

MED employees seconded to Ministers' offices: Where is the line?

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Purpose

This document is designed to-

- assist MED employees who are seconded to Ministers' offices as Private Secretaries or Portfolio Advisers;
- enable MED employees in Minister's offices to better understand where the line is between the role of a public servant and the role of other persons in Ministers' offices who are involved in political matters; and
- assist Managers who have a staff member who is being seconded to a Minister's office.

Employee of MED

A Private Secretary or Portfolio Adviser is responsible to, and takes direction from, the Minister. The Minister's Senior Private Secretary will often have day-to-day responsibility for the allocation of tasks to a Private Secretary or Portfolio Adviser. However, an MED employee who is seconded to a Minister's office remains an employee of MED, which means that-

- the employee continues to be paid by MED;
- the employee continues to have a "home manager" at MED;
- the employee must meet the professional expectations of MED as his or her employer; and
- the MED code of conduct applies to the employee's conduct.

Public servant

An MED employee who is seconded to a Minister's office remains a public servant. All public servants must comply with the *Standards of Integrity and Conduct* (issued by the State Services Commissioner under section 57 of the State Sector Act 1988). It sets out the State Services Commission's minimum standards for members of the public service, including those relating to political neutrality.

Why political neutrality matters

When an MED employee is working closely with a Minister and up close to the political arena, it is important that the employee understands public service expectations, especially those relating to political neutrality. Political neutrality is the cornerstone of the public service. The State Services Commission states that-

"The requirement that State servants must be apolitical when carrying out their duties, functions and powers is an established constitutional convention in New Zealand. It is a principle that underpins the continuing employment status of State servants and enables State servants to provide consistent services (including policy development) for the government of the day"
Political Neutrality Guidance, State Services Commission, April 2010

When an MED employee is working in a Minister's office it is extremely important that the employee's role (and their approach to the role) does not become politicised in a way that makes the employee (and the wider public service) appear to be biased towards the current government. Political neutrality means that Ministers (current and future) and members of the

public have confidence in the impartiality of public servants and have confidence that they can work under any government. The State Services Commission states that-

"We must act in a way that ensures we are able to establish professional and impartial relationships with future Ministers. Because of the apolitical way we carry out our tasks, those who may be in government at some future date can be confident that we will support them, remain impartial and be equally fit to carry out the work of government under their administration."

Understanding the Code of Conduct Guidance for State Servants, State Services Commission, April 2010

How a MED employee's role in a Minister's office differs from a Political Adviser's role

The role of an MED employee in a Minister's office is an extension of MED's role in relation to the Minister. It is the role of the Minister to set and comment on government policy. It is the role of MED to explain the potential effect of policy and give effect to policy as decided by the Minister. The role of a Private Secretary or Portfolio Adviser often includes the provision of policy advice and procedural support for the development or passage of legislation in the relevant portfolio. (In this regard, the Legislation and House Procedure Hand Book compiled by the Cabinet Office is a useful resource for Private Secretaries and Portfolio Advisers).

A Private Secretary or Portfolio Adviser role may also include representing the Minister in meetings and on key projects, as well as dealing with people on behalf of the Minister. However, this is always within the context of MED's public sector work programme and not as part of the Minister's party political role. (In this regard, the Ministerial Office Handbook compiled by Ministerial Services may be a useful resource). It is in relation to political matters that the role of a Private Secretary or Portfolio Adviser differs from that of a Political Adviser. The Cabinet Manual provides that:

"Political advisers have an important role in supporting Ministers to manage relationships with other political parties, to manage risk, and to negotiate support for policy and legislative initiatives"
Cabinet Manual, Chapter 3, Minister's and the State Sector, para 3.19

A Political Adviser is not a public servant. They have the mandate to be involved in party political matters, such as ensuring legislative proposals have the numbers necessary to pass a Bill through the House and shoring up political support for policy initiatives.

This is not to say that Political Advisers can not be involved in policy development or other areas of work usually reserved for departmental officials. The Cabinet Manual (see chapter 3, para 3.2) provides that Political Advisers can, provided the Minister and the Chief Executive have a clear understanding of the Political Adviser's authority and proper accountability exists under the Public Finance Act 1989.

However, given the fundamental importance of the constitutional convention of political neutrality an MED employee must not in any circumstances carry out aspects of the role of a Political Adviser.

How to know when you're "crossing the line"?

An MED employee should also be guided by common sense and his or her own moral compass when deciding whether an activity he or she has been asked to do in a Minister's office is political in nature. If he or she feels that something is likely to "cross the line" then that instinct is probably right.

One helpful tool is for an MED employee to apply a "reasonable observer" test in relation to any activities he or she is asked to undertake. The employee should ask him or herself "would a reasonable observer consider my involvement in this activity to be appropriate for a public servant"?

The line at which a public servant crosses over into the political arena is not always a bright line. However, there are some activities in relation to which it is not appropriate for an MED employee to be involved:

Activities not to be undertaken by MED employees from within Minister's office	
Managing relationships within or with political parties	X
Meeting with political parties, other than as instructed by the Minister in order to provide purely factual briefings or support a process of consultation or negotiation in a purely factual way	X
Negotiating support (or numbers) for the passage of legislation through the House	X
Attending caucus meetings, other than when specifically asked by the Minister (and with the consent of the Chief Executive) in order to provide purely factual information in relation to a current issue or proposed legislation	X
Undertaking work at the direction of caucus	X
Commenting on the political merits of government or party proposals	X
Undertaking costing for a political party, other than at the written request of the Minister of Finance or the Responsible Portfolio Minister	X
Substituting for a Political Adviser when one is away from the office or the role is vacant	X
Supporting the Minister in his or her political campaign or being perceived to be supporting the Minister in his or her political campaign (examples of what would be considered support are stuffing envelopes for the political party at the Minister's office or standing alongside the Minister when he or she is giving party political based speeches during the pre-election period)	X

Who can assist with questions about "crossing the line"?

Any concerns about "crossing the line" that arise during a secondment should be discussed with the employee's home manager, his or her Deputy Secretary, or the Chief Executive.

The employee may also wish to discuss the matter with the responsible Senior Private Secretary.

Other reading material

- Understanding the Code of Conduct – Guidance for State Servants, State Services Commission (First published June 2007, latest revision April 2010) at <http://www.ssc.govt.nz/display/document.asp?DocID=7650>
- State Sector Act 1989 at http://www.legislation.govt.nz/act/public/1988/0020/latest/DLM129110.html?search=ts_act_state+sector_resel&p=1&sr=1
- Public Service Induction – What it means to be a public servant at <http://www.ssc.govt.nz/display/document.asp?docid=6853>
- State Servants, Political Parties and Elections: Guidance for the 2008 Election Period, State Services Commission, February 2008 at <http://www.ssc.govt.nz/display/document.asp?NavID=280>
- Cabinet Manual 2008 (especially Chapter 3) at <http://cabinetmanual.cabinetoffice.govt.nz/>
- Political Neutrality Guidance, State Services Commission, April 2010 at <http://www.ssc.govt.nz/display/document.asp?DocID=7663>

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