

**REPORT TO THE STATE SERVICES COMMISSIONER**

**INVESTIGATION INTO THE ENGAGEMENT OF CLARE CURRAN BY  
THE MINISTRY FOR THE ENVIRONMENT**

Iain Rennie  
Deputy State Services Commissioner  
State Services Commission  
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## TABLE OF CONTENTS

<b>THE TERMS OF REFERENCE.....</b>	<b>3</b>
<b>METHODOLOGY .....</b>	<b>3</b>
<b>RELEVANT FACTS .....</b>	<b>3</b>
<b>CONTEXT OF CLIMATE CHANGE POLICY AND COMMUNICATIONS .....</b>	<b>4</b>
<b>THE ROLE OF THE MINISTER AND THE MINISTER’S OFFICE IN THE ENGAGEMENT OF CLARE CURRAN .....</b>	<b>5</b>
<b>THE CONTRACTING OF CLARE CURRAN BY THE MINISTRY FOR THE ENVIRONMENT .....</b>	<b>8</b>
<b>RESPONSE OF THE MINISTRY FOR THE ENVIRONMENT STAFF TO MS CURRAN’S APPOINTMENT .....</b>	<b>11</b>
<b>MS CURRAN’S WORK IN THE MINISTRY FOR THE ENVIRONMENT .....</b>	<b>11</b>
<b>THE CONCLUSION OF MS CURRAN’S CONTRACT .....</b>	<b>13</b>
<b>CONCLUDING OBSERVATIONS .....</b>	<b>14</b>
<b>APPENDICES .....</b>	<b>19</b>

# INVESTIGATION INTO THE ENGAGEMENT OF CLARE CURRAN BY THE MINISTRY FOR THE ENVIRONMENT

## The Terms of Reference

- 1 The terms of reference for an investigation into the engagement of Clare Curran by the Ministry for the Environment were issued by the State Services Commissioner on 23 November 2007 (see Appendix A).
- 2 The Deputy State Services Commissioner was charged with responsibility for finding all the relevant facts and reporting to the State Services Commissioner.
- 3 The Commissioner would then make any appropriate findings on the issues and draw any lessons for the Public Service.

## Methodology

- 4 The investigation into the relevant facts of this issue commenced on 23 November 2007 and was carried out by the Deputy State Services Commissioner with the assistance of State Services Commission staff. The principal part of the investigation comprised interviews of all those directly involved in the case. The investigation also had access to relevant written documentation.
- 5 Over a period of two weeks seventeen people were interviewed under oath. They are listed, by designation, in Appendix B. The Deputy State Services Commissioner conducted all of these interviews.
- 6 All interviewees were advised they could be accompanied by either a legal advisor (one did so) or a support person (one exercised that right). All interviews were conducted under oath or affirmation and were taped. Three other people were contacted to confirm information provided by other witnesses. These contacts were not placed under oath or affirmation. The transcripts will not be made public but have been drawn on as the principal source of evidence in this report.

## Relevant Facts

- 7 The terms of reference require the Deputy State Services Commissioner to report on the relevant facts of this case. As the scope of this task relates to the Ministry for the Environment's engagement of Ms Curran, the period of review has been defined as being from 11 May 2006 when the Minister suggested Ms Curran's name to the Ministry for the Environment ("the Ministry") until 28 July 2006 when her contract with the Ministry ended. Any comment or findings relating to the Ministry's handling of the public debate in November and December 2007 surrounding Ms Curran's engagement will be made in the State Services Commissioner's findings.
- 8 In accordance with the terms of reference, I have reviewed all the material brought together by this investigation and particularly the interviews and associated documents and have summarised below what I consider to be the most important matters of fact, including those areas where there are significant differences of opinion or recall.

- 9 In the following paragraphs I have used the designations of those involved as much as possible to reduce personal references and to focus on the facts.

## **Context of Climate Change Policy and Communications**

- 10 In December 2005, Cabinet considered a review of climate change policy prepared by officials from a number of government departments. This review had been commissioned in June 2005 by the Convenor of the Ministerial Group on Climate Change. Arising from consideration of this review, Cabinet agreed that the proposed carbon tax would not proceed in 2007 and that the Government would consider other ways to ensure New Zealand met its commitments to cut greenhouse gas emissions. The Minister Responsible for Climate Change Issues (“the Minister”) was invited to prepare a whole-of-government work programme for climate change policy.
- 11 Officials from a number of government departments worked actively over the early months of 2006 to design the climate change policy work programme. The development of these work programmes created consequential demands for communications support. For example, various stakeholder groups were to be engaged in the course of the departments’ work. In addition, climate change communications work was becoming increasingly complex as a result of the myriad of connections between climate change policy and other government priorities, such as economic transformation.
- 12 The combination of a significant change in climate change policy and the Government’s expectations of departments to develop rapidly an alternative, integrated whole-of-government climate change policy placed significant pressure on the Ministry for the Environment to adapt quickly to the new situation. There were increased policy demands on the Ministry and additional requirements to provide effective leadership and coordination across departments. Included in the whole-of-government leadership role were expectations that the Ministry would lead the development of climate change communications advice across departments. Communications was not agreed as a priority in its own right until April 2006 and the extent of this work programme remained unclear until August 2006.
- 13 Within the Ministry, changes were made to enable the Ministry to meet the Government’s new expectations. Resourcing was increased in relevant areas, including in climate change policy and communications, and the outgoing Chief Executive had made some structural changes in the early part of 2006 to position the Ministry to deliver on a challenging work programme.
- 14 The Ministry initially struggled to meet fully the expectations placed upon it. Evidence from witnesses in the Ministry at this time paints a picture of heavy work pressures on staff in the climate change area, a degree of confusion about work programmes, in part reflecting the uncertain policy environment, and uncertainty about the roles of particular staff and work areas. As well, there did not always appear to be clear or comprehensive internal communications within the Ministry. Towards the middle of 2006 the Minister was expressing some frustration at the Ministry’s and some other agencies’ slow progress in responding to some of the Government’s requirements for advice around climate change issues. Senior managers in the Ministry recall they were aware that the Ministry at that time had not fully established its credibility on climate change issues with the new Minister and they were seeking to increase its credibility through timely and quality delivery on the climate change programme.

