

## **PUBLIC SECTOR PERFORMANCE CONTRACTING IN NEW ZEALAND**

### **CASE STUDIES OF THE MINISTRY OF JUSTICE AND DEPARTMENT FOR COURTS(\*)**

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#### **EXECUTIVE SUMMARY**

The separation of policy advice from policy implementation in New Zealand has provided chief executives with broad authority to run their organisations since the late 1980s. With this freedom to manage, performance contracts became an important tool to ensure that managers were accountable for these responsibilities. Performance contracting in various forms is applied throughout the Public Service to a variety of different relationships. Key relationships are between the State Services Commissioner and the chief executive, between the Minister and the chief executive, within a department, between a department and its environment and between Government departments. The case of the Ministry of Justice (policy role) and the Department for Courts (service delivery role) show that some areas lend themselves to more standard and formal agreements than others. For areas where the principal-agent role is less clear, the ability to influence performance without monitoring or assessment components is limited.

(\*) Also refer to the synthesis document: [PUMA/PAC(99)2] *Performance Contracting: Lessons from Performance Contracting Case-Studies & A Framework for Public Sector Performance Contracting*, and to the other related case-studies of Australia, Belgium, Canada, Denmark, Finland, France, Norway and Spain, all available on the OECD netsite (<http://www.oecd.org/puma/>).

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## **PUBLIC SECTOR PERFORMANCE CONTRACTING IN NEW ZEALAND CASE STUDIES OF THE MINISTRY OF JUSTICE AND DEPARTMENT FOR COURTS**

### **1. Overview of Performance Contracting as a Tool for Performance Management**

#### ***Background***

Since 1984, New Zealand has undertaken a bold and rapid programme of reforms of both its economic policy and its public sector management systems. Changes to economic policy were driven by a need to address the faltering economy and move away from the pervasive and rigid government interventions and controls in the economy that were characteristic, particularly in the early 1980s. Public sector reforms were driven by a growing concern that the government's own management practices were adversely affecting macroeconomic performance and the achievement of its own priorities.

A number of converging factors provided a fertile environment for the changes:

- The economy was faltering. While in the 1960s, New Zealand's per capita income ranked it amongst the highest in the OECD community, by the 1980s it ranked amongst the lowest.
- The 1984 Parliamentary election brought to power a new Labour Government with its new generation of leaders committed to making significant changes to economic and state sector management.
- Concern about the management system was growing within the public sector, particularly amongst managers frustrated by the excessive controls over all aspects of their work. The need for fundamental public sector reform was well identified.

The convergence of these factors provided a unique opportunity in New Zealand for the reforms to proceed in a bold and comprehensive way. Without these factors, reform would probably have been more modest and piecemeal. Instead, changes introduced saw a significant redefinition of the government's role in the economy and society as a whole.

As a first stage, government's controls and interventions in the economy were reduced or abandoned. A second stage saw the government begin to withdraw from managing commercial activities. These activities were now established as State-Owned Enterprises operating in commercially competitive markets. New arrangements which empowered boards to run the enterprises and managers to be responsible for their areas of work without regard to public service rules brought dramatic gains in productivity, improvements in customer services, lower prices and higher returns to shareholders.

#### ***Public Sector Management Reforms***

The success of managerial accountability in State-Owned Enterprises encouraged the reformers to extend the principles to the core State sector. As a next stage to the reforms, comprehensive changes

to the systems of government management were introduced. These were influenced by several key principles presented by the Treasury to the Labour Government following its 1987 election victory. Drawing on the shortcomings of the present systems, it argued that a well-run government should:

- have clear objectives that inform managers what is expected and enable their performance to be monitored;
- be transparent in explaining these objectives and the means by which they are to be pursued;
- be structured to minimise the scope for capture of policy by service providers;
- give managers incentives to achieve the government's goals rather than their own;
- ensure efficient use of information;
- have incentives and information that enhance accountability of agents to principals;
- promote contestability of both policy advice and service delivery.

The brief emphasized that improved management outcomes could only be achieved if the management system was addressed as a whole with a comprehensive and integrated reform package. A piecemeal approach was unlikely to succeed.

The government responded. Legislation passed in 1988 (the State Sector Act) and 1989 (the Public Finance Act) laid the foundation for a comprehensive management framework which includes performance contracting for its departments and other agencies that make up the state sector. Under the old arrangements, managers were constrained by numerous rules and regulations, and were funded on the basis of inputs. The new regime provided chief executives with broad authority to run their organisations, recruit staff, use appropriated funds to produce agreed outputs, decide on the optimal mix of inputs to deliver those outputs, and report on achievements.

With this freedom to manage came increased responsibilities and the need to ensure that managers were accountable for these responsibilities. To this end, from the late 1980s, performance-contracting arrangements were widely applied throughout the public sector.

