



Te Kawa Mataaho

Public Service Commission

7 March 2023

Hon Andrew Little
Minister for the Public Service
Parliament Buildings
WELLINGTON

By email: a.little@ministers.govt.nz

Dear Minister

Yesterday through your office you asked me to look at published opinion pieces written by Mr Steve Maharey for Stuff. You requested my advice on the appropriateness of Mr Maharey's opinion pieces and any other similar public commentary by him and asked what, if any, action might be taken. These concerns have also been raised with me through a request that I received from an individual under the Official Information Act.

My officials have reviewed the opinion pieces written for Stuff, as well as articles he has written for Pundit and comments he may have made on LinkedIn and Twitter. My officials identified for further consideration, all public statements that commented on New Zealand party politics or policy settings in a way that could be interpreted as engaging in political statements or political activity. Where the public statements comment solely on international politics or generic policy positions not commenting directly on New Zealand party politics, my view is that further analysis is not warranted. I consider that there are two articles that warranted further consideration, and these are discussed below.

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.

The two opinion pieces Mr Maharey wrote for Stuff

Mr Maharey was appointed as the Board Chair for Pharmac and Education New Zealand in 2018. In April 2021 he was appointed Chair of the ACC Board. During, and before this time, he contributed opinion pieces for publication on Stuff. Prior to holding these Board roles, Mr Maharey was an academic, lecturing in Sociology at Massey University (1975- 1990), a Labour Member of Parliament (1990-2008), including serving as a Minister of the Crown for part of that period and then subsequently as Vice Chancellor of Massey University (2008-2016). Mr Maharey's opinion pieces for Stuff begin with the tag line: "Steve Maharey is a director. He is a former academic, politician and vice-chancellor."

On two occasions¹ Mr Maharey commented on political matters in a way that could be interpreted as engaging in party political activity. Specifically:

- 1) Criticising the current National party "line-up" while making positive comments about the Labour Party

"The previous National government had to deal with an unanticipated event of their own in the form of the 2008 Global Financial Crisis. They got the books back in balance but at the cost of ignoring almost everything else. By 2017, voters were well aware that a long list of policy issues was crying out for attention."

He, [Chris Hipkins] and a refreshed line-up of ministers, have until October to make it clear to voters that the work to bring about positive change continues. That story needs to be told alongside a reminder that Labour is the battle-hardened team that can get the job done.

It is appropriate that the National Party was alongside Labour in Napier this past week because it encouraged comparisons. National has just released its refreshed line-up. An objective observer might be forgiven for pointing out that nothing seems new or fresh about the team National is offering.

¹ [Article One, Oct 2022](#); [Article Two, Jan 2023](#)

Indeed, it is hard not to see the National Party in the same light as the Republicans in the US, Liberals in Australia or Conservatives in Britain. They seem more interested in the past than the future.

ACT has pointed this out already as it worries National in government would revert to type and do nothing. This is a view perhaps reinforced by the list of large donors to National's election coffers. Nothing about them suggests they want change. They made their money under a system that favoured them. More of the same please.

Meanwhile, across town there is no denying that Labour looks and talks like the New Zealand of the future.

But they have work to do. A crowded policy agenda needs to become clear, achievable and compelling. Ministers and the wider caucus will need to demonstrate unity of purpose and deliver results."

2) Commentary on the nature of each party and the National leader's "brand"

"National is not and never has been the party of change. More the party for administration. Its leader's "brand" rests on him being a good manager (of an airline). He is at pains to say that he and his colleagues should be in government because they are better at running things, not changing things ...

...Labour is a party of change, and it has been trying to run a 'transformation' agenda since it was elected in 2017. Its supporter, the Greens, have also been trying to advance their climate change agenda. In other words, if it is change voters want, they need look no further than the current Government. But it is clear that a sizeable proportion of voters are not keen on the kind of change Labour and the Greens are offering."

My assessment of the comments

Mr Maharey's comments were made in his capacity as a regular column contributor and not specifically associated, through the tagline or the content of the articles, with his role as a Board Chair or member. He specifically positions himself as a social commentator not an appointed official. Readers will be familiar with the different roles that Mr Maharey has held in his career, as these are listed at the start of each opinion piece. The pieces therefore build from his career experience, and while his role as a director is mentioned generally there is no direct or indirect reference to the specific public agencies on the Boards of which he serves.

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. 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 as opposed to official capacity as a Board member.

Read in isolation, certain phrases used by Mr Maharey appear at face value to be critical or favourable towards particular political parties. To an extent this is mitigated by the wider context in which they

appear. The comments are offered as part of a broader social commentary which has a degree of even-handedness to it across the political spectrum. The comments appear to invite readers to reflect on the matters raised. They do not directly engage in specific political debate, or question the integrity of current political actors. The comments are reflective rather than assertive, consistent with their positioning as commentary.

Ultimately the relevant assessment is whether Mr Maharey's public comments have jeopardised his ability to effectively perform his roles or eroded public trust in the relevant entities. Although mitigated by the context in which the comments were made, the way Mr Maharey positioned himself and his intent, read in isolation they could be interpreted as actively engaging in political debate. Therefore, my view is that aspects of the opinion pieces may have impeded his ability to act effectively under the current or a future government.

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

What action may be taken

Mr Maharey's political neutrality obligations under the Act and the Code are owed to the responsible Ministers of the relevant portfolios. It is a matter for those Ministers to consider and determine what action if any should be taken in relation to Mr Maharey's published comments that I have reviewed.

As set out above, my view is that given his Board Chair roles his comments were unwise and, aspects of the opinion pieces may have impeded his 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.

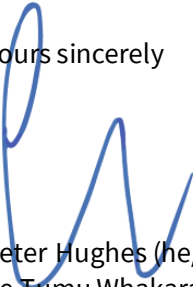
As far as I am aware, no similar concerns have been raised with Mr Maharey in the past. Mr Maharey has proactively contacted me and indicated he is open to changing his approach. I understand he has made the same offer to the Prime Minister, via his office. The relatively restrained nature of the comments, Mr Maharey's history as a regular commentator and his publicly expressed willingness to adjust his approach in future lead me to conclude that his actions fall short of justifying dismissing him from the posts he currently occupies. However, the comments were unwise, and may have impeded his 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 the relevant Ministers to advise Mr Maharey that they expect him to exercise greater care in his public and published 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 Mr Maharey and/or meeting with him to discuss these matters. Alternatively, I

could write to Mr Maharey about these matters or meet with him on the instruction of the relevant Ministers if that is their 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

A handwritten signature in blue ink, appearing to be 'Peter Hughes', written over the 'Yours sincerely' text.

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