencies who report to them. I am also observing ministers who are excited about their portfolios and see public

servants as part of their team. That flows down throughout government agencies and has a huge impact on productivity through the relationship of trust that's built.

"In the absence of transparent and open conversation, we see fear develop, and that leads back to the dark ages - where lack of knowledge leads to poor decisions. But given the increasingly open relationship between officials and Parliament currently, we've got every chance to leverage the knowledge that informs public policy and practice, and achieve better outcomes.

"Government agencies are looking at ways of being proactive about providing the public with official information, including access to legislation, Cabinet papers, publishing our audit reports and investigation findings. Everything is so open and accessible. We're having conversations right across the State sector in a meaningful way, and that's creating a positive spiral as new ideas for transparency are tested and the benefits are being shown to outweigh the costs.

"Equally, as much as we need to strive for transparency and openness, politicians and public servants need to recognise it isn't about inundating the public either - it's about making information accessible through the right channels so the public can contribute to the decision-making conversation. If that fails, it can lead to a more disturbing response if people feel democracy isn't working for them," Snively adds.

For Snively, the free and frank convention is intrinsically linked to maintaining both the integrity of, and public confidence in, our public service.

In releasing SSC's Guidance on Free and Frank Advice, State Services Commissioner Peter Hughes described the convention as "one of the four pillars that underpin the Public Service ... and help ensure the legitimacy of our system of government." The other three were identified as political neutrality, openness and transparency, and merit appointments<sup>3</sup>.

<sup>3</sup> <http://www.ssc.govt.nz/node/10621>

Together these pillars form a broad framework that enables public trust and participation. As public servants, these pillars point to a strong stewardship lens.

### Stewarding our future

That concept of stewardship is something Anthony Richards (Vice President, IPANZ) and Ros Coote (doctoral student at Victoria University's School of Government) are exploring in an IPANZ-led project looking at what stewardship might mean for the future public service.

"We have a focus of 10 to 15 years," Richards explains. "It's long enough that it washes out the immediate, but it's not so far ahead that predicting what the world looks like in 25 years becomes an almost meaningless conversation.



Anthony Richards

"That's not to say we're ignoring the longer-term trends, it's just that we recognise the way people will think about those big issues and concepts will evolve - as it has for us.

"In terms of stewardship itself, at its core it's about the immediate not swamping the long term. For those of us in public service, it means taking a view of what's good as a whole for New Zealand and also includes an idea of making things better, not just leaving it as it was. The classic question of what kind of world we want our grandchildren to grow up in is still a good touchstone for understanding stewardship.

"We're thinking about stewardship in terms of the public service, rather than the big issues for society as a whole. Within that, the key questions are what stewardship looks like over the next 10 to 15 years and how our view of public service is evolving," Richards adds.



Ros Coote

Coote picks up the conversation, adding: "Stewardship is one of the conventions of public service. So is free and frank. What's interesting about that is that conventions are usually based on unwritten expectations and behaviours. What seems to be happening at the moment is those public service conventions are being codified, not just in New Zealand but in other countries with Westminster parliamentary traditions.

"When conventions get codified, they're always modified by the times they're in. That's why conventions last so long. As our conventions are being reaffirmed, they become recontextualised as they're brought into the language and context of our time."

***"The classic question of what kind of world we want our grandchildren to grow up in is still a good touchstone for understanding stewardship."***

What Coote and Richards are interested in is exploring stewardship as a way to address the key issues facing New Zealand's public service over the next 10 to 15 years. They're also considering what a contemporary model of stewardship looks like - how it connects with the Māori concept of kaitiakitanga, whole-of-system perspectives, and what fresh meaning our shifting demographic trends will bring to the conversation.

"There are so many different aspects to an issue and they're not only interconnected, they interact with each other. A change in one area has a dynamic effect on other areas. When giving advice, you have to understand the likely interactions in

## Open Government Partnership – integrity and transparency on the world stage

The Open Government Partnership (OGP) aims to ‘secure concrete commitments’ from governments around the globe who sign the Open Government Declaration and commit themselves to an action plan to ‘promote transparency, empower citizens, fight corruption and strengthen governance’.

New Zealand joined the Open Government Partnership in 2013. While the OGP principles of openness and transparency were already well embodied by New Zealanders, the focus on implementing a specific national action plan provides a strong framework for government agencies to work much more directly with civil society, private organisations, and our international peers.

New Zealand’s first action plan (2014-16) focused on existing initiatives that support the goals of openness and transparency, including the Better Public Services programme, the Government ICT Strategy, the Kia Tūtahi Relationship Accord, and responding to the 2013 Transparency International Assessment report. The 2016-18 Action Plan has focused on proactive initiatives that increase citizen access to information

and decision-making, such as the commitment to Open Budget, and improved official information and open data practices.

New Zealand is currently developing its third National Action Plan, inviting New Zealanders to join the conversation and get involved in topics and initiatives that cover everything from digital technology, to children and young people, open data, official information, decision-making, and even the budget New Zealand is allocating to its OGP commitments.

All of the initiatives, opportunities for getting involved, lessons learned, and external reports and evaluations are being published online at [www.ogp.org.nz](http://www.ogp.org.nz).

It’s another way public service agencies are working together nationally and regionally to ‘make government more open, transparent, responsive and accountable to citizens’<sup>4</sup>.



<sup>4</sup> All quotes taken from [www.ogp.org.nz](http://www.ogp.org.nz).

both the immediate and mid-term and anticipate how you may need to respond,” Coote says.

“That is where free and frank advice intersects with a stewardship perspective and concepts of kaitiakitanga. This is what we want to explore – we see it as the conversation-to-come in this space and it’s a very hopeful one.”

### Foundations for the future

“Whenever we see the speed up of information, particularly the democratising of information, you see great change,” Richards comments.

Richards’ observation suggests we can’t simply assume the future will be a continuation of the present, based on the history of our experiences so far. As people’s expectations continue to evolve, it changes the context, and we need to proactively adapt with it.

Suzanne Snively provides an echo to these thoughts, adding: “There can be a tendency to rest on the laurels of our reputation as a highly trusted public sector. However, we need to not only ensure we are perceived as corruption free, but also that we actually remain corruption free.”

“We have no hidden budgets, no ‘ghost’ soldiers. Our peacekeeping forces are network-enabled and everything can be tracked. However, as our population changes, we will inevitably take in more people from countries that score lower on the TI-Corruption Perception Index integrity index and have quite different norms and expectations of how government should operate.

“The freedom from corruption and general cohesion we enjoy as a nation are unprecedented among our peers. We couldn’t have done it without the Treaty and we’re growing into having a much more sophisticated understanding of what the Treaty partnership looks like but, for the most part, we’ve achieved this unconsciously.

“If we’re going to maintain New Zealand’s integrity, we need to become much more articulate about what it is that’s made us so corruption free, so that we can consciously reinforce this in our foundations for the future. Otherwise, we might not be able to absorb the growing levels of diversity without undermining the core values of our culture,” Snively reflects.

“Equally, there are other nations who

are keen to learn from us. Our goal should be to demonstrate what’s worked for us so others can replicate it in their context. That requires a greater degree of awareness and articulation of these core unifying values than we have at the moment.”

These issues are something Andrew Kibblewhite is also mindful of. As he explains, it’s something we need to both celebrate and prepare for.

***“We need to be talking about the risk of corruption, where it creeps in, where institutions might permit it in small, unconscious ways, and how we can resource efforts to stamp it out.”***

“Diversity is an enormous strength. Our growing diversity is part of what makes New Zealand such a rich and wonderful country, full of innovative potential.

“There are issues to manage, though, as people settle here with different experiences of government, different norms, different views of how public servants should behave, and what ethical practice looks like. To manage that, we need to continue to

strengthen and invest in the integrity of our institutions.

“We should pay really careful and deliberate attention to always building the strength of our institutions - not so that they become conservative, unchanging things, but so that they can preserve what matters and take that into the future as a source of strength.

“How do you make that work? You need to maintain and model a high-trust, high-integrity culture. We need to be talking about the risk of corruption, where it creeps in, where institutions might permit it in small, unconscious ways, and how we can resource efforts to stamp it out.

“The feedback on our brand internationally is interesting. Talking with Peter Crisp (NZTE), I’ve learned that the clean, green image is absolutely part of it, but what really helps New Zealand businesses offshore is our reputation as honest, straight-talking, straight-forward people. It turns out our reputation for integrity is of huge economic value,”

Kibblewhite says.

### Looking ahead

Asked to provide some closing thoughts, Snively and Kibblewhite both look ahead with a realistic, but positive, lens.

“As I think about those who are likely to join the public service in the coming years, the majority of those will be millennials, who typically come equipped with a very strong moral code. They already embody many of the values we want to preserve. The challenge for them is that they may find not every aspect of the public service embodies the values we are working towards to the same degree yet. They need to know it is changing and that we are serious about this direction of travel,” Snively comments.

“Similarly, we should have great confidence in the strengths of the public service. There’s plenty of work yet to be done and we should be humble about that, but we shouldn’t be humble about our strengths. We need to own those – they provide

some of the signposts for where we’re going.”

Kibblewhite reflects, “I’ve been privileged to work closely with the last four Prime Ministers – from Helen Clark to Jacinda Ardern. Each one of those Prime Ministers had an appetite for hearing officials’ best advice and each one of them was also quite comfortable respectfully disagreeing with the advice at times too.

“When officials put advice up and ministers disagree with it, as long as that’s not the norm, I think this is something to be celebrated. I see it as a sign of a mature system at work – a system where people can provide advice, see that advice considered, and ministers are able to come to a decision in regard to it.

“The point isn’t whether they agreed with the advice or not, it’s that they had access to timely, free and frank advice that enabled them to make a decision – which is what they’re there to do. When I see that healthy level of dialogue and debate leading to a decision, I know the system is working.”