### ***Public Sector Performance Contracting***

To understand the role of public sector performance contracting, it is useful to understand the accountability relationships that apply in the New Zealand setting. New Zealand's Constitution is based on the Westminster model. Relationships between ministers and public servants are based on the convention of ministerial responsibility. The reforms of the late 1980s build on and modify that relationship.

Drawing on the policies of the government and the mandate of the electorate for those policies, ministers choose which goals (i.e. outcomes) they wish to pursue. Ministers draw on advice from the chief executive of the department for which they are responsible, from the central agencies representing their ownership, purchase and collective interests (State Services Commission, Treasury, and the Department of Prime Minister and Cabinet, respectively) and from others. This advice helps them to decide which goods and services (i.e. outputs) to purchase from government agencies and other organisations from which they purchase services. Government agencies are accountable to ministers for producing the outputs. Ministers in turn are responsible to Parliament for the choice of outputs and for the choice and achievement of outcomes.

In addressing accountability in the public sector, the New Zealand public management model focuses strongly on the concept of performance. To achieve this, it has developed and emphasized contractual relationships using a range of contractual instruments to improve efficiency and effectiveness in public institutions.

- The aims of these performance-contracting arrangements are to improve performance by:
- setting clear objectives;
- delegating authority for day-to-day input decision making;
- specifying agent performance in terms of results they can control (outputs and financial performance - not outcomes);
- assigning accountability for those results;
- increasing the transparency of the accountability relationship;
- promoting communication between the parties;
- establishing clear reporting and monitoring processes;
- providing a basis for assessment of performance;
- providing a basis for renegotiation, should conditions change.

### ***Legal Basis For Performance Contracts***

While the concept of performance contracting is now widely applied in the public sector, many of the resulting agreements are not legally binding. Nevertheless, these agreements share with more formal contracts the contractualist language which makes explicit the reciprocal expectations between the parties concerned.

In some sectors, specific agreements between identified parties have a legislative base, e.g. in the health and transport sectors. In the justice sector, however, with the exception of the legislative underpinning for the performance agreement with the chief executive outlined below, performance contracts (or more appropriately, performance agreements) do not have a formal statutory base. There is, however, a Cabinet requirement that purchase agreements should be established for all outputs purchased by the Crown to ensure that the Crown's expenditure is made lawfully in terms of the Public Finance Act 1989.

Under the State Sector Act 1988 (section 32), chief executives are responsible to their responsible minister for:

- a) *The carrying out of the functions and duties of the Department (including those imposed by Act or by the policies of the government); and*
- b) *The tendering of advice to the appropriate Minister and other Ministers of the Crown; and*
- c) *The general conduct of the Department; and*
- d) *The efficient, effective and economical management of the activities of the Department.*

The financial responsibilities of chief executives are specified as follows in the Public Finance Act 1989 (section 33):

- (2) *The Chief Executive of a department shall be responsible to the Responsible Minister for the financial management and financial performance of the department and shall comply with any lawful financial actions required by the Minister or the Responsible Minister.*

- (3) *The Chief Executive shall be responsible to the Responsible Minister for compliance with the financial reporting requirements of this or any other Act.*

Conditions relating to the review of the performance of chief executives are set out in section 43 of the State Sector Act which states that:

- (1) *The [State Services] Commission shall be responsible to the appropriate Minister or appropriate Ministers for reviewing either generally or in respect of any particular matter the performance of the chief executive.*
- (2) *In carrying out its functions under subsection (1) of this section, the Commission shall report to the appropriate Minister or appropriate Ministers on the manner and extent to which the chief executive is fulfilling all the requirements imposed upon the chief executive whether under this Act or otherwise.*

The Commission is also required under section 6(b) of the State Sector Amendment Act (No 2) 1989:

*“to review the performance of each department including the discharge by the chief executive of his or her functions”.*

## **2. The Case Study Organisations: Ministry of Justice and Department for Courts**

The Department of Justice was one of the last major conglomerate departments to be disassembled. It was replaced in 1995 by three agencies: the Ministry of Justice (policy role), Department of Corrections, and Department for Courts (service delivery roles).

The role of the Ministry of Justice as a policy agency is to provide a strategic overview of the Justice sector, coordination and leadership within the sector, and high quality advice to the government in the areas of constitutional law, civil justice, criminal justice and electoral operations. It is also responsible for the administration and financial management of the Office of Treaty Settlements which reports direct to the Minister in Charge of Treaty of Waitangi Negotiations.<sup>1</sup> The funding allocation for the ministry is made from two separate votes<sup>2</sup>: Vote: Justice and Vote: Treaty Negotiations.

The Department for Courts which receives its funding allocation from Vote: Courts is responsible for providing a modern, cost-effective, customer-focused service to court users and the judiciary. The Department of Corrections which receives its allocation from Vote: Corrections manages all custodial and non-custodial sentences imposed by the Courts.

