

STATE SERVICES COMMISSION
Te Komihana O Ngā Tari Kāwanatanga



Questions and answers

The Code of Conduct for the State Services *“Standards of Integrity and Conduct”*

State Services Commission

October 2014 (update)



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When did the code of conduct come into effect?

Standards of Integrity and Conduct (www.ssc.govt.nz/code), the code of conduct issued by the State Services Commissioner (the Commissioner), came into force on 30 November 2007 for most agencies in the State Services. The code of conduct has been progressively applied to other agencies since that date.

Why do we need a code of conduct?

A code of conduct provides the basis for ongoing trust in the integrity of the State Services. It also protects staff by setting out clear expectations, so that everyone knows their obligations and what is required of them.

The State Services is collectively responsible for implementing Government policies and providing or administering a wide range of statutory functions and public services. State servants are guardians of what ultimately belongs to the public; the public expects State servants to serve and safeguard its interests.

The New Zealand State Services is regarded as one of the most honest and transparent in the world.¹ Every State servant has a part to play in acting with integrity to maintain New Zealanders' confidence in the State Services.

Misuse of a position or of powers, or a failure to meet expectations, causes people to lose trust in government. A perceived 'integrity failure' in one government agency can impact negatively on the opinion people hold of all the State Services.

Who is covered by the code of conduct?

The table below shows which agencies the code of conduct may be applied to and if it has been applied.

Agency type	Comment
Public Service departments	The code of conduct is applied to all Public Service departments. The code replaced the Public Service Code of Conduct in force from 1990-2007. The behaviour that is expected under the "new" code is no different from before. The values are enduring. What changed was the way they are expressed.
Crown entities	The code of conduct is applied to statutory Crown entities and Crown entity companies, and to Crown entity subsidiaries that employ staff. The Commissioner has not yet applied the code of conduct to School Boards of Trustees.

¹ For example New Zealand is ranked:

- [first in the International Budget Partnership Biennial 2012 Open Budget Survey](#)
- [first equal out of 182 countries in Transparency International's 2013 Corruptions Perceptions Index](#)
- [fourth out of 77 countries in the 2013 Global Open Data Barometer](#)
- [first out of 132 countries on the 2014 Social Progress Index](#)
- [third out of 183 economies on the World Bank's assessment of how governments regulate commerce](#), and
- [in the top 10 in the World Justice Project's Rule of Law Index](#).

Agency type	Comment
Parliamentary Counsel Office	The Commissioner has not yet applied the code of conduct to the Parliamentary Counsel Office (PCO). The PCO has chosen to comply with the Commissioner's code (see Statement of Intent for the period 1 July 2013 to 30 June 2018 , Maintaining the PCO's integrity and reputation).
Parliamentary Service	The Commissioner has not yet applied the code of conduct to the Parliamentary Service. The Parliamentary Service has applied its own code.
Public Finance Act Schedule 4A companies	The State Sector Amendment Act 2013 extended the Commissioner's mandate to apply the code of conduct to Public Finance Act Schedule 4A companies. This process is underway.

A list of each agency the code of conduct has been applied to is available here: www.ssc.govt.nz/code-organisations.

Once each agency covered by the code of conduct has been notified in writing that the code applies to it the agency including its employees, and individuals working as contractors or secondees in relation to a function, duty, or power of the agency, must comply with the code². It is the responsibility of each agency to determine how the standards apply to any other volunteers, contractors, and individuals working for them.

It is not the role of the Commissioner to specify how this is to be done. All agencies should have policies, practices and procedures in place that set out how their staff will comply with the standards. In this way, by meeting the requirements of their agency, staff will meet their integrity and conduct obligations as State servants.

Who is not covered by the code of conduct?

The Commissioner does not have the power to set standards of integrity and conduct for Crown research institutes and tertiary education institutes, although these are Crown entities. Neither does the Commissioner have the power to set standards for other parts of the wider State sector such as State-owned Enterprises, the New Zealand Police, New Zealand Security Intelligence Service, the New Zealand Defence Force and parliamentary agencies like the Ombudsmen's Office and the Office of the Auditor General. These agencies, however, are part of the State sector.