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## THE SPIRIT OF SERVICE



Peter Hughes

**Recently, Peter Hughes, State Services Commissioner, gave the Paterson Oration in Sydney, where he spoke about matters such as political neutrality and free and frank advice. Here is an excerpt of his speech.**

We've started talking about the spirit of service in New Zealand. I say, let's do it.

Let me talk a little bit, now, about the public service and its constitutional role, because this is part of it. I'm not one of those who believes that the public service is simply the delivery arm of the executive branch of Government. I am somebody who believes the public service is a special part of our constitutional democracy. I often refer to the public service as a constitutional artefact. For me, it's part of the constitutional architecture that guarantees our form of government and its legitimacy. For me, there are four things that underpin the public service in that constitutional role. I call them the "Foundational Pillars" because, pretty much, everything else proceeds from that. There are things that are really precious and, I think, we need to pay some attention to.

- The first is political neutrality.
- The second is free, frank and fearless advice.
- The third is merit appointments. We all take that for granted, but, it's really important.
- The fourth is open Government.

I believe it is the responsibility of each generation of public service leadership, to nurture and protect these. I'll talk about three of them just very briefly.

Political neutrality is, I think, the absolute bottom line to assuring an enduring career public service in the Westminster tradition. But, it's something that is under pressure in various ways in most jurisdictions. So, for me, there is a line. Politicians respect public servants who go down to the line, but not over it. Politicians put themselves out there every day. There's nothing tainted about politics, in my view. Politics is democracy in action, and our politicians put themselves out there every day. But, they don't respect public servants who stay closeted in an ivory tower of neutrality or independence, who take no risks, who sit on the hill looking down on the line lobbying their advice over it, shrugging their shoulders and washing their hands of accountability, and I know that some of you here feel that about Australia as well. The public service, as a whole, must be able to garner the trust, confidence, and ultimately, the respect of successive administrations in order to do its job. The key for me, is to engage actively with the political context without becoming part of it.

### **It's very easy to do.**

There is a line, and I say, we go down to the line but not over it. Often there are people and forces trying to pull us over the line. Every public servant in the room will know that this

is not easy stuff. Political advisors can be one of those. You have political advisors in your system, we now have them in New Zealand. They were a response to the complexity of a fast-moving political context, powered up by social media and other media. Like many other jurisdictions, political advisors have just happened; they've just arrived on the scene. They've filled a market gap.

But, it's a role that, in my view, needs to be positioned in a constitutional sense, otherwise it is a risk to us. We need political advisors to understand and own the line. We need them to understand and own the role of the public service. In New Zealand, political advisors are public servants. They work for a Government department. Before the last election, I took the opportunity to issue, using my powers as Commissioner under the Act, a Code of Conduct for political advisors. A special Code of Conduct for political advisors.

**Free and frank advice, in my view, is a duty on public servants. It's a bottom-line obligation.**

This was not an easy thing to do, and that's a whole other story, and probably one I'd rather tell when cameras are not present. But, anyway, we did it before the last election and we issued the code. Following the election – because we had a change of Governments – I issued further guidance for political advisors, because I wanted to be crystal clear about where the line was, and I knew that we would have a whole set of new political advisors coming in to that role with the new Government. The Code of Conduct that I issued for Ministerial staff requires them to "respect the duty of our independent State services to provide free and frank advice and to undertake their responsibilities free from inappropriate influence". It's there in the code.

In the New Zealand system, this has force of law through the employment relationship and, ultimately, I can order a public inquiry using my powers under the Act if necessary. I can do that. I could not do that without the Code. Some commentators in New Zealand – I'm sure this is the case here – say that the role of political advisor should not exist or should be curtailed in some way. With respect, I strongly disagree. That's to ignore the reality of modern politics. This is a real job, doing real work. It's important, and we cannot retreat into the past.

But, political advisors working in the right way, working with the administrators in the public service in the right way, are a

guarantee of political neutrality, more than they are a threat to it.

Let me talk a little bit about free and frank advice. Again, I want to be clear about what we mean by this. Free and frank advice, in my book, is not about the bold and fearless public servant facing down the Minister, as characterised by some people. It is not a license to be obstructive to the Government's objectives or a Minister's policy position. The intended outcome of free and frank advice, is better results and better services for our country. Not officials advancing their own agenda or looking to demonstrate fearless independence for its own sake. The convention of giving free and frank advice is designed to support Ministers to achieve their objectives.

**The thing that I've learned in this last job that I've got, is that politicians and others don't always agree with you in the heat of the moment. But, if you do the right thing, they will respect you for doing that.**

But, again, we need to make sure that this convention operates fit for purpose in our modern age. When I joined the public service, as you know now was a long time ago, there were no computers, no mobile phones, no emails and no text. None of that. There was one computer locked away on the third floor, and that's what they paid the benefits through. Otherwise, we had a typing pool as our means of communication. These days, the way I communicate most often with the Ministers I work with, is by text message in real time. It's fast, and sometimes it's furious. But, for some advice so significant it needs a little more formality than that around it, and it needs to be written down. It needs to be formal.

I think we need to be clear about what constitutes free and frank advice and why, and we need some rules around it. Free and frank advice, in my view, is a duty on public servants. It's a bottom-line obligation. But, we do need some rules around it. Again, in New Zealand, we've spelt out some of this in the Cabinet Manual, and we've written it into the Codes of Conduct applying to political advisors and public servants in general. I have written it into the Performance Expectations of our Chief Executives, your secretaries. We've issued

guidelines about it using my powers under the Act. These have formal force of law.

We're also developing a practice around free and frank advice, and this is being led and championed by the Head of the Policy Profession, appointed by me to do that. So, these things need to be taken care of and they need to be brought up to date in their operation in the modern age.

Open Government. There are a whole basket of things under this heading, and I've often got myself into trouble talking about this topic. The last time was in Singapore, where I found myself on the other side of the argument with the Head of the Australian Delegation there, as all of the Asian participants looked on at us arguing about this from our bottom end of the planet. Open, easy, timely access to official information is an antidote to suspicion and mistrust. And most certainly the converse is true. It's basic, in my view, to political and public service accountability. I've heard people say that open access to information will constrain Government and effective decision making. I totally disagree.

There is a phase in policy development where things do need to stay confidential, where things are flying around and floating around and moving around where it's highly dynamic, otherwise you disturb the creativity of that process. But, beyond that, when things become more settled, when things become propositions, they need to go out. They need to go out. Not just requested, but, proactively. We need to put them out before we're asked to do that. I can't speak for the politicians, but, most public servants I know, don't fear being accountable but, they do fear being treated unfairly. They do fear the media and the others in this regard. That is why we're sometimes reticent about official information and its release.

But, you can't look at this without the backdrop of strong, ethical, active, leadership from system leaders. We absolutely need to back our people to do the right thing, and we need to back them to do this right thing. The thing that I've learned in this last job that I've got, is that politicians and others don't always agree with you in the heat of the moment. But, if you do the right thing, they will respect you for doing that. Not in the moment, but, in the round. They will respect you for doing the right thing. The right thing, in my book, is always to be upfront, open and accountable.

Public Sector thanks the State Services Commissioner for his permission to reprint this portion of his speech.

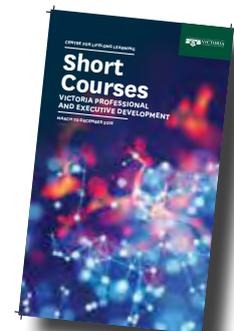
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## Embracing change:

*A conversation with Carolyn Tremain*



**Carolyn Tremain**

***As a teenager, she wanted to be a police officer. Instead, Carolyn Tremain, Chief Executive of MBIE, ended up in top roles in the private sector, including Air New Zealand where she broke the glass ceiling as the airline's first female GM, and then in the public sector. An expert in leading large, complex organisations and change management, she talks with ROSE NORTHCOTT about her very successful career to date and the need to grab even the left-field opportunities.***

### **What happened to those police force aspirations?**

As a teenager I was keen to be a police officer but at the time Police wanted people with a little more life experience and one of the things they recommended was some form of military training. So, after travelling overseas for three months when I left school, I went into the Air Force. I guess I was drawn to uniform services of some sort!

I also completed a Bachelor of Arts at Victoria University, majoring in politics. By the time I completed my degree I had left the Air Force. Our family then relocated to Auckland where I started working as a personnel officer for a South Auckland heavy metal and plastics manufacturing business - nothing to do with politics.

### **Tell us about that experience and what it led to.**

What I had was a combination of really good grounding from the Air Force and the ability to get on with people. I realised I didn't want a career in law or accounting. I was actually much more interested in people and workplaces, so I decided to establish a career in HR.

It was the period of Rogernomics and the manufacturing organisation I worked for reduced from around 700 staff to 27. I saw the impact exogenous effects could have on industries that didn't have a fundamentally sound business model. That was a salient lesson I learnt quite early on. It taught me a lot about change management in trying and difficult circumstances and, despite a difficult environment, I was quite successful at helping people adjust and find new roles.

I then moved into retail with Farmers and did a lot more change management and restructuring work as a corporate HR professional. From there I went to Air New Zealand for 13 and

half years.

### **How did your career evolve during what were very significant years for Air New Zealand?**

I started as an HR professional working in the domestic airline and also had a period leading a business improvement team. By the time I left, I was head of HR and Organisational Change for the Air New Zealand Group. I was the first female direct report to the Chief Executive from early 1991 through to when I left.

I was at Air New Zealand during the 90s, which saw significant growth in the international airline, and I was there during the challenging Ansett period. Between working in manufacturing, retail and Air New Zealand, I developed a real capacity for change management and optimising businesses. I became skilled in industrial negotiations and working with organisations to change their operating model and build greater employee participation in the workplace.

### **Why did you leave a successful private sector career for the public sector?**

Our family had grown with the arrival of a third child and after leaving the airline I decided to spend a little more time focused on my family. But after a few months off I was approached to take up a role with Inland Revenue, which was somewhere I'd never thought I would work. I had been very much a private sector career person. But after having had some time out, I was clear I wanted to do something broader than just HR.

