



Te Kawa Mataaho
Public Service Commission

Long-Term Insights Briefing

Consultation on the draft briefing

June 2022

Contents

Summary	3
Max Rashbrooke	5
Te Rūnanga o Ngāi Tahu	10

Summary of responses

Once we had shaped up our content into a draft briefing, we published this on our website and opened for comments on it in our second round of statutory consultation under the Act. The feedback we received from that consultation helped us further develop the briefing into its final version. The broad points are summarised below, with more detailed and specific comments outlined in terms of the changes they resulted in for the final briefing:

- Needs to be more content on the conditions required for participation to be effective or good. The briefing could be more consistent and explicit about these qualities such as inclusion (ensuring that everyone has the opportunity to participate), equality (those participating do so on equal terms with an equal chance of being heard), respect (participants respect each other's views).
- Should be more attention to deliberation in terms of either definition or virtues in terms of contribution to ensuring that participation is good/useful/effective. Particularly relevant throughout chapter 5, which weakens as it progresses up the spectrum towards greater participation
- Although the discussion of approaches to public administration is well done and very helpful for setting the wider discussion in context, it could be strengthened in terms of the defects of New Public Management. In particular, the shift (only partially addressed in the draft) from treating citizens as what they are, citizens, towards treating them only as consumers.
- The vision should be that the political system offers people greater opportunities for their participation and should include a discussion of the rights that New Zealand citizens should enjoy in terms of participation. Current vision is simply that participants “know” what kind of participation to expect.
- Caution of the broad definition of ‘public participation’ to include iwi Māori rūpū and whānau. As a Tiriti partner and holding rangatiratanga within the relevant areas, iwi are not the public, and mana whenua are not another stakeholder group to be briefed. Engagement with Māori as a Te Tiriti partner should be elevated above public engagement, noting that this does not preclude individuals’ engagement in public consultation processes. Across the public sector, there is a distinct lack of clarity around the differences between Te Tiriti Partner engagement and public engagement, with limited avenues for the former.
- Capacity in the public sector for engaging with mana whenua is increasing, but there is still some distance to travel. This will require the development of additional tools to improve public sector engagement with Māori. Efforts could be directed to developing capacity and sharing work programme planning with iwi Māori, to better support meaningful participation.

Changes made in response to feedback:

- Ensured the briefing is explicit about the conditions required for participation to be effective or good, including qualities such as inclusion, equality, and respect.
- More clearly defined deliberation and emphasised its importance and contribution.
- Acknowledged New Zealand’s absence of experience with more deliberative models like citizens’ assemblies and participatory budgeting.

- Used more decisive language in the third element.
- Substantially revised the section on New Public Management to better explain its implication for public participation, especially in conception of the relationship between the public and the state. This also makes the benefits of the recent shift to recognising the public as ‘citizens’ more explicit.
- Updated the references relating to how significant the issue of inequality is for the New Zealand public.
- Expanded the data on the digital divide in New Zealand, including explaining the challenges and limitations of this data.
- Noted challenges around the Open Government Partnership, clarifying that there is a renewed commitment to improvements in this area.
- Clarified that there is ongoing work to improve the collection of performance data in relation to the Official Information Act, including on extensions and transfers.
- Removed some confusing text about the relative importance of processes and outcomes in participation.
- Clarified that although there are costs associated with more participatory process, these are often offset by better reflection of the public’s views and greater legitimacy for decisions that then reduce implementation costs later on.
- Substantially reworked the section on Public Service capability to acknowledge the extent of difficulties in this area, especially with regard to more participatory and deliberative models.
- Also emphasised the improvements required for Public Service capability to engage with Māori and the appetite to do more.
- Revised the descriptions of models later in chapter 5 and clarified that case studies are purely descriptive rather than evaluative due to the difficulties of obtaining credible evaluation data.
- Expanded the briefing’s vision of the future to properly summarise all the opportunities for improvement: greater avenues for and more innovative participation; processes that build trust and social cohesion; priorities in the Māori Crown relationship; clarity over roles, responsibilities, and expectations; emphasis on accessibility, inclusiveness and respect; and development of Public Service capability.
- Clarified in chapter 1 that there is an important distinction between engagement with Māori in participation processes and engaging with Māori as a Treaty partner. Each are appropriate in different contexts and the former should not be seen as a substitute for the latter.

