

# Legislating for a Civil Service

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## About the author

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As one of a series of publications on accountability in central government, this paper benefitted greatly from the experience and insight of the many current and former civil servants, ministers, academics and others who we spoke to in 2012 and 2013. Many of those we spoke to must remain anonymous. Their contributions have been invaluable.

Any errors or omissions remain the responsibility of the author alone.

## Summary

Since the passage of the Constitutional Reform and Governance (CRAG) Act 2010, the UK Civil Service has been based in primary legislation. The enactment of this legislation marked a notable constitutional moment. Since its earliest days the status of the Civil Service had rested on prerogative powers, meaning there was little that could not be changed at will by the government of the day. But has the passage of the CRAG Act changed anything in practice?

Supporters of the Act wanted to entrench current civil service principles, and so the light-touch legislation did not set out much about the structure or practice of Whitehall. Yet this approach to civil service legislation is not the only option. Three other Westminster-style systems – New Zealand, Australia, and Canada – have codified more of how their civil services work. This paper considers the similarities and differences between the four systems across a number of aspects, and considers what consequences might flow from further legislation in the UK.

All four countries have legislation which requires codification of civil service values and rules of conduct. In Australia, even the specific text of the Code of Conduct is set out in primary legislation. The code of conducts and values espoused in all four countries emphasise ethical standards.

The relationship between ministers and the Civil Service is less clearly codified. By convention in the UK there is no constitutional separation between ministers and their officials. The roles taken on by permanent secretaries can therefore change in response to different ministerial personalities, priorities, styles of working and interest.

Elsewhere, legislation in New Zealand and Australia sets out the roles and responsibilities of department heads more clearly, in the context of a more codified relationship between ministers and the Civil Service. New Zealand demarcates management of the department as the permanent head's responsibility, while Australian legislation emphasises that department heads are responsible 'under the Agency Minister'.

Canada codifies the one aspect of the role which is also codified in the UK – that of the permanent secretary as accounting officer. This is the personal accountability to Parliament for the use of public money within a department. Despite some differences, both countries have legislation which establishes the accounting officer role as a core responsibility for departmental heads.

Common to all four systems is a commission which regulates appointments to the Civil Service and acts as guardian of civil service values, and is independent (to a degree) from government. The Civil Service Commission in the UK is established in the Constitutional Reform and Governance Act 2010, and perhaps its most powerful role is overseeing recruitment competitions for senior officials. Commissioners in all four countries have a role in upholding and enforcing civil service values, though New Zealand and Australia give their commissioners a further responsibility for the capability of the Public Service.

The New Zealand State Services Commissioner is also the head of the Public Service, a role which is separate to that of commissioner in the three other systems. The least codified head-of-the-civil-service position is in the UK. Not only is the role not entrenched in

legislation, but neither are there strong conventions about the nature of the role. This is illustrated by the ease with which the current Government split the role from that of Cabinet Secretary in 2011 at the discretion of the Prime Minister.

The significance of even the limited provisions of the CRAG Act was recently illustrated during the debate over permanent secretary appointments. The Government had announced an intention to allow ministers to choose their permanent secretary from a shortlist. However, the Civil Service Commission made plain that it would not permit such a system to come into effect, relying on its statutory power to define the principle of 'merit' in such a way as to exclude ministerial choice. Merit is a legal requirement of appointments in all four systems. However, it is defined in Australia and Canada in a way which enables greater ministerial choice than in the UK. Australia and New Zealand also set out in legislation much more detail about the process of appointing department heads.

Finally, political appointees (special advisers, in British terms) are often exceptions to the rules which otherwise bind an impartial civil service. In all four systems, political appointees are governed by specific legislation and codes of conduct, and are exempted from the usual requirement on public servants to be impartial. Advisers in Australia are appointed as parliamentary staff rather than public servants. The systems vary in how many political appointees there are. Australia, for example, has around 400 political appointees while the UK has around 80.

UK legislation notably goes beyond the others in terms of regulation of special advisers. This suggests that legislation can have significant declaratory purposes. Special advisers had become controversial by 2010, so the legislation was used to signal norms about their expected behaviour.

So what consequences arise from legislating for the Civil Service?

Law can establish norms of expected behaviour. It can embed change, as it is being used to do in New Zealand. Conversely, it can also be used to entrench with parliamentary backing the structures and values of the system, as the proponents of UK legislation sought to do. Legislation can therefore reduce the government's flexibility, and there is little appetite among civil servants and politicians in the UK for legislation which over-formalises the relationship between them. You cannot legislate away the unavoidable ambiguity of the relationship between permanent secretary and secretary of state.

Setting out key relationships in legislation can help embed a shared view of where power and accountability reside in the system. Currently these are matters of some contention, so unless and until there is greater consensus on how and where powers and responsibilities should lie, further civil service legislation seems unlikely and unadvisable. As the Government approaches the 2015 general election, relations between ministers and permanent secretaries could deteriorate further – and instability in the system consequently increase. This is especially true if officials request ministerial directions to pursue policies they think are not feasible or good value, which becomes more common in the years before a possible change of government. When so many of the civil service organisations and accountability arrangements are in flux, a minimal approach to legislation is probably correct. But in due course, it might be necessary to consider which elements of the Whitehall system could be more firmly entrenched.

## Introduction

On what legal foundations is the UK Civil Service based? Until recently, it was rooted formally in Royal Prerogative powers, and buttressed by long-standing constitutional principles. Ministers alone, on behalf of the Crown, could alter the Orders in Council on which the Civil Service stood. The Civil Service was held to be a creature of the Crown with no independent constitutional personality – it served the government of the day, whoever that might be.

After a slow moving debate over the past two decades, the Civil Service was finally established in primary legislation in the Constitutional Reform and Governance Act 2010. This gave the independent Civil Service Commission the security of a statutory basis, set rules for appointment, codes of conduct, and other measures – but fundamentally sought simply to place into statute what already existed as Orders in Council. It was therefore silent on the respective responsibilities, and relations between, Secretaries of State and Permanent Secretaries. Legislation was used to entrench the principles and values which support the status quo, giving Parliament the final say over any future changes to them.

This paper describes the development of legislation for the Civil Service in the UK. We then compare the UK with three other Westminster-style systems: Australia, New Zealand, and Canada. We look at how they have codified and legislated for their civil service systems, and how the different experiences illustrate the consequences of placing more of the system of government on a collectively agreed basis.

Does this mean the UK should place more of the Civil Service in legislation? Not necessarily. But it does suggest that the UK should explain more clearly and openly the relationships at the heart of government. Clarity is essential to accountability, by enabling a full and shared understanding of who is responsible for what, and on the basis of which powers.

This research paper is one of the Institute for Government's series of publications which consider accountability arrangements in central government. Alongside it are papers on the accounting officer system and the accountability of civil servants to Parliament. The Institute for Government has previously published research on reforming civil service accountability in Australia and New Zealand; on rethinking ministerial private offices; and on the right level of ministerial involvement in appointing permanent secretaries. The Institute for Government's final report on accountability in central government will be published later in 2013.

## Development in the UK

In 1854 the famous report into the organisation of the Civil Service by Stafford Northcote and CE Trevelyan was published. Their statement about the role and purpose of a permanent civil service has widely been regarded as a cornerstone of British government ever since:

'It may safely be asserted that, as matters now stand, the government of the country could not be carried on without the aid of an efficient body of permanent officers, occupying a position duly subordinate to that of the ministers who are directly responsible to the Crown and to Parliament, yet possessing sufficient independence, character, ability, and experience to be

able to advise, assist, and, to some extent, influence, those who are from time to time set over them.<sup>1</sup>

The report then went on to highlight problems with the recruitment and promotion of civil servants at the time, with recommendations to eliminate personal patronage and introduce competitive examination of merit instead. The report's legacy was a system of open recruitment based on selecting young men by examination overseen by the newly appointed civil service commissioners.

The final paragraph of the report suggested that changes to a system 'supported by long usage and powerful interests' needed to be given 'the force of law'. The authors said:

'It remains for us to express our conviction that if any change of the importance of those which we have recommended is to be carried into effect, it can only be successfully done through the medium of an Act of Parliament.'<sup>2</sup>

This recommendation was not implemented. The changes were made and sustained through royal prerogative powers, set out in Orders in Council. These established the rules by which the Civil Service operated, and this provided the constitutional and legal basis for the permanent civil service until very recently.<sup>3</sup>

In recent decades, the opposition to legislation appeared to be based more on inertia than opposition to the principle of it. The 1995 government report *Taking Forward Continuity and Change* said, somewhat equivocally, that the then Government 'retains an open mind' about the case for legislation.<sup>4</sup> Yet unlike the approach taken by Northcote and Trevelyan – that legislation could be used as a vehicle for entrenching changes – this was a deeply conservative approach. Legislation would be desirable as 'an effective means of expressing and entrenching general agreement on the non-political nature of the Civil Service'. Far from using legislation to drive change, the government report argued that 'opening up the possibility of change in the constitutional position of the Civil Service' by proposing legislation which could be amended in Parliament could mean 'risking its politicisation'.

Nevertheless, the case in principle for civil service legislation – provided it did not risk actual change – was accepted. Although there was no mention of it in Labour's 1997 manifesto, the party did commit to an Act, together with the Liberal Democrats, in the Report of the Joint Consultative Committee on Constitutional Reform published shortly before the election.<sup>5</sup> The Committee on Standards in Public Life (CSPL) recommended a Civil Service Act in 2000, highlighting that the government had committed to one and that there was a broad political consensus in favour, but that no time was being made available for it.<sup>6</sup> The minister responsible for the policy at the time of the CSPL's report, Jack Cunningham, remarked that while the Act remained a 'commitment', there was no legislative time available for it.