- 15 It was in this context that a discussion occurred in May 2006 around Ms Curran's engagement by the Ministry for the Environment.

### **The Role of the Minister and the Minister's Office in the Engagement of Clare Curran**

- 16 The first discussion about Ms Curran between the Minister and officials is most likely to have occurred on 11 May 2006 at one of the regular meetings on climate change policy issues held between the Minister, staff from his office and senior officials from the Ministry for the Environment. There is no record of the conversation about Ms Curran in the minutes but the recollections of those in attendance suggest strongly that her name was raised at the meeting on 11 May.
- 17 Ms Curran's name arose as part of a brief conversation on communications in which the Minister and officials agreed that additional resourcing was required to make more progress. The Minister mentioned that Ms Curran could be a good person to assist with climate change policy communications work. He said that she had done communications work in his electorate and he knew that she had worked in the climate change communications area previously, including in the Greenhouse Gas Office in Australia. The General Manager, Working with Central Government from the Ministry responded that he knew of Ms Curran and that the Ministry would consider the Minister's suggestion. All officials interviewed believed that the Minister was offering a suggestion rather than giving a direction. None of the officials appears to have considered that the Minister's suggestion required particular sensitivity in its handling and neither the Acting Chief Executive nor the General Manager, Corporate and Community, who was responsible for the communications area, were briefed by those senior managers who attended the 11 May meeting.
- 18 My understanding of the Minister's and the Ministry's knowledge of Ms Curran, at that time, is as follows:
- Ms Curran's company, Inzight Communications, had done communications work, such as assistance with newsletters, for Minister Parker in 2004 and 2005 in his role as the Member of Parliament for the Otago electorate. Inzight Communications also produced a newsletter for Southern Labour Party Members of Parliament in June 2006 (attached as Appendix D). Subsequent to Minister Parker's engagement of Inzight Communications, Ms Curran told him of her wider communications experience, including her work on climate change issues. Ms Curran also informed him during this period that she had joined the Labour Party and Minister Parker occasionally came across her subsequently at Labour Party gatherings.
  - In respect of the Ministry's knowledge of Ms Curran, on the basis of Ms Curran's records, she had sent an email to the General Manager, Working with Central Government on 15 April 2003, advising him of her background and her willingness to do consulting work for the Ministry. This was one of a number of approaches to potential clients that Ms Curran made at that time promoting the business she had established following her return from Australia in 2002. The timing of the approach to the Ministry is earlier than the timing of late 2005/early 2006, indicated in the State Services Commission's report to the Minister for the

Environment of 19 November 2007, and reflects the subsequent opportunity that the Commission has had to talk to Ms Curran and access her records.

- The General Manager replied to Ms Curran on 28 April 2003 indicating that her curriculum vitae had been forwarded to relevant Ministry managers and while there was nothing available at that time, they would keep her in mind. On 21 May 2003, Ms Curran and the General Manager, Working with Central Government had lunch in Wellington, at Ms Curran's request, to follow up on her initial letter. There is no evidence that there was contact between Ms Curran and the Ministry after that point until May 2006.
- 19 Following the meeting between the Minister and the Ministry on 11 May 2006, the Minister called Ms Curran, as a courtesy, to say that he had mentioned her name to the Ministry as someone who could be appropriate to do some climate change communications work. He said that someone from the Ministry might give her a call and he said that any decision about whether Ms Curran would be engaged would be the Ministry's to make. The evidence indicates that this phone call occurred on 15 May and Ms Curran recalls that she mentioned to the Minister that she would be in Wellington later that week on a visit to identify further business opportunities and that could be an opportunity for the Ministry to talk to her.
  - 20 Also on 15 May, the Private Secretary (Climate Change) to Hon David Parker ("the Private Secretary"), a secondee from the Ministry located in the Minister's office, sent two emails to the General Manager, Working with Central Government, the General Manager's support staff, the Manager - Communications and a Senior Communications Advisor ("the Advisor") who had been contracted by the Ministry to provide communications advice in the area of climate change through until May 2006 (see Appendix B, Senior Communications Advisor 1). In terms of this case, the relevant details of the first email (attached in Appendix E) included contact details for Ms Curran, reference to her upcoming visit to Wellington and the Minister's suggestion that officials meet her later that week. The email also comments that "He (the Minister) wondered if there was a prospect of potentially engaging Claire (sic) to help with comms work now that [the Advisor] is close to departure."
  - 21 The second email sent to the same group of addressees (see Appendix E) noted that if the Ministry was aware of other external consultants, there was no problem with the Ministry engaging someone other than Ms Curran. The email noted that the Minister was simply familiar with Ms Curran's work, hence the suggestion of a meeting between her and the Ministry.
  - 22 Ms Curran visited Wellington from 17 to 19 May fitting in three meetings with Ministry officials around a series of meetings arranged earlier for her business. One of these organised by Ms Curran on 9 May, occurred on 17 May with the Minister. This meeting was to discuss Otago issues including the opportunity for Inzight Communications to do further work for Minister Parker as a Member of Parliament.
  - 23 On 18 May, the General Manager, Working with Central Government mentioned to the Minister in the weekly climate change briefing that the Ministry was going to meet with Ms Curran to discuss options for her to provide advice to the Ministry. There was no further discussion of this issue at the meeting. It was appropriate, given previous discussions, to provide the Minister with assurance that the issue of communication

