

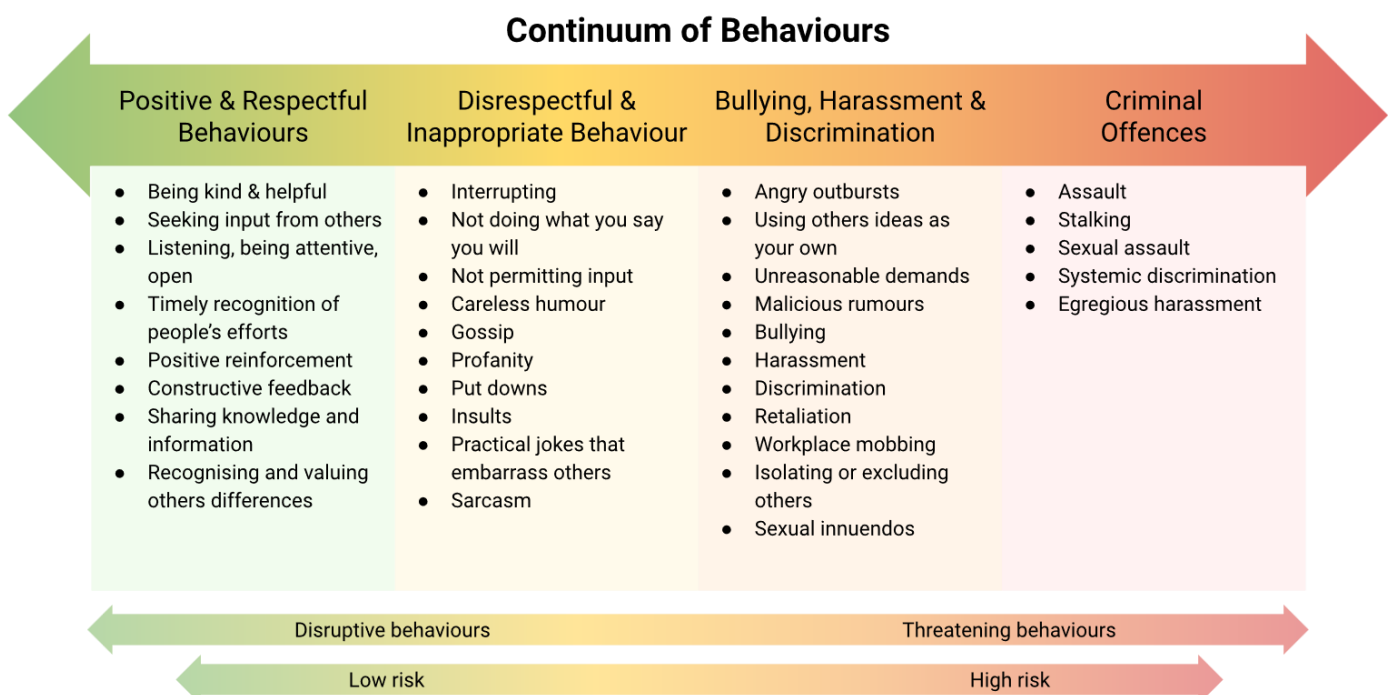
Tū Māia, Tū Rarawe

Guidelines: Responding to Unacceptable Behaviour

1. Introduction

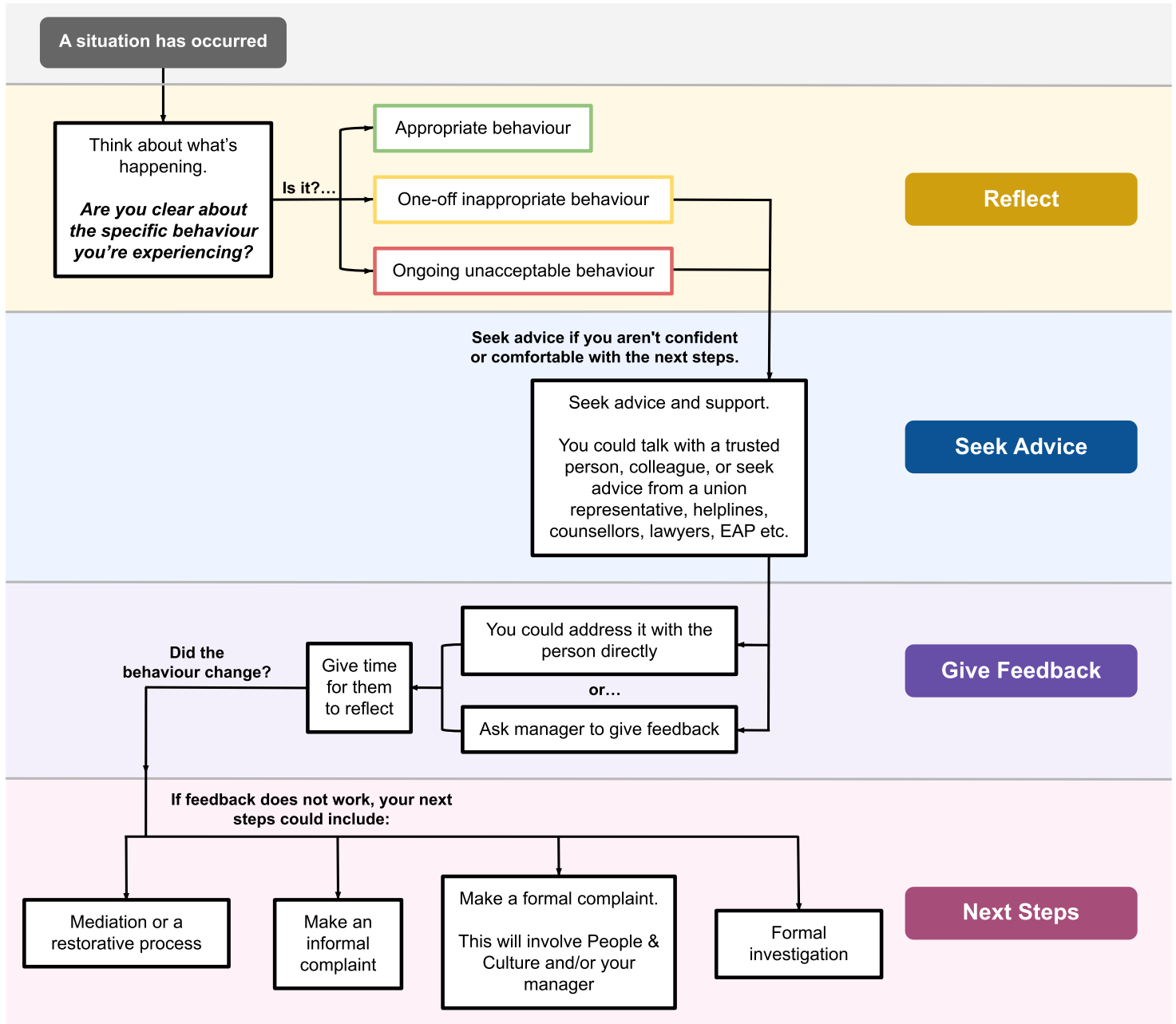
- 1.1 Everyone is entitled to a safe work environment where behaviour is respectful and appropriate. We all play a part in the culture we want to have at the Electoral Commission.
- 1.2 These guidelines support the Workplace Behaviour Policy. The guidelines support building an inclusive, safe, healthy, and welcoming culture at the Electoral Commission.
- 1.3 There is no 'one size fits all' approach to addressing issues of unacceptable behaviour. In every case you (and your manager or another manager, if it's appropriate) will need to consider how best to address the matter – each circumstance will be unique.
- 1.4 If you are in a situation where you see or experience inappropriate behaviour, in the first instance, you should try to give the person clear and constructive feedback, as this can often help resolve the situation before it escalates.
- 1.5 Not all inappropriate behaviour is the same. Below we have included a graphic showing a Continuum of Behaviours. This chart briefly describes some of the differences between respectful, inappropriate, bullying, discrimination and harassment behaviours and criminal offences.
- 1.6 Definitions of terms to help identify the behaviour and how to take action are provided at the end of these guidelines.

