

Introductory comments for IPANZ/IPS seminar, 20 August 2007

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Welcome to this joint IPANZ/IPS seminar on the 'Political Neutrality of the State Services'. The size of the audience no doubt highlights the level of interest in this subject.

In a moment I will invite Ross Tanner to begin proceedings. Ross is the President of IPANZ and a former senior public servant. Ross' presentation will be followed by some brief comments by my academic colleague Rob Laking, also a former senior public servant, and myself. After this there will an opportunity for questions and discussion.

Before turning to Ross, I would like to make four quick comments:

First, this is a public forum. What is said during this seminar may be reported. There are no restrictions – other than good manners!

Second, I think it would be preferable to focus on matters of principle, rather than the intricate details of the events and issues surrounding the employment of Madeleine Setchell by the Ministry for the Environment, and the subsequent termination of her appointment. Bear in mind that we do not know all the facts of the matter as yet. Don Hunn's report is in preparation, and should be published next month. At that juncture, there may well be a case for a follow-up seminar.

Third, we should bear in mind that the events of the past 4-5 weeks have been very difficult for many of those directly involved. I think we should be mindful of this in the way we conduct our debate today.

Fourth, and finally, it is very clear that there are widely divergent views within the community – including amongst academics, officials, politicians, the media and the wider public – about many of the issues generated by the 'Setchell affair', if I can call it that. Such issues include:

1. Is it appropriate for ministers to have any role in public service employment matters, except at the level of departmental chief executives? More specifically, under what circumstances, if any, might it be appropriate and acceptable for departmental CEs to consult their minister (or his/her ministerial office staff) over the appointment of departmental personnel?
2. Under what circumstances, if any, is it appropriate for a minister's office to raise questions with a department concerning an employment matter affecting that department?
3. Under what circumstances, if any, should conflicts of interest, or potential conflicts of interest, be taken into account when departments make employment decisions? To be more specific, is it acceptable for a person to be disadvantaged, in terms of their employment prospects in the public sector, as a result of a relationship with another person, such as a marriage or a relationship equivalent to a marriage?
4. Is there any evidence to support the contention that the public service has become more politicized since the passage of the State Sector Act in 1988?

It is these, and related issues, that deserve our attention today.

Brief comments in response to Ross Tanner's presentation

Thank you, Ross, for your very thoughtful presentation. You have provided an excellent summary of the legal framework governing the relationship between ministers and departmental chief executives in New Zealand, and the conventions and principles that guide the activities of the public service. I agree with much of what you have said.

I would like to comment very briefly on five matters.

First, there is a powerful case for a meritocratic, non-partisan and professional public service, all the more so in a small, centralized, unitary state like New Zealand, with a unicameral parliament and relatively few checks on the political executive. In particular, a public service with the features that Ross has enunciated is almost certainly more efficient, effective, responsive and less prone to corruption than one in which the most senior ranks are politicized. Accordingly, I am opposed to NZ adopting the US model, where the political executive determines departmental appointments at the top 3-4 levels. Equally, I have significant reservations about NZ following the increasingly common practice in Australia, where many departmental secretaries – at both the Commonwealth and state levels – are replaced when there is a change of government.

Second, and related to this, while the State Sector Act (1988) and the related 'managerialist' revolution has certainly altered the relationship between ministers and departmental CEs in various subtle ways, there is no compelling evidence, in my view, that the public service has become more politicized. For instance, I am not aware of any evidence that Ministers are taking a more active role than was previously the case in departmental appointments at the level below that of CEs.

Third, I agree with Ross that, as general rule, ministers should not be involved in departmental appointments, except for CEs (as provided for under the State Sector Act). Having said this, I also agree that there are some circumstances, although strictly limited, where it would be both prudent and appropriate for a CE not only to inform the relevant minister about a key departmental appointment, but also to consult the minister prior to making the appointment. Such circumstances are likely to be relatively rare, limited to senior positions in the department (especially those involving significant interactions with ministers), and restricted to those cases where there are potential political risks or issues associated with the appointment. Examples might include situations where a potential appointee is the best qualified person for the job but:

- was previously a senior member of a political party (candidate, MP, senior office holder); and/or
- was previously a political adviser in a ministerial office; and/or
- is very closely related to a current politician or senior political adviser.

In any such discussion with a minister about a departmental employment matter, the CE should make it clear that the final decision is his or her responsibility, not that of the minister. Further, any such interaction does not prevent a CE from making an independent decision, as required under the State Sector Act. As Ross has highlighted, acting independently does not require the CE to act alone.

Fourth, the general presumption should be that ministerial offices do not involve themselves in matters affecting the employment of departmental staff. At the same time, ministerial offices have a responsibility to manage political risks. In some situations this may prompt inquiries with a department about employment matters. Any such inquiries should be managed with appropriate care, tact and sensitivity.

Fifth, in relation to the management of conflicts of interest, or potential conflicts of interest, the Office of the Controller and Auditor General has prepared some very helpful advice. I commend the recent report on this subject to you (*Managing conflicts of interest: Guidance for public entities*, June 2007).

There is not time to go through the issues in detail – although we may wish to return to the matter in discussion. However, departments and other public entities need to give consideration to a range of potential conflicts of interest, not only those of a financial nature but also others – such as professional, political and organizational conflicts – that may arise from close personal relationships, such as close relatives and intimate friendships,

involving staff members or prospective staff members. This particularly includes situations where a relative lives with a staff member, or where the two people are otherwise dependent upon each other.

In such situations, according to the Controller and Auditor General, the interests of the relative 'must be treated as being effectively the same as an interest of the ... official' (p.19). No doubt some will reject this proposition. There is also scope for legitimate debate about the precise implications of accepting such a proposition. But in my view the Controller and Auditor General is correct to point out that the decisions we make about who we choose to live with may, at times, generate conflicts of interest, or perceived conflicts of interest, and in some situations these may affect our employment opportunities and prospects.

To be specific, if my wife were a departmental CE, it would be unwise for me to apply for a senior job in that department, and inappropriate for me to be appointed, even if I were the best person for the job in question. Similarly, if I were the leader the opposition, my wife could not readily aspire to be a departmental CE. It would simply create too many difficulties for all concerned. This is not to question the professionalism, integrity or trustworthiness of the people involved, but rather to take such precautionary steps as our necessary to protect that professionalism, and, of course, the integrity of the organizations and institutions directly affected.

Finally, as with others, I await the forthcoming report from the State Services Commission with interest.