resourcing was being progressed. However, given that the Minister and Minister's office had told Ms Curran and the Ministry that the discussion to engage Ms Curran was the Ministry's to make, it was not necessary for the General Manager to brief the Minister on the progress of a specific contracting process that was not the Minister's responsibility to determine.

- 24 Everyone who attended the discussions with the Minister on 11 May provides consistent recollections of his comments and the Ministry's response. I have carefully considered four pieces of evidence that, variously, suggest at first glance that the Minister considered that Ms Curran's engagement could substitute for an existing contractor, that there was a close relationship between her and the Minister on climate change issues and witnesses who believe they were told that the Minister had directed Ms Curran's engagement.
- 25 The Private Secretary's comment in the first email of 15 May, reported above, seems to suggest that the Minister regarded Ms Curran as a possible replacement for an existing contractor, the Advisor. I have not found any other evidence to suggest that the Minister saw Ms Curran as a replacement for the Advisor and, as such, the investigation has not put weight on the email reference. There is no evidence from those who recall the Minister's discussion about Ms Curran on 11 May that either the Minister or the Ministry mentioned Ms Curran's engagement in connection with the Advisor's departure. The Minister does not recall having ever met the Advisor or even being aware of her work. The Private Secretary also doubts that the Minister knew of the Advisor and her work. The Private Secretary is unable to recall the basis for the comment in her email. Her comments are also inaccurate in terms of the Ministry's intentions with respect to the Advisor's ongoing engagement. While the Advisor's existing contract did conclude at the end of May 2006, the Manager - Communications was at this time discussing options for her to return to the Ministry as a permanent staff member after she took a planned holiday. In her area of expertise, the Advisor was highly valued by the Manager - Communications and he therefore wanted to retain her skills within the Ministry.
- 26 The second piece of evidence that I have considered in respect of the relationship between Ms Curran and the Minister is another email from the Private Secretary on 19 June to the Personal Assistant of the Ministry's Chief Executive, Mr Logan, seeking a meeting between Mr Logan and Ms Curran to discuss the work she was doing for the Ministry. The email describes Ms Curran as the Minister's "right-hand woman" (attached in Appendix E). The Minister and Ms Curran were both surprised by this description and neither considers that this was an accurate description of their relationship. The limited climate change interactions between the two prior to Ms Curran's engagement and the nature of their contact during her period of engagement do not suggest a close relationship. The Private Secretary recalls asking for the meeting at Ms Curran's request as Ms Curran felt that she might not get access to Mr Logan as a short-term contractor. The Private Secretary cannot recall the basis on which she described Ms Curran in this fashion but has suggested to the investigation that she could have "played-up" her role to improve her chances of securing a meeting with Mr Logan. While Mr Logan did subsequently meet Ms Curran, he does not recall seeing the email nor would he expect to as it was addressed to his Personal Assistant. Given that it was the Minister who had initiated Ms Curran's consideration by the Ministry, it does not appear wise and was, quite possibly, unnecessary for the Minister's office to have arranged the meeting with Mr Logan.