<sup>1</sup> Northcote, S.H. & Trevelyan, C.E., *Report on the Organisation of the Permanent Civil Service*, The Stationery Office, 1854, p.3, retrieved 4 September 2013 from <http://www.civilservant.org.uk/northcotetrevelyan.pdf>

<sup>2</sup> *ibid.* p.23

<sup>3</sup> Civil Service Commissioners, *Civil Service Order in Council 1995: An informal consolidation including amendments up to and including Civil Service (Amendment) (No 2) Order in Council 2008*, retrieved 4 September 2013 from [http://www.civilservice.gov.uk/wp-content/uploads/2011/09/Consolidated-Order-in-Council-as-at-22-Jan\\_tcm6-6864.doc](http://www.civilservice.gov.uk/wp-content/uploads/2011/09/Consolidated-Order-in-Council-as-at-22-Jan_tcm6-6864.doc)

<sup>4</sup> Citizen's Charter, *The Civil Service: Taking forward continuity and change*, The Stationery Office, January 1995, para2.15-2.17, retrieved 12 September 2013 from <http://www.official-documents.gov.uk/document/cm27/2748/2748.pdf>

<sup>5</sup> Labour Party, *Report of the Joint Consultative Committee on Constitutional Reform*, 1997

<sup>6</sup> Committee on Standards in Public Life, *Reinforcing Standards (Sixth Report)*, The Stationery Office, January 2000, ch.5, retrieved 4 September 2013 from <http://www.archive.official-documents.co.uk/document/cm45/4557/4557.htm>

Understandably perhaps, the Government was not prepared to make room in the legislative timetable for an Act which, its supporters argued, would in fact change nothing.

The debate was given fresh impetus when the Public Administration Select Committee (PASC) published a draft civil service bill in December 2003.<sup>7</sup> The Committee felt that the Northcote-Trevelyan view – that legislation was needed to secure the form of the Civil Service – remained valid, and that the Government was still not giving the subject the time it deserved, despite the calls of CSPL and others to do so.

The PASC bill draft would have placed the Civil Service Commission – the independent institution which safeguards the impartial appointments process for civil servants – on a statutory basis, and given the Civil Service Code statutory force. The Committee did not think the bill would change the system in any fundamental way or ‘shield civil servants from change’, but rather that it would ‘anchor some of the key operating principles of our system of government in Parliament’.<sup>8</sup> The two principles at the fore were: entrenching the existing position; and giving parliament greater power over the Civil Service. This has remained a theme throughout the recent discussion of civil service legislation – unlike the Northcote-Trevelyan view of using legislation to overcome inertia and vested interests supporting the status quo.

The Opposition threw its weight behind the PASC Bill. In an Opposition Day debate on the subject, Douglas Alexander, then Cabinet Office Minister, promised that the Government would publish its own draft bill. It eventually did so on 15 November 2004.<sup>9</sup> However the Government did not commit to bringing forward actual legislation, and in fact ignored PASC requests to even publish consultation responses to the draft bill until 2008.

Gordon Brown’s first oral statement to the House of Commons as Prime Minister<sup>10</sup> announced the publication of the *Governance of Britain* Green Paper, which contained wide ranging constitutional reform proposals – including placing the Civil Service on a statutory footing.<sup>11</sup> The Green Paper proposed to ‘enshrine the core principles and values of the Civil Service in law’ to ‘ensure that the Civil Service is not left vulnerable to change at the whim of the government of the day without proper parliamentary debate and scrutiny’.<sup>12</sup> The then Head of the Civil Service and Cabinet Secretary, Sir Gus (now Lord) O’Donnell was a strong advocate of the Bill, which he declared himself ‘in favour of absolutely’, although some of his predecessors had been more sceptical about legislation.<sup>13</sup> His support would reportedly be crucial to retaining clauses on the Civil Service in the final days of the Bill’s passage through Parliament.

<sup>7</sup> HC 128-I, *A Draft Civil Service Bill: Completing the reform*, First report of session 2003-04, retrieved 4 September 2013 from <http://www.parliament.the-stationery-office.co.uk/pa/cm200304/cmselect/cmpubadm/128/128.pdf>

<sup>8</sup> *ibid.* p.7

<sup>9</sup> Cabinet Office, *A Draft Civil Service Bill: A Consultation Document*, retrieved 4 September 2013 from <http://www.archive2.official-documents.co.uk/document/cm63/6373/6373.pdf>

<sup>10</sup> HC Deb 3 July 2007, *Hansard*, vol 462, col 815, <http://www.publications.parliament.uk/pa/cm200607/cmhansrd/cm070703/debtext/70703-0003.htm#07070334000001>

<sup>11</sup> *The Governance of Britain*, The Stationery Office, retrieved 4 September 2013 from <http://www.official-documents.gov.uk/document/cm71/7170/7170.pdf>

<sup>12</sup> *ibid.* p.22

<sup>13</sup> HC 499, *Constitutional Renewal: Draft Bill and White Paper*, Tenth report of session 2007-08, Oral Evidence, 29 April 2008, Q96, retrieved 4 September 2013 from <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmpubadm/499/8042902.htm>; Lord Turnbull, Cabinet Secretary between 2001 and 2005 was more sceptical, warning in his valedictory lecture that a civil service bill risked raising ‘unrealistic expectations’ unless it focused on values and principles, see White, M., ‘Top official warns against civil service legislation’, *The Guardian*, 27 July 2005, retrieved 4 September 2013 from <http://www.theguardian.com/politics/2005/jul/27/uk.Whitehall>

The Government published its draft legislation in March 2008, but rather than bringing forward a standalone civil service bill, the provisions on the Civil Service were incorporated into a larger omnibus constitutional reform bill.<sup>14</sup> This draft bill was then scrutinised by a joint committee. PASC also considered the Bill.<sup>15</sup> Both committees had a number of suggestions for the Government but broadly accepted the scope and thrust of the bill. Many of their suggestions sought greater clarity over what the bill was saying. For example, both PASC and the joint committee expressed concern that the bill seemed to give ministers the power to appoint and manage civil servants. Yet, as the Government pointed out, this drafting reflected the existing position under the Orders in Council which vested the power to manage the Civil Service in the Minister for the Civil Service (by convention always the Prime Minister), which was in turn delegated in practice to department heads. The general approach of this legislation – as with previous drafts – was to codify existing practice.

After this consultation process, little happened until the MP expenses scandal broke. The revised *Constitutional Reform and Governance Bill* was then published on 20 July 2009, containing not only clauses relating to the Civil Service but also sections about ratifying treaties, parliamentary standards, the tax status of MPs and peers, and freedom of information. This bill was passed in the ‘wash up’ phase of Parliament before the 2010 election, which meant it escaped the scrutiny normally given to primary legislation.

The *Constitutional Reform and Governance Act 2010* now provides the legal basis for the UK Civil Service. It contained clauses on the key issues which had concerned both the CSPL and PASC, though in a weaker form than they had wanted. The relevant provisions established the Civil Service Commission in statute; described the Minister for the Civil Service’s power to manage the Civil Service; required a civil service and separate diplomatic service code and special adviser code to be published and laid before Parliament; gave minimum requirements for the code of including the values of integrity, honesty, objectivity, and impartiality; established that appointments to the Civil Service ‘must be on merit on the basis of fair and open competition’ with some exceptions; and, defined and limited the role of special advisers.

## Comparisons with Canada, New Zealand and Australia

Even after the passage of the Constitutional Reform and Governance Act, little of the civil service system was defined in statute. The Act provided a statutory foundation, but little by way of superstructure. New Zealand, Australia, Canada and the UK share the same basic Westminster system of parliamentary government supported by a permanent non-partisan civil service. Below, we discuss how they have codified or entrenched various aspects of the structure and nature of their civil services.

We take a number of key categories about the structure and nature of each country’s Civil or Public Service, and consider how the four countries differ in how their systems have codified or entrenched them. These categories are: civil service values; ministerial role and powers vis-à-vis the civil service; role and powers of the head of the civil service; role of department

<sup>14</sup> Ministry of Justice, *The Governance of Britain – Draft Constitutional Renewal Bill*, March 2008, retrieved 4 September 2013 from [http://www.official-documents.gov.uk/document/cm73/7342/7342\\_ii.pdf](http://www.official-documents.gov.uk/document/cm73/7342/7342_ii.pdf)

<sup>15</sup> Joint Committee on the Draft Constitutional Renewal Bill, *Draft Constitutional Renewal Bill*, 31 July 2008, HL 166-I and HC 551-I 2007-08, also PASC, *Constitutional Renewal: Draft Bill and White Paper*, 4 June 2008, HC 499 2007-08, retrieved 16 September 2013 from <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmpubadm/499/499.pdf>



heads; role and powers of the civil service commission or equivalents; appointments process for senior officials; and, ministerial advisers.

It is not just the degree of codification, or history and context, which differs between comparator systems – the terminology varies also. What is known as the ‘Civil Service’ in the UK is known as the ‘Public Service’ in Canada and Australia. New Zealand refers to central government bureaucracy as the ‘Public Service’, but this is only one part of the wider ‘State Services’ to which the legislation tends often to refer. Heads of department in the UK are ‘permanent secretaries’, but are ‘chief executives’ in New Zealand, ‘secretaries’ in Australia, and – confusingly – ‘deputy ministers’ in Canada. This paper uses original terminology.

## Civil service values

The issue which has most animated recent debate in the UK about civil service legislation is a strong, but ill-defined, fear of ‘politicisation’. It is essentially an ethical concern about the character of the service, rather than a concern primarily about capability. Civil service values therefore take high priority in the UK legislation and in the comparator systems. All four countries set out in codified form the values of their civil service.

United Kingdom	New Zealand <sup>16</sup>	Australia <sup>17</sup>	Canada <sup>18</sup>
<ul style="list-style-type: none"> <li>• Integrity</li> <li>• Honesty</li> <li>• Objectivity</li> <li>• Impartiality</li> </ul>	<ul style="list-style-type: none"> <li>• Fair</li> <li>• Impartial</li> <li>• Responsible</li> <li>• Trustworthy</li> </ul>	<ul style="list-style-type: none"> <li>• Impartial</li> <li>• Committed to service</li> <li>• Accountable</li> <li>• Respectful</li> <li>• Ethical</li> </ul>	<ul style="list-style-type: none"> <li>• Respect for democracy</li> <li>• Respect for people</li> <li>• Integrity</li> <li>• Stewardship</li> <li>• Excellence</li> </ul>

In all four countries there are both values and a separate code of conduct, which is a more detailed explanation of the values.