The Cabinet Manual requires that all employees in the State sector must act with a spirit of service to the community and meet high standards of integrity and conduct in everything they do. In particular, employees must be fair, impartial, responsible, and trustworthy ([paragraph 3.50](#)).

Why does the code of conduct apply to more than just Public Service departments?

The code of conduct (www.ssc.govt.nz/code) recognises that the State Services is made up of a wide range of agencies but that they all have responsibilities in common to the Government.

² The 2013 amendment to the State Sector Act extended the coverage of the code to individuals working as contractors or secondees in relation to a function, duty, or power of the agency

The code of conduct provides for a unifying sense of values across the State Services, building a shared commitment and sense of trust across agencies with widely varying functions.

Why doesn't the code of conduct apply to Crown entity board members acting in their personal capacity? What happens if they act inappropriately?

As the Crown Entities Act 2004 specifies individual and collective duties of board members, the Commissioner has decided not to include the personal conduct of board members in the coverage of the code of conduct.

Many parties can have a legitimate interest in the conduct of Crown entity board members (e.g. the chairperson, other members on the board, a select committee undertaking a review, the Minister of Finance, the Auditor-General, the Ombudsmen, the State Services Commissioner, the public). However, the board's most important relationship in terms of accountability is with the responsible Minister. In the event of members' wrong-doing, the Minister may lose confidence in their ability to fulfil their responsibilities and initiate statutory processes for removing them from office. This is the same process the Minister would consider if members were included in the code coverage.

How do agencies' codes of conduct interface with the Commissioner's code? Which code takes priority?

All agencies to which the Commissioner has applied the code of conduct must comply with it. However, it is not intended that agencies automatically discard existing codes. Some agencies may choose to comply with the code of conduct through an agency-specific code that has the same effect as the standards set out in the Commissioner's code. Others may customise the Commissioner's code of conduct, by incorporating additional or detailed standards that apply to their particular circumstances.

The code of conduct (www.ssc.govt.nz/code) does not replace other agency codes containing standards that are more detailed than or additional to those in the Commissioner's code. However, if the pre-existing codes are inconsistent with any of the Commissioner's code standards, inconsistent parts will be ineffective unless the responsible Minister has agreed that the agency can deviate from the standard.

What will I do to apply the code of conduct?

The code of conduct incorporates enduring standards that have always formed part of the expectations New Zealanders and our Governments have held of the State Services, and more particularly of departments and Crown entities. The code of conduct (www.ssc.govt.nz/code) expresses these in a contemporary way.

An agency may change its policies and procedures to give effect to the code of conduct. However, there should be no difference in the commitment you have to your work and the way you carry out your duties. We remain committed to a spirit of service to the community and to acting with integrity in what we do.

Who can I go to for additional advice and guidance?

The State Services Commission has issued detailed guidance about the standards set by the code of conduct, and the behaviour expected of everyone working in the State Services – see www.ssc.govt.nz/code-guidance-stateservants.

This guidance explains each of the standards and the way in which we show that we are complying. The guidance is not part of the code of conduct. Together with other integrity material available on the SSC website, the guidance builds on the understanding of "public service" that has evolved over many years in New Zealand. The Cabinet Manual refers to these 'principles of public service' using the words of the *Standards of Integrity and Conduct*.

What is the life expectancy of the code of conduct?

The code of conduct doesn't have a "use by" date. It incorporates enduring values. These have been unchanged in nearly 100 years of public service in New Zealand.

What is the history of the code of conduct?

From 1951, the Public Service was guided by a Public Service Manual, subsequently recognised in the State Services Act 1962. That Act made it an offence for public servants to bring the Public Service into disrepute, and authorised Regulations relating to the conduct of employees. These included integrity and impartiality, activities detrimental to the performance of official duties, and handling of official information.

Law changes to reflect restructuring of the State sector in the mid 1980s included the State Sector Act 1988, which repealed the provisions in the 1962 Act. The Long Title of the State Sector Act required State servants to be imbued with the spirit of service and to serve with integrity. The Act enabled the Commissioner to set minimum standards of integrity and conduct for Public Service departments. This led to the *Public Service Code of Conduct* (www.ssc.govt.nz/coc), issued in 1990, identifying core principles of conduct required of public servants.