- 27 The third piece of evidence I have considered in this context are the comments that the Advisor has made publicly and to this investigation suggesting that both she and the Manager - Communications resigned from the Ministry owing to the Minister's alleged improper direction to the Ministry in respect of Ms Curran's engagement.
- 28 The Manager - Communications is adamant that his resignation, written on 22 May, and subsequently withdrawn on 20 June, did not reflect a concern about any improper influence from the Minister. The resignation reflected personal considerations and a sustained period of work under considerable pressure and this is consistent with what he wrote in his letter of resignation. As discussed more fully in the next section, the Manager - Communications did not feel obliged to engage Ms Curran and he reached his decision to engage her only after meeting her on 18 and 19 May. As the Manager - Communications was seeking up to two more people, one senior and one junior, in the climate change communications area, he saw Ms Curran as a potential short-term candidate for the senior role that he was seeking to fill. Given these comments, I have not found evidence to support the view that the Manager - Communications resigned on the basis of concerns about the Minister's involvement.
- 29 The Advisor recalls that both the Manager - Communications and the Private Secretary mentioned that the Ministry was directed to hire Ms Curran because of the Minister's desire to have his personal image promoted by someone who had worked with him previously. Neither person recalls having made comments along those lines and neither believes that they would have made those comments given that they did not consider that this was the case. The Advisor was also an addressee of the Private Secretary's email on 15 May which explained that the Ministry could engage contractors other than Ms Curran if that was the appropriate course.
- 30 The fourth piece of evidence in this context relates to the recollections of the Senior Media Advisor. He believes that he was told by both the Advisor and the Manager - Communications that Ms Curran was going to be engaged by the Minister's office and located within the Ministry where she would oversee the Ministry's climate change communications work. The Manager - Communications does not recall such a conversation with the Senior Media Advisor. There does not appear to be any evidence to suggest that Ms Curran would be engaged by the Minister's office.
- 31 My assessment of the evidence is that it suggests that there was no direction from the Minister to the Ministry to engage Ms Curran. All witnesses who attended the meeting with the Minister on 11 May believe he raised Ms Curran's name as a suggestion. Subsequent comments by the Minister to Ms Curran and an email from the Private Secretary to the Ministry (see Appendix E) confirmed that the decision was the Ministry's to make. I have not been able to find evidence that the Manager - Communications resigned owing to concerns about political interference. Neither the Manager - Communications nor the Private Secretary have been able to corroborate the Advisor's and the Senior Media Advisor's accounts of what they believe they had been told.

### **The Contracting of Clare Curran by the Ministry for the Environment**

- 32 Following the meeting with the Minister on 11 May, the General Manager, Working with Central Government, mentioned to the Manager - Communications that he thought Ms Curran could be a possible additional resource to work on climate change



communications. They agreed to set up a meeting with her. While the General Manager considers that he informed the Manager - Communications of the Minister's remarks, the Manager - Communications cannot recall being aware of this connection until a few days later. The Manager - Communications did not receive advice to handle the process with Ms Curran with particular care given that the Minister had initiated consideration of her engagement.

- 33 On 16 May, the Manager - Communications rang Ms Curran to set up a meeting for 18 May to which the General Manager, Working with Central Government, the Manager - Communications, the Manager, Climate Change Policy and the Advisor were invited.
- 34 Ms Curran met with the General Manager, Working with Central Government, the Manager - Communications and the Manager, Climate Change Policy at the Ministry for the Environment on 18 May. Ms Curran also believes a woman attended the meeting taking notes but I have not found evidence to support this view. The Advisor did not attend the meeting as she had left the Ministry on 16 May. During the meeting, the Ministry outlined the climate change policy work programme, including the communications workstream, the nature of the work that was envisaged and the urgency of that work. For her part, Ms Curran outlined her experience and the nature of her expertise.
- 35 There is a difference of recollection as to whether Ms Curran raised her membership of the Labour Party and the paper called "Language Matters" that she wrote earlier in 2006 and on which she had recently delivered a workshop at a regional Labour Party conference. Ms Curran recalls that she raised the paper with the Ministry officials as there had been some mention of this paper in an article in the Dominion Post on that day and she felt that she needed to let the Ministry know about it. She cannot recall any reaction from the officials and the discussion moved on. For their part, Ministry officials cannot recall that Ms Curran raised the issue of her paper.
- 36 The difference in recollection is not necessarily surprising nor is it material to this case. On Ms Curran's part she had not expected a public discussion of her paper and was therefore surprised to see it referred to in some media in the context of pre-Budget commentary published on the same day as she met Ministry officials. Therefore, it would not be surprising if she has a more vivid recollection of her comments than officials and that she felt at the time that she should raise the issue. On the part of officials, given that Ms Curran was not likely to have significant interaction with Ministers, they would not be likely to have considered her Labour Party associations as relevant. Therefore, at this distance from the relevant events, the inability of officials to recall the matter is not surprising.
- 37 Conflicts of interest were not explicitly tested during the meeting. The contract management checklist attached to Ms Curran's contract (see Appendix F) asks "Are you confident there is no conflict of interest for any of the parties to the contract?". The checklist records a "Yes" answer. This appears to have been answered on the basis that the Ministry did not ask a question and Ms Curran did not offer any comment. In fact, the Ministry already knew from the Minister and Ms Curran that Inzight Communications was working for Minister Parker in his capacity as a Labour Party Member of Parliament from time to time. Given the nature of that work there may have been potential conflicts of interest between Inzight Communications' work for Minister Parker and its work for the Ministry. A discussion that identified any potential conflicts

of interest between these two contracts and agreed on appropriate management of them should have occurred. The fact that the work produced by Ms Curran does not indicate any apparent conflict is more a matter of good luck rather than good management by the Ministry.

