

Purchase advisers and the public service: who pays the bill?

The Government is risking the political neutrality of the public service in the way it has contracted six purchase advisers to scrutinise departmental spending, argue Victoria University's Dr Chris Eichbaum and Massey University's Dr Richard Shaw.

The decision of the Government to direct ministers to contract six purchase advisers, and to source the expenditure on the contracting of those advisers through Votes for which the ministers themselves are responsible, raises some important issues regarding the demarcation of political and administrative appointments and the respective responsibilities and accountabilities of ministers and chief executives. Questions have been raised as to whether the Government's hiring of these purchaser advisers may have breached the State Sector Act.

As political commentator Colin James observed in the *Dominion Post* (9 May 2009):

The problem arises because ministers' personal appointees are treated as quasi-public servants. That is at odds with the strict separation of

duties first legislated in 1912 and repeatedly endorsed since ... Public servants are required to be strictly non-party-political in performing their duties. Ministers in turn cannot hire and fire them. That is the preserve of the chief executive. Moreover, chief executives are selected by a process run by the public service. The Cabinet may reject a nominee but not select or suggest an alternative.

Let us be clear from the outset, any government has the right to seek advice from whomever it chooses. Ministers from different political parties have used a variety of advisers, including those with whom they share beds or even fence-lines (but probably not both). In recent years, however, political or policy advice that is consistent with the government's preferences has usually been sought



Dr Chris Eichbaum.



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from a particular type of adviser, a ministerial adviser, with expenditure appropriated through Vote: Ministerial Services.

In the present circumstances, with the fiscal context and outlook being more adverse than perhaps at any time since the Second World War, it makes sense – particularly for a new government and for more junior ministers – to seek the advice of those who know the 'bureaucratic ropes'. Moreover, purchase advice need not be confined to a period of transition from one government to another and may

take the form of an enduring organisational arrangement. Departments of state may provide purchase and monitoring advice on other departments, agencies or entities. For instance the Ministry of Education provides 'purchase advice' in relation to Crown Entities (such as the NZQA) in the education sector.

Finance Minister Bill English appears to have relied on a Cabinet Circular (CO (93) 9), dated 6 August 1993 (clearly one of the virtues of a Westminster-styled public service is institutional memory!). That circular notes that ministers have a number of options – seeking the assistance of an institution, but also notes that specialist employees, external consultants, or one of the central agencies may be used to provide purchase advice.

Moreover, it has been common practice in the past for the Treasury to provide staff to assist ministers, including with purchase advice. Not all ministers have been provided with this kind of resource, but many have and have benefitted greatly from it. The traditional 'Westminster' principle of public service anonymity is such that we are not inclined to name names, but those in the Wellington policy community will know who we are referring to, and will know also that these individuals have served different governments with professionalism and integrity. This practice has been discontinued under the present Government for reasons that are less than clear.

We have no particular issue with ministers seeking specialist, including partisan advice. In fact, in principle we support it, not least because research we have recently undertaken has shown that political advisers can greatly assist departments to understand ministers' political intentions and ensure an appropriate measure of public service responsiveness to the Government's priorities.

It is crucial, however, that political advisers are appointed and employed on the appropriate basis, for to do otherwise is to risk politicising the public service. Typically, political advisers in New Zealand are em-



Photo: Shelly Farr Biswell.

The Ministry of Health is one example of a government department that has been ordered by Finance Minister Bill English to put a purchase adviser on its payroll.

ployed on short-term (or 'events-based') employment contracts by the Ministerial Services Branch of the Department of Internal Affairs. Because New Zealand lacks many of the formal means of holding such advisers to account – including special Codes of Conduct for political advisers – which other countries use, it is critical that this practice, supported by the informal conventions which govern relations between political advisers and public servants, be maintained.

But what is happening at the moment is of an altogether different, and potentially far more risky, order. The six advisers whose names have been released in recent weeks are employed – at the direction of the Minister of Finance – by the very government departments whose spending activities they have been asked to scrutinise. Clearly, some of them will bring a wealth of experience and knowledge to the challenging task of ensuring value for money in public expenditure (which means value for money for taxpayers). The fact that one of the six has, in recent times, been a candidate for a political party, is interesting, but the central issue – and our central concern here – is the nature of the employment arrangements.