In the UK, the Constitutional Reform and Governance Act requires the Minister for the Civil Service (who in the UK is always by convention the prime minister) to publish a ‘civil service code’ which must be laid before Parliament.<sup>19</sup> The Civil Service Code, which was first published in 1996, sets out the core values and standards expected of all civil servants. The Code now forms part of the terms and conditions of service for any civil servant it covers.<sup>20</sup> The legislation requires in the code as a minimum that civil servants act with ‘integrity and honesty’ as well as ‘objectivity and impartiality’. This latter requirement is emphasised as being required to ‘carry out their duties for the assistance of the administration as it is duly constituted for the time being, whatever its political complexion’. When the Act came into force on 11 November 2010, the Government also laid before Parliament an updated version of the civil service code, which defined the four key terms used in legislation as follows:

- Integrity – putting the obligations of public service above personal interests

<sup>16</sup> State Services Commission, *Code of Conduct for the State Services*, retrieved 4 September 2013 from <http://www.ssc.govt.nz/code>

<sup>17</sup> Australian Public Service Commission, *APS Values*, retrieved 4 September 2013 from <http://www.apsc.gov.au/aps-employment-policy-and-advice/aps-values-and-code-of-conduct/aps-values>

<sup>18</sup> Treasury Board of Canada Secretariat, *Values and Ethics Code for the Public Sector*, retrieved 4 September 2013 from <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049&section=text>

<sup>19</sup> Constitutional Reform and Governance Act 2010 S.5

<sup>20</sup> Constitutional Reform and Governance Act 2010 S.5(8)

- Honesty – being truthful and open
- Objectivity – basing advice and decisions on rigorous analysis of the evidence
- Impartiality – acting solely according to the merits of the case and serving governments of different political parties equally well.<sup>21</sup>

The values which all four countries espouse for their civil service are closely related, but the Canadian values stand out from the others – notably by including excellence and stewardship as values. Other systems espouse values which primarily concern ‘ethical’ behaviour of public servants, rather than the quality or scope of their work.

Nevertheless, values in all four countries do emphasise ethical standards. Canada does not explicitly list impartiality as a value, though guidance explains that the ‘expected behaviours’ of public servants do include ‘carrying out their duties in accordance with legislation, policies and directives in a non-partisan and impartial manner’.<sup>22</sup> However, while the values themselves are similar, each country embeds them in legislation in different ways.

While the four values above are specified in the UK legislation as minimum requirements for the Code, the entire substantive contents of the Australian Public Service (APS) values, employment principles, and code of conduct are all in primary legislation in Australia.<sup>23</sup> These have recently been updated from the previous values because the minister responsible said, ‘The old values [were] long, difficult to remember and insufficiently focused on contemporary requirements.’<sup>24</sup> But to amend the values requires legislation and therefore the consent of Parliament.

The law in Australia also obliges agency heads to ‘uphold and promote’ the values.<sup>25</sup> Enforcement of the APS Code of Conduct within departments is down to the agency head, who can impose a sanction up to and including terminating employment.<sup>26</sup>

In contrast to both Australia and the UK, the New Zealand legislation – while otherwise quite detailed about State Service structures – says little about the substance of the code of conduct. Rather, the State Sector Act 1988 empowers the State Services Commissioner (who is the head of the Public Service) to set ‘minimum standards of integrity and conduct’ for public bodies including the Public Service, Crown entities, and publicly-owned companies.<sup>27</sup> Those bodies can then develop more detailed standards if they choose. Once an organisation has been notified in writing by the Commissioner that a code applies to it, the organisation, including its employees, is legally bound to abide by it. Since 2007, the *Standards of Integrity and Conduct* code has been in force, which describes in more detail the requirements to be fair, impartial, responsible, and trustworthy.

New Zealand also has a Cabinet Manual, endorsed by Cabinet at the start of each new government, which acts as a guide to central government. This expands the values above, describing in more detail how they apply in given situations – for example, giving detailed

<sup>21</sup> Civil Service, *Values*, retrieved 4 September 2013 from <http://www.civilservice.gov.uk/about/values>

<sup>22</sup> Treasury Board of Canada Secretariat, *Values and Ethics Code for the Public Sector*, retrieved 4 September 2013 from <http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049&section=text>

<sup>23</sup> Public Service Act 1999 S.10, 10A, 13

<sup>24</sup> Special Minister of State Hon Mark Dreyfus QC MP, ‘New Australian Public service Values’, 18 June 2013, retrieved 4 September 2013 from [http://www.smos.gov.au/media/2013/mr\\_292013.html](http://www.smos.gov.au/media/2013/mr_292013.html)

<sup>25</sup> Public Service Act 1999 S.12

<sup>26</sup> Public Service Act 1999 S.15(1)

<sup>27</sup> State Sector Act 1988 S.57

guidance on how officials should handle contact with political parties.<sup>28</sup> The manual makes clear that impartial conduct means ensuring an agency ‘maintains the confidence of its current minister *and of future ministers*’.<sup>29</sup>

Canada is similar to New Zealand, in that the contents of the code are not set out in legislation. But the Treasury Board – the cabinet committee responsible for administrative, personnel and financial management in the federal Canadian government – is mandated to establish one applicable to the public sector.<sup>30</sup> The resulting *Values and Ethics Code for the Public Sector* details what the values and expected behaviours for public servants mean in practice.<sup>31</sup> Canada also has other legislation to regulate the behaviour of public officials – for example, to regulate conflicts of interest for public officials.<sup>32</sup>

In all four cases there is a set of values and a code which is backed by legislative force, even if the precise details vary in where they are codified and who has the authority to determine them. The requirement for impartiality is a strong convention in all four systems, arguably irrespective of legislation requiring it – reflecting shared normative values about the proper relationship between ministers and officials.

### Ministerial role and powers vis-à-vis the Civil Service

The essence of an effective functioning relationship between ministers and their officials cannot be fully encapsulated in codified form – let alone legislated for – since it depends heavily on personalities and ministerial priorities. Nevertheless, several of the comparator systems do seek to describe some of the expectations and accountabilities between the political and administrative sides of government.

The UK legislation says the least about this relationship because by convention there is not a constitutional separation between ministers and their officials. The Armstrong Memorandum – written by the then Cabinet Secretary in the wake of Clive Ponting’s acquittal over leaking government documents under a ‘public interest’ defence – described the formal relationship between the Civil Service and ministers.

In general the executive powers of the Crown are exercised by and on the advice of Her Majesty’s Ministers, who are in turn answerable to Parliament. The Civil Service as such has no constitutional personality or responsibility separate from the duly constituted Government of the day.<sup>33</sup>

The Constitutional Reform and Governance Act gives the power to manage the Civil Service to the Minister for the Civil Service and the Secretary of State (in practice the Foreign Secretary) in relation to the diplomatic service.<sup>34</sup> Beyond this, the UK legislation says little about the relationship between ministers and their civil servants. The relationship can

<sup>28</sup> New Zealand Cabinet Office, *Cabinet Manual*, para.3.63-3.75, retrieved 4 September 2013

<http://www.cabinetmanual.cabinetoffice.govt.nz/3.50>

<sup>29</sup> Author’s italics. New Zealand Cabinet Office, *Cabinet Manual*, para.3.51, retrieved 4 September 2013

<http://www.cabinetmanual.cabinetoffice.govt.nz/3.50>

<sup>30</sup> Public Servants Disclosure Protection Act 2005 S.5(1)

<sup>31</sup> Treasury Board of Canada Secretariat, *Values and Ethics Code for the Public Sector*, retrieved 4 September 2013 from

<http://www.tbs-sct.gc.ca/pol/doc-eng.aspx?id=25049>

<sup>32</sup> Conflict of Interest Act 2006

<sup>33</sup> Head of the Civil Service, *The Duties and Responsibilities of Civil Servants in Relation to Ministers – the ‘Armstrong Memorandum 1985, as amended on 17 July 1996*, retrieved 4 September 2013 from

<http://www.civilservant.org.uk/armstrong.shtml>

<sup>34</sup> An exception was the express exclusion of national security vetting from the power to manage the Civil Service and the diplomatic service. This means that national security vetting continues to be carried out under existing prerogative powers. Constitutional Reform and Governance Act S.3(4)

therefore change in response to different personalities, styles of working, and interest. For example, David Cameron has in effect delegated the role of Minister for the Civil Service to the Cabinet Office minister Francis Maude, who is the driving force behind the current Civil Service Reform Programme.

More detail setting out expectations about the minister-official relationship is instead given in the non-statutory Ministerial Code. The Ministerial Code has no legal standing, but does carry significant normative weight for how ministers should conduct themselves, and is notionally enforced by the Prime Minister. It outlines a general principle for relations with civil servants that ministers ‘must uphold the political impartiality of the Civil Service, and not ask civil servants to act in any way which would conflict with the *Civil Service Code*’ as well as the legislation.<sup>35</sup>

There is stronger protection from political interference elsewhere. In New Zealand and Australia, the statutory role and responsibilities of department heads implies ministerial restraint in those areas, since to interfere would be to prevent a department head from complying with the law. For example, New Zealand has a clear statutory demarcation over the management of the department or agency. The State Sector Act 1988 places a clear statutory duty on chief executives to act independently in ‘matters relating to decisions on individual employees’.<sup>36</sup> The only constraints are that chief executives must have the Commissioner’s agreement to appoint to key positions and politically-appointed ministerial staff – when the chief executive must ‘have regard to the wishes of the relevant minister’.<sup>37</sup>

Australia also provides statutory protection for agency heads in some employment decisions. The Public Service Act 1999 specifically states that an agency head ‘is not subject to direction by any minister’ in relation to their treatment of whistleblowers or APS employees suspected of breaching the code of conduct. Nevertheless, Australian legislation also encapsulates the nature of the relationship between department heads and ministers: the secretary is responsible for agency management ‘under the agency minister’.<sup>38</sup> Paul Keating – Prime Minister from 1991 to 1996 – described the change which originally inserted the words ‘under the minister’ into legislation as ‘three words which say it all’.<sup>39</sup> Hierarchy is set out in law.