Feedback on draft long-term insights briefing – Max Rashbrooke

I welcome the publication of the commission's draft briefing; the engagement with the relevant literature is good, and the three broad areas of action – a framework for measuring how much participation agencies are achieving, piloting deeper participation in selected areas, and moving towards greater participation across the board – seem sound, although in need of being developed further. However, there are several areas, both large and small, where the draft could be improved.

My principal concern is that although the focus on participation is welcome, there is very little on the conditions required for that participation to be effective or good. Although these issues are tackled occasionally in passing, as it stands, the draft is partly open to the charge that the commission believes participation of any quality or standard to be a good thing. Yet the Brexit referendum, for instance, was – regardless of one's stance on Britain's relationship with Europe – a process of appalling quality that nonetheless had immense amounts of 'participation'.

At a minimum, the commission needs to be explicit about the qualities that will make participation 'work', in crude terms. This involves virtues like inclusion (ensuring that everyone has the opportunity to participate), equality (those participating do so on equal terms with an equal chance of being heard), respect (participants respect each other's views), etc – all of which will be covered in the literature the commission has already reviewed.

Perhaps most seriously – and again Brexit serves as a warning example – the commission does not adequately address deliberation, neither defining it properly nor examining its virtues. This is a problem in a minor sense, in that the draft mentions deliberation from time to time, so to fail to address it properly is internally inconsistent. In a more serious sense, deliberation – by which I mean, roughly speaking, high-quality public discussion among participants who have to listen to the views of others and give reasons for their own positions – deserves much greater attention. Often, we do not know what we think until we have discussed an issue with others. Equally, in a given group of people, each person may have part of the solution to a given problem, but unless they are able to discuss the issue deeply with others, those pieces of the puzzle will not be brought together, and the wisdom of the crowd will not come to the surface. Put simply, participation may empower the populace, but it is (often) deliberation that makes it wise. To take just one example, the problem with standard government consultation procedures is not just that they score so poorly on the participation front, but also that they are very non-deliberative. That is, they ask each individual, responding in isolation, for their opinion, without any guarantee that the individual has discussed it deeply with others. The Brexit referendum suffered from the same problem. I would not go so far as to say that participation has no merit without deliberation, but the former's value is certainly greatly enhanced by the latter. Accordingly, I think the draft briefing needs to properly define deliberation but also make clear its contribution to ensuring that participation is good/useful/effective.

I turn now to some more minor points:

(page) 5 – the statement that New Zealand has “good examples” of participation across the spectrum seems too strong, given the country's well-established absence of processes like citizens' assemblies, participatory budgeting, etc. Co-governance arrangements with Māori are of course rightly highlighted, but the absence of other such processes must be noted.

5-6 – the three ‘Elements’ are welcome, although it is worth noting that the first, the creation of a common framework for identifying agencies’ approaches to participation, will not by itself achieve much change unless the second and third elements are also pursued. Moreover, the language of the third element seems overly cautious. I appreciate there are constraints on how far the commission wants to be directive. Nonetheless, its own briefing clearly establishes the philosophical and practical desirability of greater participation; therefore, to more strongly recommend a move in that direction would be internally consistent. Where the third element currently says that a more consistent approach to participation “could involve an expectation” that agencies move towards power/collaborate, the word “could” should be replaced with “should”.

16-17 – the discussion of approaches to public administration is well done and very helpful for setting the wider discussion in context. However, the discussion of new public management could be strengthened. The commission notes that NPM runs up against problems with services not being integrated, citizens lacking sufficient information, etc, but NPM’s defects ran/run much deeper. In particular, its core defect was the shift (only partially addressed in the draft) from treating citizens as what they are, citizens, towards treating them only as consumers. As the Canadian academic Leslie Seidle has argued, a given person is not a simple purchaser of government services; they are, among other things, “a taxpayer, the recipient of certain monetary benefits from the state, a voter and possibly a member of a political party and/or one or more voluntary organisations with an interest in public policy”. The citizen “carries expectations that extend beyond a particular contact with a particular public servant at a particular time”. NPM in this sense was fundamentally unable to see people as they truly are – that is, as carrying the rights, responsibilities and expectations of citizens. Any participation-based approach, in contrast, is founded on recognising that wider citizenship. (“Citizen-users” is also a useful phrase where one wants to distinguish people in their role as direct users of government services; it is superior to “consumer” or even “client”.) Such shifts are fundamental to the move beyond NPM, and need to be made more explicit in the draft.

