



Te Kawa Mataaho
Public Service Commission

16 March 2023

Hon Barbara Edmonds
Minister of Internal Affairs
Parliament Buildings
WELLINGTON

By email: 9(2)(a) privacy

Dear Minister

As you are aware, I have been asked by the Opposition spokesperson for the Public Service to investigate whether commentary made by Ms Ruth Dyson on Twitter complied with the Government's political impartiality rules, given her position as Deputy Chair of both the Fire and Emergency New Zealand (FENZ) and the Earthquake Commission (EQC). I am writing to you to let you know my view on the commentary, given Ms Dyson's accountability to you as the responsible Minister and what, if any, action might be taken.

Political neutrality

By long-standing convention New Zealand's Public Service is politically neutral. It serves the government of the day and successive governments, regardless of their political composition. By acting in an apolitical way, the Public Service can maintain the confidence of the current Government, whilst ensuring the confidence of future governments. This allows the Public Service to provide continuity of service and high quality, free and frank advice, which are vital to good government.

In 2020, Parliament enshrined political neutrality in statute as a public service principle. Section 12 of the Public Service Act 2020 (the Act) also created duties for upholding the principles. In relation to Crown Agents, the Board is responsible to its Minister for ensuring that the entity they govern upholds the principle of political neutrality when carrying out their functions.

The principle of political neutrality is further reinforced by the Code of Conduct for Crown Entity Board Members, issued by the Public Service Commissioner under s 17 of the Act. Board Members must comply with this Code. It relevantly states:

We are politically impartial

We act in a politically impartial manner. Irrespective of our political interests, we conduct ourselves in a way that enables us to act effectively under current and future governments. We do not make political statements or engage in political activity in relation to the functions of the Crown entity.

When acting in our private capacity, we avoid any political activity that could jeopardise our ability to perform our role or which could erode the public's trust in the entity. We discuss with the Chair any proposal to make political comment or to undertake any significant political activity.

My assessment of the commentary

On 5 February 2023 Ms Dyson made a comment on Twitter referencing the Leader of the Opposition's speech at Waitangi that said; *"Oh, no. It sounds like some cruel junior staffer gave Mr Luxon the wrong speech! #Waitangi2023"*

Ms Dyson's comment was made in her personal capacity on a platform that does not directly state that she is on the board of EQC or FENZ. However, even when acting in a private capacity, the Code of Conduct requires Board members to act in a manner that does not jeopardise their ability to effectively undertake their role under the current or a future government. The Code does not stop Board members from expressing any political opinions or undertaking political activity. It recognises that Board members have the same rights to freedom of speech and political activity in their private lives as other New Zealanders. However, the profile and visibility of Board members can make it difficult to clearly distinguish between operating in a private capacity as opposed to in an official capacity as a Board member.

The comment while not engaging in specific political debate could be interpreted as having a negative connotation about the quality and content of Mr Luxon's speech. This could be seen as providing generally unfavourable commentary about the current National party leader and a particular political party whilst having favourable content towards another party on the same platform. For example, by retweeting commentary that links to the "Our achievements" page of the Labour party website and tweets made by others of a political nature.

Ultimately, the question is whether Ms Dyson's public commentary has jeopardised Ms Dyson's ability to effectively perform her Board roles or eroded public trust in the relevant entities. In my view while the comment was made on a twitter page that did not identify Ms Dyson's board memberships it was inappropriate and could have impeded this ability. In coming to this view, I have had regard to the decisions reached in other recent cases involving allegations of political comment by crown entity members.

On balance, I consider that this is a breach of the Code of Conduct at the lower end of the spectrum.

What action may be taken

Ms Dyson's political neutrality obligations under the Act and the Code are owed to each of you as the responsible Ministers of the relevant portfolios. It is a matter for Ministers to consider and determine what action if any should be taken in relation to Ms Dyson's social media commentary that I have reviewed.

