

## OPTIONS FOR CHANGE

### WORKING WITHIN THE CONSTITUTION

In Britain, Canada, Australia and New Zealand, Service Commissions were set up by ordinary law rather than the constitution (necessarily so in Britain and New Zealand, which have no written constitutions). Provisions relating to Service Commissions were written into the independence constitutions of most other Commonwealth countries.

Although the distribution of human resource management functions is based on the constitution, the delegation of Commission functions does not necessitate constitutional change: provisions for delegation are a standard element in the constitution. Section 89 of the Mauritius constitution provides a typical example:

1. Subject to this Constitution, power to appoint persons to hold or act in any offices in the public service (including power to confirm appointments), to exercise disciplinary control over persons holding or acting in such offices and to remove such persons from office shall vest in the Public Service Commission.

2.(a) The Public Service Commission may, subject to such conditions as it thinks fit, delegate any of its powers under this section by directions in writing to any member of the Commission or to any public officer.

(b) The Public Service Commission may, subject to such conditions as it may prescribe, delegate by direction in writing, its powers under this section to enquire and report to it:

(i) in the case of any professional misconduct or negligence committed by a public officer in the performance of his duties, to any appropriate statutory disciplinary body;

(ii) in the case of a public officer who has been seconded for duty or transferred to a body corporate established by law for public purposes, to that body corporate.

Besides entrenching the Commission's powers, the constitution usually gives the Commission power to regulate its own procedures (albeit with the Prime Minister's consent). The relevant provision of the Maltese constitution states that:

**121.** (1) Any Commission established by this Constitution may, with the consent of the Prime Minister or such other Minister as may be authorised in that behalf by the Prime Minister, by regulation or otherwise, regulate its own procedure and

confer powers and impose duties on any public officer or authority of the Government of Malta for the purpose of the discharge of its functions.<sup>25</sup>

This type of provision generates some potential for impasse. The chairman of Trinidad and Tobago's Public and Police Service Commissions notes that if a Prime Minister does not agree "with the policy direction of the Commissions he may withhold his consent to any proposed delegation or procedural regulations. This latter can undoubtedly have the effect of sterilizing or nullifying the ability of Commissions to exercise their constitutional functions." Very similar concerns are expressed by the chairman of Malta's Public Service Commission.<sup>26</sup>

Prime ministerial consent notwithstanding, Service Commissions clearly have sole prerogative to initiate changes to their own procedures.

#### AMENDING THE CONSTITUTION

Delegation can be achieved by amending the constitution. This is the approach Singapore has chosen. Its Commissions are now at the head of a tiered system of personnel boards staffed by senior ministry and departmental officials. Each board is responsible for selection at particular levels within a department or group of departments. The boards were set up by constitutional amendment.<sup>27</sup>

However, usually the constitutional provisions establishing the Service Commissions are deeply entrenched. Unless the government is assured of a large enough parliamentary majority, the route to constitutional change can end in embarrassing failure. Additionally, the incorporation of precise arrangements for delegation in the constitution can build new rigidities into public service staffing and sow the seeds of future problems.

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<sup>25</sup> Section 89 (2) (a) of the Mauritius constitution and section 121 of the Maltese constitution find close parallels in all Commonwealth Caribbean constitutions, among others, though in the Caribbean the delegation of powers to a public office requires the Prime Minister's approval.

<sup>26</sup> Kenneth Lalla, response to questionnaire, p. 3; Edwin J Borg Costanzi, similar source p. 1.

<sup>27</sup> Trinidad and Tobago has also sought to amend its constitution. A bill currently before parliament is intended to give the Police Service Commission responsibility for personnel management reform, make it accountable to a joint parliamentary committee, and devolve disciplinary powers to the Commissioner of Police. But the bill has yet to be passed (Gordon Draper, response to questionnaire).

### **Delegation in Singapore – The Organisation**

With effect from January 1995, staffing and discipline in the Singapore public service have been delegated not directly to departments but to a hierarchy of personnel boards. There are three levels of boards: a Special Personnel Board, Senior Personnel Boards, and Personnel Boards.

The Special Personnel Board consists of a number of permanent secretaries and is chaired by the head of the civil service. It is responsible for promotions to upper levels (to Superscale E1) and all promotions within the Administrative Service.

The next tier down consists of six Senior Personnel Boards. Each consists of the permanent secretaries of a group of ministries. Each takes care of recruitment and promotions at mid-upper levels (Division I) for the group of ministries.