Canadian legislation appears more focused on clarifying in primary legislation what counts as permissible political activity by officials, rather than seeking to prevent ministerial pressure on them. Any employee ‘may engage in any political activity so long as it does not impair, or is not perceived as impairing, the employee’s ability to perform his or her duties in a politically impartial manner’.<sup>40</sup> This is subject to quite detailed exceptions – for example, precisely when an employee may become an election candidate, and whether they must seek a leave of absence or not. In reality, the only substantive difference in Canada is the use of legislation to describe this – all four countries allow civil servants to undertake limited minor political activities (such as being members of political parties) provided this does not

<sup>35</sup> Cabinet Office, *Ministerial Code*, Gov.uk website, para 5.1, retrieved 4 September 2013 from <https://www.gov.uk/government/publications/ministerial-code>

<sup>36</sup> State Sector Act 1988 S.33(1)

<sup>37</sup> State Sector Act 1988 S.33(2)

<sup>38</sup> Public Service Act 1999 S.57(1)

<sup>39</sup> Paun, A. & Harris, J., *Reforming Civil Service Accountability: Lessons from New Zealand and Australia*, Institute for Government, p.10, retrieved 4 September 2013 from <http://www.instituteforgovernment.org.uk/publications/reforming-civil-service-accountability>

<sup>40</sup> Public Service Employment Act 2003 S.113(1)

conflict with their duty – as outlined in the codes of conduct – to be impartial. Canada does however go further in setting out clearly in legislation that deputy heads of the Commission and deputy ministers (permanent heads of departments, rather than politicians) are prohibited from ‘any political activity other than voting in an election’.<sup>41</sup>

### Role and powers of the head of the civil service or equivalent

Strong and active leadership is important to the effectiveness of government – especially to a civil service undergoing extensive change as it is currently in the UK.<sup>42</sup> However, there is nothing in UK statute that clarifies the role and powers of the Head of the Civil Service. Neither are there strongly entrenched conventions about the nature of this role, as illustrated by how easily the current Government split the role of Head of the Civil Service from that of Cabinet Secretary in 2011 at the discretion of the Prime Minister. The Prime Minister’s freedom to alter the role at will has led in recent months to speculation about its future.<sup>43</sup> Other systems offer examples of how the core role and functions of the position can be collectively agreed and codified – even if the individual then has considerable flexibility and freedom beyond that.

The Secretary for the Department of the Prime Minister and Cabinet is similarly not mentioned specifically in Australian legislation except in relation to the role he or she plays in the appointment of other secretaries – otherwise they are a department head and treated as such by the law. Their leadership role springs principally from proximity to the Prime Minister – as does the authority of the UK Cabinet Secretary. However, it is also implied by the collective leadership role they are given as part of the Secretaries Board. In addition, Australian legislation establishes as a leadership group for the Public Service the Secretaries Board consisting of the Secretary of the Department of the Prime Minister and Cabinet as chair, other department secretaries, the Commissioner, and nominated others.<sup>44</sup> The Board – created on the recommendation of a major review of the Public Service in 2010<sup>45</sup> – is required to ‘identify strategic priorities for the APS’, to ‘take responsibility for the stewardship of the APS’ and to ‘work collaboratively and model leadership behaviours’.

In contrast, Canadian legislation specifically establishes the role of the head of the Public Service explicitly, which is the Clerk of the Privy Council and Secretary to the Cabinet.<sup>46</sup> However, other than being ‘head’ of the Public Service, little is said in legislation about their role – other than the requirement to ‘submit a report on the state of the Public Service in each fiscal year to the Prime Minister’ which is in turn laid before Parliament.<sup>47</sup> This does not mean the role is necessarily ill-defined, but it does mean that the definition of the role can change over time as different individuals fill it – and as different prime ministers require. The current Clerk defines his three-fold role as being Deputy Minister to the Prime Minister (providing ‘direct advice and support ... on all issues’); Secretary to the Cabinet (helping ‘support the cabinet in its deliberations’); and Head of the Federal Public Service (ensuring

<sup>41</sup> Public Service Employment Act 2003 S.117, S.127.1(2)

<sup>42</sup> The importance of strong corporate leadership for civil service reform is discussed in Thomas, P., Kidson, M., & Wright, W., *Civil Service Reform: One Year On*, Institute for Government, p.13, retrieved 4 September 2013 from [http://www.instituteforgovernment.org.uk/sites/default/files/publications/oyo%20cs%20reform%20final\\_v3.pdf](http://www.instituteforgovernment.org.uk/sites/default/files/publications/oyo%20cs%20reform%20final_v3.pdf)

<sup>43</sup> See for example Parker, G., & Neville, S., ‘Cameron set to end experiment of part-time civil service head’, *Financial Times*, 5 August 2013, retrieved 4 September 2013 from <http://www.ft.com/cms/s/0/82abbd08-facd-11e2-87b9-00144feabdc0.html>

<sup>44</sup> Public Service Act 1999 S.64

<sup>45</sup> Department of the Prime Minister and Cabinet, *Ahead of the Game: Blueprint for the Reform of Australian Government Administration*, March 2010, p.49, retrieved 18 September 2013 from

[http://www.dpmc.gov.au/publications/aga\\_reform/aga\\_reform\\_blueprint/docs/APS\\_reform\\_blueprint.pdf](http://www.dpmc.gov.au/publications/aga_reform/aga_reform_blueprint/docs/APS_reform_blueprint.pdf)

<sup>46</sup> Public Service Employment Act 2003 S.125-126

<sup>47</sup> Public Service Employment Act 2003 S.127

the Civil Service has ‘the policy, management and human resources capacity it needs to design and deliver high-quality programs and services’).<sup>48</sup> This outline of the role is essentially the same in practice as that performed by Australian Secretary for the Department of the Prime Minister and Cabinet, and that of Cabinet Secretary when Gus O’Donnell – and his predecessors since the 1980s – combined the role with Head of the Civil Service, before the role was split in 2011.<sup>49</sup>

New Zealand opts for a different approach, in which the Commissioner for the Civil Service (the State Services Commissioner) is also its functional head – roles which are split in the UK, Canada and Australia. The commissioner role is primarily to be the independent regulator of civil service appointments and the guardian of civil service values – rather than the leader as such. The Prime Minister in New Zealand is served not by the most senior official directly therefore, but by the Department for Prime Minister and Cabinet and his Office of the Prime Minister. The State Services Commissioner must work closely with the Prime Minister, but the post-1980s system there has created a clear separation between leading the Civil Service and providing the executive with policy advice – a split which has been partially attempted in the UK with the division between the Head of the Civil Service role and the Cabinet Secretary, but without the same legislative and institutional supporting structure.

The State Sector Act 1988 established the role of State Services Commissioner and described its functions. These include the power to review performance of departments; appoint department heads; promote leadership capability; and reinforce standards of integrity and conduct in the Public Service.<sup>50</sup> He was given ‘all such powers’ as necessary to carry out his functions and duties.<sup>51</sup> The amendment of the original Act by the State Services Amendment Act 2013 inserted a new clause which describes the Commissioner’s role within the system, in addition to his pre-existing functions and duties. His core role is ‘to provide leadership and oversight of the State services’, which includes ‘identifying and developing high-calibre leaders’ and ‘advising on the design and capability of the State services’.<sup>52</sup> The legislation also includes new wording which reflects the current emphasis in New Zealand on cross-government working.<sup>53</sup> The commissioner is now responsible for ‘promoting the spirit of collaboration among agencies’ as well as ‘promoting a culture of stewardship in the state services’.<sup>54</sup> Performance management of chief executives is also explicitly the Commissioner’s statutory responsibility<sup>55</sup> – a task which is not assigned to anybody in UK legislation, although in practice carried out by the Cabinet Secretary and Head of the Civil Service together.

## Role of departmental heads

The role of department head – and their relationship with the minister – is important to the success of a government by providing effective leadership. As with the Head of the Civil

<sup>48</sup> Clerk of the Privy Council, ‘The Role of the Clerk’, retrieved 4 September 2013 from <http://www.clerk.gc.ca/eng/feature.asp?featureId=19&pageId=88>

<sup>49</sup> Australian Department of the Prime Minister and Cabinet, *About the Department*, retrieved 4 September 2013 from [http://www.dpmc.gov.au/about\\_pmc/index.cfm](http://www.dpmc.gov.au/about_pmc/index.cfm)

<sup>50</sup> State Sector Act 1988 S.6

<sup>51</sup> State Sector Act 1988 S.7

<sup>52</sup> State Sector Act 1988 S.4A

<sup>53</sup> For a discussion of state sector reform in New Zealand, see Paun, A. & Harris, J., *Reforming Civil Service Accountability: Lessons from New Zealand and Australia*, Institute for Government, November 2012, retrieved 4 September 2013 from <http://www.instituteforgovernment.org.uk/publications/reforming-civil-service-accountability>

<sup>54</sup> State Sector Act 1988 S.4A

<sup>55</sup> State Sector Act 1988 S.4A(g)

Service, little of this relationship is codified in the UK, reflecting how the UK's constitutional system has evolved over time according to practice rather than design. Yet as other systems show, allowing such uncodified flexibility for individual ministers within departments is not the only way of structuring the relationship.

There is little clarity in the UK over the role of the permanent secretary. The role is fluid, dependent on the personal preferences of secretaries of state and what they choose to focus attention on, as discussed in the Institute's forthcoming final report on accountability in Whitehall. Some seek close involvement in the leadership of a department, others leave management to the permanent secretary. The degree to which a permanent secretary is seen as a key policy adviser can depend entirely on the minister's interests in receiving that advice. This ambiguity over the role is reinforced by the fact that nowhere is the role codified or set out formally, let alone legislated for. There is no job description. To an extent this is because you cannot legislate away the unavoidable ambiguity of the relationship between permanent secretary and secretary of state. However, comparator countries do place more of the public sector's structure in legislation – including elements of the role of department heads and their relationship with ministers.

