



New Zealand Public Service Code of Conduct





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Public Service Code of Conduct: THE THREE PRINCIPLES

FIRST PRINCIPLE

Public servants should fulfil their lawful obligations to the Government with professionalism and integrity.

SECOND PRINCIPLE

Public servants should perform their official duties honestly, faithfully and efficiently, respecting the rights of the public and their colleagues.

THIRD PRINCIPLE

Public servants should not bring the Public Service into disrepute through their private activities.

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INTRODUCTION

Why a New Zealand Public Service Code of Conduct?

The strength of any government system lies in the extent to which it earns and holds the respect of its citizens. That respect comes from the confidence which people have in the integrity of government, and the services it provides. Everyone employed in the State Services has a part to play in earning public respect for government and maintaining confidence in the institutions of government.

The Public Service has extensive influence over people's lives. It is responsible for a large part of the work of government. Mismanagement or abuse can have serious and far reaching effects. As public servants, we work for the Government. New Zealanders are entitled to the high expectations they have of the staff in government agencies. They expect that we are honest, fair, and loyal. These are absolute standards. We must meet those expectations. There is no middle course.

New Zealanders expect departments to comply with both the letter and the spirit of the law. They expect official decisions to be made fairly and impartially. They expect that public money will be spent wisely and public assets will be used and cared for responsibly. They expect that public servants will always behave ethically, and be conscientious and competent in their work. Generations of public servants have strived to meet these expectations.

Where expectations are not met, public criticism quickly follows. Where people lose trust in government, they don't seek the help they are entitled to; they don't provide information necessary for delivering effective services; they resist paying tax and become increasingly resentful of Public Service activities.

Any abuse of trust, abuse of resources, abuse of information, or personal opportunism corrodes the entitlement of all New Zealanders. Standards of integrity and conduct underpin the way we go about our business. The way individual public servants go about their responsibilities, and the way in which the Public Service as a whole goes about its functions, reflect on us all. It is not only what we do, but how people perceive what we are doing. We must always be seen to be acting with integrity.

The purpose of the Code of Conduct is to set minimum standards for the way we go about our business.

Purpose of the Code

Section 57 of the State Sector Act provides for the State Services Commissioner to set minimum standards of integrity and conduct for the Public Service and to apply those minimum standards by a Code of Conduct.

The Code, which has not changed since it was first issued in 2001, has two particular characteristics:

- It guides public servants on the standards of behaviour required of them.
- It provides a basis for more detailed standards which some departments need in order to meet their particular circumstances.

Minimum Standards of Integrity and Conduct

The Code of Conduct describes the following three principles of conduct which encompass the minimum standards of integrity and conduct expected of all public servants:

- public servants must fulfill their lawful obligations to the Government with professionalism and integrity;
- public servants must perform their official duties honestly, faithfully and efficiently, respecting the rights of the public and their colleagues;
- public servants must not bring the Public Service into disrepute through their private lives.

The Code does not cover standards which people in general should follow (whether laid down by law or established by social norms), general employee obligations, particular professional standards, or organisational cultural requirements.

The minimum standards of integrity and conduct required of public servants are not unique. They apply in most of the State Services. Agencies may adopt part of this Code when developing their own processes. From time to time, it may be appropriate for me to issue a code applying these minimum standards to others in the State Services.

Standards of integrity and conduct serve a profound purpose. They are central to earning New Zealanders' trust in government and maintaining their confidence in the Public Service. As public servants, we have a professional obligation to give full effect to the letter and the spirit of these standards.



Mark Prebble
State Services Commissioner

1. FIRST PRINCIPLE

Public servants should fulfil their lawful obligations to the Government with professionalism and integrity.

The first principle of the Code is concerned with public servants' obligations to the Government in the performance of their official duties. In broad terms, the first priority for public servants is to carry out Government policy. In doing so, they are expected to act in a manner that will bear the closest public scrutiny.

Obligations to Government

Public servants are obliged to serve the aims and objectives of the Minister. Public servants should ensure that their personal interests or activities do not interfere with, or appear to interfere with, this obligation.

The State Sector Act 1988 sets out the principal responsibilities of Public Service chief executives,¹ and therefore by implication, Public Service departments. One of the main responsibilities of chief executives is for the general conduct of the department. Other responsibilities include assisting in the formulation and the implementation of Government policy. The focus of these responsibilities is the department's Minister or Ministers. Public servants are therefore obliged to serve their Ministers within the law, with integrity, and to the best of their ability.