***I saw the impact exogenous effects could have on industries that didn't have a fundamentally sound business model. That was a salient lesson I learnt quite early on.***

IR contacted me about a role in corporate services. I was really impressed by the CE at the time, David Butler, and felt I'd love to work with him. We formed a team that included Colin MacDonald and Naomi Ferguson and a couple of other really strong tax professionals, Robin Oliver and Martin Smith. It was a great team to work with and David was a great leader. This was one of the best teams I had ever worked in. I learnt a lot from him about being a leader and working in the public sector.

From starting in corporate services at IR, I moved into service delivery and then moved to Customs NZ as Chief Executive in 2011. And from there I moved to interim Chief Executive at the Ministry of Business, Innovation and Employment in July 2017.

### **What attracted you to the Customs CE role?**

I thought that it would be a terrific role and a good fit for me where I could add value. Customs has a clear purpose and such a strong brand in New Zealand and through my airline work I had a lot of regard for the Customs people I'd met, and of course I understood how airports operate. Customs also does tax collection work and I felt it was a nice combination of what I'd learnt at Air New Zealand and IR. It was also an organisation that was ready to modernise, which drew on my strengths.

### **How did you modernise the Customs service?**

There was a lot of modernisation in the IT space, including the joint border management system - the electronic platform where customers interact with Customs and MPI. That was a huge piece of work across the Ministry for Primary Industries and Customs. There was also a change to the Customs & Excise Act, with the final stage of that going through Parliament now.

The third part of the modernisation process was the workforce career structure and how people move through a career service. I found my experience of being in the Air Force really helpful in that I understood how uniformed services worked; there is also some commonality of language between the two organisations.

### **Is the policing aspect of Customs increasingly challenging?**

Customs is responsible for detecting illegal things coming in to New Zealand. I have been amazed at the creativity of criminal syndicates in finding new ways of trying to evade Customs. Customs continually refines its practice, and criminal syndicates are continually trying to find ways around the obstacles we put in the way.

It is a very challenging organisation to work in on that basis. Customs officers are passionate about keeping our borders, families and communities safe.

### **What sort of organisation is Customs today?**

Customs regularly gets commented on internationally as well as in New Zealand on how professional it is, and how much friendlier the New Zealand Customs Service is [compared to its international counterparts].

Customs is a very old organisation - 178 years old. It's our oldest government department and as Comptroller I felt a real sense of continuity of guardianship and the importance of that organisation in protecting New Zealand's borders. I felt a real sense of privilege to be the Chief Executive and Comptroller of that organisation.

### **Has your private sector experience helped in your public sector roles?**

It has really helped. Most of my roles have had a theme of being customer-oriented; that was definitely the case at IR, and also at Customs, and again at MBIE, which is a very business-oriented organisation. I have a good understanding of how business operates, and that has been very useful to me in the public sector.

### **Has it been challenging leading MBIE during a change of government?**

The change of government has been a major process for MBIE - we produced 16 BIMS (Briefings to Incoming Ministers), which I think is a record! We also had a good number of items in the government 100-day plan. The largest of those, and the one I feel most proud of, was the establishment of the Pike River Recovery Agency. I think the team did an extremely good job - they worked very well with the families within a relatively tight timeframe to have the agency established by the end of January 2018.

We also had a number of other significant initiatives under government's 100-day plan. We established two new units in MBIE, one the Provincial Development Unit responsible for administering the [\$1 billion] Provincial Growth Fund, and we are also the incubator for KiwiBuild until the Housing Commission is established.

Delivering on the new government's vision has taken quite a lot of effort across MBIE.

The great thing about the New Zealand public sector is that it is politically neutral. We have worked with the new government to understand their work programme and focused and worked strategically to implement it. That is a real strength of our public sector.

### **Do you feel you have a role to play in helping other women advance?**

As a senior woman leader, you do feel an obligation to do your part in helping pull up other women into the senior ranks. I felt that quite keenly during my time at Air New Zealand. I was the first female GM of the airline and I think I have been lucky in some respects, but it's not all luck. It's about having good mentors, taking opportunities when they come up. I try to encourage women to always take opportunities and try things that are different. I would have never thought I'd go to Inland Revenue, but it opened up a whole different career opportunity for me at a time when otherwise I would have gone overseas, and perhaps stayed overseas for quite a while. For me, IR was a great opportunity to stay in NZ and bring up my children, and that was something I really wanted if I could have it.



## BATTLING TO GET AHEAD

*In the second of our series of articles on local government, BRIAR EDMONDS looks at Opotiki District Council which, like many rural councils, is battling to expand the local economy and keep young people in the district.*

The town of Opotiki is in the Eastern Bay of Plenty, nestled in a harbour inlet formed by the junction of two rivers. It's a beautiful place, boasting a spectacular surf beach. As a service town, Opotiki is known for its horticulture, forestry industry, dairy farming, agriculture and orchards. The town provides ample opportunities for hunting, fishing, camping and walks in beautiful landscapes.

Yet its beauty belies its challenges. Opotiki has one of the highest levels of deprivation in the country and is the poorest community in the Bay of Plenty. In a district of just 9,000 people the social welfare spend is high - around \$23 million a year.

As with all councils, rates paid by local residents form the basis of Opotiki District Council's funding. With such a small population, heavily reliant on social welfare, the issues are obvious when it comes to the Council's ability to raise funds for essential physical and social infrastructure.



**John Forbes**

Opotiki's mayor, John Forbes, says, "Our community is just not as well off as others and this does create particular challenges for us as a Council when it comes to having enough money."

Council Chief Executive, Aileen Lawrie, echoes Forbes' view. "Our socio-economic status is our biggest challenge. It's a long-term thing to fix - it's taken generations to get where we are and it will probably take generations to get away from where we are, poverty-wise."

Also challenging for the Council is the fact that Opotiki has very little flat land, with 75% of the district being unrateable land, further reducing opportunities for vital income.

### **Could hope lie in the harbour?**

While Opotiki is short on land assets, it's not short on ocean and the district has been making the most of it by developing its aquaculture industry.

Local iwi, Te Whakatohea, invested in the creation of an open-water mussel farm, which began in 2009 when the iwi was given consent to farm in the area with the help of some large seafood companies. When the companies' backing was pulled, around 100 Opotiki residents contributed money to help. The

farm celebrated its first harvest of mussels in 2016 and has been going from strength to strength ever since.

The Council is keen to support the ongoing growth of the mussel farm and other aquaculture initiatives in the pipeline, and has been championing a project to redevelop the harbour to do just that.

The proposed plan would see a year-round navigable harbour entrance built to service the aquaculture industry, allowing processing locally and associated jobs and education opportunities. It would, in turn, reduce reliance on government spending for benefits, justice, health and other social spending.

Forbes explains the development as a "river channel giving access to the ocean" made via a groyne.

Forbes says the economic opportunity presented by Opotiki's large-scale mussel farming development and associated onshore processing is compelling. "The proposed development will be good for Opotiki and good for the eastern Bay region. We would love to see the processing facilities built and providing crucial jobs in Opotiki."

***"Our socio-economic status is our biggest challenge. It's a long-term thing to fix - it's taken generations to get where we are and it will probably take generations to get away from where we are, poverty-wise."***

Unfortunately, the Council can't afford to come up with the full cost of a project this big, which at this stage has a \$145 million price tag, so it has had to ask central government for help. It has been seeking help for the last ten years.

Forbes explains, "This project is incredibly expensive. It's not the sort of thing that gets done very often. We are asking government for a big chunk of money, we know that. The amount of money we're asking for, for a community this size, is disproportionate. If this was Auckland, Wellington or Christchurch wanting this amount of funding, I think the numbers would be seen as quite small. But for a little town that's a really big ask. But the investment opens the door to a huge amount of opportunity."

"Opotiki is at the cutting edge of aquaculture technology. We've got farming systems out in the open ocean that are currently growing mussels, but are consented for a number of different things as well. We're able to grow protein in an environmentally sustainable way. Most of New Zealand's protein is grown on land, which causes great pressures on the land. Out in the open ocean we're growing much more protein per hectare than you can do on the land, but also in a way that

enhances the ocean environment.

“High quality, healthy seafood is hugely in demand overseas, too, so there are real export opportunities, especially in Asia. And we’re really lucky in Opotiki because our ocean has an upwelling of current that brings phytoplankton to feed the mussels and we’ve also got the perfect temperature range year round.

“We have 4,000 hectares of consented sea space, and according to independent experts we’ve consulted that can be scaled up to 16,000 hectares and not have much environmental impact. We’ve got limited flat land to use, but out on the water we’ve got almost unlimited space to grow food.”



**Aileen Lawrie**

According to Council Chief Executive, Aileen Lawrie, “We’ve been asking successive governments for this investment for well over ten years. As you can imagine, there’s been a lot of work to meet their requirements over that time and we have already spent around \$3 million of central government money to do that and the wider region has spent about \$12 million. It’s something we’ve invested a lot of time and money in.

“We need this investment to stop the exodus of people who are leaving Opotiki to work in Australia, where the jobs are. We’re seeing so many people leave us

who could be contributing to Opotiki and to New Zealand, but instead they’re contributing to Australia. The community has really pinned its hopes on this project as a way to stop that. Getting investment from government would bring back jobs and make all the difference,” says Lawrie.

She points out that Opotiki has struggled to find the right funding door to open. “We don’t fit into main government funding types, so we’ve had to submit business cases for various different types of funding and this means that the goal posts keep changing. It’s very frustrating.”

#### **Back to the drawing board**

Sadly, at the end of May, Regional Economic Development Minister Shane Jones made it clear that the Government would not be funding the Harbour Project with its current \$145 million price tag. The decision was made based on the advice of an independent board of advisers who warned him the project was too risky to go ahead with at that cost.

Forbes says the proposed plan’s cost is due to it being earthquake-proof and “very low maintenance”. “We’re mindful of protecting our rate-payers, and they cannot afford something that will require millions of dollars to maintain every few years.”