22 – although, as the creator of the site linked to in footnote 50, it pains me to say this, the relevant reference is out of date and probably no longer accurate. The polling series referred to seems to have been discontinued some years ago, and more recent polling shows other issues usurping inequality in the public’s priorities, notably housing and cost of living (albeit both are closely linked to inequality).

26 – the draft quite rightly references the digital divide, but does not provide clear figures on it for New Zealand (for instance, how many households still lack a reliable internet connection). Surely this could easily be remedied.

28 – the draft references New Zealand’s “commitment” to the Open Government Partnership, but it must also surely be noted that New Zealand has been consistently reproved by independent observers for the extraordinary lack of ambition demonstrated in its OGP action plans. Otherwise this gives a false impression of the strength of the authorising environment.

29 – the draft notes data purporting to show that compliance with the Official Information Act is improving, but it should be also noted that these data are easily gamed (more requests can be answered within the statutory time frame simply by taking advantage of the statute’s provisions for

requesting extensions, and therefore actually taking *longer* to answer them). It is not clear, in fact, that the data are adequate to show improved performance in a substantive sense.

32 – the draft says that good participation may involve an “emphasis on process as much as outcome”. While good processes may have normative and practical benefits (people may feel better simply for having had the chance to contribute), this seems overly strong. ‘Good’ processes that do not lead to good outcomes are, obviously, materially worse than ones that do. (And can they in fact be ‘good’ if they do not create good outcomes?) The draft also says participation may be “as much about building citizenship as it is about producing better decisions”, but it is not clear what this means. Moreover, it is hard to see how citizenship would be built – that is, people would be encouraged to be more active in decision-making on a recurring basis – if they were always taking part in “good” processes that did not actually lead to anything or produce material improvements in their lives. I would suggest that this bullet point needs to be clarified, and that moreover it should say nothing stronger than the fact that good participation may involve an emphasis “on process *as well as outcome*”.

33 – the draft says more participative processes are “more costly”, but this is far too bald. Engaging the public more deeply, if it leads to better, more consensual decisions that better reflect citizens’ needs, will save money further down the track. Nothing is more expensive, after all, than quickly taking the wrong decision and having to tear everything up and start again. There is some evidence that participatory processes do indeed save money in the long term. At the very least, the draft should say nothing stronger than something like, “more participatory processes have greater upfront costs, but this may be offset by lower costs further down the line resulting from decisions that better reflect the public’s desires and a greater legitimacy among the public”.

33–35 – the section on public sector capacity for participatory processes does not really make clear just how significant the shortfalls are. There may not be any hard data on this point, but if so, the draft needs to clearly note that we do not know how bad the situation is. Anecdotally, public sector officials tell me that they – and their colleagues – simply would not have the knowledge and ability to implement the kind of participatory processes I favour. Such weaknesses are, in any case, acknowledged later in the draft, so should probably be expanded upon here.

Reverting for a moment to broader issues in the draft briefing, there are significant weaknesses in the description of the spectrum of participatory processes from page 37 onwards. The early parts of that description are good, perhaps reflecting the New Zealand public service’s familiarity with relatively non-participatory processes. However, the account gets weaker as one progresses up the spectrum towards greater participation. This part of the briefing has the air of being somewhat rushed, and needs greater attention. Some detailed points follow.

44 – the case studies on things like AWHI are welcome, but in many cases it is not clear what impact participation has actually had; the existence of participation is merely described. This probably needs to be addressed if these case studies are to have the desired impact.

48 – the paragraph on crowdsourcing is brief, poorly developed and unclear. It needs to be significantly expanded, and could be strengthened with references to concrete examples, such as Green MP Gareth Hughes’s crowdsourcing of possible legislation on digital issues (some years ago) or Scandinavian crowdsourcing processes for suggesting bills to go before Parliament (described in my work and elsewhere).