As set out above, my view is that given her Board roles the conduct as outlined above was inappropriate and may have impeded her ability to act effectively under the current or a future government. Relevant Ministers have the power under section 36 of the Crown Entities Act to remove a Board member from their role for any reason under the Crown Entities Act. Ministers can also formally caution or warn a Board member. In seeking to remove a Board member from their role, the Act contemplates that the process will allow for the principles of natural justice to be met and to enable you to properly consider the matter. This requires Ministers to:

- put the matter to the member for their response
- advise the member that the Minister is considering exercising the removal power under section 36 of the Crown Entities Act.
- consider the member's response before making any final decision.

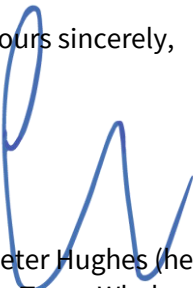
As far as I am aware, no similar concerns have been raised with Ms Dyson in the past. I understand Ms Dyson has publicly committed to reflecting on her comments. She has also indicated that she will review her social media activity to ensure it meets the standard required in light of her obligations under the Code. Ms Dyson has indicated that she intends to moderate her comments going forward to ensure they align with her obligations as a board member.

The high-level nature of the commentary, and her publicly expressed willingness to moderate her comments going forward lead me to conclude that her actions fall short of justifying dismissing her from the posts she currently occupies. However, the comment was inappropriate, and may have impeded her ability to act effectively under the current or a future government. In my view these circumstances merit further action.

In these circumstances, in my view it is open to you as Ministers to advise Ms Dyson that you expect her to exercise greater care in her comments going forward, specifically to avoid any comments that could be interpreted as actively engaging in political debate. This could be done by writing to Ms Dyson and/or meeting with her to discuss these matters. Alternatively, I could write to Ms Dyson about these matters if that is your preference.

When you have considered this letter and determined any action you intend to take, I am happy to support you by preparing any documentation you might need.

Yours sincerely,



Peter Hughes (he/him)
Te Tumu Whakarae mō Te Kawa Mataaho
Public Service Commissioner | Head of Service

Copies to:
Minister for the Public Service
Minister Responsible for the Earthquake Commission



Te Kawa Mataaho
Public Service Commission

16 March 2023

Hon Dr Deborah Russell
Minister Responsible for the Earthquake Commission
Parliament Buildings
WELLINGTON

By email: 9(2)(a) privacy

Dear Minister

As you are aware, I have been asked by the Opposition spokesperson for the Public Service to investigate whether commentary made by Ms Ruth Dyson on Twitter complied with the Government's political impartiality rules, given her position as Deputy Chair of both the Fire and Emergency New Zealand (FENZ) and the Earthquake Commission (EQC). I am writing to you to let you know my view on the commentary, given Ms Dyson's accountability to you as the responsible Minister and what, if any, action might be taken.

Political neutrality

By long-standing convention New Zealand's Public Service is politically neutral. It serves the government of the day and successive governments, regardless of their political composition. By acting in an apolitical way, the Public Service can maintain the confidence of the current Government, whilst ensuring the confidence of future governments. This allows the Public Service to provide continuity of service and high quality, free and frank advice, which are vital to good government.

In 2020, Parliament enshrined political neutrality in statute as a public service principle. Section 12 of the Public Service Act 2020 (the Act) also created duties for upholding the principles. In relation to Crown Agents, the Board is responsible to its Minister for ensuring that the entity they govern upholds the principle of political neutrality when carrying out their functions.

The principle of political neutrality is further reinforced by the Code of Conduct for Crown Entity Board Members, issued by the Public Service Commissioner under s 17 of the Act. Board Members must comply with this Code. It relevantly states:

We are politically impartial

We act in a politically impartial manner. Irrespective of our political interests, we conduct ourselves in a way that enables us to act effectively under current and future governments. We do not make political statements or engage in political activity in relation to the functions of the Crown entity.

When acting in our private capacity, we avoid any political activity that could jeopardise our ability to perform our role or which could erode the public's trust in the entity. We discuss with the Chair any proposal to make political comment or to undertake any significant political activity.