Political Neutrality

Public servants are required to serve the Government of the day. They must act to ensure not only that their department maintains the confidence of its Ministers, but also to ensure that it is able to establish the same professional and impartial relationship with future Ministers. This convention of political neutrality is designed to ensure the Public Service can provide strong support for the good government of New Zealand over the long term.

1 Section 32, State Sector Act 1988.

Public servants have a long-established role in assisting with development as well as implementation of policy. This role may be performed in different ways and at different levels from department to department. Public servants are responsible for providing honest, impartial, and comprehensive advice to Ministers, and for alerting Ministers to the possible consequences of following particular policies, whether or not such advice accords with Ministers' views.

However, final decisions on policy are the prerogative of Ministers, and public servants may not withhold relevant information from Ministers, nor seek to obstruct or delay a decision, nor attempt to undermine or improperly influence Government policy (for example, by the unauthorised release of official information).

Occasionally dilemmas can arise where public servants have strong personal beliefs on issues that conflict with their official duties. In such circumstances, public servants must, regardless of their personal views, implement Government policies to the best of their abilities. Ministers bear political responsibility for Government policies. Once the Minister has made a decision, it is the duty of public servants to implement that decision within the law, whether or not they agree with it.

If public servants find themselves in a situation where their conscience constrains them from carrying out a lawful instruction, they should discuss their circumstances and options with their immediate manager. They must not do anything to circumvent or undermine the Government's policies.

Public Comment on Government Policy

Departments may authorise certain employees to respond to media requests for comment about aspects of Government policy, or its implementation or administration by the department. Official comment on behalf of the department should be made only by those employees authorised to do so.

Individual Comment

Generally, public servants have the same rights of free speech and independence in the conduct of their private affairs as other members of the public. However, they also have a duty not to compromise their employer or their Minister by public criticism of, or comment on, Government policy.

Public servants should ensure that their contribution to any public debate or discussion on such matters is appropriate to the position they hold, and is compatible with the need to maintain a politically neutral Public Service. Public servants occupying senior positions or working closely with Ministers need to exercise particular care in this regard.

In general, comment made by public servants on matters of public policy would be regarded as unacceptable if it:

- revealed advice given to the Minister;
- used or revealed any information gained in the course of official duties where this was not already known by, or readily available to, the general public;

- criticised, or offered alternatives to, a proposed or actual Ministerial policy or departmental programme, or that of any other Minister or department with which the individual was professionally involved;
- purported to express or imply a departmental view, rather than clearly expressing a personal view only;
- gave openly partisan support to, or criticism of, a political party;
- constituted a personal attack on a Minister, departmental colleagues or other public servants; or
- amounted to a criticism sufficiently strong and/or persistent so as to call into question the public servant's ability to impartially implement, administer, or advise upon a Government policy.

Actions of this kind may amount to misconduct, depending on the circumstances of the case.

Private Communications with Ministers and Members of Parliament

Generally, public servants have the same rights of access to their political representatives as other members of the public. However, given the requirement for public servants to remain politically neutral in their work, public servants should exercise care and judgement before making any such communications.

As a general guide:

- public servants may communicate privately with any Minister or Member of Parliament about matters outside their official duties, but public servants occupying senior positions or working closely with Ministers should exercise particular care with such communications;
- public servants may also communicate privately with their Minister about matters concerning their department, but such matters should first be raised with the chief executive of the department;
- any communications made in this way may not be covered by the Protected Disclosures Act, as Ministers and Members of Parliament are not "appropriate authorities" under the Act;
- where a matter is raised directly with the responsible Minister, the department may be directed to provide a suitable response;
- a public servant is entitled to the same information or level of detail in a response as would be given to any member of the public under the Official Information Act 1982.

Political Participation

Public servants need to ensure that their participation in political matters does not bring them into conflict, or the appearance of conflict, with their duty as public servants to act in a politically neutral manner. This is important to maintain Ministerial and public confidence in the impartiality of the advice given, and actions taken, by public servants. Determining what is appropriate in any particular case will depend on the extent of the participation of the individual, the nature of the issue, and the position held by the individual in the Public Service.