48 – the section on “representative deliberative processes” needs, I think, to be completely reworked. Firstly, the title is confusing, because the established use of the term “representative deliberative processes” – as in the OECD publication *Catching the Deliberative Wave* – refers to a wide range of institutions including citizens’ assemblies, citizens’ juries, and so on. The draft’s description of such forums – that they take half a day and involve 20-70 people – strikes me therefore as referring only to one kind of representative deliberative process, planning cells, and is thus badly askew from the title. I think this section needs to be renamed “planning cells” and have more detail on that institution specifically. There could then be a separate section on representative deliberative processes, outlining what it means as a catchall term (as per the OECD) and explaining that institutions falling under that umbrella can lie anywhere on the participation spectrum from involve to empower, depending on what powers are granted. There also needs to be sections on other essential institutions in the representative deliberative family (as discussed below).

54 – the prominence given to participatory editing seems puzzling, especially given the neglect of other more important processes (as discussed below), and it is not clear how the method has been used or whether it has had significant impact (my instinct is that it has not). This paragraph needs significant strengthening.

54 – the account of citizens’ juries is reasonable, although it needs to start with the sentence on how the juries are selected and who they comprise, as their role is difficult to understand otherwise. However, given the increasing use, importance and responsibility accorded to citizens’ juries, this account could be significantly expanded. Moreover, it is incorrect to suggest that citizens’ juries are incapable of tackling technical issues. Australia, for instance, has run successful citizens’ juries on issues such as the disposal of nuclear waste. One of the strongest findings in the participatory literature, in fact, is that such processes are remarkably capable of handling complex, technical information.

54 – at this point I would have expected to see a section on citizens’ assemblies, and its absence is difficult to comprehend. The case study on the Irish Citizens’ Assembly is of course welcome, but there needs to be a much wider account explaining the history of the assemblies, their merits, how they work (even if this is just to say “like citizens’ juries, but bigger”), and the growing importance accorded to them. This is especially true given examples such as the French Climate Assembly, surely one of the most exciting participatory processes (for all its faults) of the last few years.

54 – also missing is any account of the very important experiments being undertaken with citizen-based constitutional conventions, in which demographically representative or elected groups of citizens are tasked with writing new constitutions. The Icelandic case, albeit it has not been fully successful, is an important one, and is well discussed in Helene Landemore’s recent book *Open Democracy*. A similar experiment is currently underway in Chile. Given that these are some of the

most significant experiments in participation seen in the modern world, they surely deserve attention in this briefing.

58 – the draft briefing’s vision for the future is simply that participants “know” what kind of participation to expect, but this seems inadequate as a picture of the future. Given that the commission has already established the case for *greater* participation, surely the vision should be that the political system offers people *greater* opportunities for their participation, not simply the *knowledge* of the processes (however inadequate and non-participatory) they will be facing. I suggest the commission should also include a discussion of the rights that New Zealand citizens should enjoy in terms of participation. For instance, in the OECD publication referenced above, and in Landemore’s *Open Democracy*, there is discussion of the growing view that citizens should have explicit participation rights. This might be the right to start a petition for a particular issue to be put to a representative deliberative process (e.g. a citizens’ assembly); this petition, if it gathered enough signatures, would be binding on the government. A participation right might also be the right to put a given piece of legislation to a representative deliberative process (again, conditional on achieving a certain number of signatures). Even if the commission does not want to recommend such rights, it should at least be noting that they are increasingly being proposed.

62 – as above, the wording of the third element seems unnecessarily tentative, and should be strengthened to recommend that agencies “should” move towards the more participatory (and indeed deliberative) end of the spectrum. Finally, I would challenge the bald statement that the public’s participation is purely at ministers’ discretion. It is not clear that this is true in even a minimal, legalistic sense. After all, various court cases have shown that citizens and civil society groups have a legitimate expectation of, at least, consultation. Moreover, it is surely not the case that ministers could simply remove all avenues for public participation if they attempted to do so. Select committees, for instance, have statutory roles that allow public participation. More generally, there would rightly be an outcry, and frankly unmanageable political turmoil, if ministers attempted to close off all public participation. That is, citizens (quite rightly) in the modern world have high expectations of participation, and these norms (again quite rightly) shape the actual scope of ministerial discretion. While it is true that, in the short term, ministers have significant discretion over how far processes are participatory, and that all efforts should be made to get them on board with a participatory direction of travel, this closing sentence needs to be significantly reworked.