Of the four countries, New Zealand and Australia have set out in legislation the principal responsibilities of departmental heads (chief executives and secretaries respectively) to the greatest extent. For a start – and unlike in the UK – their existence is a statutory requirement.<sup>56</sup> While this is also the case in Canada, the role is not described in any detail in legislation.<sup>57</sup>

While specific functions and powers given to heads of different departments are set out in various Acts – often in instances where, in the UK, legislation would empower or impose duties on 'the secretary of state' – the State Sector Act 1988 in New Zealand bestows on chief executives the general power to carry out the 'functions, responsibilities and duties' imposed on or given to them by any legislation.

Until this year, the legislation which described chief executive responsibilities in New Zealand was relatively broad brush, focusing chief executive responsibility to ministers on 'carrying out the functions and duties of the department', 'tendering advice', 'the general conduct' of the department, and the 'efficient, effective, and economical management' of the department.<sup>58</sup> However, the State Sector Act 1988 was amended this year to include a more extensive list of statutory responsibilities of chief executives. Accordingly, more of their role is prescribed in legislation – arguably increasing their independence from ministers. The Australian legislation also contains a similarly extensive – though explicitly not comprehensive<sup>59</sup> – list of the role and responsibilities which secretaries are given.

Chief executives in New Zealand are now required by legislation not only to be responsible for 'the performance of the functions and duties and the exercise of the powers of the chief executive or of the department', but for a number of new duties as well.

The amended Act includes the responsibility for the 'stewardship' of a department, not only for its long-term sustainability and financial health, but also for its 'capability' and the

<sup>56</sup> State Sector Act 1988 S.31; Public Service Act 1999 S.56

<sup>57</sup> Public Service Employment Act 2003 S.127.1(1)

<sup>58</sup> State Sector Act 1988 S.32 (Act as at 1 July 2013)

<sup>59</sup> Public Service Act 1999 S.57(1)

'capacity to offer free and frank advice to successive governments'. In a political system with a three-year electoral cycle, this is an attempt to give chief executives the statutory power to take a longer view, and to provide the cover to undertake longer-term strategy which an incumbent minister might not otherwise prioritise. Secretaries in Australia have a similar role: their role as leader of the department (distinct from their management role) includes 'providing stewardship' both within the department and across the wider public service.<sup>60</sup> This is also implicit in the responsibility of the secretary to 'manage the affairs of the department in a way that is not inconsistent with the policies of the Commonwealth and the interests of the APS as a whole'. However there is not the same focus on the long-term or on serving successive governments as in New Zealand.

An earlier statutory requirement in New Zealand for chief executives to tender advice has been replaced by a strengthened requirement to tender 'free and frank advice to ministers'.<sup>61</sup> Of course, the interpretation of this remains largely up to a chief executive and depends on the individual relationship they have with the minister. But it sends a strong signal about what a chief executive can be expected to do. The Australian legislation gives secretaries as their first role that of 'principal official policy adviser to the agency minister' and does require them to ensure the minister's portfolio 'has a strong strategic policy capability' – but there is no explicit requirement for this to be 'free and frank' advice as such.<sup>62</sup> While there is nothing in the UK which positively asserts a permanent secretary's policy-advising role, the Ministerial Code implies it by instructing ministers to 'give fair consideration and due weight to informed and impartial advice from civil servants'.<sup>63</sup>

Finally, the amended Act in New Zealand has also included a responsibility on chief executives to be responsive to 'matters relating to the collective interests of government'.<sup>64</sup> This is to combat the well-documented tendency of the New Zealand system to operate in discrete government silos, and has been reinforced through the setting of chief executive performance objectives to emphasise more strongly collaborative and collective working.<sup>65</sup> Australian legislation also emphasises the collective responsibility of secretaries. Their management role is explained as entailing 'ensuring delivery of government programs and collaboration to achieve outcomes ... across the whole-of-government', and the policy capability of the department is intended to enable the minister to 'consider complex, whole of government issues'.<sup>66</sup> While not statutory, the Canadian guide to the role of ministers and deputy ministers emphasises that part of a deputy minister's role is to be 'accountable to the Prime Minister for responding to the policies of the Ministry as a whole'.<sup>67</sup>

Department heads do not feature in UK legislation, since they are – constitutionally speaking – the administrative extension of the secretary of state. However, one element of their role has a limited statutory basis – the personal responsibility of being accounting officer.

<sup>60</sup> Public Service Act 1999 S.57(1)

<sup>61</sup> State Sector Act 1988 S.32(1)(f)

<sup>62</sup> Public Service Act 1999 S.57

<sup>63</sup> Cabinet Office, *Ministerial Code*, Gov.uk website, para.5.1, retrieved 4 September 2013 from <https://www.gov.uk/government/publications/ministerial-code>

<sup>64</sup> State Sector Act 1988 S.32(1)(b)

<sup>65</sup> See Paun, A. & Harris, J., *Reforming Civil Service Accountability: Lessons from New Zealand and Australia*, Institute for Government, November 2012, pp.15-18, retrieved 4 September 2013 from <http://www.instituteforgovernment.org.uk/publications/reforming-civil-service-accountability>

<sup>66</sup> Public Service Act 1999 S.57(1)(b), and S.57

<sup>67</sup> Privy Council Office, *Accountable Government: A guide for ministers and ministers of state*, 2011, p.42, retrieved 4 September 2013 from [http://www.pm.gc.ca/grfx/docs/guidemin\\_e.pdf](http://www.pm.gc.ca/grfx/docs/guidemin_e.pdf)



## Accounting officers

This element of the permanent secretary's role in the UK stands out from the rest: their accounting officer role, responsible for ensuring that public money is handled with probity and good value. This role is treated very seriously and is based in the UK in legislation.

The accounting officer of a department is the single official who is responsible for ensuring that public money is used in such a way that meets parliamentary and Treasury standards.<sup>68</sup> This includes ensuring the regularity and propriety of spending – that is, ensuring the department has parliamentary permission to spend the money, and does so in a way befitting a public sector organisation – and also ensuring that spending is used for initiatives which represent value for money and are feasible. Where this is not the case, the accounting officer can seek a written direction from the minister to proceed.

The role is based on deeply entrenched conventions and practice, buttressed by Treasury and parliamentary enforcement. However, the core of the role is set out in legislation. The Government Resource and Accounts Act 2000 requires accounting officers to prepare the department's resource accounts and transmit them to the Comptroller and Auditor General.<sup>69</sup> This replaced similar, though less specific, requirements in the Exchequer and Audit Departments Act 1866. Beyond this reference, the accounting officer system is not statutory – but the role at least has a separate statutory basis, independent of ministers.

In this respect, Canada offers a different experience. After many years of debate, and spurred particularly by the Gomery Commission in 2005 which investigated allegations of corruption and misuse of public money in government, Canada introduced a version of the British accounting officer regime in 2006. Modelled on the UK system, but with a few modifications, the system is given statutory force by amendments to the Financial Administration Act 1985 by the Federal Accountability Act 2006.

The Act specifies (where in the UK this is only by convention) that the accounting officer of a department is its head (or 'deputy minister' as the post is known in Ottawa). The Act makes clear that accounting officer accountability is 'within the framework of ministerial responsibility and his or her accountability to Parliament, and subject to the appropriate minister's management and direction of his or her department'. Like accounting officers in the UK, their Canadian counterparts are accountable for signing the department's accounts and maintaining effective systems of internal control. Where the minister and deputy minister disagree, the legislation provides for arbitration by the Treasury Board, the statutory cabinet committee responsible for the federal civil service. This is analogous to the UK mechanism of a written 'direction' from minister to permanent secretary, but that is not arbitrated by a central agency – and is not set out in legislation.

The amended Financial Administration Act 1985 also sets out the accounting officer's role as being to take measures 'to organise the resources of the department to deliver departmental programs in compliance with government policies and procedures'.<sup>70</sup>

<sup>68</sup> For an in-depth discussion of the accounting officer role in central government, see Harris, J., *Following the Pound: Accounting officers in central government*, Institute for Government, 2013, retrieved 4 September 2013 from <http://www.instituteforgovernment.org.uk/publications/following-pound>

<sup>69</sup> Government Resource and Accounts Act 2000 S.5(7)

<sup>70</sup> Financial Administration Act 1985 S.16.4(1)(a)

## Role and powers of the civil service commission or equivalent

If accounting officer and stewardship responsibilities place public servants in a 'guardian' type role, who guards the guardians? In each system a form of commission has emerged, which is independent of government to a degree. These safeguard the values of the Public Service and to investigate complaints where those values are breached.

The Civil Service Commission was set up in the UK in 1855 following recommendations by Northcote and Trevelyan to improve recruitment processes. The Commission was based in Orders in Council until the CRAG Act placed it in statute for the first time. This means it is now more clearly independent of government. Its continued existence depends now on Parliament through legislation.

The Act details two primary functions of the Commission: first, to uphold the principle that selection for appointments to the civil service must be on the basis of fair and open competition; second, to hear and determine appeals raised under the Civil Service Code, as well as working with departments to promote the Code and the civil service values. The Act also sets out the process by which Commissioners are appointed – and can be removed. Before appointing the First Commissioner, the Prime Minister must consult the First Ministers of Wales and Scotland, as well as the leaders of the two opposition parties with the highest vote share, to ensure the appointment has cross-party support.<sup>71</sup> Commissioners can only then be removed by ministers if they do not attend meetings, are convicted of an offence, are declared bankrupt, or are found 'unfit or unable to carry out the functions of the office'.<sup>72</sup> Once appointed, therefore, commissioners have a high degree of statutory independence from ministers.

The Commission is most proactive, and arguably most powerful, in its role guarding the recruitment principles for appointments. In the recent debate in the UK over the role of politicians in appointing permanent secretaries, the First Civil Service Commissioner who heads the Commission – Sir David Normington – has most vocally defended the current system.<sup>73</sup> As described above, the Commission is statutorily empowered to define the principles by which senior appointments to the Civil Service take place and to chair the process to ensure it does so. They also monitor the compliance of departments with the recruitment principles for junior appointments through regular audits.