In structural terms, the New Zealand reforms are characterised by a separation of policy advice from policy implementation, and a separation of funding or purchasing of services from delivery of services. This approach is based on concern about potential conflict of interest where parties with a direct interest in service delivery give direct advice to the government on policy and resource allocation. Structural reforms also seek to sharpen the focus of organisations and create more specialised agencies.

This separation of roles has been applied in a variety of forms in the New Zealand setting. The health sector, for example, is restructured into a policy ministry (Ministry of Health), a funding/purchasing agency (the Health Funding Authority) and business-like hospital and community service delivery groupings known as Crown Health Enterprises. The Minister of Health is the responsible minister for this area. In addition to the chief executive's performance agreement with the minister, performance contracting between agencies in the sector centres around funding and purchase agreements.

In another model, the restructured Department of Social Welfare retains policy advice, service purchase and service delivery roles within the one organisation. Responsibilities are separated, however, into several internal agencies each headed by a general manager: Social Policy Agency (policy role); Community Funding Agency (purchase role); Income Support Service and the Children, Young Persons and Their Families Service (service delivery roles). The Minister of Social Welfare is the responsible minister for the department and its agencies. In addition to the chief executive's performance agreement with the minister, performance contracting centres around performance agreements between the chief executive and the general managers of the internal agencies.

In the justice model, policy and service delivery agencies are set up as separate government departments, and each has its own responsible minister. The new service delivery agencies, Courts and Corrections, sit alongside other separate justice sector agencies including the New Zealand Police and Department of Social Welfare (youth justice services). Within this framework, the Ministry of Justice has no direct contracting role with the service delivery departments, and no formal levers with which to influence their operations. Nevertheless, it is expected to take a lead role in the development of a strategy for responding to crime, and provide advice on the allocation of resources across the sector. The service delivery departments retain responsibility for the provision of policy advice that relates directly to their operational responsibilities.

The range of performance contracts or agreements applied to and used by the Ministry of Justice and Department for Courts is described in some detail in section 3 of this paper. While many of these are standard across the Public Service, the justice sector has developed some less formal "contracting" arrangements to assist in the development of effective working relationships between the Ministry of Justice and the other agencies operating in the sector. It also has some unusual contracting arrangements with external service providers, reflecting the need to modify standard arrangements to agencies providing services which have statutory independence from the government.

### **3. Features of Performance Contracting**

Performance contracting in various forms is applied throughout the Public Service to a variety of different relationships. Key relationships are:

- between the State Services Commissioner<sup>3</sup> and the chief executive;
- between the minister and the chief executive;
- within a department, e.g. staff performance agreements, internal contracting for services;
- between a department and its environment, e.g. contracts with external service providers such as Crown entities, private sector providers and not-for-profit providers;
- between government departments.

#### ***Between the State Services Commissioner and the Chief Executive***

The State Sector Act gives authority for the State Services Commissioner to appoint the chief executives of the majority of government departments, including the Ministry of Justice and Department for Courts, subject to approval by the Cabinet. The chief executive selected enters into an employment contract with the State Services Commissioner. Chief executives are generally appointed on five-year contracts of employment with their tenure based on performance.

The employment contract takes a broad approach to specifying the responsibilities of the chief executive. It goes on, however, to refer to the responsibility of the State Services Commission for the review of the chief executive's performance on behalf of the responsible minister. A letter from the State Services Commissioner to the chief executive which accompanies the contract expands on the chief executive's obligations, responsibilities and accountabilities. It points out that where chief executives are *responsible* for activities, they are also *accountable* for those activities.

The State Sector and Public Finance Acts provide broad authority for chief executives to run their organisations and be responsible for financial matters. In doing so they rely heavily on the performance of these chief executives within that authority. Indeed, the effectiveness and performance of departments and success of the public sector reforms as a whole rely heavily on the skills and effective performance of these managers. It is important therefore that the assessment of the performance of these chief executives is both comprehensive and rigorous. The performance agreements outlined below derive from, but expand significantly on, the responsibilities outlined in the legislation and the chief executives' employment contracts. They also establish procedures for a comprehensive and increasingly rigorous assessment of performance.

### ***Between the Minister and the Chief Executive***

The review of chief executives' performance is based on an annual performance agreement which each chief executive completes with the responsible minister (the Minister of Justice for the chief executive of the Ministry of Justice, and Minister for Courts for the chief executive of the Department for Courts). The agreement specifies *ex ante* the minister's requirements against which the performance of the chief executive is assessed.

#### *Performance Agreements*

The performance agreement covers three key areas of interest:

- the department's performance in relation to the government's **purchase interest**, i.e. delivery of its agreed outputs in terms of the specification in the purchase agreement entered between chief executives and their ministers each year;
- the achievement of specified **key results** and their link to the government's strategic result areas (discussed further in section 4);
- the effective management of the government's **ownership interest** in the department.<sup>4</sup>

The performance agreement also sets out the chief executive's personal performance requirements in terms of leadership, relations with the minister or ministers, and individual contribution to the collective interest. It outlines reporting requirements, and sets out the role of the State Services Commissioner to assess the chief executive's performance for the appropriate minister at the end of each financial year. Performance agreements are developed each year for all departments on the basis of *pro forma* and guidelines issued by the State Services Commission, and follow a three-stage cycle.