Reference Source: New Zealand Defence Force



2. Responding to inappropriate behaviour - flow chart

- 2.1 This flow chart provides steps and options you can follow if you feel the behaviour you have experienced has been inappropriate and needs to be addressed.
- 2.2 It is important to remember that confidentiality of both complainant (the person making the complaint) and respondent (the person whose behaviour may be inappropriate) must be respected throughout any process.



3. Reflect

- 3.1 Sometimes, people don't behave or act in ways we would like them to. Before you react to a situation where you think someone has done something inappropriate or unacceptable, take some time to reflect on the behaviour/situation.
- 3.2 We all have different ways of communicating, developed from our experiences and cultural background. Some of us may be more accustomed to more direct ways of saying things; others may not. Do consider these elements when you reflect on the behaviour/situation.
- 3.3 Reflecting on the situation will help you to work through the other person's behaviour, your role in the interaction and its impact on you. You might want to ask yourself some questions:
- what was the situation?
 - what was the behaviour you experienced?
 - why did it make you feel the way you did?
 - was this a one-off? Or has it happened before?
 - was it out of character for them?
- 3.4 Studies have shown that by stepping into another person's shoes for a moment and imagining what might have been going on for them, we boost empathy and understanding, which can also help to resolve conflict. Using words like 'inappropriate', 'bullying' or 'harassment' can raise the temperature of a situation, making it more difficult to resolve.
- 3.5 It is possible that while you don't like what's happening, it isn't inappropriate
- 3.6 When reflecting, be thoughtful and consider the behaviour from both points of view. There is however, no requirement to make excuses for the other person's behaviour.
- 3.7 You may want to read. A useful resource comes from Te Kawa Mataaho | Public Service Commission.¹

4. Seek advice

- 4.1 The next step in this process is to seek advice and support. You could get advice from:
- a trusted colleague/person
 - Employee Assistance Programme (EAP)
 - helplines
 - your manager
 - People & Culture representative
 - a union representative
 - counsellors
 - lawyers

¹ <https://www.publicservice.govt.nz/guidance/guide-he-aratohu/model-standards/speaking-up-in-the-public-sector>

- 4.2 Seeking advice from someone impartial and objective may give you better insight into the situation or provide you a new angle to think about.

5. Give feedback

- 5.1 If you are in a situation where you see or experience inappropriate behaviour, in the first instance, you should try to give the person clear and constructive feedback. This can often help resolve the situation before it escalates.
- 5.2 You may choose to meet with the person in private, with or without support, or write to the person. It is important that you:
- clearly explain your intention (that you wish to give feedback)
 - describe the situation and why you find the person's behaviour unacceptable
 - focus on and describe the actual behaviour (rather than giving it a general label, such as 'bullying')
 - describe the impact it has on you (and/or others involved)
 - request that it stop
 - you can also give the person an opportunity to respond (if meeting face-to-face)
 - if you think it is appropriate, advise the person that you may escalate the situation further if the unacceptable behaviour continues
- 5.3 Discussions or communications of this sort can be difficult for those involved. We suggest talking to someone independent first, such as a colleague, a manager, People and Culture, union delegate or someone else who is removed from the situation, so you can clarify your thoughts and communicate the key points clearly and in a culturally appropriate way.
- 5.4 If you feel uncomfortable giving feedback, you might want to ask this trusted individual to provide the feedback for you. If they agree to this, it is important that you are present. Try to ask someone who is an impartial third party.
- 5.5 Make sure that you give the other person time to reflect on the feedback.
- 5.6 If the behaviour persists, or you do not see a change in behaviour, you might want to choose one of the next steps discussed below.

6. Next Steps

Mediation or a restorative process

- 6.1 Mediation is a process and a way to resolve issues quickly and soon after they arise. Mediation often helps to maintain relationships between the parties ([Employment New Zealand, 2023](#)).
- 6.2 An independent person called a mediator helps resolve an employment relationship problem. The mediator will help you to identify the main issues and find potential solutions. The aim is for you and the other person to hear each other's perspectives and reach a solution or agreement about the behaviour/s observed.
- 6.3 In mediation, you cannot be forced into a decision or agreement.
- 6.4 Mediation is confidential. This means that all the discussions and the details of any agreed resolution, if there is one, are private in most cases.

- 6.5 Mediation can be both informal or more formal. In many cases, an informal approach can be less stressful and still achieve the outcomes you seek. The usual difference between informal mediation and giving feedback, is that a mediator is trained.
- 6.6 You might choose to use an internal mediator in the Commission, or an external agency (e.g., Employment Mediation Services). Employment Mediation Services within the Ministry of Business, Innovation and Employment (MBIE) provides free mediation services to any employee or employer with an employment relationship problem. Private mediation is also available.
- 6.7 Each mediation is different and has its own format, such as:
- Early assistance - this may be through email and telephone conversations. A mediator will see if there's a way of sorting out the problem without needing a mediation meeting.
 - A mediation meeting - this is when parties meet with a mediator in a semi-formal environment.
 - Giving the mediator powers - if both parties agree, you can give the mediator the power to either make a written recommendation or binding decision.
- 6.8 You may choose to have a support person/representation throughout the mediation process.
- 6.9 You might choose a restorative approach. A restorative process uses skilled facilitators to support a conversation with all those affected in a safe and supportive environment. All parties come together to safely and respectfully share their different perspectives to build mutual understanding and trust.
- 6.10 Get in touch with our People & Culture team if you'd like to learn more about the restorative process.

Formal vs informal complaints

- 6.11 You could choose to make a formal or informal complaint. A high-level description of these two different approaches is set out below:

Informal	Formal
Best handled by the complainant and their manager	Complainant makes a written statement of complaint
No blame approach	May result in disciplinary action
Solution focussed	Investigation focussed
Forward looking	Past looking – what happened
Establishes agreements	Establishes what can be substantiated
Can achieve a quick resolution	Can take time to resolve
Best handled by the complainant and their manager	Complainant makes a written statement of complaint

- 6.12 Before deciding whether you go through an informal or formal complaint process, think about and consider:
- What is the outcome you'd like.
 - Whether you have contributed to the situation.
 - The likely consequences of addressing the matter informally or formally.

6.13 However you decide to address the matter, terms like ‘bullying’ or ‘harassment’ can be loaded with emotion. It can be more useful to frame your conversations around the actions of the other person, the specifics of the behaviour, and the impact. It can come as a shock to a respondent when a complainant says that they've been bullied or harassed by the respondent

Informal complaint

6.14 An informal complaint can be a good way of raising the issue and addressing the problem while preserving the working relationship between the two parties.

6.15 If you want to resolve the matter in an informal way, you could ask a third-party to intervene. You could ask your manager or People and Culture to appoint an appropriate third party to intervene on your behalf.

6.16 The third party will talk with you to gather the facts, including the impact of the behaviour and what you want to happen to resolve the matter.