My assessment of the commentary

On 5 February 2023 Ms Dyson made a comment on Twitter referencing the Leader of the Opposition's speech at Waitangi that said; *"Oh, no. It sounds like some cruel junior staffer gave Mr Luxon the wrong speech! #Waitangi2023"*

Ms Dyson's comment was made in her personal capacity on a platform that does not directly state that she is on the board of EQC or FENZ. However, even when acting in a private capacity, the Code of Conduct requires Board members to act in a manner that does not jeopardise their ability to effectively undertake their role under the current or a future government. The Code does not stop Board members from expressing any political opinions or undertaking political activity. It recognises that Board members have the same rights to freedom of speech and political activity in their private lives as other New Zealanders. However, the profile and visibility of Board members can make it difficult to clearly distinguish between operating in a private capacity as opposed to in an official capacity as a Board member.

The comment while not engaging in specific political debate could be interpreted as having a negative connotation about the quality and content of Mr Luxon's speech. This could be seen as providing generally unfavourable commentary about the current National party leader and a particular political party whilst having favourable content towards another party on the same platform. For example, by retweeting commentary that links to the "Our achievements" page of the Labour party website and tweets made by others of a political nature.

Ultimately, the question is whether Ms Dyson's public commentary has jeopardised Ms Dyson's ability to effectively perform her Board roles or eroded public trust in the relevant entities. In my view while the comment was made on a twitter page that did not identify Ms Dyson's board memberships it was inappropriate and could have impeded this ability. In coming to this view, I have had regard to the decisions reached in other recent cases involving allegations of political comment by crown entity members.

On balance, I consider that this is a breach of the Code of Conduct at the lower end of the spectrum.

What action may be taken

Ms Dyson's political neutrality obligations under the Act and the Code are owed to each of you as the responsible Ministers of the relevant portfolios. It is a matter for Ministers to consider and determine what action if any should be taken in relation to Ms Dyson's social media commentary that I have reviewed.

As set out above, my view is that given her Board roles the conduct as outlined above was inappropriate and may have impeded her ability to act effectively under the current or a future government. Relevant Ministers have the power under section 36 of the Crown Entities Act to remove a Board member from their role for any reason under the Crown Entities Act. Ministers can also formally caution or warn a Board member. In seeking to remove a Board member from their role, the Act contemplates that the process will allow for the principles of natural justice to be met and to enable you to properly consider the matter. This requires Ministers to:

- put the matter to the member for their response
- advise the member that the Minister is considering exercising the removal power under section 36 of the Crown Entities Act.
- consider the member's response before making any final decision.

As far as I am aware, no similar concerns have been raised with Ms Dyson in the past. I understand Ms Dyson has publicly committed to reflecting on her comments. She has also indicated that she will review her social media activity to ensure it meets the standard required in light of her obligations under the Code. Ms Dyson has indicated that she intends to moderate her comments going forward to ensure they align with her obligations as a board member.

The high-level nature of the commentary, and her publicly expressed willingness to moderate her comments going forward lead me to conclude that her actions fall short of justifying dismissing her from the posts she currently occupies. However, the comment was inappropriate, and may have impeded her ability to act effectively under the current or a future government. In my view these circumstances merit further action.

In these circumstances, in my view it is open to you as Ministers to advise Ms Dyson that you expect her to exercise greater care in her comments going forward, specifically to avoid any comments that could be interpreted as actively engaging in political debate. This could be done by writing to Ms Dyson and/or meeting with her to discuss these matters. Alternatively, I could write to Ms Dyson about these matters if that is your preference.

When you have considered this letter and determined any action you intend to take, I am happy to support you by preparing any documentation you might need.

Yours sincerely,



Peter Hughes (he/him)
Te Tumu Whakarae mō Te Kawa Mataaho
Public Service Commissioner | Head of Service

Copies to:
Minister for the Public Service
Minister of Internal Affairs