**Specification stage:** A panel of the heads of the government's key central agencies: State Services Commission, Treasury and the Department of Prime Minister and Cabinet reviews the key result areas (KRAs) submitted by departments to ensure that they align with the government's strategic result areas (SRAs) and with key result areas of other departments (KRAs and SRAs are discussed further in section 4). The specification stage for the performance agreement occurs in parallel with chief executives reaching agreement with responsible ministers on departments' purchase agreements (see

below). This stage of the cycle is completed when the responsible minister and chief executive reach agreement on the chief executive’s performance agreement.

**Reporting and monitoring of performance stage:** In addition to the requirements specified in the performance and purchase agreements, both Treasury and the State Services Commission write to chief executives at the start of the financial year to confirm their specific *departmental* performance expectations and make explicit what aspects of departmental performance they will monitor and report on as a contribution to the State Services Commissioner’s appraisal of chief executive performance. Chief executives prepare formal reports on performance at six months and again at the end of the performance year for their minister, and for the State Services Commission to use as part of its assessment of departmental performance.

**Appraisal of the chief executive’s performance stage:** Performance is assessed by the State Services Commissioner against the chief executive’s performance agreement. In undertaking the assessment, the State Services Commissioner draws on information relating to departmental performance provided by the State Services Commission, Treasury, and Department of Prime Minister and Cabinet; information provided by the responsible minister; input from referees nominated by the responsible minister and the chief executive, and the chief executive’s self assessment. This approach enables the Commissioner to gain a broad view of the chief executive’s overall performance, and provides input for a meeting between the Commissioner and the chief executive to discuss the chief executive’s performance. Assessment is based on a mixture of measurement against targets specified in the performance and purchase agreements and more general assessment of the manner in which the business is undertaken. The model used in assessing chief executive’s performance is shown in Table 1 below. A scale of performance ratings, currently under review, is used to indicate whether the chief executive is failing to meet expectations, meeting expectations or exceeding expectations.

**Table 1: Model used for assessing chief executive’s performance**

<b>Performance area</b>	<b>Performance strand</b>	<b>Description of measures</b>
Results	Strategic priorities	Results as achieved in areas of strategic priority for the government
	Ownership	The department’s capacity is maximised to meet current and future demands efficiently and effectively
	Output delivery	The department’s agreed outputs, as specified in the purchase agreement are delivered

Behaviours	Relationship with minister(s)	Maintaining professional, productive and effective working relationship(s)
	Leadership	Demonstrating strategic thinking and maintaining effective communication and relationships
	Promotion of the collective interest of the government	Behaving in ways that contribute to the wider interests of government

Following completion of the appraisal, a report is prepared by the Commissioner for the chief executive and the appropriate minister.

With the State Services Commission increasingly using information from chief executives' assessments to plot the position of individual departments compared to others in relation to particular competencies, departments have increasingly good comparative information which may serve as an incentive to improve performance. Another incentive is the use of performance bonuses. Sanctions include non-renewal of contracts for chief executives whose performance does not meet expectations, or in extreme cases, removal from office.

#### *Purchase Agreements*

Purchase agreements form an important part of performance agreements. Purchase agreements are negotiated while the Budget is being prepared and are consistent with the annual Estimates of Appropriations tabled in Parliament.

Departmental output classes have been increasingly refined in recent years and now form a stable basis for planning departmental activities and expenditure. Ministry of Justice and Department for Courts output classes are outlined in Tables 2 and 3.

**Table 2: Ministry of Justice output classes**

<b>Vote: Justice</b>	
<b>Output class 1: Ministerial servicing and contract management</b>	This class includes services provided to the Minister of Justice relating to ministerial correspondence, parliamentary questions, advice on ministerial appointments and services relating to the management of memoranda of understanding and contracts with Crown entities and other bodies funded through Vote: Justice.
<b>Output class 2: Policy advice</b>	This includes advice on public law policy, responses to crime policy including the development of a responses to crime strategy, family policy, commercial and family law, legal advice and law reform, purchase advice to ministers on the outputs of Justice agencies and the development and completion of an integrated Justice Information Strategy.