- 38 While Ministry officials did not keep a record of their meeting with Ms Curran and their recollections of the detail of the meeting are understandably hazy, at the end officials consider that they agreed that Ms Curran had demonstrated sufficient experience and expertise in the meeting to move to agree the basis of engagement. The Manager - Communications took responsibility to undertake the contracting as the relevant manager.
- 39 Ms Curran recalls two further meetings with the Manager - Communications, one on 18 May and another on 19 May in which there was further discussion of the work programme and terms of engagement. She recalls that she considered that she was hired following the conclusion of the third meeting during which she was asked to consider how many hours she could work per week and whether she could start work the following week, given the urgency around the work programme.
- 40 Ms Curran was contracted to deliver up to a maximum of 200 hours totalling \$24,000 (excl GST) plus disbursements up to a maximum of \$5,400, over a period from 22 May 2006 to 28 July 2006 (contract attached in Appendix F). The standard contracting process for contracts in the \$20,000 to \$50,000 range is to seek three quotes for the work (contracting guidelines attached in Appendix F). In this case, the Ministry did not seek quotes as it felt that its recent contact with recruitment agencies had given it a good sense of hourly contracting rates for communication contractors. In addition, the sense of urgency to hire another person with climate change communications experience had been heightened by the departure of the Advisor from the Ministry on 16 May. The sensitivity of engaging Ms Curran given the Minister's initial involvement was not considered as a factor to undertake a fuller, if slower, selection process. Such a process could have included features such as referee checking, seeking quotes from other contractors and an examination of previous work of contractors who were quoting, including Ms Curran's. A more rigorous process, which included a formal interview and referee checking, had recently been undertaken by the Manager - Communications when he recruited another Senior Communications Advisor – Climate Change (see Appendix B, Senior Communications Advisor 2) in April 2006.
- 41 The contracting process was poor in some other aspects. Ms Curran was initially engaged on the basis of a verbal contract and indeed the final contract was only signed on 13 July, just a fortnight before the end of the contract, in part owing to a lengthy period agreeing the basis of disbursements. While the Ministry's contracting guidelines permit the use of non-competitive selection processes provided approval is given by the relevant manager, this approval was only gained some weeks after Ms Curran had been engaged and therefore there was no opportunity for the relevant General Manager to test the approach proposed.

42 Overall, the process used was not appropriate for a situation where the Minister had initiated consideration of a contractor. The Manager - Communications did not receive appropriate advice and support from senior managers about how to handle such a sensitive case. The emphasis on speed of engagement relative to managing potential risks around political neutrality contributed to make the process appear as if it was a scramble to hire someone suggested by the Minister.

### **Response of the Ministry for the Environment Staff to Ms Curran's Appointment**

43 Ministry for the Environment staff expressed different views as to their understanding of why Ms Curran was engaged. Second tier staff who were interviewed believed that the Minister's involvement had been appropriate. There was also a general understanding among the second tier, climate change policy staff and the communications team that there was a heightened need for additional climate change communications at that time. One senior staff member commented that additional skill sets were needed in climate change communications to meet a new demand for strategic rather than operational communications advice.

44 However, as reported above, the Advisor and the Senior Media Advisor understood that Ms Curran was engaged at the request of the Minister. Other staff in the communications team were not initially aware of Ms Curran's connection to the Minister and were not surprised by her engagement given the team's work pressures and the need for additional resourcing.

45 Over the period of Ms Curran's engagement, more staff became aware of her involvement with the Labour Party and her company's work history for the Minister. This led to some speculation within the Ministry that Ms Curran's connection to the Minister was the reason for her appointment and there was a subsequent rumour that her Labour Party membership was a reason for not extending Ms Curran's contract. Neither speculation was true but it does not appear to have been challenged by management. The Acting Manager - Communications recalls widespread comment across the communications team when she arrived in July 2006 that the Minister had appointed Ms Curran. Indeed, the Acting Manager - Communications referred to a ministerial appointment as a point of fact in a paper that went to the General Manager, Corporate and Community in October 2006 (attached in Appendix G). Although I have found no evidence that this paper, in its original form, was presented to a Ministry Group Leaders meeting, the Acting Manager - Communications does not recall that her assumption about the circumstances of Ms Curran's appointment was challenged.

### **Ms Curran's Work in the Ministry for the Environment**

46 The main products produced or contributed to by Ms Curran during the contract period included:

- Review of and advice on earlier drafts of communications programmes in an email entitled 'response as requested'
- 'Minister Parker briefing climate change announcement and communications strategy'

- ‘New Zealand Government statement of intent on the response to climate change: Moving forward together’
- ‘Proposal for Government climate change announcement’
- ‘The name – some revised suggestions’
- ‘The communications plan for the announcement’
- ‘Communications strategy – draft (not Government policy)’
- ‘Climate Change: The way ahead’
- ‘Climate change announcement key messages for Minister Parker’
- ‘High level messages’
- ‘Communications and engagement work programme’
- ‘Brief - Climate change booklet’
- ‘Minister Responsible for Climate Change Issues 20 July 2006’
- ‘Communications and engagement work programme’
- ‘Climate change communications and engagement ‘The Next Phase’
- ‘What’s happened?’
- ‘Briefing note to Minister Parker’.