While disappointed, Forbes says he’s confident the project can be reconfigured to allow for a more affordable development.

Whakatane, Opotiki and Kawerau Councils are currently working on a proposal to put in front of Ministers, which will clearly define the joined-up nature of the opportunities in the eastern Bay of Plenty and the benefits that will flow from them.

#### **It’s not all bad news**

While the harbour project outcome is disappointing, it’s not all bad news for

Opotiki. Aileen Lawrie highlights a recent success in the area of sewerage - “A much more interesting topic than you’d think,” she notes wryly.

“Until recently our sewerage system was really and truly stuffed. The pipes were purchased second hand from Auckland back in the 1950s and were really giving up the ghost. We started costing out how much it would cost to replace our system and the initial numbers were quite scary - like \$30-\$40 million.

“So we invested in a research project to figure out exactly how we could fix our sewerage problems. After having cameras put down pipes and all kinds of different monitoring equipment going on, we worked with an independent expert to come up with a solution that would cost only \$13 million - to do a re-lining and rehabilitation of the system. This was much more affordable than fully re-fitting, but will still provide a great result for our community.

“We had heavy rainfall last weekend, and our sewerage system is already showing huge signs of improvement. So there are these sort of ‘associated wins’ for Opotiki residents - better infrastructure, education pathways, driver licencing programmes, all sorts of things that you can tie back in a way to the harbour.”

#### **The future for Opotiki**

Lawrie and Forbes are confident Opotiki is going in the right direction, albeit more slowly than they’d like.

Lawrie also says that her community will not give up on their dream of a redeveloped harbour and a re-energised Opotiki. “Eighty percent of the Opotiki community see this project as critical to the district’s future, and they’re not just going to go away. They will keep chasing to make this happen.”

## Strong Demand for Policy Professionals

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Kirsty Brown and Victoria Brice

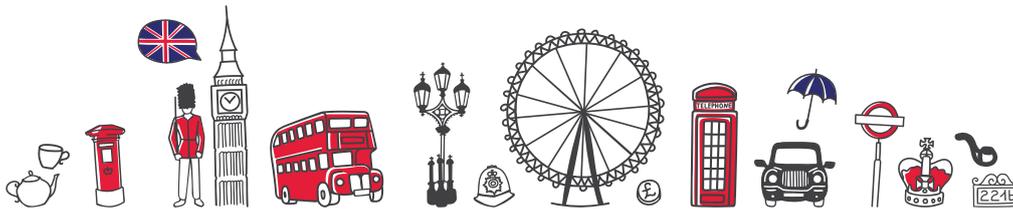
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# A COMMON WEALTH - a common future

Recently, the Commonwealth Heads of Government Meeting (CHOGM) was held in London.  
 Writer SHELLY FARR BISWELL reports on the Meeting's forums.



***“Commonwealth suggests that each of you is cooperating with the others. Not so you can get ahead, but so that you can **all** get ahead. There’s inequity within and between your countries and nobody is denying that, but you come together and work to help make life better for every one of your citizens. And it’s working. The more the rest of us follow these strong examples and focus on the ‘common’ part, the better our global future will be.”*** - Nigerian poet and novelist Ben Okri OBE FRSL, keynote speaker, CHOGM 2018 People’s Forum

In April, leaders from the 53 Commonwealth countries met in London for CHOGM 2018. Held biennially, CHOGM’s theme this year – Towards a Common Future – reflected the ambitious intention of the meeting to encourage dialogue and action between countries to ensure a safe, fair, sustainable and prosperous future for all Commonwealth citizens.

When I arrived in London in January and told people I was hoping to go to CHOGM 2018, I received quizzical looks and polite nods. As one candid taxi driver told me, “I don’t think most people here think about the Commonwealth”. Still, as winter gave way to spring, interest in the Commonwealth grew, both in the media and in conversations on the street. At least part of that attentiveness can be traced to the UK’s need to strengthen alliances and seek new trading partners as it prepares to leave the European Union.

There may be more to it, however, as David Howell, President of The Royal Commonwealth Society, noted in the *CHOGM 2018 Report*: “The cyber age has drained and dispersed the power of governments, strengthened grassroots influence and given rise to forces, good and bad, which largely lie beyond the traditional interstate system of global affairs.

“It is a supreme irony of our era that the modern Commonwealth of Nations – with its voluntary adherence, its loose coordination and its people-driven networks, orchestrated by no central agency or plan – is fast emerging as better equipped to adjust to these conditions than some international and multinational institutions of the past.”

## A common understanding

The Commonwealth is a voluntary association of countries across Africa, Asia, the Americas, Europe and the Pacific. It’s home to nearly one-third of the world’s human population, of which over half are under the age of 30.

The Commonwealth Charter serves as the guiding document for the association and outlines core principles, such as mutual respect, inclusiveness, transparency, and accountability. A hallmark of the Commonwealth is that “size does not matter”, with all countries having an equal say. This is a notable feat, when one considers that the nations belonging to the Commonwealth range in size from Tuvalu (population under 10,000) to India (population over 1.25 billion).

One of the founding members of the modern Commonwealth, New

Zealand, has a well-earned reputation for being a team player. We provide funds and other support, such as technical expertise and a scholarship scheme, to help build capability in member countries.

***“It is a supreme irony of our era that the modern Commonwealth of Nations...is fast emerging as better equipped to adjust to these conditions than some international and multinational institutions of the past.”***

## Four forums

The week of CHOGM 2018 began with four forum events – Business, People, Youth and Women – which brought together hundreds of representatives from business, civil society and government.

An important part of the conversation for all four forums was climate change. The issue was underscored by the fact that this CHOGM was meant to be held in Vanuatu in late 2017. Following the devastating impacts of Cyclone Pam on the small Pacific island nation, the meeting needed to be rescheduled and moved to London.

As Jamaica Prime Minister Andrew Holness noted during the joint forum session, for small island states, such as those in the Caribbean and the Pacific, the issue of climate change is not a “philosophical” one, but a very real “existential threat”. He said that funding for resilience, adaptation and education should not be treated as aid, but as an investment.

“We need to make an investment in the resilience of countries that are affected so that they can withstand, live through and recover quickly from these variable and extreme weather events...The truth is that the countries that suffer the most are the ones that least contribute to the issue of climate change.”

## Changing the policy environment – the Women’s Forum

Young activist Zeleca Julien, Co-director of the Trinidad and Tobago community-based organisation I Am One, opened the Women’s Forum with a powerful reminder of the challenges many women face, saying “There is nothing in this world more important to a young black woman than freedom. Black women have always had to prove themselves 100% more to get a fraction of basic human rights and respect...We are born fighting for freedom.”

It’s a troubling reality, as Tanya Barron, UK CEO of Plan International UK, wrote in the *CHOGM 2018 Report*. “Forced labour, modern slavery and human trafficking are highly complex and context-specific phenomena. Whilst anyone can be forced, coerced or deceived into exploitative conditions, women and adolescent girls are disproportionately affected, accounting for 71 percent of people estimated to be forced into labour or marriage.”

An important part of resolving this issue is ensuring there are more women in leadership roles. IPANZ President and Gender Consultant

## Forum recommendations

Recommendations from the Women's Forum and Youth Forum are outlined below and can be viewed online.

The recommendations from the Women's Forum has four overarching recommendations:

1. Accelerate actions to invest, implement and track progress of the Sustainable Development Goals (SDGs), particularly Goal 5: Achieve gender equality and empower all women and girls.
2. Create a taskforce of both male and female leaders from political, public and private sectors to champion gender equality, and to hold governments and businesses accountable on reaching the global target of 50% representation across all levels of decision-making.
3. Carry out a systemic review and repeal of discriminatory laws, and ensure that new laws undergo a gender impact assessment on women's rights and participation in leadership and economy.
4. Invest and increase technical and financial resources for data collection and analysis; research; knowledge creation and sharing; and capacity building for women's leadership, and implement measures to advance women's participation across sectors.

The Declaration and Action Plan by the Young People of the Commonwealth includes the following themes and key areas:

1. **A more prosperous future:** tackling youth employment; promotion of youth entrepreneurship and innovation; resourcing and financing youth development: leaving no one behind; and mainstreaming youth priorities in national development planning.
2. **A more secure future:** UN Security Council Resolution 2250 – Youth, Peace and Security; countering/preventing violent extremism; cyber security; global citizenship, and inter-faith and inter-cultural understanding.
3. **A more sustainable future:** youth leadership and participation in climate change policy; innovation and livelihoods in the blue and green economies; vulnerability and climate resilience; and sustaining use and management of energy and natural resources, including our oceans and tackling plastics.
4. **A fairer future:** inclusion and equity; health and well-being; enhancing the role of youth in democracy and governance; establishing and promotion of the economic, and social and cultural rights of young people.

To learn more about the forums, visit [www.chogm2018.org.uk/forums](http://www.chogm2018.org.uk/forums). To see the Women's Forum recommendations, visit [www.chogm2018.org.uk/womens-forum](http://www.chogm2018.org.uk/womens-forum). To see the Youth Forum recommendations, visit [www.chogm2018.org.uk/youth-forum](http://www.chogm2018.org.uk/youth-forum).

Dr Jo Cribb facilitated a panel session on this central topic, with Rt Hon Helen Clark, former Prime Minister of New Zealand, as one of the panellists. Clark noted during the session that there is a need for parliamentarians to apply "a gender lens across all areas of policy and budgeting," to determine whether policies are fair.



Helen Clark and Dr Jo Cribb (right).

Another session considered what needs to change within the policy environment to achieve gender equality. Dr Margo Thomas, international expert in private sector development and trade, identified four ways we can strengthen the current policy environment:

1. **Clarify for all stakeholders that women's economic empowerment is a win/win for everyone.** We have the evidence that when women are economically empowered there are benefits for everyone in society – there is greater potential for: social stability, inter-generational health and wellbeing benefits, economic growth and diversity, and equity in the distribution of wealth and income.
2. **Undertake a systemic review of policy, legal and regulatory frameworks.** The policy environment is dynamic. We may fix a certain law or address a policy issue today, but if we don't address the underlying systemic constraints, issues or legacy laws we are only providing a short-term fix.  
  