<b>Output class 3: Management of the parliamentary electoral system</b>	This covers the conduct of parliamentary elections, by-elections, referenda and polls, appointment and training of returning officers; printing of voting papers; publicity programmes concerned with voting procedures and polling places and nominations.
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<b>Vote: Treaty Negotiations*</b>	
<b>Output class 1: Policy advice: Treaty negotiations</b>	This includes ministerial services, advice on the impact of claims under the Treaty of Waitangi, advice on Maori interests in land which might be used for Treaty settlement purposes, advice on specific historical Treaty claims and Crown options for settling those claims, direct negotiation and settlement of Treaty claims, and implementation of Treaty settlements.
<b>Output class 2: Land portfolio management</b>	This includes acquiring, managing, transferring and disposing of Crown-owned land for Treaty settlement purpose

\* At present, Vote: Treaty Negotiations outputs are included in the performance agreement between the Director of the Office of Treaty Settlements and the Minister in Charge of Treaty of Waitangi Negotiations, not the Ministry of Justice chief executive's agreement with the Minister of Justice. This is an atypical arrangement.

**Table 3: Department for Courts output classes**

<b>Vote: Courts</b>	
<b>Output class 1: Policy advice</b>	This includes policy advice on the relevance and effectiveness of court services, and ministerial servicing.
<b>Output class 2: Collection or enforcement of fines and civil debts</b>	This includes administrative services for processing and enforcing of fines and orders of the court.
<b>Output class 3: Case processing — criminal</b>	This includes administrative and prescribed statutory services related to the efficient management of individual cases through the criminal courts process
<b>Output class 4: Case processing — civil</b>	This includes administrative and prescribed statutory services related to the management of applications through the Maori Land Court and individual cases through the Civil and Family Courts.
<b>Output Class 5: Case processing — tribunals and other authorities</b>	This includes administrative services related to the efficient management of claims, applications or cases through individual tribunals, authorities, boards and committees administered by the department, including the Environment Court.
<b>Output class 6: Judicial support</b>	This includes research, library, sentencing information, security, case information and administrative services to support judicial officers in their judicial functions.

<b>Vote: Courts</b>	
<b>Output class 7: Information, licensing and agency services</b>	This includes administrative activities related to provision of Maori land information, occupational licensing services, agency services and services to Treaty of Waitangi claimants through the Maori Land Information Office

The purchase agreement describes outputs and establishes performance indicators relating to quantity, quality, timeliness and cost of those outputs. Although a similar approach is used for setting policy outputs and service delivery outputs, policy outputs, e.g. Vote: Justice output class 2 and Vote: Corrections output class 1, have an additional performance measure. This is the unit cost or cost per advisor day of providing policy advice.

In the absence of a competitive market for policy advice, this measure was added to provide ministers, the government and departments with comparative information on the cost of policy advice provided by different departments. Although this is a somewhat blunt instrument given that there may be legitimate reasons why policy advice in certain areas is more expensive to produce than in others, it nevertheless assists in making comparative costs transparent, and seeks justification for higher costs where they appear, e.g. requirements for extensive consultation, high level technical input.

The purchase agreement with the chief executive of the Ministry of Justice includes a further performance indicator in relation to its policy output class. This performance indicator seeks information on what it terms “compliance”. Compliance relates to the minister’s six-monthly feedback on the quality of policy advice services provided.

Output specification arrangements are thus applied both to the work of policy advice and service delivery agencies. With the adaptations to performance indicators for policy advice outputs outlined above, the same general framework is applied for policy and service outputs.

For the purchase agreement, output classes are formally broken down into sub-outputs in order to provide greater specificity about the services being purchased. As an example, Ministry of Justice Output class 2: policy advice has the following sub-outputs:

- 2.1 Public law policy;
- 2.2 Responses to crime policy;
- 2.3 Family policy;
- 2.4 Commercial and property law policy;
- 2.5 Legal advice and law reform;
- 2.6 Strategic assessment and purchase advice;
- 2.7 Justice information strategy.

The Ministry of Justice work plan which derives from the purchase agreement provides information on each project that will contribute to the sub-outputs. This document is used for internal specification and monitoring purposes. Similarly, the Department for Courts output classes are specified in more detail in its business plan.

Chief executives report regularly to their minister on progress in producing the specified outputs. These reports identify and explain variances between agreed and actual performance. Where there are significant variances, the parties generally discuss corrective action or alternatively agree to modifications to the agreement.

Purchase agreements which were introduced with the 1993/94 financial year were not part of the original management system design. They are, however, gaining acceptance and are now better integrated into the performance agreement system.

#### *Within Departments*

Chief executives are the legal employers of staff in their departments. As with staff in other departments, Ministry of Justice and Department for Courts staff are employed either in terms of individual or collective employment contracts. The chief executive's performance and purchase agreements form the basis for the business or work plan in each organisation. Staff in both departments enter annual performance agreements with their managers at the beginning of each financial year. These agreements set out the work which they are expected to complete and competencies against which their performance will be measured. Staff are assessed by their managers at the end of the financial year.

#### *With External Agencies*

A number of agencies known as Crown entities are funded through Vote: Justice. These include the Electoral Commission, Human Rights Commission, Law Commission, Race Relations Conciliator, Privacy Commissioner, and the Police Complaints Authority. Unlike government departments, Crown entities are legally separate from the Crown. As such, any performance agreement cannot override the legislative requirements of those entities.