Ms Curran also provided input into work by other communications staff including revising material prepared prior to her engagement.

- 47 As part of this investigation, we have examined the documents (attached in Appendix H) that Ms Curran contributed to and have found them to be of professional quality. We have also found no evidence of Ms Curran’s political views being apparent in the examples cited.
- 48 I have some concerns about aspects of the Ministry’s management of Ms Curran’s briefing note for the Minister on 12 June. Ms Curran correctly cleared the draft with her manager. The note focuses heavily on the proposed tactics associated with a planned launch of climate change work. This included minimising the risk of negative comment from “Greens” (by which Ms Curran meant the Green Party and Green NGOs) and timing the event to dominate the media agenda for that week. While departmental advice on communications can appropriately consider tactical issues, it should focus on the presentation of government policies and avoid the appearance of advice on the political management of government announcements. In this instance, because the new set of climate change policies was still in development, the focus of departmental communications advice on managing the planned event rather than on articulating key policy messages is understandable. In any event, I can find no clear evidence that the planned announcement occurred.
- 49 Ms Curran and relevant managers did not get a substantive opportunity to discuss the briefing at the meeting with the Minister on 12 June. However, Ms Curran had an opportunity to run through the briefing when she and the Minister coincidentally travelled back to Dunedin on the same plane. The Minister has no recollection of the

discussion. However, the Ministry could have exercised more care in ensuring that Ms Curran's briefing was appropriately couched to avoid any perception that someone with connections to the Minister was preparing or delivering advice that could be construed as verging on recommending tactics for a broader political communication around climate change.

- 50 Witness comment describes Ms Curran's work as satisfactory. She is said to have met the needs of the work programme and to have been mature and responsive to work with. One member of the Climate Change Policy Team notes that the communications strategy advice provided by Ms Curran still influences the climate change communication work programme today.
- 51 Emails exchanged between Ms Curran and the Ministry also indicate that Ms Curran was prompt and professional in her responses. She appears to have worked comfortably within an officials' process, seeking and responding to feedback about her proposed documents, in particular, requesting feedback about the quality, accuracy and appropriateness of her work regularly and adjusting work appropriately.
- 52 Ms Curran was clear and well planned about her travel arrangements, seeking approval for travel before she undertook it and proposing meeting times to coincide with her approved travel arrangements.
- 53 In the main, Ms Curran provided material to the communications team but she also dealt directly with Climate Change Policy staff and the Private Secretary when occasion required it. There is no evidence that Ms Curran corresponded directly with the Minister at any stage.
- 54 During the period of Ms Curran's contract, she met with the Minister on three occasions. As noted above, she met with him first as part of an officials' briefing group in his office on 12 June; by coincidence she travelled home to Dunedin on the same plane as the Minister on the evening of 12 June and spoke to him then; and on 24 July when Ms Curran presented Minister Parker with the draft communications and stakeholder engagement work programme as part of an officials' briefing.

### **The Conclusion of Ms Curran's Contract**

- 55 Ms Curran's contract was not renewed. This was communicated to her by the Acting Manager - Communications, by email on 27 July 2006, following a telephone discussion between them. The Acting Manager - Communications made the decision not to renew Ms Curran's contract because she believed that:
  - the Ministry had sufficient dedicated climate change communications staff who could deliver the support that the Ministry needed,
  - the nature of the work that Ms Curran had been engaged to do was not going to be a priority for the Ministry in the next period, and
  - the additional travel costs of Ms Curran did not compare favourably to the nil travel costs of a Wellington based contractor.

## **Concluding Observations**

56 Arising from my assessment of the facts, I make the following observations that appear to emerge from this investigation.

### ***Role of Minister in Engaging Ms Curran***

57 Ministers should exercise considerable caution in suggesting individuals whom departments could engage, either as contractors or employees, given the significant risk that any such suggestion could be seen as improperly influencing the employment decisions that are legally required to be made on the basis of merit by Chief Executives and their delegates. The Minister recalls that the suggestion of Ms Curran has been the only occasion on which he has suggested an individual to the Ministry for the Environment. In this case, he was aware of someone with relevant experience and he knew that the Ministry had been struggling to increase its resourcing at the pace required to fully meet his expectations.

58 The Minister acted appropriately in this case as he took a number of steps to exercise care. He told officials about the nature of his association with Ms Curran, he raised her name by way of suggestion, rather than direction, his office emailed officials to confirm that the Ministry should engage a contractor other than Ms Curran if it considered that was appropriate and he made it clear to Ms Curran that any decisions around her engagement were the Ministry's to make.

59 The Minister could have considered raising this suggestion with the Acting Chief Executive, rather than with the senior officials present. Ultimately, it is the Chief Executive who is expected to ensure that the employment and engagement processes of the department are demonstrably carried out on the basis of merit, especially in a case such as this where the process needs to be undertaken with great care given the involvement of the Minister. However, given that the Minister raised his suggestion with senior and very experienced officials, there should have been a reasonable expectation that the Ministry would have handled the matter with appropriate care.