The latter element of the Commission's role – as guardian of the Civil Service Code – is more of a reactive role. The Act provides for complaints to be made to the Commission where there are allegations that recruitment principles were not followed, though the Act does not give the Commission a proactive role in undertaking individual investigations on its own initiative. Similarly, it enables civil servants to complain to the Civil Service Commission about alleged breaches of the Civil Service Code and diplomatic codes. The Commission can require a civil service management authority and another civil servant involved in the incident to provide information, but the Commission cannot launch investigations on its own initiative. In the most recent period for which data is available, 2012-13, the Commission

<sup>71</sup> Constitutional Reform and Governance Act Sch(1)(2)

<sup>72</sup> Constitutional Reform and Governance Act Sch(1)(5)

<sup>73</sup> For example, see Sir David Normington's speech at an Institute for Government seminar in January 2013: Civil Service Commission, 'David Normington speaks at IFG seminar on the appointment of permanent secretaries', retrieved 4 September 2013 from <http://civilservicecommission.independent.gov.uk/news/david-normington-speaks-at-ifg-seminar-on-the-appointment-of-permanent-secretaries-28-january-2013/>

dealt with 17 cases across the entire Civil Service – and no breaches of the Code were found.<sup>74</sup>

This role of promoting and upholding civil service values is important, and it is shared by the Australian Public Service Commissioner and the New Zealand State Services Commissioner. In New Zealand, the State Services Commissioner is responsible for determining the code of conduct for the state services, required by legislation to ‘promote and reinforce standards of integrity and conduct in the State services’ and tasked with promoting ‘transparent accountability’.<sup>75</sup> In Australia, the Public Service Commissioner’s role is laid out in legislation, and similarly to the UK requires him or her to promote APS values and the code of conduct, and to investigate alleged breaches. The role has more proactive power to do this, being required to evaluate how well departments uphold the APS values. They are assisted in this by the Merit Protection Commissioner – a statutory role under the Public Service Act 1999 – whose key functions are to conduct independent reviews of employment decisions and to receive and inquire into whistleblower reports.<sup>76</sup>

The Canadian Public Service Commission is responsible for safeguarding the political impartiality of the Public Service. They provide guidance to officials on permitted political activities, and investigate accusations of improper political activity. Their investigatory powers are strong, grounded in the Inquiries Act 1985 which allows them to require ‘any witnesses’ to give evidence, including under oath, and to ‘produce documents and things as the commissioners deem requisite to the full investigation’.<sup>77</sup> While the UK Civil Service Commission is empowered by statute to be provided with ‘any information it reasonably requires’ from civil service management, the complainant, and any civil servant whose behaviour is being investigated, it is not given the sweeping investigatory powers its Canadian counterpart enjoys.<sup>78</sup>

The Canadian Public Service Commission, the APSC, and the SSC are involved in the appointment process for department heads. The State Services Commissioner does not, however, merely regulate the process as such, but he is the employer of department heads, and so makes the appointments directly and independently of government. The Australian equivalent has a lesser role – providing a report to the Prime Minister when she or he appoints a new Secretary for the Department of Prime Minister and Cabinet, and helping the Secretary of the Department for Prime Minister and Cabinet to write an advisory report on other appointments. The Canadian Public Service Commissioner has the power ‘to appoint, or provide for the appointment of, persons to or from within the Public Service’ – though in practice, as with the Minister for the Civil Service’s power to appoint in the UK, this is delegated to department heads.<sup>79</sup> The Commission does still have the power to regulate appointments as with the UK Civil Service Commission.

The relationship that the Australian and New Zealand commissioners have with government is different to that of the UK Civil Service Commission. However, all are appointed by the government with varying degrees of independence. For example, in the UK the First Civil Service Commissioner’s appointment must be agreed by the Leader of the Opposition – in

<sup>74</sup> Civil Service Commission, Annual Report and Accounts 2012-13, retrieved 12 September 2013 from [http://civilservicecommission.independent.gov.uk/wp-content/uploads/2013/07/2900825\\_CSC\\_AnnualReport\\_acc.pdf](http://civilservicecommission.independent.gov.uk/wp-content/uploads/2013/07/2900825_CSC_AnnualReport_acc.pdf)

<sup>75</sup> State Sector Act 1988 S.6

<sup>76</sup> Public Service Act 1999 S.50, S.50A

<sup>77</sup> Inquiries Act 1985 A.4; The Commission is granted the powers under this Act by the Public Sector Employment Act S.18

<sup>78</sup> Constitutional Reform and Governance Act 2010 S.9

<sup>79</sup> Public Sector Employment Act S.11(a), S.29

the New Zealand and Australia there is a direct relationship with a minister. The Public Service Minister (in Australia) and State Services Minister (in New Zealand) are mid-ranking ministerial posts with responsibility for the Public Service. In Australia, the relationship is codified in legislation – the PSC must ‘consider and report to the Public Service Minister on any matter relating to the APS’.<sup>80</sup>

There is a further difference between New Zealand and Australia, and the UK, in that both the Antipodean systems give their Commissioner a greater responsibility for the capability of the Public Service (as it relates to personnel). The Australian Public Service Commissioner is required to ‘facilitate continuous improvement in people management’ and ‘co-ordinate and support APS-wide training and career development opportunities in the APS’. This is part of a broader responsibility to ‘contribute to, and foster, leadership in the APS’. In this respect, the Australian PSC shares a number of functions which in the UK are given (though not in legislation) to the Head of the Civil Service.

Finally, in all four systems the commissioner role is commonly – and currently – filled by a former civil servant. In Australia this is sometimes before taking a future public service role as the commissioner post was historically regarded as a relatively junior post compared to some department secretary jobs. Since the role in New Zealand is more akin to a Head of the Civil Service, the person filling that role is traditionally an experienced senior public servant at the top of their public service career. In the UK, the appointment in 2010 of a retired permanent secretary to the part-time post of First Civil Service Commissioner marked the end of an eight-year period of non-career civil servants taking the role, although a majority of other commissioners have never been civil servants. There is nothing in the legislation to determine the background of whoever fills these four roles.

### Appointments processes for senior officials

Northcote and Trevelyan recognised that the appointment of civil servants was a critical point at which to ensure the quality and character of officials. It remains the case that effective government requires effective recruitment to ensure the right people are in the right jobs, and to ensure that the calibre of senior officials is as high as possible.

Under the CRAG Act, the Minister for the Civil Service has the statutory power to manage the Civil Service, which includes the power to make appointments. However, the explanatory notes published alongside the Act by the Government stress that the power to appoint and dismiss civil servants would continue to be delegated, as previously, to the Head of the Civil Service and permanent heads of departments. This power of delegation is set out in the Civil Service (Management Functions) Act 1992, which allowed ministers to delegate powers vested in them ‘to any other servant of the Crown’ – primarily meaning civil servants.<sup>81</sup>

Clauses 10-13 of the Constitutional Reform and Governance Act 2010 provide for appointment on merit and require the Commission to publish a set of recruitment principles, including provision for the approval of the Commission for appointments. These principles have statutory force, and are therefore binding on the Civil Service and ministers. The main exceptions to the principle of appointment on merit are for special advisers, heads of mission and governors of overseas territories in the diplomatic service. The Commission or civil

<sup>80</sup> Public Service Act 1999 S.41(d)

<sup>81</sup> Civil Service (Management Functions) Act 1992 S.1(2)

service management authorities have discretion in applying aspects of the recruitment principles.

Although CRAG can generally be considered as providing a minimal statutory underpinning to the Civil Service, these provisions have recently demonstrated the significance of embedding rules and procedures in legislation. As part of its civil service reform agenda, the Government considered changing the process by which permanent secretaries are appointed. Specifically, the minister responsible for civil service reform, Francis Maude, publicly stated a desire to change the system to require that the CSC presented ministers with a choice of appointable candidates for permanent secretary jobs – as happens for many public appointments.<sup>82</sup> As discussed by the Institute for Government in its report on permanent secretary appointments, this was blocked by the CSC on the grounds that CRAG gave them the statutory power to define ‘merit’ for the purposes of appointment.<sup>83</sup> They had done so specifically to exclude choice, requiring that ‘the job must be offered to the person who would do it best’.<sup>84</sup> This was not intended by those behind the legislation. The minister responsible, Jack Straw, told us that he ‘wouldn’t have been party to it’ had he known the legislation would be used by the Commission to block ministerial choice of candidates.<sup>85</sup>

Merit is also a prime requirement for civil service appointments elsewhere. Canada sets out in legislation that appointments ‘to or from within the Public Service shall be made on the basis of merit and must be free from political influence’, going on to define this as being when the Commission appointing the official is ‘satisfied’ that the candidate ‘meets the essential qualifications for the work to be performed’.<sup>86</sup> This definition specifically does not require merit to be competitively determined (as Northcote and Trevelyan wanted for the UK). A single individual could apply and be appointed on the basis of merit. And it implies that merit means a candidate who can do the job, rather than the best possible candidate.<sup>87</sup> New Zealand legislation backs the approach of the Civil Service Commission in the UK, requiring that chief executives ‘shall give preference to the person who is best suited to the position’.<sup>88</sup> The Australian Public Service employment principles enshrined in legislation require that decisions ‘relating to engagement and promotion’ are based on merit.<sup>89</sup> The legislation details the characteristics of a merit-driven decision, including ‘a competitive selection process’ – unlike in Canada – and open recruitment.<sup>90</sup>

Beyond these general appointment principles, in New Zealand and Australia the process for appointing heads of department is specifically set down in legislation, though the position in the two countries is very different.<sup>91</sup> In New Zealand, appointment is by the independent

<sup>82</sup> Wintour, P., ‘Ministers to be given say in civil service appraisals’, *The Guardian*, 5 August 2013, retrieved <http://www.theguardian.com/politics/2012/aug/05/ministers-formal-role-civil-service-appraisals>

<sup>83</sup> Paun, A., Harris, J., & Magee, I., *Permanent Secretary Appointments and the Role of Ministers*, Institute for Government, p.17, retrieved 4 September 2013 from <http://www.instituteforgovernment.org.uk/publications/permanent-secretary-appointments-and-role-ministers>

<sup>84</sup> Paun, A., Harris, J., & Magee, I., *Permanent Secretary Appointments and the Role of Ministers*, Institute for Government, p.17, retrieved 4 September 2013 from <http://www.instituteforgovernment.org.uk/publications/permanent-secretary-appointments-and-role-ministers>

