

By Email

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Dear Fiona

### Consultation Draft of State Sector Reform Bill

We refer to your email of 16 July 2012 attaching a working draft of the State Sector Reform Bill. Thank you for the opportunity to provide feedback on this draft.

We have prepared a table that identifies our comments on the main proposals that appear to be most relevant to the Guardians in the time we have had to consider the Bill. Please note that we have not had sufficient time to consult with our Board on these matters and this submission remains subject to the Board's comments.

We note that there are many proposed amendments that we think are very useful and will assist in the overall goal of delivering better public services and we support these proposed amendments.

The following table focuses only on the key points we wanted to make on issues relating to the Guardians, or where we have specific concerns or queries. In particular, we have suggested some further consequential amendments to the New Zealand Superannuation and Retirement Income Act 2001 (NZSA) to ensure the proposed amendments are consistent with the objectives of the NZSA.

We welcome the opportunity to discuss these comments with you further and to provide additional information as needed.

Yours sincerely



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<p>Section 149F</p>	<p>Section 107</p>	<p>Section 107(2)(c)</p>	<p>Section 107(2)(c)</p>	<p>Section 107(2)(c)</p>	<p>Section 107(2)(c)</p>	<p>Section 107(2)(c)</p>	<p>Section 107(2)(c)</p>
<p><b>Crown Entities Act</b></p>	<p>Expand grounds for issuing a 'whole of government direction'. In particular s107 would be amended as follows:  The Minister of State Services and the Minister of Finance may jointly direct Crown entities to comply with specified requirements for the purpose of both supporting a whole of government approach and</p>	<p>As noted above, we support the whole of government approach where it is consistent with the obligation to perform efficiently and effectively and is not inconsistent with the functions of the Guardians under the NZSA and other relevant legislation.</p>	<p>To allow for 'functional leadership', ie "drive best practice, set common standards, collect data, influence or control budgets and identify opportunities to increase value."</p>	<p>Change s107 (Whole of government direction):  The Minister of State Services and the Minister of Finance may jointly direct Crown entities to comply with specified requirements for the purpose of both supporting a whole of government approach by complying with specified requirements for any of the following purposes:  (a) supporting a whole of government approach; and  (b) either directly or indirectly improving public services; or  (a) improve (directly or indirectly) public services  (b) to secure economies or efficiencies  (c) to develop expertise and capability;  (d) to ensure business continuity  (e) to manage risks to the government's financial position  New section 107(2)(c):  to a group of Crown entities (whether made up of categories or types) if the group –  (i) is made up of at least 3 Crown entities; and  (ii) has in common at least 1 significant characteristic that relates to the direction (for example, the characteristic could relate to the Crown entities' asset holdings or presence in a region)</p>	<p>The Guardians function is to manage and administer the Fund.  Section 64 of the New Zealand Superannuation and Retirement Income Act 2001 (NZSA) provides a mechanism for the Minister to give directions to the Guardians regarding the Government's expectations as to Fund's performance, including the Government's expectations as to risk and return.  In our view as currently drafted a direction under the proposed amended 107 of the CEA may be contrary to the purpose of the NZSA including the importance of the Guardians managing the Fund on an arms-length basis. In addition, the combination of new subsections 107(1)(e) and (2)(c) appear to circumvent section 64 of the NZSA - which, as set out above, enables the Minister to give directions in relation to risks but on the basis the Guardians have regard to the direction (not give effect to it). Section 64 has been deliberately drafted in this way to ensure there is an appropriate degree of autonomy as is required for the effective management of the Fund..  This potential conflict has already been addressed in the NZSA in respect of s 104 (Power to direct autonomous Crown entities to have regard to government policy). Accordingly, we suggest that section 64(3) of the NZSA should be consequentially amended as follows:  (3) Despite sections 104 and 107 of the Crown Entities Act 2004 the Minister may not give a direction to the Guardians in respect of the Fund except in accordance with this section.  (Note we also suggest a further amendment to section 64(3) below)</p>	<p>New s 149F Amendments to statements of performance expectations by responsible Minister  (1) A responsible Minister for a Crown entity may direct a Crown entity to amend any provision that is included in the entity's statement of performance expectations.  (2) If a responsible Minister intends to so direct.....</p>	<p>We query the apparent inconsistency between s 149F(1) and 149A. The latter section provides for a process for the Minister to comment on the Statement of performance expectations and the Crown entity to consider those comments.  However, s149F allows the Minister to direct a</p>

