

THE PUBLIC SERVICE - A DISCUSSION PAPER
RESPONSIBILITY - ACCOUNTABILITY - RIGHT OF APPEAL
THE PURPOSE OF THIS DISCUSSION PAPER IS TO EXPLORE A PRACTICABLE
AND INEXPENSIVE RIGHT OF APPEAL FOR CITIZENS WHO BELIEVE THEY
HAVE JUST CAUSE FOR GRIEVANCE

Public servants fulfill an essential role in any society and have a wide range of responsibilities. Fundamentally, their function is to apply the regulations decreed by our elected representatives.

The right of appeal is a basic tenet of justice. If public servants in applying regulations, give wrong interpretations, cause unnecessary delays or excessive costs or in any way cause grievance, clients should have the right of appeal against such injustices.

New Zealand's greatest period of growth occurred when laws were few, and where the Public Service sector was small by today's standards. These administrators were most conscious that they should be politically neutral, serve their elected masters and the people they represented. The huge increase in the Public Service sector over recent years has resulted in a shift of power to that sector away from the people.

There are now severe limitations on what citizens may or may not do within the law. Our private and business lives are more controlled, which inevitably has increased the power and influence that public servants have over our citizens. Compliance costs have increased enormously. The monopoly status, which Government Departments, local authorities and other statutory bodies enjoy, exacerbate the problem as clients cannot access alternative services as is the case in the private sector.

Elected representatives are voted in or out of office. Public servants are appointed and their performance and accountability seldom receives public scrutiny. Many realize that their positions of authority and monopoly are a privilege and therefore carry out their duties with sensitivity and sound judgment. Unfortunately there are some who abuse this privilege by being obstructive and even welcome a transformation from being public servants to public masters. Some have the ability to generate enormous costs to clients for consultancy and/or compliance, or use delaying tactics. They are able to use public funds to frustrate those who are supposed to be their clients. To say "no" is the easy and no risk option. Junk science, where science is selectively and wrongly used to endorse personal agendas, is increasingly used to justify a case. Misinterpretation of well-intentioned laws is not uncommon.

Currently citizens have no affordable redress against wrong or unfair decisions, which many see as an erosion of the democratic process.

A POSSIBLE SOLUTION TO THE PROBLEM

Ideally legislation should be passed requiring every Government Department, Local Authority and Statutory Body to establish an independent appeal authority – not to appeal against a law – but the interpretation and/or unreasonable application of the law. Such an appeal mechanism could be applied on a local district level as a pilot scheme.

A District Council, for instance could create a pool of practical and experienced people with a wide range of expertise to serve as appeal personnel. Appeal personnel could be past Councillors, engineers, farmers, builders and tribal elders – people who have earned the respect of their community. For this role people could be nominated and/or elected.

The Council would select a chairperson who would select an appeal committee of three from the pool of appeal personnel to hear both the complainant's case and also the public servants reasons for the decision being contested. The decisions of the Appeal Committee would be final and binding. There may be alternate systems – an ombudsman for instance – that could deliver the same result.

THE IMPACTS OF A CITIZENS RIGHT OF APPEAL

1. The political implications of strengthening the democratic process by reducing the intrusion of officialdom into private and business lives, via the **right of appeal** process, are enormous.
2. It would demonstrate and enhance the existence of natural justice in our democratic society.
3. It would alleviate a great deal of frustration that results when wrong and/or unreasonable decisions are made by public servants.
4. Public servants would know that their decisions could be contested and this would result in more careful consideration of a case and the application of common sense and sound judgment.
5. It would, in the longer term, result in a more amicable relationship between public servant and client.
6. Greater accountability would lead to greater responsibility, which in turn could lead to reducing costs to clients.
7. The low voter turnout at local body elections has been attributed to the fact that many feel that their votes have no effect as those elected have little influence, as those who dictate policy are the unelected public servants.
8. If those serving on "appeal committees" saw their role as a public service, then the **right of appeal** concept could result in little cost to the complainant.
9. The overall effect of the **right of appeal** concept would be to shift some of the growing power of public servants back to the people, where it should be.