<sup>85</sup> *ibid.*

<sup>86</sup> Public Service Employment Act S.30(1,2)

<sup>87</sup> Public Service Employment Act S.30(4)

<sup>88</sup> State Sector Act 1988 S.60

<sup>89</sup> Public Service Employment Act 1999 S.10A(1)(c)

<sup>90</sup> Public Service Employment Act 1999 S.10A(2)

<sup>91</sup> For more on appointment process for heads of department in New Zealand and Australia, see Paun, A. & Harris, J., *Reforming Civil Service Accountability: Lessons from New Zealand and Australia*, Institute for Government, November 2012, pp.15-18, retrieved 4 September 2013 from <http://www.instituteforgovernment.org.uk/publications/reforming-civil-service-accountability>

State Services Commissioner with a political veto, and in Australia by the Prime Minister with a non-political veto power for the Governor-General. In both cases the prospect of a veto occurring is almost unthinkable. The last (and only) time it happened in New Zealand was in 1991, and the Australian Governor-General's unelected position means an appointment would need to be extraordinarily improper to enable them to claim political legitimacy to overrule it – irrespective of the statutory system. The New Zealand system of appointment is formalised, requiring ministerial input into the decision – a panel chaired by the Commissioner or Deputy Commissioner, and the decision taken by the Commissioner (rather than unanimously by the whole panel, as is required under Civil Service Commission rules in the UK).<sup>92</sup> In Australia, a department secretary is appointed formally by the Governor-General on recommendation of the Prime Minister – in practice, the Prime Minister appoints directly with the advice of the Secretary to the Department for Prime Minister and Cabinet.<sup>93</sup>

In both New Zealand and Australia the appointment is for a fixed term of a maximum five years, though this is renewable.<sup>94</sup> In Australia, the legislation was changed this year to make clear that the first time a secretary is appointed it is for five years unless the secretary requests a shorter term. The Minister for the Public Service and Integrity explained, 'a five year term will help avoid the perception that elections can be tied to the electoral cycle' which in Australia is three years.<sup>95</sup> There is no formal limit to permanent secretary tenure in the UK, nor in Canada.

### Ministerial advisers

Political appointees are often exceptions to the rules which otherwise bind an impartial civil service. There has been controversy in all four systems about the role of political appointees – known as ministerial advisers in Australia and New Zealand, exempt staff in Canada, and special advisers in the UK. Often attention focuses on how many there are and how their role is regulated – but sometimes concern has also been expressed about how much authority they wield, and whether this somehow affects the impartiality of the wider civil service.

Under UK legislation, special advisers are civil servants who are exempt from a number of requirements; they are not appointed on merit and are not required to carry out their duties with objectivity and impartiality.<sup>96</sup> They are appointed by the Prime Minister, although in practice departmental secretaries of state are usually given a relatively free choice over who they employ.

In response to concerns that special advisers had grown over-mighty under Tony Blair, the CRAG Act specifically prohibited advisers from authorising the expenditure of public funds, and from exercising any power of management over civil servants. This prevents the future use of an Order in Council to grant special advisers management powers, as Jonathan Powell and Alastair Campbell had under Tony Blair in 10 Downing Street. They are prohibited from exercising any statutory power or prerogative power. These proscriptions go beyond the legislation on advisers in the three comparator systems. However, despite calls

<sup>92</sup> State Sector Act 1988 S.35

<sup>93</sup> Public Service Act 1999 S.58(1)

<sup>94</sup> Public Service Act 1999 S.58(3); State Sector Act 1988 S.38(1)

<sup>95</sup> Special Minister of State Hon Mark Dreyfus QC MP, 'New Australian Public service Values', 18 June 2013, retrieved 4 September 2013 from [http://www.smos.gov.au/media/2013/mr\\_292013.html](http://www.smos.gov.au/media/2013/mr_292013.html)

<sup>96</sup> Constitutional Reform and Governance Act 2010 S.7(5)

from PASC and others to do so, the Government did not place in statute a cap on the number of advisers who could be appointed. Nevertheless, the Ministerial Code states that the normal rule is for cabinet ministers to each have two special advisers.

Advisers are appointed under specific legislation in Canada, where they are known as 'exempt staff' since, like UK special advisers, they are exempted from certain requirements of the Public Service. The legislation says that ministers – and the leader of the Opposition, in both House of Commons and Senate – may appoint 'an executive assistant and other persons required in his or her office'.<sup>97</sup> Beyond that, the Treasury Board has approved a list of jobs to which exempt staff can be appointed including a chief of staff, policy advisers, press secretary, special assistants, support staff, and a driver.<sup>98</sup> Their staff therefore comprises more of a 'cabinet' than the UK system of non-political private offices with one or two political advisers.

Australia and New Zealand are somewhere in between the UK and Canada, since in both cases their private office support for ministers is a mixture of political and public service appointments. Nonetheless, Australia is a more political system than New Zealand. It has a much higher number of political appointees in central government – around 400. Public servants in ministerial offices are direct ministerial appointees and are treated as political staff while serving in the minister's office.<sup>99</sup>

Unlike Canada and the UK, Australian ministerial advisers are not members of the Public Service at all. They are employed as ministerial staff in Parliament under the Members of Parliament (Staff) Act 1984. The Australian Prime Minister must report annually the names of staff employed by ministers under the Act, specifying the details of their engagement and the tasks specified of them.<sup>100</sup> This is more onerous than the requirement on the UK Prime Minister to merely publish a report – though in practice this contains their names, who they work for, and their salary band.<sup>101</sup> As in the UK, their activities have been a cause of concern, leading one former secretary to PMC to describe the lack of more regulation over their activities as an 'accountability black hole'.<sup>102</sup>

Often this concern has arisen partly out of confusion between the proper responsibilities of political and non-political staff. In New Zealand, the need for clarity in this matter is made explicitly clear in the *Cabinet Manual*, which says the minister and agency chief executive 'must establish a clear understanding to ensure that ... departmental officials know the extent of the adviser's responsibility'.<sup>103</sup> The UK has a *Code of Conduct for Special Advisers* – required by the CRAG Act – which outlines in detail what special advisers may be required to do, and what the limits of their interaction with civil servants should be.<sup>104</sup> The Code also introduced for the first time the reminder that they serve the government as the whole, as appointees of the Prime Minister – perhaps in response to concerns that special advisers

<sup>97</sup> Public Service Employment Act 2003 S.128(1)

<sup>98</sup> Treasury Board of Canada Secretariat, 'Policies for Ministers' Offices', January 2011, para.3.2.1, retrieved 4 September 2013 from [http://www.tbs-sct.gc.ca/pubs\\_pol/hrpubs/mg-ldm/2011/pgmo-pldcm03-eng.asp](http://www.tbs-sct.gc.ca/pubs_pol/hrpubs/mg-ldm/2011/pgmo-pldcm03-eng.asp)

<sup>99</sup> Paun, A., *Supporting Ministers to Lead: Rethinking the ministerial private office*, Institute for Government, pp.10-11, retrieved 4 September 2013 from <http://www.instituteforgovernment.org.uk/publications/supporting-ministers-lead>

<sup>100</sup> Members of Parliament (Staff) Act 1984 S.31

<sup>101</sup> Constitutional Reform and Governance Act S.16(1)

<sup>102</sup> Moran, T., 'Political staffers an accountability black hole', *Financial Review*, 26 September 2012, retrieved 4 September 2013 from [http://www.afr.com/p/opinion/political\\_staffers\\_an\\_accountability\\_SU0IgbDWNnbQxRc9fxnpO](http://www.afr.com/p/opinion/political_staffers_an_accountability_SU0IgbDWNnbQxRc9fxnpO)

<sup>103</sup> New Zealand Cabinet Office, *Cabinet Manual*, para.3.20, retrieved 4 September 2013

<http://www.cabinetmanual.cabinetoffice.govt.nz/3.50>

<sup>104</sup> Cabinet Office, *Code of Conduct for Special Advisers*, retrieved 4 September 2013 from

[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/62451/special-advisers-code-of-conduct.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/62451/special-advisers-code-of-conduct.pdf)

were increasingly seen to be involved in intra-government conflict. Codifying expectations of special adviser conduct establishes norms by which their behaviour can be judged, even if it does not prevent controversies about their conduct from occurring in the first place.<sup>105</sup>

The fact that special adviser legislation in the UK goes beyond what the other three countries have legislated for, suggests that legislation is passed as much for declaratory and political advantages as for any actual intended effect. Special advisers had become controversial by 2010, so the legislation was used to signal norms about their behaviour, such as changes to the power of special advisers to manage civil servants compared to the situation under Blair.

## Final comments

Comparisons of the UK with New Zealand, Australia and Canada illustrate how differently systems can codify the structures and relationships of the Civil Service. So what consequences might arise from clear legislation for the Civil Service?

The passing of law legitimises procedures and can establish norms of expected behaviour. Legislation can be a vehicle for embedding change, as Northcote and Trevelyan intended it to be, and as it is being used in New Zealand in particular. Conversely, it can also be used to entrench – with parliamentary backing – the structures and values of the system, as the proponents of UK legislation sought to do.

Legislation can therefore reduce the flexibility of the government to respond to changing circumstances – including through machinery of government changes. This flexibility is widely regarded as a virtue among senior civil servants and politicians in the UK, and there is little appetite for legislation which over-formalises the relationship between them. You cannot legislate away the unavoidable ambiguity of the relationship between permanent secretary and secretary of state. Politicians also seem unwilling to forego the ability to make machinery of government changes. For example, there is no desire for a list of departments to be set out in law as in Canada.<sup>106</sup>

Good legislation requires government to be clear in its aims and intent. This is perhaps the important principle behind legislation which is most useful to clarifying accountabilities. Writing legislation requires the government to commit clearly to the changes it wants in the Public Service – or the changes it wishes to prevent. Setting out key relationships in legislation can help create a shared view of where power and accountability reside in the system. This does not mean of course that there will be universal agreement about how the system should be structured, but there will hopefully be better understanding of how the system actually is structured.