The lowest tier consists of several Personnel Boards (one for each ministry). Each board consists of senior Division I officers and is chaired by a Superscale officer from the ministry. It is responsible for the recruitment and promotion of Division II, III, and IV officers within the ministry.

Personnel boards can appoint recommending panels – comprising, for example, heads of department – to assess officers and recommend candidates for promotion. Line managers are also involved in the process. The boards are required to apply selection criteria and procedures drawn up by the Public Service Division of the Prime Minister's Office.

Service Commissions continue to recruit to the Administrative Service and promote to top levels (Superscale D and above). They also serve as a final authority for appeals against decisions by the personnel boards.

The system has worked well so far – though better in some ministries than in others. The Public Service Division's short-term role is to refine procedures and provide support to the personnel boards. In the longer term, it is expected that the boards will be taking on a more extensive and proactive role in ministry personnel management.

*Source: Lim Hup Seng, Deputy Secretary in the Office of the Prime Minister, Singapore, response to questionnaire, 14 April 1995, p. 12.*

### **LEGISLATING FOR CHANGE**

An alternative to constitutional change may be to enact ordinary legislation. In Malta, for example, the government drew up a bill which sought, among other things, to set clear terms of reference for the Public Service Commission and define a number of constitutional terms which were being interpreted differently by the Government and the Commission. However, the draft ran into problems over the

constitutionality of its attempt to define the Commission's terms of reference. It is currently being rewritten. Constitutional provisions put strict limits to what can be achieved by way of ordinary legislation.

Appendix D describes the legislative and constitutional situation in the Commonwealth Caribbean. It notes that some legislative action to define the status of public servants can underpin delegation of personnel management.

### **CHANGING THE COMMISSION'S PERSPECTIVE**

The government can try to indirectly shift the Commissions' policy direction by appointing commissioners who share its views on decentralisation. It would, of course, take time before enough vacancies could be filled for the strategy to have effect. However, as discussed above, differences in views between Service Commissions and government are not simply ascribable to the personal views of Commission members.

Commissioners' actions are shaped by the institutional milieu within which they operate. Commissioners must act with reference to the constitution which requires a particular focus on tradition, continuity and protecting the merit principle. The government may be primarily concerned with its operational needs. Commissioners may also feel compelled to safeguard their Commission's constitutionally-prescribed sphere of autonomy.

As the saying goes, where you stand depends on where you sit. Once appointed, commissioners' actions will in part be dictated by the requirements of their new position and making strategic appointments to Service Commissions may prove of limited value.

### **CORPORATISATION AND AGENCY CREATION**

Statutory and non-statutory corporations and authorities have been a standard element in government organisation since independence. However, governments are increasingly entrusting new public functions or activities to corporations or agencies rather than government departments. In addition, a number of existing government organisations staffed by public servants have been corporatised. The

best known example is New Zealand, which adopted a wholesale strategy of corporatisation in the late 1980s.<sup>28</sup>

Corporatised entities and agencies have more managerial room for manoeuvre than government departments. In addition, staffing and discipline in corporatised organisations are not normally subject to a Service Commission.<sup>29</sup> Corporatisation thus provides a significant opportunity to achieve delegation in public service personnel management.

The disadvantage of this approach is that it is incomplete. Corporatisation offers benefits, but it is no substitute for dealing with the service's problems on a service-wide basis and indeed it may divert attention from such efforts.<sup>30</sup>

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<sup>28</sup> *A Profile of the Public Service of New Zealand: Public Service Country Profile Series No. 5*, Commonwealth Secretariat, 1995. See also *From Problem to Solution: The strategies for improvement series No. 1*, Commonwealth Secretariat 1995, pp 29-31.

<sup>29</sup> Trinidad and Tobago has hitherto been an exception as it had a Statutory Authorities' Service Commission established by the Statutory Authorities Act. This Commission is now to be abolished (Draper, response to questionnaire).

<sup>30</sup> Charles Polidano, "Of Bureaucrats and Businessmen: The Growing Role of Public Enterprises and Authorities in Maltese Administration," *Institute of Public Policy and Administration Newsletter* [Malta] no. 7 (1991), pp. 3-8. In a similar vein, concerns have been expressed in Australia that the withdrawal of agencies from the public service impedes a whole-of-government approach to certain personnel issues. See Public Service Commission, *Submission by the Public Service Commissioner to the Review of the Public Service Act 1922* (Canberra: PSC, 1994).