6.17 The third party will then meet the respondent to get their perspective and views on what can be done to address the issue. The third party will not investigate the allegations or make findings on whether the respondent has behaved inappropriately.

6.18 If the third party is able to broker an agreement about what will happen to remedy the situation, the matter can be resolved confidentially between the parties.

6.19 If the third party is unable to broker agreement on how the matter will be resolved, the informal process will conclude. You will then be advised of the outcome and that it is open to you to make a formal complaint, if you choose to escalate the situation further.

Formal complaint

6.20 You may choose to make a formal complaint to a manager or People and Culture. A formal complaint can follow an informal intervention process.

6.21 If you wish to make a formal complaint, you should provide the following information to your manager or People and Culture:

- who the complaint is about
- what happened (including as much detail as possible about the time, date, place, and what was said and done)
- how you responded and what impact the behaviour has had on you
- any action you have taken to address the issue or to deter the behaviour so far, such as providing feedback or informal intervention
- whether anyone else witnessed the behaviour, and if so, who that was
- any outcomes or suggested resolutions you would like to see

6.22 On receiving a formal complaint, a manager or People and Culture will need to:

- consider how the complaint should be addressed and whether mediation or formal procedures should be used
- consider whether any interim measures are required to protect those involved

6.23 Before deciding how to address the complaint, the manager or People and Culture will consult you about the approach the manager proposes to take. If you want to escalate the complaint

to a formal investigation into the respondent's conduct, the manager or People and Culture will need to consider what investigation is required.

6.24 A formal investigation may include external agencies.

Formal investigation

6.25 When a complaint becomes formal, People and Culture will usually lead the process.

6.26 In the first instance, a decision will be made whether an investigation is required before deciding what to do next. The nature and extent of the investigation required will depend on a range of factors and the circumstances, including whether the respondent has admitted or accepted the conduct, the nature and extent of the behaviour alleged, the amount of information you have provided, the number of people who will need to be involved and the complexity of the issues.

6.27 If very serious behaviour occurs, the Commission may have to do more to check that this behaviour has occurred.

6.28 You and the respondent will be informed about the progress of the investigation. The objective of a formal investigation is to determine what happened and whether the allegations of serious inappropriate behaviour or conduct are valid.

Possible outcomes of a formal complaint

6.29 The complaint process may result in the Commission taking steps to address the complaint. Action might include:

- considering appropriate interim measures to address the situation in the short term (such as temporary redeployment of the complainant or respondent or change in reporting lines)
- a recommendation that the respondent accepts responsibility for the conduct and apologises to the complainant
- counselling or training for the complainant or respondent
- taking steps to restore the working relationship between the complainant and respondent, for example mediation or coaching
- making changes to work practices or the environment
- providing education and training on bullying, harassment, discrimination and victimisation
- addressing the respondent's conduct in a disciplinary way where the Commission is concerned that conduct may have breached the Code of Conduct or a Commission policy or procedure
- where the Commission considers the complaint was vexatious or malicious, addressing the complainant's conduct in a disciplinary way where the Commission is concerned that conduct may have breached the Code of Conduct.
- a combination of some of the above

7. Frequently Asked Questions

What support is available if I choose to make a complaint?	There are many types of support available if you choose to make a complaint, and dependent on the type of complaint. You could talk with a trusted colleague or friend, seek advice from a union representative, call a helpline (such as Lifeline Aotearoa), contact EAP , talk to your manager, or get in touch with our P&C team.
What happens if the person acting inappropriately is my manager?	If you are not comfortable speaking to your manager, you can speak directly to P&C or a trusted person who can support you in what action to take. You can also make a complaint directly to the Chief Electoral Officer or to the Board.
Will there be repercussions if I make a complaint?	There are no repercussions if you make a complaint. If you feel like this is not the case, make sure to talk to your manager or speak directly to P&C.
What do I do if I witness inappropriate behaviour? (i.e. someone acting inappropriately to someone else)	If you witness inappropriate behaviour, there are several things you could choose to do. You may want to speak to the person at the time, check in with the person/people involved at a later stage, or discuss what you've witnessed with your manager.
What do I do if none of the options work for me	If none of the options in the <i>Responding to inappropriate behaviour flow chart</i> are appropriate for you, talk to P&C for support and to see what other options may be available.
How do I make an anonymous complaint?	You could make an anonymous complaint using the Health, Safety and/or Wellbeing incident or concern reporting tool on ECHO. The Chief Electoral Officer and the Board could also be a channel you might want to pursue if you have a serious complaint you need to escalate.
I want to understand more about my options	Review the Model Standards on the Te Kawa Mataaho Public Service Commission website
As a manager, what support and action can I provide?	Te Kawa Mataaho Public Service Commission has produced Model Standards for Positive and Safe Workplaces for Managers

8. Definitions

8.1 It is important that we define some terms in this Guidelines document due to their complex nature.

Term	Definition
Bullying	<p>Bullying is repeated and unreasonable behaviour directed towards a person or group of people. It can be physical, verbal, non-verbal or emotional. Bullying may be overt or covert and often includes behaviours that are intended to target, victimise, undermine or humiliate the recipient. When bullying is directed towards an employee, or group of employees, it creates a risk to health and safety.</p> <p>In some instances where the behaviour towards the recipient is particularly serious, a one-off incident can amount to bullying. The Commission will apply a 'reasonable person' test to identify bullying (i.e., would an objective and reasonable third party observing the situation consider the behaviour bullying?).</p> <p><i>Examples of bullying (this list is not exhaustive) include:</i></p> <ul style="list-style-type: none"> • Behaviour directed at a person which is offensive, malicious, insulting or intimidating. • Using verbal abuse, swearing, or shouting inappropriately. • Excessive or unjustified criticism over minor things, or undermining status and credibility by criticising someone in the presence of others. • Undervaluing or ridiculing an individual's contribution. • Deliberately setting unreasonable objectives, tasks, or timescales. • Deliberate exclusion or isolation. <p><i>For the sake of clarity, the Electoral Commission does not consider the following behaviours bullying:</i></p> <ul style="list-style-type: none"> • Differences of opinion, disputes and difficulties in working relationships. • A manager allocating work, setting reasonable instructions, goals and deadlines, and giving legitimate feedback. • Managing and addressing identified performance, competence, or disciplinary issues. • Friendly banter, light-hearted exchanges, mutually acceptable jokes and compliments. • Friendships, sexual or otherwise, where both parties consent to the relationship. • Free and frank discussion about issues, concerns in the workplace, or directed at the advancement of knowledge which are not personal or targeted at individuals. • Instructing staff to ensure safe work practices. • Constructive feedback and legitimate advice from peers or colleagues. • Isolated instances of rude or thoughtless behaviour, especially when the individual later apologises (the behaviour may nevertheless be addressed as unacceptable behaviour). <p>WorkSafe New Zealand provides various resources on bullying, including a questionnaire to help identify if behaviour is bullying, or a different type of undesirable behaviour, on its website http://www.business.govt.nz/worksafe/information-guidance/all-guidance-items/bullying-guidelines.</p>
Harassment	<p>Harassment is behaviour much like bullying. It is generally a pattern of behaviour repeated over time but may be a one-off occurrence (e.g., a physical assault). Harassment may be in respect of gender, ethnic origin, colour, religion, marital status, age, sexual orientation, disability, health status, and could include abuse of authority, unfair or inequitable treatment of an employee by their manager or similar behaviour.</p>

