



Questions and answers

the code of conduct for the
State Services
“Standards of Integrity and Conduct”

State Services Commission

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When does the new code come into effect?

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

Why do we need a code of conduct?

A code of conduct provides the basis for ongoing trust in 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.

What's the relationship between this code of conduct and the Public Service Code of Conduct?

Standards of Integrity and Conduct (www.ssc.govt.nz/code) replaced the *Public Service Code of Conduct* in force from 1990-2007 (www.ssc.govt.nz/coc). The behaviour that is expected under the new code is no different from before. The values implicit in that code are enduring. What has changed is the way they are expressed.

Who is covered by this code of conduct?

The Commissioner has applied the code to Public Service departments and to Crown entities within his mandate (over 120 organisations, and also to many Crown entity subsidiaries that employ staff - see www.ssc.govt.nz/code-organisations). Staff of those organisations must

¹ Transparency International Corruption Perception Index www.transparency.org/policy_research/surveys_indices/cpi/2008
Index of Economic Freedom www.heritage.org/research/features/index/countries
World Bank Governance Indicators www.worldbank.org/wbi/governance/data
World Bank Doing Business Rankings www.doingbusiness.org/EconomyRankings/

comply with the standards and it is the responsibility of each organisation to determine how the standards apply to volunteers, contractors, and others working for them.

The State Sector Amendment Act 2004 gave the State Services Commissioner the mandate to set minimum standards of integrity and conduct for most organisations in the State Services (i.e. Public Service departments, the Parliamentary Counsel Office, Parliamentary Service and most Crown entities). Once each organisation covered by the code has been notified in writing that the code applies to it, the “agency, including its employees, must comply”².

The State Services Commissioner has not yet applied the code to school boards of trustees or their staff, or to the Parliamentary Service or Parliamentary Counsel Office.

The Commissioner does not have the power to set standards of integrity for Crown research institutes and tertiary education institutes, although these are Crown entities. Neither does he 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 organisations 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).

Organisations to which the State Services Commissioner has applied the code must comply with the standards. It is not the role of the Commissioner to specify how this is to be done. All organisations 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 organisation, employees will meet their integrity and conduct obligations as State servants.

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

Standards of Integrity and Conduct (www.ssc.govt.nz/code) recognises that the State Services is made up of a wide range of organisations but that they all have responsibilities in common to the Government.

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

Prior to 2004, the State Services Commissioner had the authority to set minimum standards of integrity and conduct for Public Service departments only. The State Sector Amendment Act 2004 extended the Commissioner's mandate to provide advice and guidance on integrity and conduct to employees across the State Services³ (apart from Crown research institutes and their subsidiaries), and to set minimum standards of integrity and conduct for most organisations in

² section 57 of the State Sector Act

³ State Sector Act 1988, section 2, which excludes tertiary education institutes

the State Services (i.e. Public Service departments, the Parliamentary Counsel Office, Parliamentary Service, and most Crown entities).

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 specifies individual and collective duties of board members, the State Services Commissioner has decided not to include the personal conduct of board members in the coverage of the code.

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 will organisational codes of conduct interface with the new code? Which code takes priority?

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

Standards of Integrity and Conduct (www.ssc.govt.nz/code) does not replace other organisational 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 a Ministerial derogation has been obtained.

What will I be doing differently when the new code is in place?

The code 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. *Standards of Integrity and Conduct* (www.ssc.govt.nz/code) expresses these in a contemporary way.

An organisation may change its policies and procedures to give effect to the new code. 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, 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. 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 this code?

The code 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 requires State servants to be imbued with the spirit of service and to serve with integrity. The Act enabled the State Services 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 State Services 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.

What is the legal status of the code?

The State Services Commissioner has the power⁴ to set minimum standards of integrity and conduct and apply a code of conduct to organisations. Organisations can develop additional or detailed standards if they are consistent with the Commissioner's standards.

Once an organisation has been notified in writing by the Commissioner that a code applies to it, the organisation, including its employees, is legally required to comply. The legal obligation applies whether or not the code is mentioned in the terms and conditions of employment agreements.

Has this code 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.

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. So the code of conduct is strongly validated by the Government as part of its current programme.

What value is there for the public in this code?

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

⁴ State Sector Act 1988, section 57

What value will this code add?

Standards of Integrity and 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 incorporates standards, it gives staff a basis from which to make judgment calls in situations that may be ambiguous or difficult.

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

Can I (or my organisation) opt out of this code?

Once each organisation that is covered by the code has been notified in writing that the code applies to it, the organisation will be legally required to comply with it. The provision in section 57A of the State Sector Act 1988 is that “an agency (including its employees) must comply with any standards that apply to it”.

The responsible Minister may give prior written approval for an organisation to derogate from a particular standard in the code, and copy it to the State Services Commissioner.

What does my organisation need to do to put this code in place?

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

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

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

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 is specifically mentioned in the code. 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*.

Standards of Integrity and 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 organisations covered by the code, 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 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 organisational 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 organisation-specific legislation. As State servants, we must be aware of the responsibility to properly carry out our duties and to co-operate 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 this code 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 organisations 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 organisation'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 organisations. 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
- posted on the SSC website, with comment on the wording invited.

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

State servants are employed either by a board in the case of a Crown entity, 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.