



Te Kawa Mataaho
Public Service Commission

28 August 2020



Dear 

Official Information Request
Our Ref: SSCOIA 2020-0064

I refer to your official information request received on 31 July 2020 where you have asked several questions relating to consequences for senior public service officials whose actions breach the code of conduct. For ease of reference, we have listed each of your questions and provided our responses directly below.

1. Are CEs and Deputy CEs of Governmental agencies appointed by the Commissioner subject to a code of conduct?

Parliament has repealed and replaced the State Sector Act 1988 with the new Public Service Act 2020 which came into force on 7 August 2020.

Under the Public Service Act, the Public Service Commissioner (the Commissioner) appoints and is the employer of public service chief executives. Deputy chief executives are employees of their chief executives and are not appointed by the Commissioner. We therefore restrict our answers to the remainder of your questions to matters concerning those chief executives appointed by the Commissioner.

The Commissioner's functions include setting standards of integrity and conduct across most of the State services. The Commissioner has issued a code of conduct for the State services, called the [Standards of Integrity and Conduct \(the Code\)](#). The Code applies to public service departments and departmental agencies, and a number of entities in the wider State services. The Code also applies to chief executives.

Public service chief executives are responsible for the integrity and conduct of the employees in their agencies. We expect agencies' policies and processes to be consistent with all the Code's minimum behavioural requirements.

2. What are the consequences if a CE or Deputy CE breaches the code of conduct?

Chief executives are expected to comply with the Code as part of their employment obligations.

A breach of the Code by a chief executive is an employment matter for the employer (the Commissioner) to consider. Depending on its seriousness, it may lead to an employment investigation and disciplinary action. Disciplinary action could, in the most serious cases, include removal in accordance with the Public Service Act.

3. Who can make a complaint against a CE or Deputy CE's behaviour if it breaches the code of conduct?

Anyone can make a complaint against a chief executive's behaviour if they consider it breaches the code of conduct.

4. What is the disciplinary process to investigate the CE or Deputy CE's behaviour?

The disciplinary process to investigate a chief executive will be determined by the Commissioner depending on the nature and seriousness of the complaint and in accordance with employment law and good employment practices.

5. What is the process if a complaint is laid against the Commissioner of State Services? Who conducts the investigation and what are the consequences?

The Commissioner is appointed by the Governor-General on the recommendation of the Prime Minister and may only be removed from office by the Governor-General following the process in clause 4 of schedule 4 of the Public Service Act.

6. Is a child protection policy included in the code of conduct? If not or there is no code of conduct, are CEs and Deputy CEs subject to a child protection policy? If so, what are the consequences for breaching that policy and what is the disciplinary process to investigate a breach of that policy?

The Code does not include a child protection policy. Certain State services agencies are required to adopt child protection policies, in accordance with the Children's Act 2014. This is a particular statutory requirement, separate to the Code. This Act is administered by Oranga Tamariki.

7. If you have a code of conduct, is appropriate behaviour with staff and/or the public included in the code of conduct (sexual harassment and bullying)? If not or there is no code of conduct, are CEs and Deputy CEs subject to a policy in relation to appropriate behaviour with staff/public e.g sexual harassment and bullying policy? If so, what are the consequences for breaching that policy and what is the disciplinary process to investigate a breach of that policy?

In addition to the Code, Te Kawa Mataaho Public Service Commission (the Commission) publishes model standards, setting out the Commissioner's minimum expectations for agencies and staff in the State services in specific integrity areas. These include expectations as to positive and safe workplaces, information gathering and public trust, speaking up, conflicts of interest and others included on our website: <https://www.publicservice.govt.nz/our-work/integrityandconduct/>. Our website also includes a range of guidance for agencies relating to bullying and harassment, and its prevention.

8. In the past five years, have you had any complaints on the Commissioner's, CEs' or Deputy CEs' behaviour in relation to inappropriate behaviour with under 25s, or bullying, harassment or sexual harassment?

9. How many complaints resulted in an investigation process?

10. How many complaints resulted in disciplinary action? If so, what was that disciplinary action?

The Commissioner, as the employer of public service chief executives, receives a wide variety of complaints which include concerns that, while raised as a complaint about an agency chief executive, actually relate to operational matters and decisions made by the public service departments, and not the specific actions of the chief executive themselves.

The appropriate avenue for concerns related to operational matters and decisions made by the public service departments, being the chief executive in the first instance, is explained to the complainant. For the purposes of this request, we have not included complaints of this nature as within scope of your request.

In response to “*whether we have had any complaints received for the Commissioner and CEs in relation to inappropriate behaviour with under 25s, or bullying, harassment or sexual harassment*”, we can confirm that as at the date of this response since the current Commissioner was appointed in July 2016, we have received no complaints about the Commissioner’s inappropriate behaviour with under 25s , bullying, harassment or sexual harassment, in the time he has been the Commissioner (since July 2016).

We are also not aware of any complaints about the former State Services Commissioner’s behaviour in the 2015-2016 period.

In relation to chief executives, we have not received any complaints in the last five years relating to chief executives’ inappropriate behaviour with under 25s, harassment or sexual harassment. We have received one complaint alleging bullying behaviour of a chief executive. No complaints received in the last five years have resulted in disciplinary action.

- 11. *Is there any work underway to look at child protection or bullying, harassment, and sexual harassment within the public service? If so, what is it?***
- 12. *What work does the State Services Commission do to ensure that there is no bullying, harassment and sexual harassment within the state service?***
- 13. *What guidance, training or support does the State Services Commission provide to agencies relating to bullying, harassment and sexual harassment?***

The Commission’s [Positive and Safe Workplaces model standards](#) sets out the Commissioner’s minimum expectations for staff and organisations in the public service to ensure positive and safe workplaces. They also refer agencies to additional practical guidance set out in WorkSafe NZ’s [bullying](#) and [sexual harassment](#) prevention toolboxes.

These model standards are the first step in a system-wide work programme, being led by two public service chief executives, Ms Rebecca Kitteridge and Mr Ray Smith. An evidence-based culture change framework was introduced as part of this work programme which will help agencies to support them to explore the different elements that shift culture. [Agency planning workbook](#) was also introduced to support agencies to create positive workplace cultures.

Good policies and processes that encourage staff to speak up about possible wrongdoing are also vital for maintaining the integrity of our State services. The [Speaking Up Model Standards](#) outline the Commissioner’s minimum expectations for organisations to support staff on speaking up in relation to wrongdoing concerns that could damage the integrity of the State services. They comprise all the key elements for promoting a ‘speak up’ culture operating good processes including timely investigations and keeping people safe from reprisals or other detrimental impacts.

The guidelines, policies, model standards and other material described above are updated periodically. The Commissioner includes updates on these in regular communications with chief executives. He also frequently covers topics of integrity and conduct in his regular [blog](#).

If you wish to discuss this decision with us, please feel free to contact Ministerial.Services@publicservice.govt.nz.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that we intend to publish this letter (with your personal details removed) on the Commission's website.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Nicky Dirks', with a stylized flourish at the end.

Nicky Dirks
Managing Principal - Ministerial Services
Te Kawa Mataaho Public Service Commission