	<p>The Harassment Act 1997 deals with serious types of harassment as criminal offences (and allows the person being harassed to obtain trespass or restraining orders and provides sanctions if the orders are breached). Sexual and racial harassment are dealt with under the Employment Relations Act 2000.</p> <p>Racial harassment in employment is where an employer uses behaviour, language or visual material that expresses hostility against an employee on the grounds of their colour, race, or ethnic or national origins, which is hurtful or offensive to the employee and has a detrimental effect on the employee's employment, performance, or job satisfaction.</p> <p><i>Sexual harassment in employment is where an employee (including a manager):</i></p> <ul style="list-style-type: none"> • makes a request for sexual intercourse, contact or activity and promises preferential or threatens detrimental treatment, or makes threats about another employee's employment status; or • uses behaviour, language or visual material of a sexual nature that is unwelcome or offensive and has a detrimental effect on another employee's employment, performance or job satisfaction. <p><i>Examples of harassment (this list is not exhaustive) include:</i></p> <ul style="list-style-type: none"> • Offensive teasing or abuse. • Unwelcome or inappropriate physical conduct. • Rude gestures and comments or offensive jokes. • Offensive pin-ups or posters. • Unwanted attention of a sexual nature. • Unwelcome or inappropriate letters, emails or phone calls. • Repeated teasing or comments about the differences between cultures. <p>Harassment that is not a criminal offence under the Harassment Act or sexual or racial discrimination under the Employment Relations Act will still be dealt with by the Electoral Commission as unacceptable conduct.</p>
Discrimination	<p>Generally speaking, discrimination is treating someone less favourably than someone else in the same or similar circumstances, for example excluding or restricting an employee or group of employees from opportunities that are available to others. Discrimination on the basis of a person's sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status or sexual orientation is prohibited.</p> <p>In employment, discrimination can also extend to different treatment because of a person's involvement in the activities of a union and their refusal to do work likely to cause serious harm.</p> <p>Not all discrimination is unlawful and the Human Rights Act 1993 and the Employment Relations Act 2000 permit discrimination in certain circumstances (e.g., where sex is a genuine occupational qualification of a role in order to preserve reasonable standards of privacy or where the duties of a role are such that a person with a particular disability could not perform those duties without a risk of harm to themselves or others).</p>
Victimisation	<p>Victimisation is treating a person (or threatening to treat a person) less favourably than they otherwise would have been as part of, or as a result of, an allegation of bullying, harassment, or discrimination.</p> <p>The Human Rights Act 1993 deals with victimisation where a person who made, or intends to make, use of their rights or sought to promote the rights of another person under the Human Rights Act 1993 or the Protected Disclosures Act 2000, or who has refused to do something that would contravene the Human Rights Act 1993.</p>

9. Procedures status and approval

Version	November 2024 update
Approval authority	DCE, Enterprise Services
Approval date	November 2024
Policy owner	Manager, People & Culture
Revision cycle	3 yearly
Next review	November 2027

Tū māia, Tū rarawe

Workplace Behaviour Policy

1. Introduction

- 1.1 The Electoral Commission Te Kaitiaki Take Kōwhiri (the Commission) is committed to treating everyone who works for or with the Commission with dignity and respect. We want a safe and inclusive workplace culture where all people are respected and valued.
- 1.2 Everyone has the right to work in an environment that is safe and free from discrimination, harassment, bullying, victimisation, and unacceptable behaviour.
- 1.3 The Commission has a 'no tolerance' approach to unacceptable behaviour and will take all instances seriously and act on complaints. The Commission is committed to creating an environment where our people feel comfortable and able to speak up when they encounter unacceptable behaviour, without fear of retribution or discrimination.
- 1.4 Our principles, Values/Te Poutokomanawa and behaviour guide how we work together. They describe what is important to us and help us deliver our best work every day through:
 - Manaaki – demonstrating generosity and empowering people; creating a safe environment where we help, support, and encourage each other to work together collaboratively and constructively
 - Tūhonohono – connecting, building, and maintaining relationships and bringing people together so our people can come forward and speak up when the behaviour of others is not appropriate
 - Tika – emphasises appropriate standards and behaviour. Upholding the integrity, impartiality and quality of our work should always be maintained; doing things right and doing the right thing
 - Arataki – seeking to understand different perspectives and supporting our people to resolve conflicts; guiding towards greater understanding
 - Uakaha – we uplift each other to uphold acceptable behaviour and hold each other accountable; we bring energy, dynamism, and innovation into this space

2. Policy

- 2.1 The Commission has obligations to be a good employer, to protect our people from harassment and discrimination, and to ensure, so far as is reasonably practicable, the health and safety of our people.
- 2.2 Electoral Commission staff are required to treat colleagues, customers, and stakeholders with respect at work. We have a personal responsibility to treat each other in the way we would wish to be treated ourselves.
- 2.3 We will act on complaints of any kind including discrimination and victimisation and we will act accordingly by investigating, communicating with both the complainant and respondent, and determine a resolution, dependent on the issue.

2.4 Workplace hazards also include unacceptable behaviour. If left unchecked, unacceptable behaviour in the workplace can have serious consequences for our people and our organisation including:

- health problems resulting from increased stress levels
- decreased emotional wellbeing and loss of self-esteem
- reduced morale, work performance, and team cohesion.

3. Scope

3.1 This policy applies to everyone working at the Commission, or on our premises, including all staff/kaimahi, managers, visitors, contractors, secondees, volunteers and members of the public.

3.2 This policy provides clarity on each person's responsibilities in contributing to a safe and positive workplace; defines and provides examples of acceptable and unacceptable behaviour; provides information on resolution options in situations where unacceptable behaviour is witnessed or experienced.

4. Responsibilities

4.1 Everyone has a part to play in creating and maintaining a safe work environment as set out in our Code of Conduct and this policy.

The Commission

4.2 The Commission has a no tolerance approach to unacceptable or unlawful behaviour. All allegations of unacceptable behaviour will be treated seriously. The Commission will:

- be clear about the standards of behaviour we expect of our people
- ensure all people understand what appropriate behaviour is
- promote positive workplace behaviour
- identify factors that contribute to unacceptable behaviour and make changes to prevent it reoccurring
- encourage positive leadership behaviour and support managers to achieve this
- provide appropriate information, advice, and support to everyone involved in an incident so that all people feel safe, supported, respected, and listened to
- provide a range of processes and options to enable each person to manage and resolve incidents in a way that is culturally supportive and appropriate
- ensure principles of natural justice and procedural fairness apply to all matters which are addressed under this policy
- ensure information and resources to resolve incidents are available on ECHO.

4.3 The Commission and/or the Board will respond to any incident that is formally reported to them and will follow the same procedure outlined in the Reporting Wrongdoing and Protected Disclosures Policy. The procedure for formal reporting is described further in this policy.

4.4 All staff of the Commission should be aware of their own behaviour and how it affects others. We recognise that personalities, character, and management styles are all different. How we engage with others in the workplace must always be acceptable to others through applying principles such as:

- working collaboratively with others to achieve objectives
- managing performance in an appropriate and fair manner

- giving and receiving constructive feedback as part of normal day-to-day work activity
- understanding other people's perspectives to help reach agreement.

Managers

4.5 Managers will:

- role model and reinforce acceptable behaviour
- educate team members about this policy
- provide a safe space for our people to raise concerns of any unacceptable behaviour, whether peers or managers
- actively follow up when unacceptable behaviour is witnessed by them or reported to them (using the resolution options in the Guidelines)
- actively manage any conflict that arises in a timely manner.