*As the Women, Business and the Law 2018 Report states, "Globally, over 2.7 billion women are legally restricted from having the same choice of jobs as men." We need to undertake a systemic review of legal and regulatory frameworks, and strengthen the process by which new policies, laws and regulations are developed and implemented to make sure that they're more transparent, more inclusive, and that we consult with all constituents.*
3. **Ensure once there's enactment of policy or legal changes, there are funds for implementation.** If we want change, we need to fund implementation. As part of this, we need greater accountability, implementation monitoring and systematic assessment of impact.
4. **Assure voice, representation and agency of women.** In the current political, economic and environmental landscape this is an all-hands-on-deck moment. This is not a task for just the public sector or the private sector. If we each start addressing these issues within our sphere, wherever we sit or stand, together we can make a difference.

### Towards a common future

At the end of the three-day events, each forum provided a set of recommendations to the heads of government to consider (see box). These recommendations helped shape many of the decisions and discussions held over the remaining days of CHOGM.

The other outcome of the forums was a commitment from representatives to go back to their respective countries to share what they learned and to take action.

As keynote speaker entrepreneur and philanthropist Bill Gates noted during the joint forum session, progress isn't inevitable. "As long as we invest in young people they will innovate in ways we never could have imagined, and build a better life for themselves and their children, but that is not automatic. It depends on the actions that governments take and it depends on how effectively the Commonwealth forums organise and advocate," he said.

## SOCIAL INVESTMENT: A VARIETY OF VIEWS



Colin James

*The social investment approach is, arguably, one of the more interesting government initiatives of recent years. Here political journalist COLIN JAMES looks at a collection of essays analysing social investment and finds much of value in them – but also a few issues not addressed.*

Follow five tracks from the mid-1990s down to 2018.

Track one: from “outputs” (the 1988 reforms) to “outcomes”, talked about since the mid-1990s but not far travelled yet because true “outcomes” can be complex and/or long-term.

Track two: from agency “silos” set up in 1988 to collaboration and trans-agency operation. Also a long way still to go.

Track three: from the 1984-92 radical deregulation of the economy to embedded inequalities by 2016-17, with collateral damage to social cohesion and economic opportunity.

Track four: through digitisation to accumulation, mining and use for policy of vastly more information about those on the underside of the inequalities (and much else).

Track five: migration from the Accident Compensation Corporation to “welfare policy” of actuarial analysis in order to cut future liabilities, then the widening of this “forward liability investment approach” into “social investment” by 2015, using metadata to identify those most in need and most likely to benefit from a targeted approach.

Add: an institutional novelty, the Social Investment Agency (SIA), to oversee the data use and investment; the Treasury’s CBAX (cost-benefit-plus) tool to focus agencies’ budget bids on “outcomes”, evidentially scrutinised by public sector external science advisors; and the carve-out from the Ministry of Social Development of Oranga Tamariki to fix the data-detected “most vulnerable” children identified.

Result: rich pickings for academics, policy wonks and machinery-of-government wizards. To feast on them, the studiously prolific Victoria University policy wonk Jonathan Boston, with Institute of Economic Research (NZIER) principal economist and former public servant Derek Gill, convened roundtables from late 2016 to May 2017.

### Extensive

The record and necessary: Boston’s and Gill’s timely, extensive and necessary 450-page tome analysing and detailing “social investment” from multiple perspectives by academics, observers and public servants, six from within NZIER.

Boston was on track five early. He made space in the Institute for Policy Studies (now the Institute for Governance and Policy Studies, IGPS) for the secretariat of the Welfare Working Group (WWG).

ACC chair Dame Paula Rebstock chaired the WWG. It telegraphed the “forward liability” idea in late 2010, so it was well enough known in some circles by the time the WWG reported on 22 February 2011 for me to foreshadow it in a column the day before.

Driven by Bill English, the government adopted it, initially in mid-2011 for teens at risk of landing on the unemployment benefit then staying long-term, and later extended to other potential or actual long-term beneficiaries, notably single parents.

Ministers argued these people would live better lives in paid work and the state and nation would benefit through a lower forward (future) fiscal liability for benefit payments.

Early internal assessment by the Ministry of Social Development found positive indicators of lower future liabilities and improved lives for those placed in jobs.

But, as I asked in an IGPS paper in June 2015 and a Treasury lecture in March 2016, was the word “investment”, imported from capitalism, appropriate to extinguishing a liability? Or should the “investment” be aimed, as capitalists do, at building assets – for example, children who could learn well,



get jobs, pay tax and contribute to society and the economy?

In late 2015, Treasury economist Tony Burton argued the forward fiscal liability should be seen as a metric, not the objective.

In September 2015 *Public Sector* featured Gill (for) and Council of Trade Unions economist Bill Rosenberg (against) the scheme.

Critics like Rosenberg saw the forward liability scheme as thinly disguised money saving by forcing people into work regardless of whether it might make life worse for them or whether they, and the country, would benefit more if they got themselves more skilled, in order to earn more and be genuinely independent.

A foremost critic was economist Simon Chapple, now IGPS director. In *Policy Quarterly* in 2013 he questioned the actuarial methodology and said it undervalued the welfare system’s guarantee to all citizens of support in hard times.

Chapple’s chapter in the Boston-Gill book is trenchantly titled: “Corked wine in cracked bottle”.

## Misleading

The “investment terminology”, he says, “is, from an economic perspective, seriously misleading as a description of the new welfare model.” It should instead be called “the long-term fiscal redistribution model” because too little attention is paid to non-fiscal factors: outcomes for people”.

Chapple examines changes and trends in benefit receipts, the flows from working-age benefits to jobs, student allowances and absence from the tax system, the trends in benefit cancellations due to beneficiaries getting jobs, and the rate of such cancellations set against general employment growth trends.

The system, which he notes came in alongside a “much stronger and substantially enlarged work-testing, compliance and surveillance regime”, is an “overly simplistic performance model”, “based on a trickle-down view” and “creates perverse incentives in terms of achieving efficient resource allocation”.

Conversely, Michael Mintrom, Professor of Public Sector Management at Monash University, reckons it “could well signal a paradigm shift”. He writes: “The potential for governments and those who advise them to rigorously assess the merits of specific investments is a relatively recent phenomenon... Only within the past 40 years [have] the necessary analytical approaches ... become well known enough to be effectively deployed for treating public policies as investments”. The “uptake and application” of that knowledge “remain limited”.

NZIER principal economist Peter Wilson and senior economist Killian Destremeau, in a scene-setting chapter ranging widely and including historical views of social policy, see “forward liability” and “social investment” as two distinct phases in a policy approach that is “still developing”. That second phase is one of “building individual-data capability”.

They conclude that “social investment, Kiwi-style, is introducing promising new ideas to address pressing social problems”. But, they add, “if it is just a new name for policies that have not worked, we should not expect much from it”.

Wilson and Destremeau distinguish “spending” from “capital” (which investment implies). “Capital is enduring and its use does not lead to its disappearance” as consumption does. “Many social policy interventions ... involve a mixture of consumption and investment,” they write.

That mixture complicates calculation of the “benefit” from the “cost” (of consumption spending) and the (longer-term) “return” on the “investment”. Much of the rest of the book reads more like benefit-cost than investment-return or as a conflation of the two.

NZIER senior economist Sarah Hogan confronts this in her health chapter exploring the merit of intervention in early childhood, the return on which comes years or decades later. “If early childhood really is a unique opportunity for effective intervention,” she writes, noting that some think this is not proven, “that increased effectiveness still needs to be considered against cost”.

## Conundrum

Tim Hughes, Ministry of Justice chief advisor, also confronts the short-long-term conundrum. Exploring the finding (by the Dunedin longitudinal study, for example) of correlations between early childhood development of self-control and many later life traits and experience, including time in prison, he sees a need for “dynamic risk modelling” to take into “contingencies”, such as (in prediction of future criminality) education, peer association, substance abuse and the community people live in.

NZIER associate Gail Kelly and Social Policy Advisory and Research Unit principal advisor Isabelle Collins say flatly: “Data is [sic] not evidence”. Informed choices need “evaluative thinking, analysis and sense-making” and removal of bias. Amanda Wolf says a “social decision is best described as an *informed guess* comprising *both* analytic and non-analytic components” [her italics]. Well, capitalists, at least the risk-taking ones, do that.

Unpicking such complexities, termed a “braided river” by former Treasury Secretary Graham Scott, will require, Gill writes, unlocking the “iron cage of control” that pervades the public service, including the “silos”.

David Hanna of the Wesley Mission and Inspiring Communities says that by tying up not-for-profits in tight, short-term contracts, commissioning agencies in effect negate the potential which Bill English saw for them to use their intimate knowledge of those they work with and their freedom from top-down rules to innovate. The contracts impose high transaction costs, write SIA principal advisor Simon Wakeman and Diane Garrett of Family Works New Zealand.

But why bother? Sir Michael Cullen, 1987-90 Minister of Social Welfare and 1999-2008 Minister of Finance, is archly dismissive: “The investment approach should be seen as no more than a useful way to organise thinking about government spending.”

## That ignores track six

As the social investment programme was evolving, so was inquiry - abroad and here - into how to rescue the economics discipline from the damage done to it and market-liberal (neoliberal) theories

and policy settings by the 2007-08 global financial crisis. Concerns were growing (even if still among a minority) about the rundown of natural capital and “planetary limits” to human exploitation. Social fragmentation was disturbing the politics of northern democracies.

In April 2015, Girol Karacaoglu, then Treasury chief economist, drafted a working paper (published September 2015) which added “wellbeing economics” to the Treasury’s living standards framework: assessment of economic success or failure by rises or falls in natural, social and human capitals in addition to those of financial and physical capital.