Amendments in 2004 to the State Sector Act empowered the Commissioner to provide advice and guidance on integrity and conduct to employees across the State Services (apart from Crown research institutes and their subsidiaries), and to set minimum standards of integrity and conduct by way of a code, for the Parliamentary Counsel Office, Parliamentary Service, and most Crown entities, in addition to Public Service departments.

The amendments in 2013 to the State Sector Act set out, for the first time, the principal ways that the Commissioner is to provide leadership and oversight. This role includes the Commissioner promoting the spirit of service to the community, and working with State Services leaders to ensure that the State Services maintain high standards of integrity and conduct, are led well and are trusted. The amendments also applied the code of conduct to all individuals working as contractors and secondees in relation to a function, duty, or power of an agency, extended the mandate of the Commissioner to apply the code of conduct to companies named in Schedule 4A of the Public Finance Act 1989, and empowered the Commissioner to tailor the code of conduct for particular people or groups within an agency.

What is the legal status of the code of conduct?

The Commissioner has the power³ to set minimum standards of integrity and conduct and apply a code of conduct to agencies. Agencies can develop additional or detailed standards if they are consistent with the Commissioner's standards.

Once an agency has been notified in writing by the Commissioner that the code applies to it, the agency, including its employees, contractors and secondees engaged in relation to a function, duty or power of the agency, is legally required to comply. The legal obligation applies whether or not the code of conduct is mentioned in the terms and conditions of employment agreements.

Has the code of conduct been endorsed by the government?

The 2001 Review of the Centre set out the expectation of a "unifying sense of values" across Public Service departments and Crown entities. Recommendations from that review flowed through into provisions that were enacted in 2004 in the Crown Entities Act and as amendments to the State Sector Act.

³ State Sector Act 1988, section 57

Governments have consistently set out the expectation that the State Services act with integrity, seek to strengthen public trust, and are committed to reinforcing the spirit of service. Therefore the code of conduct is strongly validated by the Government as part of its current programme.

What value is there for the public in the code of conduct?

New Zealanders' trust in and respect for government is based on the integrity of public institutions, including agencies in the State Services.

The State Services is collectively responsible for putting the law into practice, implementing policies of the Government, and administering a wide range of public functions and services. State servants are guardians of what ultimately belongs to the public; New Zealanders expect State servants to serve and safeguard their interests.

Every State servant has a part to play in maintaining public confidence in the State Services. New Zealanders expect government agencies to comply with the letter and the spirit of the law. They expect decisions to be made fairly and impartially. They expect that public money will be spent prudently and public assets will be used and cared for responsibly. They expect that State servants will behave ethically, and be conscientious and competent in their work.

While the code of conduct is not a charter setting standards that the community may demand of the State Services, it displays the standards State servants set for themselves in serving the community. Because the code of conduct applies equally across the State Services, people using public services will not find themselves in the position of receiving different kinds of treatment from different agencies.

What value does the code of conduct add?

The code of conduct (www.ssc.govt.nz/code) sets out the behaviour expected of everyone working in the State Services. This means that staff know their obligations and what is required of them. Because the code of conduct incorporates standards, it gives staff a basis from which to make judgment calls in situations that may be ambiguous or difficult.

The code of conduct gives a unifying sense of values across the State Services, building a shared commitment and sense of trust across agencies with widely varying functions.

Can I (or my agency) have a variation to the code of conduct?

The 2013 amendments to the State Sector Act allows the Commissioner to apply a variation of the code of conduct to any people or groups of people undertaking particular function in an agency to which the code has been applied, in light of the legal, commercial, or operational context of the agency, people or groups involved. This increased flexibility will be used in circumstances where it is unreasonable for a generic code to apply to individuals or groups of individuals. Consideration is being given to having a variation of the code of conduct for Ministerial Staff⁴. This group of employees is often referred to as Ministerial Advisers.

Can I (or my agency) opt out of the code of conduct?

Once each agency that is covered by the code of conduct has been notified in writing that the code applies to it, the agency will be legally required to comply with it.

⁴ The State Sector Act defines this group of people as Ministerial Staff. Ministerial staff means the employees (including acting, temporary, or casual employees) who are employed on events-based employment agreements by the department that is responsible for the employment of ministerial staff across Ministers' offices; and to work directly for a Minister in a Minister's office rather than a department.