These entities are, however, required under the Public Finance Act to provide the minister who is responsible to Parliament for appropriations made to Vote: Justice, with information on their objectives, a statement of service performance, and a set of audited financial statements. Any additional reporting requirements must take account of their independent statutory functions, duties and powers. This has been achieved by using memoranda or letters of understanding between these Crown entities and the minister.

These memoranda or letters generally include a statement of purpose of the organisation, identify the parties and specify the term, provide for the disposition of risks, provide the price and basis for price changes, specify outputs and agreed measures of performance, reporting requirements and mechanisms for disputes resolution. Memoranda are generally negotiated on an annual basis, although some multi-year arrangements have been agreed. These arrangements serve to improve accountabilities and relationships between the parties by clarifying responsibilities and providing opportunities for improved communication and information flows.

For the Department for Courts which is responsible for the provision of services to the judiciary, the constitutional principle judicial independence is applied. As a result, judicial salaries and expenses, costs associated with judicial reviews, professional and ancillary services required by courts as a result of decisions made by the judiciary, and other services required by the judiciary are funded at present on a demand driven basis and are not supported by performance agreements.

#### *Between Departments in the Justice Sector*

The Ministry of Justice is responsible for the provision of advice relating to the justice sector as a whole and for advice on purchasing priorities in the sector. As mentioned earlier, the Ministry of Justice is expected to take a leadership and strategic role in the sector, but has no formal levers to

ensure that other players subscribe to identified strategies. Performing well in this overarching role has been a challenge in a sector characterised by strong and independent specialist units which may not always agree with priorities identified in the wider context.

In establishing the restructured sector, the government was mindful of the tensions that would exist. Recognising the need to define relationships and responsibilities without formal contracting arrangements, Cabinet directed relevant chief executives to develop protocols on the formulation of policy advice in areas of mutual risk between the Ministry of Justice, Department for Courts, Department of Corrections, the Police and the Department of Social Welfare which:

- recognise areas or issues of mutual interest and establish an expectation to consult;
- provide transparency in policy work programmes and specify the exchange of information on delivery performance which is to occur as a matter of course;
- provide processes for the resolution of disputes;
- prevent papers being submitted to ministers without adequate consultation between agencies on matters of mutual interest;
- consider the use of seconded staff on a regular basis across the agencies concerned.

The resulting protocols set out the justice policy development process; consultation process; arrangements for reviewing the policy development process; accountabilities for drafting legislation; objectives, functions, membership and administration of a chief executives forum; and arrangements for coordination of policy work programmes.

A protocol for purchase advice coordination in the justice sector was also agreed. Ministry of Justice purchase advice for the sector is now well developed. It is likely to be increasingly influential in the government's decision making on sector funding allocations.

These protocols, like performance agreements, specify the roles and expectations of the parties. Unlike performance agreements however, they contain no provision for *ex post* assessment of performance. As a result, it is difficult to ensure that departments consistently comply with the provisions of the protocols. While the chief executives' performance agreements make some reference to their responsibility to facilitate interdepartmental coordination of policy making and resolution of conflict, there is no explicit reference to their role in relation to protocols for justice sector coordination.

#### **4. Connections with Other Decision-making Processes**

The chief executive's performance and purchase agreements are linking mechanisms for two key decision-making processes: the contribution the Ministry of Justice and Department for Courts make to the government's identified strategic result areas, and the annual budget process.

##### ***Strategic result areas and key result areas***

A key element in providing a comprehensive framework for the contracting process is the extent to which the government has clear strategic goals and the extent to which it is able to translate these goals into requirements on chief executives to drive some of their output delivery and their commitment towards achieving those goals.

Government efforts in this direction have focused around the development of strategic result areas (SRAs) for the Public Service. These were first developed through a process coordinated by the Department of Prime Minister and Cabinet for the 1994/95 financial year, and were revised in 1997 for the period 1997-2000. SRAs are statements of the medium-term priorities for the Public Service as a whole. They provide the link between the government's broad strategic goals, resource allocation priorities in the annual Budget and the activities of government departments and agencies. SRAs are pitched at broad level outcomes, and form the headline accountabilities in performance agreements between ministers and departmental chief executives.

Present SRAs are set out under the broad headings of:

- strong economic growth;
- enterprise and innovation;
- external linkages;
- education and training;
- economic and socio-economic participation;
- safer communities;
- health and disability services;
- Treaty of Waitangi;
- protecting and enhancing New Zealand's environment.

Chief executives work with ministers to identify contributions their departments can make to the government's SRAs over a three-year period. The Ministry of Justice and Department for Courts focus on SRAs relating to enterprise and innovation, safer communities and Treaty settlements under the Treaty of Waitangi. Their contributions are framed as key result areas (KRAs) in chief executives' performance agreements. Where chief executives' business does not directly relate to SRAs, KRAs are selected for activities essential to the operational effectiveness and future capacity of their departments.