When a situation involving unacceptable behaviour is witnessed or experienced

4.6 Managers must comply with this policy and the Guidelines (Responding to Unacceptable Behaviour) to support any staff member who witnesses or experiences unacceptable behaviour.

4.7 Managers are required to undertake all/any of the following:

- step in to stop an incident that is happening at that time, and if required move the people involved away to ensure everyone's safety
- check the people involved are physically and emotionally safe
- listen without judgement if someone wants to talk about the incident
- refresh themselves of the information available on ECHO and the processes and options available to resolve an incident in a culturally appropriate way
- make notes about the incident including any discussions or observations
- advise People & Culture that an unacceptable behaviour incident has occurred and especially when there may be serious breaches of the Code of Conduct and/or this policy
- advise Vitae Services support is available and provide other wellbeing options.

4.8 Managers are encouraged to liaise with People & Culture for their own support in managing and resolving unacceptable behaviour.

Our People/Kaimahi

4.9 Our people will:

- treat everyone with respect and dignity
- take responsibility for contributing to a safe and healthy work environment
- understand the options for resolving unacceptable behaviour by:
 - reading this policy and the Guidelines, Responding to Unacceptable Behaviour
 - reviewing other resources and information available on ECHO
 - asking their manager or People & Culture to explain the options available
- on an individual basis, determine how they wish to resolve any encounter of inappropriate behaviour (unless it is a criminal act or a breach of Health, Safety and Wellbeing)

When a situation involving unacceptable behaviour is experienced

4.10 Our people will:

- inform their manager, another manager or someone they trust, about the incident
- advise People & Culture.

When a situation involving unacceptable behaviour is witnessed

4.11 Our people will:

- check the affected person is safe (physically and emotionally) and offer support
- inform their manager, another manager or someone they trust, about the incident so further action can be taken
- raise their concern with People & Culture.

5. Resolution options

5.1 There are various options to resolve any incident. These are listed below and further expanded in the Commission guidelines document, Responding to Unacceptable Behaviour.

5.2 There are no repercussions from the Commission if an individual makes a complaint.

5.3 These options are not a sequence of steps. Each resolution process will be determined separately, considering the circumstances, the views of those involved, and the seriousness of the incident/s.

5.4 Options may include:

- **Self-solve** (reflect, seek advice, and give feedback) – a low-level approach where the affected person directly tells the person concerned that their behaviour is having an impact on them, and this is acknowledged by the person concerned.
- **Informal intervention** (a mediated conversation with a third party [eg P&C] or informal complaint) – a more structured (but informal) way of resolving an incident with assistance from others.
- **Formal complaint** – a formal structured process to resolve incidents.

5.5 There may be situations where an individual wishes to make a formal complaint. They believe they are unable to raise their concerns via their manager/another manager because:

- they reasonably believe their manager demonstrates inappropriate behaviour; or
- the manager, for reasons of relationship or association with someone who is believed to be demonstrating inappropriate behaviour, cannot be approached.

5.6 In an instance where the individual is unable to approach their manager, they are encouraged to report their concerns to the Chief Executive unless:

- they reasonably believe the Chief Executive is demonstrating the inappropriate behaviour, or
- the Chief Executive, for reasons of a relationship or association with someone who is believed to be demonstrating inappropriate behaviour, cannot be approached.

5.7 If the individual is unable to approach the Chief Executive, they are encouraged to report their concerns to another member of the Commission Board unless:

- they reasonably believe all members of the Board are demonstrating inappropriate behaviour, or
- all Board members, for reasons of a relationship or association with someone who is believed to be demonstrating inappropriate behaviour, cannot be approached.

- 5.8 The individual can reasonably expect there to be action by the Commission within 20 working days.
- 5.9 If the individual reasonably believes they cannot approach any level of managers or Board members, they should refer to the Reporting Wrongdoing and Protected Disclosures Policy and approach an appropriate authority.
- 5.10 The Commission will then continue to follow the procedures detailed in the Reporting Wrongdoing and Protected Disclosures Policy.

6. Education and training

- 6.1 At Induction, the Commission provides information and training for all our new people about our culture and expected behaviour. Refresher education and training is held on a regular basis.
- 6.2 Managers will receive periodic training via the learning management system Tupu on the Workplace Behaviour Policy, the Reporting Wrongdoing and Protected Disclosure Policy, associated guidelines and procedures, and the Human Rights Act 1993.

7. Monitoring, review, and recordkeeping

- 7.1 A register of reported unacceptable behaviour incidents will be managed by People & Culture who will adhere to strict protocols to protect the privacy of both complainants and respondents.
- 7.2 Documentation relating to unacceptable behaviour incidents will be kept in a secure digital location by People & Culture with access restricted to authorised personnel.
- 7.3 Reporting incidents of unacceptable behaviour will be provided quarterly to ELT and the Board and will include a non-identifiable summary of the number of incidents, process followed and outcomes.
- 7.4 Incidents that have or are likely to be escalated will be forwarded to ELT and/or the Board as they occur for review and response.

8. False accusations, frivolous and vexatious claims

- 8.1 It is important that all complaints of unacceptable behaviour are made in good faith and are based on truth and fact. Any intentionally false allegations or frivolous or vexatious claims will be viewed seriously, investigated, and may result in disciplinary action.

9. Definitions and examples

9.1 The table below provides definitions and examples of terms used in this policy. This is not an exhaustive list.

Term	Definition	Example(s)
Acceptable Behaviour	Acceptable behaviour refers to actions or conduct considered appropriate, respectful, and aligns with our values.	<ul style="list-style-type: none"> friendly banter, light-hearted exchanges issuing reasonable instructions and expecting them to be carried out free and honest discussion about concerns in the workplace, without personal insult.
Unacceptable Behaviour	Unacceptable behaviour refers to action or conduct considered inappropriate or harmful in any given context. What constitutes as unacceptable behaviour can vary. However, in this policy unacceptable behaviour includes harassment, bullying, victimisation, and discrimination.	<ul style="list-style-type: none"> belittling remarks ignoring, excluding, isolating giving unachievable tasks – impossible deadlines, “setting up to fail” withholding information relevant to job.
Bullying	Workplace bullying is unreasonable and repeated behaviour (physical, verbal, or relational/social) towards a person or a group of people that can lead to physical or psychological harm. <i>Unreasonable behaviour covers actions which a reasonable person would not do in similar circumstances.</i>	<ul style="list-style-type: none"> using verbal abuse, swearing, or shouting inappropriately excessive or unjustified criticism over minor things undervaluing or ridiculing an individual's contribution deliberate exclusion or isolation.
Harassment Further detail is contained in Harassment Act 1997 (version at 28 October 2021) https://www.legislation.govt.nz/act/public/1997/0092/latest/whole.html#DLM417725	<p>Sexual: Sexual harassment is unwelcome or offensive behaviour of a sexual nature. It is repeated or is significant enough to have a negative effect on a person's employment, job performance or job satisfaction.</p> <p>Racial: Racial harassment is language (written or spoken), visual material, or physical behaviour that directly or indirectly expresses hostility against, or brings any person into contempt or ridicule, because of their race, colour, or ethnic or national origins.</p>	<p>Examples of sexual harassment:</p> <ul style="list-style-type: none"> makes a request for sexual intercourse, sexual contact or other sexual activity and implies or promises preferential treatment uses behaviour, language or visual material of a sexual nature that is unwelcome or offensive <p>Examples of harassment include:</p> <ul style="list-style-type: none"> offensive teasing or abuse unwelcome or inappropriate physical conduct rude gestures and comments or offensive jokes unwelcome or inappropriate letters, emails, electronic media (for example but not limited to texts, social media applications), phone calls.
Victimisation Further detail is contained in Human Rights Act 1993 https://www.legislation.govt.nz/act/public/1993/0082/latest/DLM304658.html	Victimisation is when someone is treated, or is threatened with treatment that is, less favourable than the treatment another person in the same or substantially similar circumstances is treated.	<ul style="list-style-type: none"> being denied a promotion after helping a colleague make a discrimination complaint dismissal from employment after making a complaint of sexual harassment.