### ***Ms Curran's approach to her engagement***

60 Ms Curran acted appropriately throughout her engagement with the Ministry. This investigation is inclined to accept Ms Curran's recollections that she was open about her association with the Labour Party when she first met with Ministry staff and, in particular, her authorship of a paper presented to a regional Labour Party conference in May 2006. There is no evidence that Ms Curran brought her politics into the job and there is a consistent picture that Ms Curran was very professional and produced work of good quality.

### ***Role of the Minister's Office***

61 Staff in ministerial offices undertake an important function in facilitating the clear communication of ministerial views to departmental officials. The Private Secretary, as noted above, stressed the Minister's expectations that the Ministry was responsible for the decision around Ms Curran's engagement. However, this appropriate contribution was undermined by two emails to departmental staff purporting to represent the Minister's views that do not appear to have been accurate, in one case describing Ms Curran as the Minister's "right-hand woman" and in the other adding a comment that

might have been interpreted to mean that the Minister saw Ms Curran as a replacement for the Advisor.

### ***The Contracting of Ms Curran by the Ministry for the Environment***

- 62 Departments, like Ministers, should exercise considerable care in handling the employment or engagement of individuals when their name has been identified by the Minister. Departments should ensure that the engagement process can clearly demonstrate that the successful contractor or employee was appointed on the basis of merit. This is the requirement that the law places on Chief Executives. The professional reputation of individuals engaged by the department is best protected from subsequent scrutiny by a transparent and robust process that provides clear evidence of selection on the basis of merit. The skilful management of a merit-based engagement process is also required to demonstrate that any Ministerial involvement was appropriate and was handled with care by the department.
- 63 In this case, the Ministry for the Environment did not handle the engagement of Ms Curran with sufficient care which has subsequently contributed to public questioning of the appropriateness of the Minister's involvement, created unnecessary and unfair doubts about Ms Curran's professionalism and renewed debate about the political neutrality of the Ministry for the Environment.
- 64 The judgement about the process to be used in engaging a contractor needs to balance a number of factors. The Ministry's contracting guidelines recognise that the process needs to be tailored to the needs of the situation. For example, the expected form of the competitive selection process varies according to the value of the contract. The guidelines provide the flexibility to use a non-competitive selection process in exceptional circumstances.
- 65 In this case, the fact that the contractor being considered for engagement had been suggested by the Minister was a critical factor in considering the appropriate engagement process for Ms Curran. This was because of the significant risk that a decision to engage her could be seen subsequently as political favouritism or a means of introducing a political bias to Public Service work.
- 66 There is no evidence that departmental managers considered that Ms Curran's recommendation by the Minister was a relevant factor to be assessed in the design of their selection process. The managers considered that the urgency of recruiting additional communication resourcing was the dominant consideration together with obtaining a general sense of comfort that Ms Curran could do the job. These judgements have provided an unfortunate impression that responsiveness to the Minister's work programme has a disproportionate weight in the Ministry's decision making relative to its obligations to demonstrate that it is maintaining appropriate standards of political neutrality.
- 67 There were a number of actions that the Ministry's managers could have taken to manage the situation better. The Acting Chief Executive should have been informed of the Minister's suggestion and engaged in agreeing an appropriate process for considering her engagement. It was unnecessary for officials to brief the Minister on their progress in contracting Ms Curran after his initial suggestion. The Manager - Communications should have received active support from more senior and experienced managers in handling this issue. Undertaking a more competitive selection process with associated

features such as referee checking and examination of candidates' written work together with formal record keeping of the selection process would have provided clearer evidence that the successful contractor was engaged on merit.

### ***Identification of Conflicts of Interest***

- 68 Engagement processes for contractors should explicitly address the issue of any potential conflicts of interest. This requirement does not presume that conflicts exist or, if they do, that they are an impediment to the contractor's engagement. If any conflicts are identified, there should be a discussion and determination about how best to manage that conflict. This approach is recognised in the Ministry's contracting checklist where an affirmation is required that any conflicts of interest are explicitly addressed. Our investigation suggests that there is explicit checking of conflicts of interest with contractors in some parts of the Ministry. However, it does not appear that conflicts of interest were tested in the engagement of Ms Curran.
- 69 Communications contractors are not inherently less subject to conflicts of interest than other professionals. For example, it would be relevant for the Ministry to know if a proposed climate change communications contractor had recently worked for an organisation that had campaigned actively around climate change issues. In this case, Ms Curran's company had done work for Minister Parker in his capacity as a Labour Party Member of Parliament and did further work during her period of engagement. While it does not appear that there were any conflicts between Ms Curran's work for the Ministry and Inzight Communications' work for other clients, including Minister Parker, the process used by the Ministry would not necessarily have identified a conflict if it had existed.
- 70 In respect to Ms Curran's involvement in the Labour Party, this did not present a potential conflict of interest in this case. Ms Curran recalls identifying her involvement openly as was appropriate. As Ms Curran's role did not require frequent interaction with Ministers, she was not in one of the small number of roles that requires demonstrated political neutrality.