It is interesting therefore that the very Cabinet circular that the minister tabled to provide legitimacy for his actions includes the following:

“Expenditure on any adviser (including a central agency) is to be accompanied by an equivalent reduction in the Vote in which advice is sought. It is to be appropriated through Vote: Internal Affairs, Output Class IV (Support Services to Ministers) except with respect to a central agency acting as adviser which would have expenditure appropriated to its own Vote.” (emphasis added.)

So it would appear that the Minister – at least in respect of the

purchase advisers not providing advice to a central agency (and one, Dr Graham Scott, is providing advice to the Minister of Finance) – has not acted in accordance with the very policy guidelines he recently tabled in the House.

Public servants owe a duty of service to the government of the day (and arguably a duty *pro bono publico*). They discharge those duties through their chief executives, by whom they are employed. Our principal concern is that the employment of the six purchase advisers appears to contravene the State Sector Act 1988, which clearly stipulates that appointments within departments shall be the responsibility and prerogative of departments' chief executive officers, not ministers.

The issue is one of principle and of acting in accordance with the law. It may well be that the advice provided by these individuals has been welcomed by chief executives – but that is not the issue here. Recent events are at odds with long-standing legal and conventional (and, some would argue, 'constitutional') principles of public service impartiality in New Zealand; as Colin James has noted, they are at variance with the Public Service Bargain that has operated, albeit with the embellishment of the State Sector Act 1988, since 1912. Those principles ensure that New Zealanders benefit from the best professional assessment of officials. There are means of reaching a balance between ministers' legitimate need for responsive advice from their officials and the imperatives of public service neutrality – including the appropriate deployment of political advisers – but what is presently happening is not one of them.

Rather, the Government has taken a quantum step towards the very thing National undertook not to do prior to the 2008 general election. For it was the National

Party, in Opposition, that raised quite legitimate concerns about the risks that might be posed to the political neutrality of the public service by ministers who over-stepped the mark. And it was the National Party who, quite correctly in our assessment, foreshadowed the need to better regulate the activities of political staff employed in ministerial offices (or indeed more broadly within the executive and legislative branches).

It could and should have been different. If, as we are advised, both the Treasury and the State Services Commission provided advice to the Minister of Finance, and if, assuming that, they failed to raise issues around the formal employment arrangements for these advisers, this is troubling. These staff should have been employed on contracts negotiated through the Ministerial Services Branch of the Department of Internal Affairs, and funded through Vote: Ministerial Services (which the Prime Minister has responsibility for).

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NOTE: On 3 June Radio New Zealand reported that papers it received under the Official Information Act show that the Government appointed the purchase advisers despite the misgivings of the State Services Commission over who pays them, and that Finance Minister Bill English was insistent that they should be paid for by the departments they were monitoring, even though they answer directly to ministers. Political Editor Brent Edwards said the SSC believed it would be appropriate for the advisors to sit within Ministerial Services and that this would provide for a transparent process. ■

\$15,000 Ria McBride Public Service Management Award

APPLICATIONS are open for the 2009 Ria McBride Public Service Management Award for women. The winner will receive up to \$15,000 to fund education that will improve their management prospects.

Administered by the New Horizons for Women Trust, the award is intended to help women who have already demonstrated potential to advance to higher levels of responsibility in the public service.

The award honours Ria McBride, who was the first woman appointed Chief Clerk of the Public Service Commission (which preceded the State Services Commission). Ria McBride also worked for the Māori Affairs Department. On her 'retirement' in 1970 she pursued equal employment opportunities for women as a founding member of the National Advisory Council on the Employment of Women. In this role she helped set up the Accident Compensation Commission. From 1978 to 1980 she was one of the first full-time human rights commissioners.

Sponsored by the State Services Commissioner, this is the tenth year the award has been offered. It is open to women employees of public service departments who show potential to be promoted into higher-level management. Applications close on 14 July 2009.

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