Discrimination	Discrimination is when one person is treated less favourably than someone else is treated, or would be treated, in the same or substantially similar circumstances.	<ul style="list-style-type: none"> • ignoring a staff member's application for a promotion on the grounds that they are old and will likely soon retire • paying a woman in the same role as a man a reduced rate of pay.
Frivolous or vexatious	A term used to challenge a complaint, or a legal proceeding being heard as lacking in merit, or to deny, dismiss or strike out any ensuing judicial or non-judicial processes.	
Kaimahi	In this policy, kaimahi are individuals who carry out work at the Commission in any capacity.	<p>This includes:</p> <ul style="list-style-type: none"> • contractors or sub-contractors • employees of contractors or sub-contractors • employees of labour hire companies • apprentices or trainees • people doing work experience • outworkers (home workers) • volunteer workers. • secondees
Other workers	Include workplace visitors and casual volunteers. These people have their own health and safety duties to take reasonable care to keep themselves and others safe.	
Actions of natural justice and procedural fairness	<p>The actions of natural justice include:</p> <ul style="list-style-type: none"> • taking all reasonably practicable steps to progress the matter(s) without undue delay • providing the subject of the concerns/allegations with relevant information being raised against them • providing the person who is the subject of the concerns/allegations with a reasonable opportunity to seek advice and to respond to the matters before final decisions are made • advising the person that they have the right to be accompanied by a support person • the decision-maker will consider the matter with an open mind, free of bias and pre-determination. 	

10. Policy status and approval

Version 2	November 2024
Preceding policy	Bullying and Harassment Policy 2018
Approval authority	Board
Approval date	13 November 2024
Policy owner	Manager People & Culture
Revision cycle	Every three years
Next review	November 2027
Related Electoral Commission policies	Code of Conduct (2021) Reporting Wrongdoing and Protected Disclosures Policy (2022) Health Safety & Wellbeing Policy (2023) Managing Employee Conduct and Performance (2018)

Employment Relations Policy

1. Policy

- 1.1 The Commission promotes a productive and positive work environment and aims to ensure that consultation and cooperation are the basis for all relationships within the organisation.
- 1.2 However, we recognise that employment relationship problems may arise from time to time that need to be resolved in an appropriate manner.

2. Definitions

Employment Relationship Problem

- 2.1 Employment relationship problems include disputes, personal grievances, and any other problems relating to or arising out of the employment relationship.

Personal Grievance

- 2.2 A personal grievance has a special meaning under the Employment Relations Act 2000. An employee may have a personal grievance if in their employment they have been:
 - unjustifiably dismissed
 - unjustifiably disadvantaged
 - discriminated against
 - sexually harassed
 - racially harassed
 - put under duress because of involvement or non-involvement in union activities.

Dispute

- 2.3 A dispute occurs when an employee disagrees with the way in which their employment agreement has been applied or interpreted. It is different from a personal grievance.

3. Manager and employees responsibilities

- 3.1 It is the responsibility of both managers and employees to foster an environment of open communication where problems can be resolved fairly, consistently and objectively.
- 3.2 It is expected that employees will approach their manager in the first instance with any employment relationship problem with the aim of resolving the issue as quickly and informally as possible.
- 3.3 If an employee is unable to resolve the problem with their manager then it is expected that they will approach an appropriate person within the Commission (for example, their manager's manager or the Manager Corporate Services), a union delegate, or the Employment Relations Service within the Ministry of Business, Innovation and Employment.

4. Procedure

Personal grievance

- 4.1 An employee has 90 days to raise a personal grievance formally with the Commission from the time the event occurred or came to the notice of the employee. A third party such as the union can help or act on behalf of an employee during the grievance process.
- 4.2 In exceptional circumstances employees may have longer than 90 days to put the grievance to the Commission. This would only occur where:
- the employee was so traumatised by what happened that they could not raise the grievance in 90 days
 - the person acting on behalf of the employee did not put the grievance to the Commission within the 90 days
 - the employment agreement does not include a plain language explanation of the services available for the resolution of employment relationship problems and personal grievances
 - the Commission did not confirm in writing the reasons for the dismissal.
- 4.3 When an employee or their representative raises a grievance with the Commission, the employee needs to state their grievance, the facts giving rise to the grievance and what action they want taken. This should be done in writing and forwarded to the employee's manager.
- 4.4 If a manager receives notice of a personal grievance they must contact the Manager Corporate Services immediately for advice on how to proceed.

Dispute

- 4.5 Where an employee claims to have a dispute about their collective employment agreement they need to advise the union and the Commission who are parties to the agreement. The disagreement may affect everyone else who is employed under the same collective agreement.
- 4.6 Where an employee claims to have a dispute about their individual employment agreement they need to advise their employer.
- 4.7 An individual employee, an employee via their union or the Commission may take a dispute to the mediation service for resolution.

Mediation

- 4.8 Where the employee and the Commission attend formal mediation it is up to the parties to reach an agreement on the outcome. The mediator facilitates the process and helps both parties to come to an agreement.

Employment Relations Authority

- 4.9 If at the end of mediation a resolution has not been reached either the employee or the Commission could then proceed to the Employment Relations Authority. If the problem is about a strike or lockout, or an injunction then the employee or an employee via their union can lodge the issue with the Employment Court.
- 4.10 The Employment Relations Authority looks at the whole situation rather than the technicalities of a case. It may send the parties back to mediation if it thinks that the parties have not gone through, or utilised, mediation properly.

Employment Court

4.11 If the Employment Relations Authority arrives at a decision that either party does not agree with an appeal may be made to the Employment Court. Appeals to the Employment Court must be made within 28 days of the Employment Relations Authority making its decision.

Harassment or Discrimination

4.12 In cases of harassment or discrimination employees may take their grievance to the Human Rights Commission or use the procedure under the Employment Relations Act, but they cannot use both procedures to resolve the same matter.

Further information

4.13 Information about the employment relationship problem procedure is set out in the employee's employment contract. If an employee wants further information about these processes they may contact:

- their Manager
- a Union
- an Employee Assistance Programme
- Manager Corporate Services.

5. Related policies, procedures, legislation, sites

Related Policies

- Health and Safety
- Managing Conduct and Performance
- EEO

Legislation

- Employment Relations Act 2000
- Human Rights Act 1993
- Protected Disclosures Act 2000
- Privacy Act 1993
- Crown Entities Act 2004

Useful Sites

- Ministry of Business, Innovation and Employment
- Employee Assistance

6. Policy status and approval

Version	Corporate Policy Manual December 2018 in 2022 policy template
Approval authority	Board
Approval date	December 2018
Policy owner	DCE, Enterprise Services
Revision cycle	3 yearly
Next review	TBC

Managing Employee Conduct and Performance Policy

1. Introduction

- 1.1 The Commission requires that all employees meet the standards and expectations set down in the Commission's Code of Conduct, job descriptions, performance agreements and policies and practices. In addition, employees are required to comply with the law at all times.
- 1.2 Where it is considered that standards and expectations may have been breached or not met, the Commission will ensure fair and objective processes to determine whether or not misconduct or non-performance has occurred. These processes will also take account of the obligation to operate in good faith at all times.

