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Te Pou Turuki mō Te Kawa Mataaho
Deputy Public Service Commissioner
Te Kawa Mataaho
Public Service Commission

14 July 2023

Tēnā koe Gaye,

Submission on the draft Ngā Tikanga |The Code of Conduct

Thank you for the opportunity to comment on the draft Public Service Code of Conduct and accompanying guidance document.

We understand the importance of public sector agencies maintaining the public's trust and confidence. We expect high standards of integrity and professional behaviour from our Board members and employees, which are articulated in our Board and employee Codes of Conduct.

Our Board Code of Conduct incorporates the Code of Conduct for members of Crown entity boards issued by the Public Service Commissioner in March 2021 and our employee Code of Conduct incorporates the Standards of Integrity and Conduct issued by the Public Services Commissioner in 2007. However, we do not consider that it is appropriate to extend the draft Public Service Code of Conduct to the Guardians.

Background

The Guardians' statutory functions are solely commercial, which are to manage the New Zealand Superannuation Fund (**NZSF**) and the Venture Capital Fund (**VCF**) in accordance with the legislation establishing those funds.

NZSF was established to partly pre-fund the future cost of New Zealand superannuation payments and thereby reduce the burden of the cost of superannuation on future generations of New Zealanders. VCF was established with the aim of increasing the venture capital available to New Zealand entities and help develop New Zealand's venture capital markets to function more effectively.

The legislative framework for the Guardians is designed to ensure that we can operate on a commercial basis, independent of the Government of the day.

Comments on the draft Public Service Code of Conduct

Our overall concern with the draft Code is that it extends sections of the Public Services Act 2020 (**Act**), that only apply to the public service as defined in the Act, to Autonomous Crown Entities (**ACEs**) and Independent Crown Entities (**ICEs**). All of the content of the Code is taken directly from sections of the Act:

- The 'Kaupapa | Our Purpose' statement in the draft Code repeats section 11 (*Purpose*) and section 14(1) (*Crown's relationship with Māori*).

- The 'Ngā Pou | Principles' (*How We Work*) statement in the draft Code lists five principles that replicate section 12 (Public service principles).
- The 'Ngā Mātāpono | Values' (*How We Behave*) statement in the draft Code repeats section 16 (*Public service values*).

When the Public Service Legislation Bill was introduced, Parliament decided to extend the definition of 'public service' to Crown agents but not to ACEs or ICEs. There were sound organisational, operational, and public policy reasons for making the distinction between Crown agents and the other types of Crown entity. Crown agents were considered the 'closest' to government and subject to the greatest degree of Ministerial influence. Crown agents are required to give effect to government policy, include large public-facing core public service delivery, and are generally not perceived by the public as being "separate" to executive Government. ACEs and ICEs on the other hand are intended to operate at arms' length from government and it was recognised that including them as part of the core public service could undermine their independence.¹

The blanket application of the Act's public service purpose, principles and values to ACEs and ICEs though the draft Code, removes the distinction drawn by Parliament in the Act between agencies that deliver core public services and Crown entities that are intended to operate independently of the Government. It seems unlikely that the Commissioner's powers to set minimum standards of integrity and conduct were intended to result in such an outcome.

In our view, the proposed guidance should be amended to include ICE and ACE in the entities listed in its 'Other agencies in the public sector' section (page 3). Under such an approach the existing arrangements for such entities, which are working effectively and efficiently, would be maintained. Further, such a change would mean that the draft Code accurately reflects the entity-specific distinctions set out in legislation.

This approach would also be consistent with the summary of changes for Crown entities under the Act issued by the Public Service Commission in 2020 (available [here](#)), in which the Public Service Commission makes it clear that sections 11 (*Purpose*), 12 (*Public service principles*) and 16 (*Public service values*) do not apply to ACEs or ICEs.

Alternatively, we suggest that the Guardians be specifically listed in the 'Other agencies in the public sector' section. In support of this proposal we note that:

- We have a very specific and explicitly commercial function and operate in a highly competitive global market.
- We have a high degree of independence in keeping with our purpose.
- We do not provide public services directly to the public or make decisions that affect the rights of individuals.
- We do not provide advice to Ministers and are not involved in policy development or implementation.

Thank you again for providing us with the opportunity to comment on the draft. Given the significance, in terms of consequence, of what is proposed, we would welcome an opportunity to meet with the Commission to discuss our concerns in more detail prior to Ngā Tikanga being finalised.

Ngā mihi nui



Matt Whineray
Chief Executive Officer

¹ [The Impact Statement for the State Sector Act Reform](#) notes (p44) that Crown entities sit at arms-length from Ministers in order to maintain independence from political decision making and bringing them within the realm of the public service would be at odds with their role.