The UK legislation does not make accountability and power clearer than before. The Act's supporters have argued it simply placed the accepted status quo on the statute book. Yet as the disagreement over the Commission's power to define 'merit' in senior appointments

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<sup>105</sup> For example, Michael Gove's two special advisers were criticised for allegedly misusing a twitter feed they were believed to be responsible for (though they denied it). The criticism directly referred to the Special Adviser Code of Conduct as the standard to which special advisers are expected to comply: Doward, J., 'Michael Gove advisers face claims of smear tactics against foes', *The Observer*, 2 February 2013, retrieved 4 September 2013 from <http://www.theguardian.com/politics/2013/feb/02/gove-advisers-claims-smear-tactics>

<sup>106</sup> Financial Administration Act 1985 Sch.1



demonstrated, it is not at all self-evident that the status quo is universally accepted – or acceptable. The well-documented ‘Whitehall Wars,’<sup>107</sup> while prone to being exaggerated, reflect instability in the core of the system. This may increase in the run-up to the next election in 2015, when a change of government is possible – and permanent secretaries under pressure to implement policies on tight timetables may resort to seeking more ministerial directions under accounting officer rules.<sup>108</sup>

Therefore it is probably best not to legislate unless and until there is genuine consensus on how and where powers and responsibilities should lie. When so many of the civil service organisations and accountability arrangements are in flux, a minimal approach to legislation is probably correct. But in due course, it may be worth considering which elements of the Whitehall system could be more firmly entrenched.

There is nothing magical or mystical about civil service legislation. Used well it can be a helpful device for clarifying accountability. Yet it can only assist, and not replace, the willingness of civil service leaders – both political and official – to be clear and open about the scope of their powers and their willingness to take responsibility. In none of the four cases we have considered does legislation provide the final word on government structures – even in New Zealand, where the legislation is remarkably comprehensive, they accept that practice can be more flexible and fluid. Yet it does at least provide a first word, and a shared starting point for debate.

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<sup>107</sup> For example, see ‘Lack of trust damaging accountability in Whitehall, say MPs’, *BBC News Online*, 6 September 2013, retrieved 12 September 2013 from <http://www.bbc.co.uk/news/uk-politics-23978335>

<sup>108</sup> For a discussion of accounting officers in central government and the use of ministerial directions see Harris, J., *Following the Pound: Accounting officers in central government*, Institute for Government, September 2013

Category	United Kingdom	New Zealand	Australia	Canada
<b>Civil service values</b>	Set out in primary legislation, with more detailed civil service code required by but not described in legislation: <ul style="list-style-type: none"> <li>• Integrity</li> <li>• Honesty</li> <li>• Objectivity</li> <li>• Impartiality.</li> </ul>	State Services Commissioner required by law to set minimum standards: <ul style="list-style-type: none"> <li>• Fair</li> <li>• Impartial</li> <li>• Responsible</li> <li>• Trustworthy.</li> </ul> There is also the more detailed <i>Standards of Integrity and Conduct</i> code in force since 2007.	Detail is set out in primary legislation, along with employment principles and code of conduct: <ul style="list-style-type: none"> <li>• Impartial</li> <li>• Committed to service</li> <li>• Accountable</li> <li>• Respectful</li> <li>• Ethical.</li> </ul>	The Treasury Board is required by law to establish a set of values for public service, as <i>Values and Ethics Code for the Public Sector</i> : <ul style="list-style-type: none"> <li>• Respect for democracy</li> <li>• Respect for people</li> <li>• Integrity</li> <li>• Stewardship</li> <li>• Excellence.</li> </ul>
<b>Ministerial role and powers vis-à-vis the Civil Service</b>	There is no constitutional separation between ministers and civil servants.  The non-statutory Ministerial Code requires ministers to uphold the political impartiality of the Civil Service.	Legislation requires department heads to act independently of ministers in 'matters relating to decisions on individual employees'.  Ministerial expectations of the public service are set out contractually.	Legislation makes clear that the department head is responsible for management 'under the Agency Minister' – though is required to act independently about whistle-blowers and when public servants breach the code of conduct.	Canadian legislation sets out permissible political activity by public servants.
<b>Role and powers of the head of the Civil Service or equivalent</b>	Nothing in legislation.	Legislation details the role, responsibilities, and powers of the State Services Commissioner.  The core role is 'to provide leadership and oversight of the State services' which includes 'identifying and developing high calibre leaders' and 'advising on the design and capability of the State services'. The Commissioner is also given statutory responsibility for performance management of department heads (chief executives).	Legislation establishes the Secretaries Board consisting of the Secretary of the Department for Prime Minister and Cabinet as chair, other department secretaries, the Commissioner, and nominated others. The Board is required to 'identify strategic priorities for the APS', to 'take responsibility for the stewardship of the APS' and to 'work collaboratively and model leadership behaviours'.	Legislation establishes role of head of the Civil Service (the Clerk of the Privy Council and Secretary to the Cabinet) but says little about the role.

<p><b>Role of department heads</b></p>	<p>Nothing in legislation, except the specific accounting officer responsibilities.</p> <p>Mostly these are based on long-established convention, but the existence of the role is based in the Government Resource and Accounts Act 2000.</p>	<p>Legislation describes their core roles, responsibilities, and powers.</p> <p>These have been amended in 2013 to include a number of new responsibilities including for the 'stewardship' of the department, tendering 'free and frank advice to Ministers', and being responsible for 'matters relating to the collective interests of government'.</p>	<p>Legislation describes their role, but is explicitly not comprehensive.</p> <p>Their role includes being 'principal policy adviser to the Agency Minister'. Responsibilities include 'providing stewardship' for the department and ensuring the minister's portfolio 'has a strong strategic policy capability'. Legislation also requires ensuring that policy advice enables the minister to 'consider complex, who of government issues'.</p>	<p>Canada has accounting officers, as set out in the amended Financial Administration Act 1985.</p>
<p><b>Role and powers of civil service commission or equivalent</b></p>	<p>Civil Service Commission is established as a body corporate in legislation, and has appointment processes to ensure its independence from government.</p> <p>The Commission is empowered to regulate appointments to the Civil Service, and to define the recruitment principles which must be used. The Commission can also respond to complaints about breaches of the Civil Service code. It is empowered to receive 'any information it reasonably requires' from civil service management, the complainant, and any civil servant under investigation.</p>	<p>State Services Commissioner determines code of conduct for state services, and is required by law to 'promote and reinforce standards of integrity and conduct'.</p> <p>The role is combined with leadership of the state services.</p>	<p>Australian Public Service Commissioner is established by law and is required to promote values and the code of conduct, and to investigate alleged breaches with more proactive investigatory powers – assisted by the Merit Protection Commissioner, whose role is to inquire into whistle-blower reports.</p> <p>Commissioner also has responsibility for capability of the Public Service to 'contribute to, and foster, leadership in the APS' which includes responsibility to 'co-ordinate and support APS-wide training and career development opportunities'.</p>	<p>Canadian Public Service Commission is responsible for safeguarding the political impartiality of the Public Service, providing guidance to officials on permitted activity and investigating allegations of improper activity.</p> <p>Their investigatory powers are strong, based in the Inquiries Act 1985 which allows them to require witnesses to give evidence, including on oath.</p>

<p><b>Appointments process for senior officials</b></p>	<p>Minister for the Civil Service (in practice the Prime Minister) is empowered by legislation to make appointments to the Civil Service. This is delegated to civil service leaders, but must be done on merit and overseen by the Civil Service Commission that is required by law to publish a set of recruitment principles. These are binding on ministers.</p> <p>Permanent secretaries are not appointed on fixed terms.</p>	<p>Appointments are made by agency chief executives, overseen by the State Services Commissioner who appoints chief executives and some key positions. Chief executives are required by law to 'give preference to the person who is best suited to the position'.</p> <p>The Cabinet can veto an appointment, but has only done so once – in 1991.</p> <p>Agency chief executives are appointed on renewable fixed terms of up to five years.</p>	<p>Appointments of department secretaries are made formally by the Governor-General, although in practice by the prime minister.</p> <p>Employment principles enshrined in legislation require decision 'relating to engagement and promotion' to be based on merit.</p> <p>Department secretaries are appointed on renewable fixed terms for five years initially, unless the individual requests a shorter term.</p>	<p>Appointments 'to or from within the Public Service shall be made on the basis of merit and must be free from political influence' – which is defined as the Commission is 'satisfied' the candidate 'meets the essential qualifications for the work to be performed'.</p> <p>Department heads (deputy ministers) are not appointed on fixed terms.</p>
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<b>Ministerial advisers</b>	<p>Special advisers are civil servants exempt under legislation from requirements to be appointed on merit and to comply with values of impartiality and objectivity. They are prohibited from exercising executive/management functions.</p> <p>Legislation requires a special adviser code of conduct, and the prime minister to report annually, which in practice means their names, salary banding, and who they work for.</p>	<p>No specific statutory basis.</p> <p>Their role is therefore determined by their individual contract.</p>	<p>Employed as ministerial staff in parliament under the Members of Parliament (Staff) Act 1984.</p> <p>The Prime Minister must report annually the names of staff employed by ministers under the act, specifying the details of their engagement and the tasks specified of them.</p>	<p>Appointed under specific powers of the Public Service Employment Act 2003. Known as 'exempt staff' because, as in the UK, they are civil servants who are exempt from the requirement to be politically impartial.</p> <p>The legislation specifies that ministers, and the leader of the opposition in both houses of parliament, may appoint 'an executive assistant and other persons required in his or her office'. The Treasury Board has an agreed list of the roles appointees can perform, including advisers, press secretaries, constituency staff, and even a driver.</p>
<b>Key legislation</b>	<p><a href="#">Constitutional Reform and Governance Act 2010</a></p>	<p><a href="#">State Sector Act 1988</a> (incorporating changes from, most recently, the <a href="#">State Sector Amendment Act 2013</a>)</p>	<p><a href="#">Public Service Act 1999</a> (incorporating changes from, most recently, the <a href="#">Public Service Amendment Act 2013</a>) Also, <a href="#">Members of Parliament (Staff) Act 1984</a></p>	<p><a href="#">Public Service Employment Act 2003</a></p>

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