N/A	N/A	N/A	<p>change to the Statement of Performance expectations.</p> <p>Similarly to our comments above, we suggest that section 64(3) of the NZSA should be consequentially amended as follows:</p> <p>(3) <i>Despite sections 104, [107] and 149F of the Crown Entities Act 2004 the Minister may not give a direction to the Guardians in respect of the Fund except in accordance with this section.</i></p>	<p>In our view the ability of the Guardians' Board to determine Employee Remuneration and Policies is inextricably linked with the ability of the Board to fulfil the objectives of the Guardians as set out in the NZSA.</p> <p>Most Boards will have a Board sub committee dedicated to this important aspect of governance.</p> <p>Accordingly, we think that, like independent crown entities, this provision should not apply to autonomous crown entities.</p> <p>Would you please advise the purpose of the amendment to this provision as it is not clear the role it would play in the context of an autonomous Crown entity.</p> <p>Would you please provide guidance as what is intended by 'contractors' as we wish to ensure that our practices either do or can be amended to include these people.</p> <p>The reference to "each financial year" in section 1(a) should possibly be amended to reflect SOIs that apply for a number of years. The reference could be changed to the 'applicable' financial year.</p> <p>The Guardians is largely funded from the Fund. It appears that s149C(1)(b) may not cover this type of funding. It is possible that funding from the Fund is not intended to be included in this section - would you please clarify.</p>
N/A	N/A	N/A	<p>It is proposed that the State Sector Act is amended (New Sections 55A, 55B and 55C) to enable the Minister of State Services to approve a Government Workforce Policy which may address pay/conditions or development of workforce strategy. It must specify which departments, Crown agents or Crown entities it will apply to. Autonomous crown entities such as the Guardians must have regard to the Policy as if it were a direction under s104(1) of the Crown Entities Act.</p>	<p>Amend s127:                  (b) by 1 or more attorneys appointed by the entity in accordance with this Part, or                  (c) by a person or class of persons approved in writing by the responsible Minister</p>
N/A	N/A	N/A	<p>Amend s135 (Members, office holders and employees are officials) to add in <u>contractors</u></p>	<p>Would you please provide guidance as what is intended by 'contractors' as we wish to ensure that our practices either do or can be amended to include these people.</p>
N/A	N/A	N/A	<p>S146 (Process for providing statement of intent to responsible minister)                  (1) The process that must be followed in providing a statement of intent is as follows:                  (a) The Crown entity must provide a draft statement of intent to its responsible Minister by the first working day in May before the start of each financial year and...</p>	<p>The reference to "each financial year" in section 1(a) should possibly be amended to reflect SOIs that apply for a number of years. The reference could be changed to the 'applicable' financial year.</p>
N/A	N/A	N/A	<p>S149C Requirements for statement of performance expectations                  (1) A statement of performance expectations in relation to a Crown entity and a financial year must identify each class of outputs -                  (a) that the Crown entity proposes to supply in the financial year, and</p>	<p>The Guardians is largely funded from the Fund. It appears that s149C(1)(b) may not cover this type of funding. It is possible that funding from the Fund is not intended to be included in this section - would you please clarify.</p>

Initial Response	Reason Given in Reply for Our Response	Our Response	New Proposal - Draft B	Our Submission
			<p>(b) that is directly funded (in whole or in part) by the Crown in accordance with an appropriation for the purpose, or by grants distributed under any Act, or by levies, fees, or charges prescribed by or under any Act.</p> <p>(2) ...</p>	
N/A	N/A	N/A	<p>Amendment to s 152 (Disclosure of payments in respect of members, committee members, and employees)</p> <p>(d) the total value of any compensation or other benefits including contractual entitlements paid or payable to persons who ceased to be members, committee members, or employees during the financial year ...</p>	<p>Would you please advise what you anticipate would be such contractual entitlements.</p>