Participation in Public Bodies or Voluntary Associations

Public servants are free to stand for, or be appointed to, any office or position on a voluntary body. However, they should first inform their chief executive of their intentions, to ensure that no conflict exists between such participation and their duties and responsibilities as public servants. Strong conflicts of interest are likely if a public servant is appointed to a public body. Where the chief executive considers that there would be a conflict of interest, arrangements need to be made to avoid or resolve the conflict. In some cases this may require that the public servant be requested not to stand for office, or to resign a position already held.

Standing as a Member of Parliament

Public servants may offer themselves as candidates for Parliament. Because of section 52 of the Electoral Act 1993, a public servant wishing to stand as a candidate in a general election, or a by-election, should disclose their intent to their chief executive. Section 52 states that "Any State servant² who desires to become a candidate for election as a Member of Parliament shall be placed on leave of absence" which:

"shall commence on nomination day, and in the event of his or her nomination as a constituency candidate or of the inclusion of his or her name in a list submitted under section 127 of this Act, shall continue until the first working day after polling day, unless, in any case where he or she is a constituency candidate, he or she withdraws his or her nomination."

² The Electoral Act definition of a State servant includes, but is not limited to, public servants and members of the New Zealand Police.

Where the chief executive is satisfied that the candidacy "will materially affect" the employee's ability to perform their duties satisfactorily, or to be seen as independent in relation to particular duties, it may be necessary for the chief executive to place the public servant on leave prior to nomination day. Therefore it is important to notify the chief executive of an intention to stand as a candidate as early as possible.

A public servant may resume duty on the first working day after polling day if not elected as a Member of Parliament. However, under section 53 of the Electoral Act 1993, if a public servant is elected to Parliament he or she will be deemed to have resigned from the Public Service.

During the period of leave a public servant shall not be required or permitted to carry out any of his or her official duties, or be entitled to any salary or other remuneration as a public servant, "except to the extent to which he or she takes during that period any leave with pay to which he or she is entitled".

The situation may arise where a public servant is the first or second unsuccessful candidate on a Party list. It is possible, then, that the person may become a Member of Parliament under section 137 of the Electoral Act. The potential conflicts of interest should be handled by negotiation between the person concerned and their chief executive.

Release of Official Information

The disclosure of official information is subject to the requirements of the Official Information Act 1982. The general principle of the Act is that information should be made available on request, unless compelling reasons exist why it should not. These reasons are detailed in the Act.

Departments may establish specific procedures for dealing with the release of information provided they do not conflict with those of the Act. Official information should be released only in accordance with those procedures and by public servants authorised to deal with requests for information. In all other circumstances, information is to be used by public servants only for official purposes and treated as confidential to the department.

Public servants authorised by their department to respond to requests made under the Official Information Act should exercise proper care and discretion in the application of departmental procedures. In cases of doubt, public servants should seek guidance from departmental legal advisers. Should the release of politically sensitive material be required, public servants should ensure that the Minister is notified well in advance of any information release.

It is unacceptable for public servants to make unauthorised use or disclosure of information to which they have had official access. Whatever their motives, such employees betray the trust put in them, and undermine the relationship that should exist between Ministers and the Public Service. Depending on the circumstances of the case, the unauthorised disclosure of information may lead to disciplinary action, including dismissal.

Protected Disclosures

The Protected Disclosures Act 2000 recognises that there may be circumstances when it is difficult for public servants to report suspected departmental wrong-doing through the department's normal channels. Parliament's aim in passing this legislation is to create an environment that encourages employees to report suspected serious wrong-doing, by providing some protection for the employee. The Act sets out procedures to ensure that disclosures are given due consideration and are acted on within a prescribed timeframe.

Serious wrong-doing includes unlawful, corrupt, or irregular use of public funds or resources; conduct that poses a serious risk to public health or safety, the environment, or maintenance of the law (including the prevention, investigation and detection of offences and the right to a fair trial); conduct constituting an offence; or conduct by public officials which is grossly improper.

Chief executives must put in place internal procedures for employees who have become aware of actual or possible serious wrong-doing and who wish to disclose that information³.

³ Section 11, Protected Disclosures Act 2000.

2. SECOND PRINCIPLE

Public servants should perform their official duties honestly, faithfully and efficiently, respecting the rights of the public and their colleagues.

The second principle of the Code is concerned with the general obligations of public servants to give satisfactory service, to respect the rights of the public and departmental colleagues, and to refrain from conduct that might lead to conflicts of interest or integrity.