### ***Ms Curran's Background and Ministry Staff***

- 71 Over Ms Curran's time in the Ministry, more staff became aware of her professional association with the Minister and her membership of the Labour Party. In this environment, it is not surprising that there was some speculation within the Ministry about whether her hiring by the Ministry was linked to her background. Within the communications team her alleged appointment at the behest of the Minister was becoming received wisdom by the time the Acting Manager - Communications started in July. Similarly, when Ms Curran's contract was completed, some Ministry staff reported rumours that Ms Curran's Labour Party membership was the reason that her contract was not extended. The Ministry could have managed better internal communications around Ms Curran's engagement by providing accurate information to relevant staff concerning Ms Curran's skills, background and the reasons for her engagement and challenging speculation when management became aware of it. Better management in this area could have reduced ill-informed speculation within the Ministry, and possibly externally, about Ms Curran and the Ministry's reasons for engaging her.



## ***Contracting Arrangements Used by the Ministry for the Environment***

- 72 Ms Curran was engaged by the Ministry using a non-competitive selection process. While the Ministry's contracting guidelines permit such a process it is intended to be a process that is used infrequently rather than as the default. In our report to the Minister for the Environment of 19 November 2007, we noted that some other aspects of the contracting could have been handled better, such as seeking approval to use a non-competitive selection process before, not after, engaging Ms Curran.
- 73 While we have not undertaken a detailed investigation of the Ministry's contracting, we have attempted to place Ms Curran's contracting into a wider context. On the basis of the information that was presented to the Ministry's senior managers on 15 October 2007 (attached as Appendix I), I have concerns about the declining performance of the Ministry's contracting since the period of Ms Curran's engagement. For example, the paper notes that the competitive selection process was used for 42% of long form contracts in 2004/05, 38% in 2005/06 (the year that Ms Curran was engaged) and only 16% in 2006/07. Put another way, the non-competitive selection process, designed to be used in exceptional circumstances, was used for 84% of the Ministry's long form contracts over \$10,000 in 2006/07. Similarly, there appears to be evidence of widespread contract splitting to divide projects into stages worth less than \$10,000 and thus place them below the threshold required for a competitive selection process. These practices raise significant value-for-money, legal and probity risks for the Ministry.
- 74 The Ministry has implemented new contract management systems from 1 July 2007. In addition, on 15 October 2007, the senior management team agreed a number of actions including ongoing staff education, ongoing monitoring of contracts by Group Managers and encouragement of staff to use appropriate competitive selection processes. The robustness of systems around contract management is the responsibility of the Chief Executive and I recommend that the Ministry's Chief Executive assesses the adequacy of the Ministry's response to date and take further action if required.

## ***Managing Risk Around the Roles of Ministers and Public Servants***

- 75 Evidence provided to the investigation indicates that Ministry officials understood some basic elements of the respective roles of the Ministers and public servants and their obligation to maintain political neutrality. Officials clearly understood that they could not be directed on an employment issue by the Minister. Equally there was a clear understanding by officials that they needed to be convinced of a contractor's merit before the contractor was engaged. Ms Curran's Labour Party association, although not registered by officials at the time of her engagement, was correctly not seen as preventing her engagement when her association became apparent to them later.
- 76 However, there does not appear to have been an appropriate understanding of the risk around engaging with a Minister around employment or engagement processes. For example, three senior Ministry officials heard Minister Parker's suggestion but none appears to have realised the critical need for care in the Ministry's handling of the situation. Similarly, the subsequent reporting of progress on arranging a meeting with Ms Curran seems to reflect a lack of appreciation of the risks of raising employment issues with a Minister.
- 77 I have been concerned that senior officials interviewed have generally considered that the Ministry acted appropriately in its engagement of Ms Curran under the circumstances. I

acknowledge the commitment of the relevant managers and accept the genuineness of their belief that they were meeting the expectations of behaviour of public servants. However, in this particular set of circumstances, their behaviour did not meet the standards required. They have consistently stressed the importance that they were placing on responding to the Government's programme. While energetically responding to the programme of the government of the day is indeed important for departments, so is the Public Service's capacity to be seen and trusted by the public to uphold the conventions around political neutrality and merit-based selection. On the basis of my discussions with Ministry staff, it is not apparent that the Ministry would act differently today if a similar set of circumstances arose. This is surprising given the events surrounding the Ministry in recent months. There appears to be a need for much clearer guidance across the Ministry's managers on the respective roles of Ministers and public servants and the emphasis that needs to be placed on ensuring that political neutrality is seen to be maintained. This is an issue to which I consider the Chief Executive should give urgent attention.



Iain Rennie  
Deputy State Services Commissioner  
State Services Commission  
19 December 2007

## Appendices

- A Terms of Reference
- B List of interviewees
- C Timeline
- D Inzight Communications newsletter, 'Our Southern Community'
- E Private Secretary (Climate Change) emails (dated 15 May/19June 2006)
- F Contract management checklist and Ms Curran's contract
- G Acting Manager - Communications paper, 'Improving communications in the Ministry for the Environment'
- H Samples of Ms Curran's work for the Ministry for the Environment
- I Ministry for the Environment Group Leaders Meeting paper, October 2007, 'Contracts management for financial years 2005/06 and 2006/07'. This appendix is attached to show how the contracts process in the Ministry is managed. Therefore information about specific contracts and contractors has been removed because they are not relevant.