2. Standards and expectations

- 2.1 The standards and expectations of employees in the Commission are clearly set down in a number of Commission documents, publications, and Acts.

Code of Conduct

- 2.2 The Commission's Code of Conduct is Commission policy and should be read in conjunction with this policy.
- 2.3 The Codes of Conduct specify the broad standards of conduct expected of all employees whilst they are employed with the Commission. The Code provides further examples of the sorts of behaviours and actions that are unacceptable in the Commission. It should be noted however, that the Code of Conduct are not intended to be exhaustive and there are other standards that must be adhered to or met in the course of employment with the Commission.

Policies and Practices

- 2.4 Employees are expected to comply with all Commission policies and practices

Performance

- 2.5 Performance expectations for employees will be set out clearly in job descriptions and/or performance agreements. Employees are expected to meet agreed standards.

Legislation

- 2.6 Employees are required to comply with all legislative requirements during the course of their work. Further, employees should be aware that breaking the law outside of the work environment can impact on their ongoing employment with the Commission.

3. Managers' responsibility

- 3.1 Managers are accountable for ensuring that employees are informed of the standards they should comply with during the course of their employment with the Commission. These standards may exist by way of Commission policy and practice and/or legislation. Managers are also accountable for setting clear performance expectations for their employees and monitoring the outcome.
- 3.2 Where managers are made aware of an employee's possible non-compliance with Commission standard or legal requirement, they are accountable for ensuring an objective

employment investigation is conducted and, where appropriate, disciplinary action is carried out.

- 3.3 Where managers are made aware of an employee's failure to meet performance expectations, they are accountable in the first instance, for ensuring a process to identify the reasons for failure and options to assist improvement. Disciplinary process may be instituted when improvement does not occur in a reasonable timeframe.
- 3.4 Disciplinary processes must be objective and provide the employee an opportunity to comment on any information the delegated decision maker proposes to take into account, before the delegated decision maker makes their decision. Further advice can be obtained from the Manager Statutory Relationships.

4. Employees' responsibility

- 4.1 Employees are responsible for complying with Commission policy and practice, including the Code of Conduct, and for raising with their manager any matters they do not understand. Failure to comply may result in disciplinary action.
- 4.2 Employees are also required to comply with the law both in the course of their employment and privately. An employee who commits a breach of the law either at work or privately may put their ongoing employment with the Electoral Commission in jeopardy.
- 4.3 Employees are responsible for participating in setting and for meeting agreed standards of performance.

5. Employee investigations

Non-compliance with Commission policy and practice or the law

- 5.1 When an allegation/complaint of non-compliance with Commission policy and practice or legislation by an employee of the Commission is identified and is made known to the employee's manager, they should begin an investigation into the facts of the matter. From that point on they become the investigating manager. It is important that the investigating manager approaches this investigation from an entirely objective position.

When to involve the Police

- 5.2 In the event that an employee is alleged to have committed a criminal offence in the workplace, their manager should seek advice from the Manager Corporate Services.

Preliminary meeting

- 5.3 To begin any employment investigation, it will be necessary for the investigating manager to have a preliminary meeting with the employee to:
 - outline the matter causing concern (allegations/complaint etc) and provide any written information that supports the allegation or complaint,
 - inform the employee that a thorough investigation into the facts will take place,
 - outline the investigation process and timelines to be followed,
 - advise the seriousness of the matter (i.e., that the allegation, if proven, could involve disciplinary action which may result in a warning or dismissal),
 - advise that they may have representation (union, legal or other) prior to making any statement or comment on the issue(s) and that they may have a representative at all meetings,

- request the names of any people the employee believes should be interviewed in connection with the allegation/complaint against them.

5.4 The purpose of this preliminary meeting is not to hear the employee's response but to inform them of the investigation process to be undertaken and their rights in respect of that process.

5.5 Note: Managers are to notify and consult with the Manager Corporate Services in all cases where serious misconduct or a criminal offence may have occurred.

Substantive Interview(s)

5.6 At these interviews, the investigating manager must seek the employee's response to the allegations and any further information the investigating manager has gathered during the course of their investigation and which they may rely on in reaching their conclusions.

5.7 An investigating manager may gather information from files or other documentation and further, may interview staff members and other persons who may have information relevant to the complaint(s) or allegation(s).

5.8 All information gathered must be given to the employee for their comment or response.

5.9 The investigating manager must carefully consider both the information gathered and the explanation or response by the employee and give appropriate weight to the facts before reaching a conclusion.

Findings and preliminary view on penalty

5.10 Once the investigating manager has had time to consider all the facts and the employee's explanations and comments, they should present the findings to the employee along with recommendations as to how to proceed and conclude the matter in a meeting. This meeting is to explain to the employee what decision has been reached by the investigating manager with regard to the substance of the allegation(s) or complaint(s) and how the investigating manager has come to that decision. The employee will be offered an opportunity to respond to the findings within an agreed timeframe, usually 24 hours.

5.11 The employees' response to these findings would then also be carefully considered and included in the final report of findings which would be presented to the delegated decision maker for action and conclusion.

5.12 The delegated decision-maker would assess the information provided, decide whether or not they needed to gather further information and then accept or otherwise the findings and recommendations. Where these are not accepted, it may be that the investigating manager has to do further work on the investigation because the facts do not support the findings. In this case the report would be returned to them for further action and the employee would be advised of the reasons for such a decision.

5.13 Where the findings and recommendations are accepted and they point towards disciplinary action, the delegated decision-maker will organise a meeting with the employee and their representative. This meeting is to confirm the acceptance of the findings by the delegated decision-maker and to discuss the proposed penalty. It should be stressed that while the allegation or complaint against the employee has been proven, the penalty has not yet been finalised. The delegated decision-maker will be open to receive submissions from the employee on the appropriateness of the penalty.

Submission on penalty

5.14 The submission on penalty may be in writing. A period of 24 hours for the employee to make a submission on penalty is reasonable.

5.15 If and when a submission is made, the delegated decision-maker needs to consider that submission and decide if it alters their preliminary view on penalty.

Final decision on disciplinary action

5.16 A final meeting must then be held with the employee based on the submissions received. The delegated decision-maker must explain whether their preliminary view on penalty has been altered on the basis of the submission or not and the reasons for this.

5.17 Finally, the penalty should be actioned at this meeting.

6. Separation of investigator and decision maker

6.1 It is Commission policy that wherever practicable, the investigator and delegated decision-maker are separate people. It is preferable that they are the manager and the manager's manager but a manager can appoint a separate investigator where appropriate and where they have the delegated authority to action the possible outcome of the investigation.

7. The investigation report

7.1 The investigation manager needs to provide a clear written account of the investigation to assist the delegated decision-maker's conclusions. The investigation report should be structured along the following lines:

7.2 **Who** - name who the report is being written to i.e., the delegated decision- maker

7.3 **Purpose** - detail the allegation or complaint being investigated

7.4 **Process** - set out how the investigation was conducted and the timeframe

8. Suspension

8.1 Suspension is considered to be a punitive action in that it takes an employee out of the workforce before misconduct is finally proven or accepted and therefore may cause them some disadvantage regardless of outcome.

8.2 Given this the Commission will not generally approve the suspension of an employee unless there are clearly no other options for managing an ongoing situation.