Performance of Duties

Public servants should carry out their duties in an efficient and competent manner, and avoid behaviour which might impair their effectiveness.

There is an accepted common-law obligation on all employees, including public servants, to properly perform the duties for which they are paid.

This obligation includes the following duties:

- to obey the law;
- to obey all lawful and reasonable employer instructions and to work as directed;
- to be competent and efficient in the performance of assigned duties;
- to refrain from conduct (such as the use of intoxicants) which might impair work performance;
- to consult the employer before undertaking secondary employment, and not to undertake secondary employment which, in the opinion of the employer, might conflict with official duties;
- to show reasonable care, and neither use, nor allow the use of, departmental property, resources, or funds for anything other than authorised purposes;
- to incur no liability on the part of the employer without proper authorisation; and

- to be absent from the workplace only with proper authorisation.

Public servants are expected to comply with departmental policies in their work. Public servants are covered by the Employment Relations Act 2000. Part Five of the State Sector Act includes sections on a chief executive's responsibilities in relation to employment.

Respect for the Rights of Others

In performing their duties, public servants should respect the rights of their colleagues and the public.

As well as being responsible for their own performance, public servants also have a duty to contribute to the smooth functioning of the workplace by treating their colleagues and the public with courtesy and respect. This means public servants are expected:

- to avoid behaviour which might endanger or cause distress to their colleagues, or otherwise contribute to disruption of the workplace;
- to refrain from allowing workplace relationships to adversely affect the performance of official duties;
- to respect the privacy of individuals when dealing with personal information;⁴
- not to discriminate against any person because of their sex, marital status, colour, race, ethnic or national origins, age, political opinion, employment status, family status, sexual orientation, ethnicity, disability or religious or ethical beliefs;⁵

4 Privacy Act 1993, Information Principles.

5 Section 21, Human Rights Act 1993.

- not to harass, bully or otherwise intimidate clients or colleagues;
- to respect the cultural background of colleagues and clients in all official dealings; and
- to have due regard for the safety of others in the use of departmental property and resources.

Integrity and Avoidance of Conflicts of Interest

Public servants should perform their duties honestly and impartially, and avoid situations which might compromise their integrity or otherwise lead to conflicts of interest.

The impartiality and integrity of public servants are central to the maintenance of public and governmental trust and confidence in the Public Service. Public servants should always act with personal integrity and their actions should be able to bear the closest public scrutiny.

Public servants should not only avoid circumstances in which their personal interests conflict with the interests of the department or Minister, but should also avoid those circumstances in which there could be the appearance of such conflict.

The public must have no basis on which to believe that decisions are made or policies are applied unevenly. Public servants must observe the principles of fairness and impartiality in all aspects of their work. For example, no individual or organisation with which a public servant is involved may be given preferential treatment

(whether by access to goods and services or access to ‘inside information’) over any other individual or organisation.

In addition, public servants should avoid any interest or undertaking that could directly or indirectly compromise the performance of their duties, or the standing of their department or the Public Service in its relationships with the public, clients or Ministers. This would include any situation where actions taken in an official capacity could be seen to influence or be influenced by an individual’s private interests (e.g. company directorships, shareholdings, offers of outside employment).

Potential conflicts of interest can arise from personal membership of airpoints or other customer loyalty programmes. Because the public must have confidence that public money is spent without regard to any personal interest, public servants should ensure that work-related purchasing decisions are kept separate from such schemes.

Public servants should inform their chief executive where any actual or potential conflict of interest arises that impairs the full, effective, and impartial discharge of their official duties. The chief executive will then determine the nature and degree of the conflict as it relates to their official duties, and decide upon the best course of action to resolve it.

Many situations of conflict may be resolved simply by transferring a duty from the public servant concerned to someone not affected by the particular circumstances. Alternatively, the public servant might be required to restrict or abandon the interest or activity giving rise to the conflict. However, where these options are not practical, or do not enable the matter to be resolved on a basis which the public servant concerned is able to accept, then ultimately, the option of resignation from the department may need to be considered.

A potential area of conflict exists for public servants who may have to deal directly with Members of Parliament who have approached the department in a private capacity. It is important for both the Member of Parliament and the public servant that any such dealings be addressed, and be seen to be addressed, on the basis of strict impartiality.