SRAs and KRAs are an important addition to performance contracts and appear to be adding value by increasingly linking outputs to what the government wants to achieve.

### *Budget Process*

While the budget process runs in tandem with the performance agreement process, work around the key result area specification for performance agreements has recently been brought forward so that departments can complete their work in this area before they embark on the budget round. This enables them to identify any new or expanded areas of activity proposed in the budget round in the context of strategic and key result areas.

Purchase agreements are negotiated while the Budget is being prepared. Parallel discussions are held between the responsible minister and chief executive on outputs to be purchased, and between the responsible minister and Minister of Finance and Treasury on budget expenditure decisions. Purchase agreements are finalised once Departmental Forecast Reports and the Estimates are tabled in Parliament. At the end of the financial year, departments table their Annual Reports, audited by the Audit Office. These three documents form the public and parliamentary accountability documents on departmental performance. The performance and purchase agreements are consistent with these external documents.

## **5. Assessment and Lessons Learned**

While the use of performance contracting in the Ministry of Justice and the Department for Courts, as for the Public Service as a whole, has generally served to clarify roles and responsibilities and to improve performance, some areas of performance contracting are more successful than others. Some lend themselves well to more standard and formal agreements, e.g. chief executives performance agreements. Others do not fit well, e.g. demand driven services provided to support the independent judiciary.

In some areas, a more relational approach has been taken. While relational contracts can reduce costs of contracting, they can only succeed where there is a relationship of trust between the parties. Such relationships take time to develop. As relationships within the justice sector are still new, it is too early to judge the effectiveness of these approaches.

Despite tensions in the justice sector created by the restructuring, there have been important gains. New agencies are free of the problems of multiple and sometimes conflicting objectives, are better focused and able to provide clear information about their activities and the real costs of services than was possible under the old amalgamation.

### ***Between the Minister and the Chief Executive***

The performance agreements between ministers and the chief executives of the Ministry of Justice and the Department for Courts are seen by the chief executives as useful instruments for fleshing out the responsibilities noted in their employment contracts with the State Services Commission, and specifying the performance expected from them and their departments as a whole. While both agencies would like to see more senior input from the central agencies into the development and assessment of their performance agreements, the process for developing agreements continues to be refined, and the resulting documents are well accepted by chief executives. For the State Services Commissioner, reviews of chief executives' performance and the communication surrounding the process are a useful means for identifying problems and securing a better understanding of what departments are doing.

Over time, performance agreements and purchase agreements have been better integrated. Concern about departments' performance in relation to the government's purchase interest is now better balanced with concern about the government's ownership and collective interests. This broader focus is assisting in breaking down the narrow focus in favour of more co-operative relationships underpinned by common purposes and values. The performance agreement process will continue to be refined over time, with a possibility of reducing compliance costs, e.g. moving to multi-year contracts, or developing more flexible contracting and assessment arrangements.

The requirement that chief executives are accountable to their minister, but are assessed by the State Services Commissioner creates some tensions. While chief executives see advantages in this approach, they recognise that in some circumstances, it could place them in difficult situations if the views of a responsible minister and those of the State Services Commissioner were in conflict in the assessment of their performance.

### ***Within a Department***

Both organisations have adopted a comprehensive programme of staff performance agreements which derive from the chief executive's performance and purchase agreements. These agreements and the

process of annual assessment of performance are generally well received and serve to improve performance through the clearer specification of expectations and the opportunity to discuss and assess performance. They also provide a basis from which to record poor performance and to take appropriate remedial or other action.

### ***With External Agencies***

Agreements with some external agencies have seen the standard performance contract approach modified to take account of the statutory independence of the Crown entities involved. The use of memoranda or letters of understanding has provided a viable and successful alternative. Without this flexibility, some change to the legislation of agencies concerned was needed to provide for a more formal contracting arrangement. The costs of such a move would be likely to outweigh the benefits.

External purchasing by Department for Courts for services for the judiciary continues to operate on a demand driven basis, although efforts are being made to create procedures, identify benchmarks and appropriate unit costs to ensure effective resource use.

### ***Between Departments in the Justice Sector***

Relationships are still developing between the key justice sector agencies. Some progress has been made on sector wide issues using a collaborative approach, particularly the development of a justice sector information strategy, and efforts to respond strategically to offending by Maori. Nevertheless, progress has been slow and hard won.

The protocols adopted to assist justice sector relationships in the areas of policy and purchase advice are not yet fully effective. Although the protocols set out processes to follow, agencies continue on occasion to act independently and tend to come together either where it is clearly in their interest to do so, or where they are directed to by Cabinet. Because there is no formal ex post mechanism for assessing performance against specified roles or processes, the protocols cannot really be characterised as “performance contracts”. Their emphasis is relational rather than contractual.