9 June 2022

Long Term Insights Briefings
Te Kawa Mataaho | Public Service Commission
By email: longterminsights@publicservice.govt.nz

Tēnā koe,

LONG TERM INSIGHTS BRIEFING: PUBLIC PARTICIPATION IN GOVERNMENT IN THE FUTURE

This letter sets out feedback from Te Rūnanga o Ngāi Tahu (Te Rūnanga) on the Public Service Commission's (PSC's) Long-Term Insights Briefing, titled *Public Participation in Government in the Future*.

We note that due to the limited timeframe available for response, we have not had the opportunity engage with Ngāi Tahu Papatipu Rūnanga and whānau on this response. If the PSC plans to cite any feedback contained in this response, please attribute it to Te Rūnanga o Ngāi Tahu (referred to as Te Rūnanga in this response).

The PSC's chosen topic, public participation in Government is of interest to Te Rūnanga and we are interested to see what stems from this Long-Term Insight Briefing in terms of improving public engagement across the public sector. Te Rūnanga supports the proposal to develop a common framework and measure (Element 1) and to facilitate a broader shift to collaborative approaches (Element 3). We are looking for some certainty from the Government that the development of this Long-Term Insights Briefing will result in tangible change. We look forward to being involved in any process to progress these elements in particular.

Te Rūnanga was pleased to see the PSC had explicitly considered Māori participation through the lens of Te Tiriti o Waitangi and in line with the responsibilities of public service agencies under the Public Service Act 2020.

Te Rūnanga was also pleased to see reference to New Zealand's Open Government Partnership throughout the draft Long-Term Insights Briefing. It seems there is currently little visibility across the public service of these commitments and the framework the International Association for Public Participation (IAP2) provides for determining types of engagement with the public and with iwi.

Te Rūnanga agrees that 'mutual trust and partnership is key to strengthening relationships [under Te Tiriti].' However, we would caution the PSC in its broad definition of 'public

participation' to include iwi Māori rōpū and whānau. As a Tiriti partner and holding rangatiratanga within the Takiwā of Ngāi Tahu Whānui as recognised in the Ngāi Tahu Claim Settlement Act 1998, Ngāi Tahu are not the public, and mana whenua are not another stakeholder group to be briefed. Engagement with Ngāi Tahu as a Te Tiriti partner should be elevated above public engagement. We note that this does not preclude Ngāi Tahu Papatipu Rūnanga, Whānui or individuals' engagement in public consultation processes.

It is clear that across the public sector, there is a distinct lack of clarity around the differences between Te Tiriti Partner engagement and public engagement, with limited avenues for the former. As noted in Chapter 2, participation by Māori in government decision making can lead to better decisions on management of assets and provision and delivery of public services. Te Rūnanga wholeheartedly agrees. Te Rūnanga has a broad remit and the Office of Te Rūnanga o Ngāi Tahu (the Office) has sought to be involved in numerous Government work programmes. We see value in our involvement and participation each day, however from the Office's point of view, engaging and participating as another stakeholder (as opposed to as a Te Tiriti Partner) is an uphill battle.

We note the PSC's point on page 34 that capacity in the public sector, with respect to engaging with mana whenua is increasing, but through our interactions we consider there is still some distance to travel. Currently, we are grappling with timeframes that are set by Government departments without regard to the time it takes to meaningfully engage with Māori to enable participation; and a significant inter-connected programme of reform underway. Without visibility of the broader picture, we are limited to responding to what is in front of us and are only able to engage on a superficial level with each kaupapa. Te Rūnanga supports the development of additional tools to improve public sector engagement with Māori. Te Rūnanga also strongly suggests that the public sector directs its efforts to developing capacity and sharing work programme planning with iwi Māori, to better support meaningful participation.

We are interested in the establishment of the Regional PSC offices as a way of building local capacity and increasing local participation. Te Rūnanga looks forward to connecting with the Regional Public Service Commissioner/s across the Ngāi Tahu Takiwā.

Nāhaku noa, nā,



Jacqui Caine
General Manager, Strategy & Influence