If a public servant is in any doubt about the manner in which to respond to an enquiry from a Member of Parliament, that matter should be referred immediately to the chief executive. If there is any doubt about the propriety of a request, the matter should be referred, through the chief executive, to the Minister.

Offers of Gifts or Gratuities

Public servants must not abuse their official position for personal gain. They must not solicit or accept gifts, rewards or benefits which might compromise, or be seen to compromise, their integrity and the integrity of their department and the Public Service.

As a general rule, a public servant should not accept a gift (whatever its nature or value) if the gift could be seen by others as either an inducement or a reward which might place the employee under an obligation to a third party.

Where offers of gifts or inducements are made, they should be reported by the public servant to his or her manager or chief executive, who will determine the appropriate response. A public servant who accepts a gift should declare the gift to their manager or chief executive for a decision on final disposal.

3. THIRD PRINCIPLE

Public servants should not bring the Public Service into disrepute through their private activities.

The third principle of the Code is concerned with the obligation of public servants not to compromise their department or the Public Service through their personal behaviour.

Personal Behaviour

Public servants should avoid any activities, whether connected with their official duties or otherwise, which might bring their department and the Public Service into disrepute, or jeopardise relationships with Ministers, clients or the general public.

As a general principle, a public servant's personal behaviour that does not interfere with the performance of their official duties or reflect on the integrity or standing of the department or the Public Service is of no concern to their employing department.

However, the department has a legitimate interest where the private activities of a public servant reflect to the discredit of the department or the Public Service in its relationships with the Government or the public, and/or possibly call the public servant's fitness for continued employment into question.

Whether such activities constitute misconduct will depend on the circumstances in each case, and may vary from department to department, or according to the position held by a public servant. For example, some minor offences against the law may be of no concern to the employer where they do not involve breaches of trust, or otherwise impair the ability of public servants to fulfil their duties. However, other cases may be of greater concern, particularly where some degree of publicity identifies the actions of an individual with their employment.

In making judgements of this kind, public servants should consider the following:

- the nature and circumstances of the activity;
- their position, duties, and responsibilities;
- the consequences of the activity on their ability to fulfil their duties and responsibilities; and
- the effects of the activity or its consequences on departmental relationships with clients, Ministers or the general public.

WHERE TO FIND OUT MORE

The Public Service Code of Conduct does not, and cannot, specify every conflict or difficulty that public servants may experience in the course of their duties. There are three major sources of advice, support and information that public servants can go to for help in applying the principles of the Code of Conduct.

Departments

Supervisors, managers and colleagues within a public servant's own department should be the first place to turn for advice on the application of the Public Service Code of Conduct.

Departmental codes of conduct build on the principles of the Public Service Code of Conduct. Departmental codes are usually available on departmental intranets or through managers or the Human Resources unit.

Departmental codes of conduct should be read in conjunction with the Public Service Code of Conduct and departmental policies on matters such as airpoints, gifts, appropriate use of the Internet and media comment.

The State Services Commissioner and the State Services Commission

The State Services Commissioner issues the Public Service Code of Conduct and other guidance material under the Commissioner's statutory responsibilities to prescribe minimum standards of integrity and conduct for the Public Service.

The State Services Commission provides advice, guidance and publications on various matters to do with the Code of Conduct

and wider standards of behaviour, including *Public Servants and Select Committees* and *Public Servants, Political Parties and Elections*. These guidelines are available at <http://www.ssc.govt.nz> or from the SSC, and advice is available by contacting the SSC directly. Much of this guidance is applicable to the wider State sector.

The Cabinet Manual and Cabinet Office Circulars

The Cabinet Manual includes important information on how the Public Service interacts with the Government and Parliament, although its main purpose is as a guide to central government decision-making. It is available in electronic form from the Cabinet Office's website – <http://www.dPMC.govt.nz/cabinet/manual> or in book format from the Cabinet Office.

On occasion the Cabinet Office issues Cabinet Office Circulars on issues which are of general interest to Ministers and departments. These Circulars may be incorporated in the Manual when it is revised from time to time. Many Circulars are available on the Cabinet Office's website at <http://www.dPMC.govt.nz/cabinet/circulars/index.html>, from the Cabinet Office or from departments.

Legislation Referred to in the New Zealand Public Service Code of Conduct

State Sector Act 1988

Official Information Act 1982

Electoral Act 1993

Employment Relations Act 2000

Human Rights Act 1993

Privacy Act 1993

Protected Disclosures Act 2000

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