The responsible Minister may give prior written approval for an agency to deviate from a particular standard in the code of conduct, and copy it to the Commissioner.

What does my agency need to do to put the code of conduct in place?

The State Services Commission has produced material (www.ssc.govt.nz/code-resources-organisations) to assist agencies to implement the code of conduct. This includes advice about the roles and responsibilities of staff and a checklist of practical tasks for agencies. These tasks range from training and communication activities to including the code of conduct's standards as part of recruitment and performance management processes. Key aspects of putting the code of conduct in place include promoting awareness of the standards and the process for reporting and investigating suspected breaches.

Why is there no reference to the Treaty of Waitangi in the code of conduct?

The Treaty of Waitangi is a cornerstone of New Zealand's constitutional structure together with the Constitution Act 1986, New Zealand Bill of Rights Act 1990, Electoral Act 1993 and Judicature Act 1908. None of these provisions are specifically mentioned in the code of conduct. However, they are implicitly made part of it through the reference to carrying out the work of New Zealand's democratically elected governments, and consequentially made part of it through the standards of acting *lawfully and objectively*, and being *professional and responsive*.

The code of conduct (www.ssc.govt.nz/code) sets out the behaviour expected of State servants at a lower and more detailed level than the constitutional framework. Common standards are set for everyone working in agencies covered by the code of conduct, and their responsiveness to the people of New Zealand is not to differ except where there are lawful reasons to do so. There is no difference for Māori working in the State Services or in relation to any State Services dealing with Māori.

How does this code of conduct fit with other legislative requirements?

It is important that we are always conscious that the powers we are given by law to do our jobs must be exercised responsibly.

This means we must act within the letter and the spirit of the law, including regulations and agency policies and procedures. The exercise of executive powers must comply with both New Zealand law and any international conventions given effect through statute.

We must understand that our roles flow from the constitutional framework of New Zealand, which is prescribed by law and convention. We handle information in our jobs, which means we must be particularly aware of the provisions of the Official Information Act, the Privacy Act, and the Public Records Act, but also of any other agency-specific legislation. As State servants, we must be aware of the responsibility to properly carry out our duties and to cooperate under the provisions of the Ombudsmen Act when there is an enquiry into the way we have acted.

Provisions in the State Sector Act, Crown Entities Act, Public Finance Act, New Zealand Public Health and Disability Act and many other laws, refer specifically to the obligations we have through our work. There is nothing in the code of conduct that in any way conflicts with the need to always meet the requirements of the law.

What consultation took place before the code of conduct was finalised?

Before making any decision on the appropriateness of issuing a code, the State Services Commission (SSC) undertook a comprehensive engagement with Crown entities. The SSC assessed the integrity and conduct provisions that agencies had in force and identified differences in the expectations held of board members and of employees.

This project explored whether setting additional standards could contribute to increased trust in government and confidence in the State Services.

A snapshot of current practices in the Public Service revealed a similar picture to that found in Crown entities. Departments had varied processes to support the *Public Service Code of Conduct* (www.ssc.govt.nz/coc), and had developed additional provisions to suit their agency's circumstances.

From this information, the Commissioner decided to develop common minimum standards that would be applied as a single code of conduct for State Services agencies. Qualitative research was conducted with State servants and members of the public to identify values and expected standards of behaviour. The research confirmed that the traditional values of the New Zealand public sector were the enduring expectation of most people. These were drafted into a possible code for the State Services.

The draft code then went through a detailed process of consultation. The draft was:

- discussed in individual meetings with departments and Crown entities
- discussed in meetings with representatives of unions and professional associations, and
- posted on the SSC website, with comment on the wording invited.

The feedback from agencies, unions and individuals was taken into account and, where appropriate, the draft was revised to clarify areas of concern.

What is the relationship between the State Services Commissioner and State servants?

The Commissioner has a statutory power to apply the code of conduct to agencies specified in the State Sector Act. Those agencies must then comply with the standards. They must decide how people working for the agency do this.

State servants are employed either by a board in the case of a Crown entity or a Public Finance Act Schedule 4A company, or a chief executive in the case of a department. Maintaining standards of behaviour forms part of the relationship between employer and employee. The relationship with the Commissioner is more remote. The Commissioner sets the standards, and provides interpretation and guidance about them.