Without leverage, much will depend on the skills, commitment and goodwill of the chief executives and senior staff working in the sector, and their ability to work together on issues of key strategic interest. Specific reference to justice sector collaboration in justice sector chief executives’ performance agreements could provide some incentive for more collaborative behaviour. Increased collaboration between Justice sector ministers who at present tend to work somewhat independently would also assist.

Bearing in mind the differing successes, the following questions are addressed.

#### *Does performance contracting live up to its aims?*

The aims of performance contracting arrangements are to improve performance by:

- setting clear objectives;
- delegating authority for day-to-day input decision making;
- specifying agent performance in terms of results they can control (outputs and financial performance — not outcomes);
- assigning accountability for those results;

- increasing the transparency of the accountability relationship;
- promoting communication between the parties;
- establishing clear reporting and monitoring processes;
- providing a basis for assessment of performance;
- providing a basis for renegotiation should conditions change.

At the minister/chief executive level and within departments, performance contracting is well received and has lived up to these goals. For areas where the principal/agent role is less clearly defined, although clear objectives may be set and relationships clarified, ability to influence performance without monitoring or assessment components is limited. The less formal mechanisms require a high level of trust and goodwill to operate effectively.

*What are the organisational benefits of performance contracting?*

Chief executives' performance agreements clarify the strategic areas that the department will contribute to and the priority areas for its work, enable them to be clear about responsibilities in terms of the government's ownership, collective and purchase interests, and provide a clear statement of outputs to be delivered in the agreement. The adoption by departments of comprehensive performance management systems for assessing performance of their staff has served to clarify roles and responsibilities, enjoin staff in the work and objectives of the organisation, and improve communication both between staff and their managers, and within organisations as a whole.

*In what areas is performance contracting most beneficial?*

One of the main benefits of the approach of written agreements and ex post performance assessment is the increased transparency throughout the public service in terms of information about what departments do and how much their activities cost. Before the development of output based appropriations and written agreements, ministers did not always know the full extent of their department's activities and the relative cost of various aspects. This clarity assists in departmental management and ministerial and departmental decision making. It also enables staff to gain a clearer understanding of how their work contributes to the work of the department and to the government's wider objectives.

*How important relatively are the relationships between individuals in the performance contracting process in determining the ultimate success of the process?*

While performance-contracting arrangements are key features of performance-driven organisations, they are not sufficient on their own to ensure high performance. The leadership skills of chief executives and senior managers are crucial additional factors. Although the performance contract framework was applied throughout the Public Service, and it is accepted that performance has generally improved, resulting changes in performance have nevertheless been variable. Highest improvements have been associated with organisational transformations led by effective managers. The performance of individuals and the relationships they are able to develop are clearly significant in determining the ultimate success of the process.

As with the importance of skilled managers, the effectiveness of the mechanisms also depends on the skills of ministers and their interest in assessing the performance of their agencies. Without their

interest, there is a risk that monitoring may be perfunctory and the effects of monitoring on performance weak.

*What are the key success factors in setting up the performance contract and managing the contract relationship?*

Key success factors are the development of a clear and logical process, good and ongoing communication between the parties, minimum compliance requirements consistent with the provision of adequate information for effective assessment, and comprehensive analysis and discussion of performance against specifications.

## **6. Conclusion**

The New Zealand public sector reforms have been concerned not only with structures and systems, but also with roles, responsibilities, and relationships in pursuit of performance improvement. Improving the system is an evolutionary process, and, as the environment within which public sector management takes place is continually changing, arrangements should be the subject of continual review and assessment. Nearly ten years on, the performance system adopted in New Zealand has shown pleasing results. It continues to be reviewed and adapted to assist managers to improve their performance and that of their organisations in meeting the government's objectives.

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## NOTES

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1. This refers to settlement negotiations related to the historic treaty between the Maori in New Zealand and the Crown in United Kingdom, which was signed back in 1840..
2. When the legislature considers legislation for appropriations, the appropriations are grouped within “votes” with one or more “votes” for each minister. Each “vote” represents a class of outputs produced by a department or other supplier to government. For example, “Vote:Courts” would comprise the funding for the class of outputs related to the Courts system. Normally, there is one “vote” for each ministerial portfolio. When the legislation is passed, Parliament is said to have “voted” resources to ministers. (For more information about these terms and ideas, see: “Putting it together: an explanatory guide to the New Zealand public sector financial management system”, The Treasury, New Zealand, August 1996).
3. The State Services Commission is the government’s principal advisor on public sector organisational form and strategic human resources management. As noted above, its functions include making recommendations on departmental chief executive appointments, appointing and entering into contracts with chief executives, and reviewing chief executive performance.
4. The purchase and ownership interests of government imply different approaches to measuring performance. The purchase interest refers to the kinds of information requires to assess government’s performance as a *purchaser* of good and services, e.g. information such as quantity, quality, time and place of delivery and price. The ownership interest refers to the interests of government as the *owner* of the resources of government departments, where performance centres on ensuring that capital assets are used efficiency and maintaining the capacity to provide services efficiently in future years.