In December 2016 – between the first and second roundtables – the Treasury featured this in its long-term fiscal forecast, *He Tirohanga Mokopuna*.

Jacinda Ardern and Grant Robertson tuned in in opposition and, in government, quickly embedded it into policy, highlighting it in the December 2017 economic and fiscal update.

“Social investment” aims to build social and human (and, some add, natural) capital. So logically it could feed into and feed off “wellbeing”.

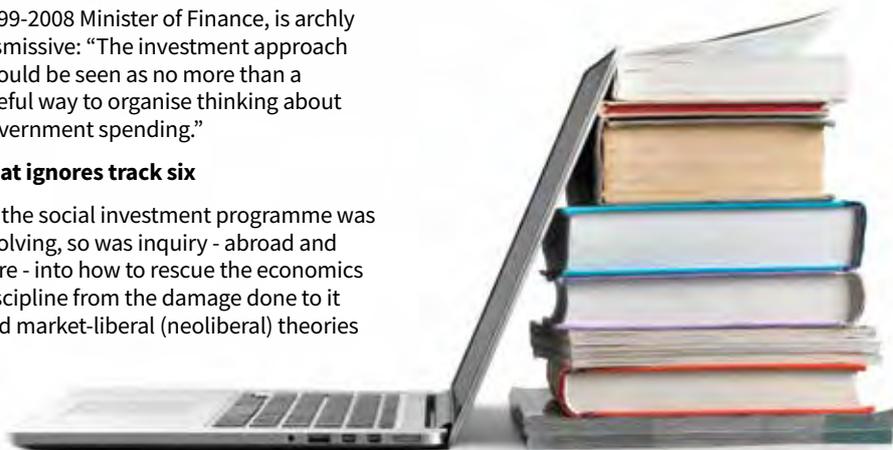
In April several people pointed Boston out to me as the go-to “wellbeing” expert. Wilson through 2017 was working with Julie Fry on migration’s impact on wellbeing. Yet it gets next-to-zero mention in the book and none as a possible partner to social investment, even by Karacaoglu when writing, with Elizabeth Eppel, on complexity issues for social investment.

Even if “wellbeing economics” was (mistakenly) thought non-mainstream during the roundtables, might not Ardern’s and Robertson’s enthusiasm have warranted an “afterword” chapter?

So, another book? Quick?

*Jonathan Boston and Derek Gill, eds, Social Investment: A New Zealand Policy Experiment (Institute for Governance and Policy Studies and Bridget Williams Books, 2017).*

*Colin James is a senior associate at the Institute for Governance and Policy Studies.*



# Free & frank & FEARLESS?

**What does free and frank actually look like in practice?  
Columnist and playwright DAVE ARMSTRONG takes a fearless look.**

Given that I am a freelance writer, a gun for hire, I find myself contracted out to all sorts of organisations. I was recently sitting in a meeting of a government institution when a colleague loudly wondered if a certain document existed. Having helped write that document over 15 years ago, again as a temporary contractor, I was able to help my grateful colleague and save some time and money.

I realised that my length of service as an occasional contractor was longer than any of the permanent staff sitting in that room. 'The permanent staff may come and go,' I quipped, 'but the temporary contractors are here forever.'

I was reminded of my comment when the incoming government was sworn in last year. A whole new group of ministers, many of them youngish and inexperienced, would be dealing with an experienced public service staff. As a recent *Dominion-Post* editorial stated 'ministers have just three years to prove to voters that they've done something useful, while public servants have a lifetime to prevent impatient politicians from doing something foolish.'

Would the new government have a public service that fulfilled the four pillars of public service that underpins its constitutional role and get on with business as usual? Would these new chums in government receive the same level of free and frank advice as their predecessors?

Though there have been some interesting events in New Zealand over the past eight months, the wheels don't seem to have fallen off either the new government or the public service. One of the reasons is that our public service is politically neutral and offers advice freely, frankly and fearlessly. Or so we are told. What we do know is that New Zealand was recently rated top of Transparency International's list of the least corrupt countries in the world.

## Furiously swearing

So what does free and frank advice actually look like? One of my favourite television satires, *The Thick of It*, written by satirist Armando Iannucci, has scenes where a youngish Scotsman furiously swears at and abuses a polite older Englishman, who passively sits there and takes it all. You then discover that the older man is a high-ranking cabinet minister and the young Scotsman is his political advisor.

We would like to think that although our public servants aspire to be free, frank and fearless, we don't reach the frightfully frank level of *The Thick of It*. As State Services Commissioner Peter Hughes says, 'Free and frank advice, in my book, is not about the bold and fearless public servant facing down the Minister' ... it is 'better results and better services for our country.'

However, Chris Eichbaum, Reader in Government at Victoria University of Wellington, believes the amount of truly free and frank advice ministers receive is actually decreasing, if not disappearing. Last year he was involved in a survey carried out

through the Institute of Public Administration New Zealand. More than 80 per cent of the responses came from people employed in the public sector. Less than a quarter disagreed with the statement that 'public servants in 2017 are less likely to provide a minister with comprehensive and free and frank advice' - and over half agreed.

## Oh dear

What caused these public servants to shy away from giving their ministers this much-needed advice? Perhaps another of Iannucci's genius creations, *Veep*, a US TV show which features a female president and her highly dysfunctional group of courtiers, also known as advisors, may give us a clue.

Unlike the polite cabinet minister of *The Thick of It*, Madame President Selina Meyer openly derides and abuses her advisors. It's very funny until you find out it's based on what often actually happens in the US political system. And this was written before Trump! Fearing yet another blistering personal attack, Madame President's advisors dread telling her the actual truth and do their best to lie, obfuscate, and coat any bitter pill with lots of sugar.

Could the same thing possibly happen here? I heard of a consultant who was employed to investigate a potential government programme. After some research he made it clear that it was a waste of money and should proceed no further. Unfortunately, the officials involved feared the minister's reaction to a pet project so didn't pass on the advice. The contractor was later invited to be involved in the implementation of the expensive programme that he so strongly warned against.

As one respondent to Chris Eichbaum's survey in 2017 said, 'In my experience there is a degree of "finessing" of information that is going to the minister ... Things seem to be reported to the minister in a way that might not be completely free and frank, but rather, make us "look good".' Do we risk having a public service that has the law laid down by the relevant minister but then scurries away looking for suitable policy-based evidence?

Therein lies the problem for both ministers and public servants. No one wants to be a party pooper. Yet if the public service relies on expert evidence and finds that a policy that the minister



thinks is wonderful is actually deeply flawed, how strongly are they going to argue against it? We know that, on paper, their career prospects won't be harmed, but what public servant ever got promoted because of their reputation for constantly irritating a minister? Only one in an Iannucci satire, I suspect.

It works the other way, too. Some people don't like the official advice that gets given by the public service, even if it is free and frank, evidence based, and well intentioned. If a minister does something simply because officials and experts recommend it, that's not necessarily going to go down well with that minister's constituency.

### Driving officials crazy

Former Prime Minister Rob Muldoon, one of this country's great anti-intellectuals, made an art form of studiously ignoring Treasury advice. Though it drove learned officials crazy, it didn't hurt Muldoon's popularity until the country almost went broke, thanks to his refusal to listen to advice.

When Roger Douglas became finance minister in 1984, he happily took the advice of Treasury and swiftly implemented a number of radical reforms. He was subsequently accused of being 'hijacked' by Treasury by some commentators who have pointed to policy differences in the pre-84 and post-84 Roger Douglas.

I suspect Douglas needed little persuading to implement the policies that Treasury recommended as he wholeheartedly agreed with them. But would it have been better if this minister, who perfected the art of the 'alternative budget', had sought a wider range of free and frank advice rather than just from the small group advising him?

So should a minister always take the advice of the public service? Of course not. Shane Jones, the freely frank, fearless New Zealand First Regional Development Minister, has called the public service a 'treacle-ridden' system that slows down the delivery of government policy. In a line that could have been taken out of *The Thick of It*, Jones called for government-appointed 'shit-kickers' to take over top public service jobs in order to get things done.

On occasions, Jones has freely, frankly and very publicly rejected advice proffered by public servants. A feasibility study for a West Coast waste-to-energy plant was initially funded by his government despite officials suggesting it had serious flaws. Although funding ended up being withdrawn because of concerns about a businessman involved in the company, at least the public

knew both what public officials thought and what the minister thought, even if Jones believed the expert advice was free and frank.

Obediently taking the expert advice of officials can lead to problems for politicians if they are seen as too 'easy'. When the Prime Minister's Science Advisor, Sir Peter Gluckman, recently released a report noting the lack of scientific evidence supporting government policy on meth decontamination, and suggesting there was moral panic over the issue, there was a public outcry.

Social Housing minister at the time, Paula Bennett, alleged that she strongly questioned the expert advice she received from both the Ministry of Health and Housing New Zealand, but was in no position to overrule it, as she was not an expert on the matter herself.

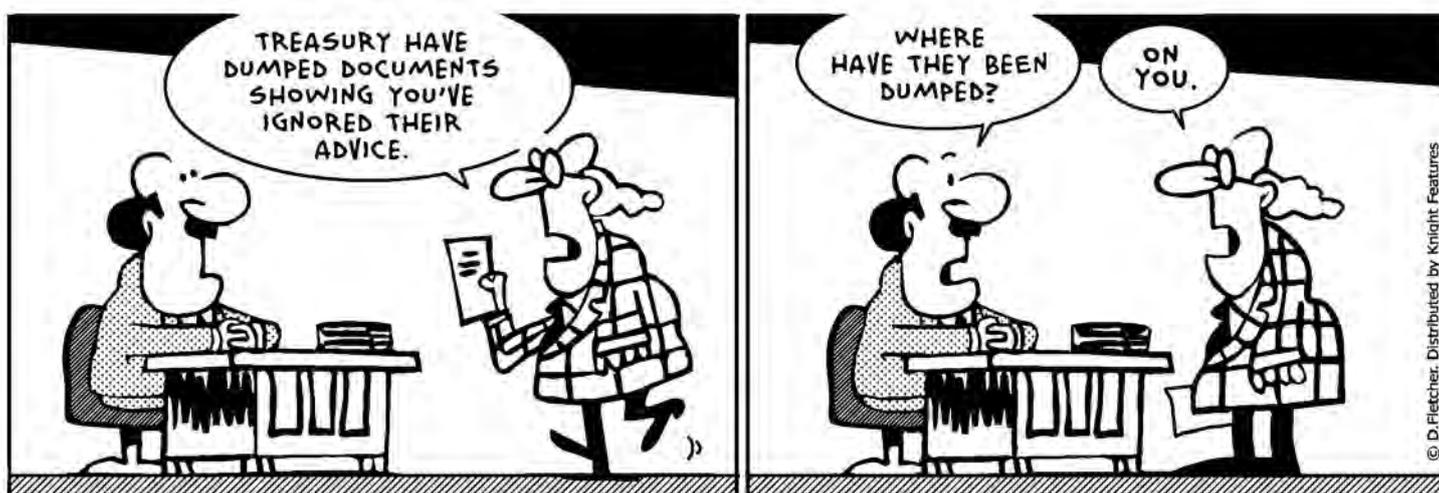
So are our officials and minister damned if they do and damned if they don't give and receive free and frank advice? Possibly. We may have some public servants who lack the courage to 'tell it like it is' to some ministers and others who are a little too free and frank. We may have some ministers who too happily ignore official advice and others who take it on without interrogating it strongly enough. But it's not as if we're living in Soviet Russia.

Again, satirist Armando Iannucci brilliantly shows us how difficult life was for public servants under Joseph Stalin in his film *Death of Stalin*. Stalin's henchmen make Shane Jones' 'shit-kickers' look like pussy cats, and being an independent expert offering free and frank advice was a one-way ticket to the gulag in Stalin's time.

### Stalin's pipe

My favourite story about Stalin concerns a joke that he himself told others, concerning his favourite pipe. After a delegation from an outlying part of the Soviet Union had visited, the leader found that his favourite pipe was missing. He asked his officials to look into it. A couple of hours later he found the pipe - he had misplaced it in his office. When he told his officials they reported that it was too late. Under interrogation, the members of the visiting delegation had all confessed to stealing Stalin's pipe and had been summarily executed.

So let's hope our public servants continue to fearlessly offer the very best free and frank advice, and that our ministers openly listen. And if the advice is not taken, that's okay. After all, it's not as if anyone's being accused of stealing a minister's favourite pipe.



Dominion post (Newspaper). 27 December 2012. Ref: DCDL-0023714. Alexander Turnbull Library, Wellington, New Zealand.

## Recent Research

**Here we present some items of recent academic research that may be of interest to readers. The Analysis and Policy Observatory has a website with a useful collection of research on New Zealand Governance and Policy. See: [apo.org.au/collections/new-zealand](http://apo.org.au/collections/new-zealand)**

### Walking in both worlds - ANZSOG, March 2018

Last December, The Indigenous Public Servant Forum brought together – for the first time – 65 senior Indigenous public servants from Australia and New Zealand. The purpose of the forum was to establish cross-jurisdictional networks and share experiences of both challenges and success.

This report summarises the discussion at the forum, including the successes, opportunities and potential of Indigenous public sector leadership; and some of the individual challenges delegates shared.

Michelle Hippolite, Chief Executive of Te Puni Kōkiri, is quoted in the report: *“Indigenous people share common struggles, including land, language, culture and [the struggle for] recognition. Yet we work inside the government. In order to strengthen the confidence of Māori in government, we need to understand the systems we work in and then work effectively to produce change.”*

The report identifies a major challenge will be in creating a public sector that facilitates and leverages the unique skills and responsibilities of its Indigenous public servants by recognising their potential to “walk in both worlds”. This may require significant change to the norms and practices of the public sector.

### ANZSOG Senior Indigenous Public Servant Forum report

<http://apo.org.au/node/138901>

### Are one-stop-shops the answer?

One-stop-shops (OSSs) have been around since the 1970s but they are currently a popular way of addressing perceived problems of fragmentation of public service delivery. This review looks at ten years of research into government one-stop-shops (including online) and asks whether they can be effective in the public sector.

Politicians can over-hype the OSS ‘win-win’ solution of delivering more at a lower cost. However, service integration can come at the expense of ‘process specialisation’, leading to reduced effectiveness and efficiency. The author argues that those implementing OSSs should do so gradually, with sufficient resources; and balance the one-stop-shop goal with a traditional ‘siloe’ approach to service production and delivery.

### ‘Putting one-stop-shops into practice: A systematic review of the drivers of government service integration’

Cosmo Howard, School of Government and International Relations, Griffith University, Australia

[*Evidence Base*, Vol 2017, Issue 2, ANZSOG]

[www.exeley.com/evidence\\_base/doi/10.21307/eb-2017-002](http://www.exeley.com/evidence_base/doi/10.21307/eb-2017-002)

### Get ready for the robots

New Zealand needs a national strategy on Artificial Intelligence (AI) to deal with the rapid change it will bring, according to a report by the AI Forum NZ released in May.

It found AI has the potential to increase New Zealand’s GDP by \$54bn by 2035 across 18 industries, and more than 140 organisations are already working with, or investing in, AI in New Zealand. However, the report found many New Zealand organisations were not taking AI or the competitive pressure that it will create seriously.

“Just 36 percent [of survey respondents] say their company’s board is discussing AI.”

New Zealand is currently ranked ninth among 35 OECD countries for government AI readiness, it said.

AI may be used to support social, economic and environmental outcomes but its introduction needs to be balanced with significant ethical considerations for our legal and political systems.

The report identifies a gap in national strategy and co-ordination in terms of creating opportunities and adapting to challenges AI will bring. It recommended a national strategy be developed urgently so New Zealand can remain internationally competitive.

### ‘Artificial Intelligence: Shaping a Future New Zealand’

[AI Forum NZ, [aiforum.org.nz](http://aiforum.org.nz)]

### Free and frank advice

To what extent can and should public servants expect their advice to ministers to remain confidential, ask Andrew Kibblewhite and Peter Boshier in a co-authored article in the May issue of *Policy Quarterly*. They discuss the challenge of balancing the provision of free and frank advice with the right of public access to official information.

From the different perspectives of their respective offices – Department of Prime Minister and Cabinet and Office of the Ombudsman – they discuss these issues and some steps they have taken to provide certainty. “Between us, we have been actively using any means in our power to foster free and frank advice, while also encouraging open government,” they state. This includes recent changes to the Cabinet Manual and a work programme to improve government agency practice around OIAs. Peter Boshier describes the phases of policy advice to ministers as a useful guide as to when to apply the ‘good government’ withholding provisions of the OIA. For example, the ‘blue-skies thinking’ early in the policy process should not be publicly released except in general terms.

### ‘Free and Frank Advice and the Official Information Act: balancing competing principles of good government’

Andrew Kibblewhite, Chief Executive of the Department of Prime Minister and Cabinet and Peter Boshier, Chief Ombudsman.

[*Policy Quarterly* Vol 14, Issue 2, May 2018. <https://www.victoria.ac.nz/igps/policy-quarterly>]



# PRIVACY – GETTING IT RIGHT

**Privacy protection in the Internet age has become convoluted and contentious. As we read of Facebook's Cambridge Analytica scandal, and the European Union introduces its tough new General Data Protection Regulation (GDPR), New Zealand is working on its own privacy law reform. What does it mean for the public sector? KATHY OMBLER found out.**

In March, after years of delay, a new Privacy Bill was introduced to Parliament. Privacy Commissioner John Edwards welcomes the progress, along with this government's pledge to prioritise privacy law reform. "The current Privacy Act is 25 years old. Given the growth of the digital economy and increased demands on personal information across the whole economy, in particular across government, there is a need to refresh our legislation."



But it needs more work, he says. "The Bill as it currently stands is based on the recommendations of a Law Commission review in 2011 and subsequent recommendations by the previous Minister (of Justice) in 2014. "There have been a lot of changes in the environment meantime and I think we need to take this opportunity to get it a little more future-proofed."

**John Edwards** New Zealand has also fallen behind other jurisdictions, he says. "Better privacy and data protection regulation is a growing trend in OECD countries. In Europe, the EU General Data Protection Regulation (GDPR), which took effect in May, sets a new international benchmark for regulation."

A key reform in our Bill, as it currently stands, is the introduction of mandatory reporting of harmful privacy breaches, an original Law Commission recommendation. Under current law, the Office of the Privacy Commissioner receives only voluntary breach notifications, or notifications in response to a complaint.

Edwards says mandatory data breach reporting is needed to bring New Zealand into line with international best practice, and is a necessary addition for consumer protection. "When an organisation to which we have entrusted our personal information is unable to keep it safe, and they lose control of it, we need to be able to protect ourselves."

Susan Bennett is director of Australia-based Sibenco Legal & Advisory. At the 2018 Privacy Forum, in Wellington in May, Bennett

presented an international perspective on data breach legislation and its variances in different jurisdictions, along with a summary of recent data breaches around the world. Examples include an American credit bureau which breached the privacy of 144 million customer records (which cost \$30 million of forensic and legal costs) because it failed to patch a known application, and a British communications company which failed to implement basic security measures leading to the theft - by teenage hackers - of personal data of 157,000 customers.

Bennett told the forum that Australia introduced mandatory data breach reporting in February and within one month, 63 data breaches had been reported (this compared with 114 for the whole of 2017).

"Of the 63 breaches, 51 percent were due to human error and 44 percent were malicious cyber-attack. Passwords and patches were not updated, or there were known problems with technical systems. The lessons learned are that most data breaches are preventable," said Bennett.

Spark NZ's Head of Digital Trust, Sarah Auva'a, told the forum how mandatory data breach reporting is a positive move.

"It helps us keep pace with global privacy standards. It's also the right thing to do. It provides opportunity to engage with customers about online safety practices and, overall, it provides transparency and trust."

Everybody's data breach is unique, she added. "What agencies need to do can differ enormously, so the shift to mandatory reporting can help us. Agencies should have an agreed plan, strategy and principles for managing data breaches before they happen. Every breach needs to be assessed on its facts and raises unique issues."

Mandatory data breach notification would unearth issues without otherwise waiting for a complaint, and give individuals the ability to protect themselves from harm, echoed Daimhin Warner, of Simply Privacy consultancy.

"One of the critical things is for agencies to train staff to recognise a privacy breach. When to notify is really difficult," he said. "You want to be there before the media - a data breach is like a shark attack to the media. You also need to take the time to have enough knowledge of the breach to properly inform the people who you are

## Protecting privacy – what to do?

With the Privacy Bill yet a work in progress, what can the public sector be doing now, to ensure it is following best practice in privacy matters? Here are six practical suggestions:

- 🔒 Have your staff engage in an online privacy course. The Office of the Privacy Commissioner offers free, e-learning training modules. [www.privacy.org.nz/further-resources/online-privacy-training-free](http://www.privacy.org.nz/further-resources/online-privacy-training-free)
- 🔒 Be familiar with the Privacy Act

information privacy principles. These 12 principles are the essence of the Privacy Act. [www.privacy.org.nz/the-privacy-act-and-codes/privacy-principles](http://www.privacy.org.nz/the-privacy-act-and-codes/privacy-principles)

- 🔒 Incorporate Privacy by Design principles when creating or changing information management systems. Privacy by Design calls for privacy to be taken into account throughout the whole engineering process. [en.wikipedia.org/wiki/Privacy\\_by\\_design](http://en.wikipedia.org/wiki/Privacy_by_design)
- 🔒 Undertake Privacy Impact Assessments (PIAs) which can help agencies identify and assess the privacy risks arising from their collection, use and handling of personal information,

and when making changes to any existing process. [www.privacy.org.nz/further-resources/knowledge-base/view/197?t=95132\\_125339](http://www.privacy.org.nz/further-resources/knowledge-base/view/197?t=95132_125339)

- 🔒 Prevent data breaches. Keep passwords and patches up to date, maintain technical systems, and keep open and clear communication, both internal and external.
- 🔒 Have a Data Breach Response Plan. Ensure that your organisation has a plan should a data breach occur. Train staff responsible for handling personal information to recognise a privacy breach. Create a culture where people feel comfortable reporting problems.

notifying. It's about balance."

Assessing 'harm' and therefore recognising when a breach has occurred could be challenging for agencies, he added.

Edwards agrees. "The Office of the Privacy Commissioner has had 25 years' experience in identifying harm, so we are accustomed to the idea. However it is quite different showing harm that a person has actually suffered to predicting harm that might occur – and this is something we expect the Select Committee to focus on when it considers the Privacy Bill.

"The threshold should be; is it clear enough for agencies to understand whether an obligation to report harm has been met?"

**Agencies should have an agreed plan, strategy and principles for managing data breaches before they happen.**

The best thing to do is avoid breaches altogether, he adds, acknowledging there is already a trend within the public sector of improving maturity in privacy practice.

**Lessons learned**

Edwards discussed incidents where government agencies, rushing the development of new information-sharing products, have taken insufficient care to protect personal or agency information, leading to privacy breaches and closure of the new online portals. Lessons have been learned, he said.

"Having good practice in completing privacy impact assessments, and really testing the risks associated with new innovations, will continue what I think has been a very encouraging trend in the public sector, promoted by the Government Chief Privacy Officer, of learning from our experience and pausing and assessing the risks associated with new applications."

Two further reforms in the current Bill will strengthen and increase the role of the Privacy Commissioner.

The first, compliance notices, will empower the Privacy Commissioner to serve a notice on a non-compliant agency.

"At the moment, I have no ability to enforce compliance," says Edwards. "I can't force anybody to do anything except provide me with information from time to time. So the compliance notice gives me the ability to say: you are not complying with the Privacy Act, now go ahead and comply with the Privacy Act - and they would be obliged to do so."

The second proposed reform, access determinations, will empower the Privacy Commissioner to issue an access determination when a person has been refused access to their personal information.

Edwards says right of access to information has been core to the public sector since 1982. "If an organisation refuses a request for personal information, that person can ask the Privacy Commissioner to investigate. However the organisation currently doesn't have to comply with any recommendation from me, all I can do is bring proceedings to the Human Rights Review Tribunal and the case can take up to three years to be dealt with.

"The access determination would allow me to demand that the organisation release information, and that will be binding on them."

Despite these reforms, Edwards is seeking still more teeth, in what he describes as a 'once-in-a-generation' opportunity to modernise privacy legislation.

"I want the Privacy Commissioner to have the power for genuine sanction. I would like to be able to go to a court and say this organisation has repeatedly ignored its obligations under the Privacy Act and as a result there should be consequences and civil proceedings."

**Basic things**

Public submissions on the Privacy Bill closed on May 24 and the Bill will now go to the Select Committee. Meanwhile, Edwards offers some essential advice for the public sector, when it comes to managing privacy.

"The day to day things are important; being clear about respecting individuals' preferences, being careful about how information is moved around. Basic things like design are important. If you're being asked to use data in new ways, think about the implications. Ask yourself, are you designing a proportional response that public policies demand?"

"Everyone needs to make sure that appropriate, sensible and well managed sharing is enabled. However we must ensure the information is only used for legitimate reasons, and we should not just share for sharing's sake," he adds.

Privacy legislation is actually a positive thing, Edwards says, recalling discussions from an international Data Sharing seminar, held in Melbourne last December.

"Speakers from other jurisdictions agreed that privacy or data protection rules are often wrongly identified as obstacles to information sharing. They reiterated that the keys to success are social license, and clarity and transparency about the objectives and methodologies of the information sharing."

Public sector agencies should see the Office of the Privacy Commissioner as enabling, he adds. "It helps them to achieve their objective. It helps them to maintain the trust and confidence of people across New Zealand. If they are doing things that are counter-intuitive or getting in the way of providing assistance to New Zealanders, then they probably need to check their assumptions and maybe talk to our office."



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## A PERSONAL COMMITMENT



**Georgina Geotina**

*Issues such as free and frank and political neutrality can sometimes be tricky if you're young and relatively inexperienced. Here, Georgina Geotina of New Professionals looks at what younger public servants think about these matters.*

My first stint as a public servant was at the State Services Commission where I started in 2013. Within my induction pack was the "Code of Conduct for the State Services"; as a migrant, recent university graduate and new professional this piece of paper was new to me. However, I have seen with my own eyes and experienced public service in a different country where public servants seemingly do not live and work within such a code of conduct. As such, I value the importance of standards of integrity and conduct in my work as a public servant. Specifically, I appreciate the importance of a politically neutral State sector that also provides free and frank advice to its government ministers which informs policy decisions. My task in writing this piece was to seek out other new professionals' perspectives on political neutrality and free and frank advice vis-à-vis questions such as, what do political neutrality and providing free and frank advice mean for you? And, what practical advice can you give someone who may come across a situation where political neutrality is at risk, but provision of free and frank advice is necessary?

My first port-of-call was the New Professionals Leadership Team, comprised of individuals with a passion for the public service. I also tapped into several networks for answers to these questions. The following is an amalgamation of the responses I received from various perspectives: private and public sector, policy and operational roles, really new and more experienced.

***What do political neutrality and providing free and frank advice mean for you?***

Political neutrality and free and frank advice have denotations and guidance (circa 2010 and 2017 respectively) which are available publicly on the State Services Commission website. I found that for new professionals, this means working to the best of one's ability, regardless of who is leading the government. There is a personal commitment to be professional, competent and capable implied in the responses I received.

Being politically neutral recognises that the needs of the New Zealand public outweigh personal leanings; being able to provide free and frank advice recognises that the public service requires a committed bureaucracy to function effectively. Together, these two concepts provide stability to the public sector buffering it from the whiplash of changing governments or replacement of ministers.

***How important is political neutrality and providing free and frank advice in your work?***

There were varied responses to this question. There appears to be a trend where those closer to policy work have described these two as more important to their work, compared to those working in other areas of the agency conducting business-facing work. Those from the private sector see themselves as supporting public servants to fulfil this role, via provision of independent opinion backed by evidence.

***How important do you think these concepts are in the public service?***

Political neutrality and free and frank advice are the cornerstone of Westminster-style government. None of the new professionals said that these are not important. Words to describe the importance of these two included 'vital,' 'very important,' 'ensures that decision-makers are offered the best possible advice.' Others described these two concepts as a reason why our public sector is highly-regarded globally.

***At the end of the day, we need to ask ourselves: is this the best outcome for New Zealanders?***

Political events and milestones like a change in government create waves of potential uncertainty. However, when this is backstopped by a public service offering quality and non-biased advice, it reduces the undulations, provides stability, and helps business-as-usual to continue as quickly as possible.

***What practical advice can you give someone who may come across a situation where political neutrality is at risk, but provision of free and frank advice is necessary?***

This was not an easy question to answer, perhaps because new professionals are more removed from day-to-day engagement with ministers than their more experienced managers/leaders. The advice that new professionals usually provide via their work tends to undergo layers and iterations before the final policy advice is developed. However, it is such situations where new professionals need to be cognisant of the environment; one will get a good sense if the organisation is encouraging of free and frank advice or simply diluting what was free and frank advice initially. There is a risk that some new professionals may find that the work they contribute to conflicts with personal ethics and values. A case-by-case and

pragmatic approach is proposed, ensuring that one discusses with a peer-in-confidence, their team and/or manager/leader. However, at the end of the day, we need to ask ourselves: is this the best outcome for New Zealanders?

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