8.3 Managers considering suspension of an employee should consult with the Manager Corporate Services and the delegation holder.

9. Warnings

9.1 Where the employee's breach of policy or practice is not one of serious misconduct warranting dismissal, it may be appropriate to issue a warning. There are two types of warnings that may be issued to employees, i.e., verbal or written.

Verbal warnings

- 9.2 A verbal warning may be the first formal step in a disciplinary process. It is normally given in relation to lower-level misconduct issues, rather than matters of serious misconduct. Where a delegated decision maker issues a verbal warning, they must ensure that the employee understands that they are receiving a warning. The decision maker must specify what behaviour is required of the employee to improve their conduct and provide a timeframe for improvement. Because a verbal warning is usually issued in relation to a low-level matter, the duration of warning would normally be relatively short. The warning must be recorded on the employee's personal file.

Written warnings

- 9.3 The first warning is an early warning mechanism, the aim of which is to encourage the employee to return to an acceptable standard of behaviour or performance. It must give details of the matter that was discussed, any explanations given, the action the employee must take in order to improve and avoid any further disciplinary action and the duration of the warning. The warning must make it clear to the employee that any further breach could result in further disciplinary action, including dismissal.

Final written warning

- 9.4 A final warning is usually issued when the employee fails to improve their conduct or offends again after receiving a first warning.
- 9.5 However, it may also be given in the first instance, for a more serious case of misconduct, which does not warrant summary dismissal.
- 9.6 A final written warning should include:
- the nature of the allegation/matter that was discussed
 - all meetings held
 - the explanations provided
 - the reasons for not accepting the explanation
 - the reason(s) for the warning as the outcome.
- 9.7 Note: All warnings must have a timeframe in which the behaviour is to improve. At the end of the stipulated timeframe the employee's manager is bound to review the employee's progress and behaviour. For a warning to expire, the employee should normally have met all of the conditions of the warning and the employee's manager must have confidence that the behaviour has been rectified. If the employee's manager does not have confidence that there has been a real change in behaviour the delegated decision maker they may wish to consider extending the warning or issuing a more serious warning.

- 9.8 The record of any warning remains on the employees file, including after it has expired.

10. Dismissal

- 10.1 Where the employee commits an act of serious misconduct or continues to breach law and/or policy after warnings(s) have been given, or where the required improvement in the standard of performance has not been forthcoming after reasonable attention, dismissal is a likely outcome.
- 10.2 The decision to dismiss an employee can only be taken by the delegated decision- maker.

10.3 Prior to the decision to dismiss being made, the employee concerned must have been given the opportunity to have their case presented to the delegated decision-maker. The decision-maker must evaluate all material relating to the case before making a final decision.

10.4 Letter of dismissal should include:

- the nature of the allegation/matter that was discussed
- all meetings held
- the explanations provided
- the reasons for not accepting the explanation
- the reason(s) for dismissal as the outcome
- the date on which the employment will terminate, and
- whether the dismissal is with or without notice.

11. Poor performance

11.1 Where an employee has failed to improve their standards of work performance after a period of performance counselling and assistance, a disciplinary process may be embarked on.

11.2 Such a process will involve the warning system as outlined in this policy. The warning must clearly state the standard to which the employee must improve, the time in which they have to make the required improvement and how the improvement will be measured. They should also detail what assistance will be given to the employee to facilitate that improvement.

12. Employee assistance

12.1 The employee assistance programme exists to provide assistance for Commission Personnel who have issues to deal with which are negatively affecting their work. In some cases the Commission will assist towards meeting referral treatment expenses.

12.2 The programme is confidential.

12.3 Vitae (formally SEED) provide the Commissions Employee Assistance Programme. Pamphlets can be found in the lunchroom.

13. Applicable legislation

- Employment Relations Act 2000
- Human Rights Act 1992
- Protected Disclosures Act 2000
- Privacy Act 1993
- Crown Entities Act 2004.

14. Policy status and approval

Version	V0.1 Draft
Approval authority	Board
Approval date	
Policy owner	DCE, Enterprise Services
Revision cycle	3 yearly
Next review	TBC

Reporting Wrongdoing and Protected Disclosures Policy

Type: Policy

Policy owner: DCE Enterprise Services

Date: July 2022

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1. Statement/Intent

The Commission will ensure that consistent policies and practices exist and are applied for managing disclosures that are made about wrongdoing in or by the Commission.

The Commission will ensure that employees who make disclosures about Serious Wrongdoing in or by the Commission are protected in accordance with the provisions of the Protected Disclosures (Protection of Whistleblowers) Act 2022 (the Act).

Some breaches of the Commission's Corporate Policies, Code of Conduct, or Governance Manual will come within the criteria of "Serious Wrongdoing" under the Protected Disclosures Act but others will not. The Commission encourages employees to report all suspected wrongdoing and, to the extent practicable, will apply this policy to disclosures of wrongdoing that do not meet the Serious Wrongdoing criteria.

2. Background

The policy provides guidance about the principles and processes for making protected disclosures at the Commission.

3. Content

3.1 Scope of the Policy

All employees and non-employees are entitled to make protected disclosures to the Commission about the Commission. They may also make disclosures to the Commission (as an Appropriate Authority) about another organisations.

3.2 Definitions

Appropriate Authority

An appropriate authority, without limiting the meaning of the term,

- includes the head of any public sector organisation; and
- includes any officer of Parliament; and
- includes (as examples) the persons or bodies listed in the second column of Schedule 2 of the Act; and
- includes the membership body of a particular profession, trade, or calling with the power to discipline its members; but
- does not include
 - a Minister; or
 - a member of Parliament.

Protected disclosure

A disclosure of information is a protected disclosure if the discloser

- believes on reasonable grounds that there is, or has been, serious wrongdoing in or by the discloser's organisation; and
- discloses information about that in accordance with this Act; and
- does not disclose it in bad faith.

Serious Wrongdoing

In the Act, serious wrongdoing includes any act, omission, or course of conduct in (or by) any organisation that is 1 or more of the following:

- an offence:
- a serious risk to
 - public health; or
 - public safety; or
 - the health or safety of any individual; or
 - the environment
- a serious risk to the maintenance of law, including
 - the prevention, investigation, and detection of offences; or
 - the right to a fair trial:
- an unlawful, a corrupt, or an irregular use of public funds or public resources:
- oppressive, unlawfully discriminatory, or grossly negligent, or that is gross mismanagement, and is done (or is an omission) by
 - an employee (if the organisation is a public sector organisation) or
 - a person performing (or purporting to perform) a function or duty or exercising (or purporting to exercise) a power on behalf of a public sector organisation or the government.

3.3 Who can make a protected disclosure?

Any employee of the Commission may make a protected disclosure. For the purpose of the Protected Disclosures Act, an employee includes a former employee, a home-worker, a person seconded to the Commission, a contractor to the Commission, a person involved in the management of the Commission including a member of the Commission Board and an unpaid volunteer.

A person who makes a protected disclosure is called a discloser.

3.4 Protections afforded to a discloser

A discloser is entitled to protection under this Act for a protected disclosure to their organisation or to an appropriate authority. These protections are not available for disclosure of wrongdoing that does not meet the Serious Wrongdoing criteria.

A discloser is entitled to protection for a protected *disclosure made to their organisation* if it is made

- in accordance with any internal procedures; or

- to the head or a deputy head of the organisation.

A discloser is entitled to protection for a protected *disclosure made to an appropriate authority* at any time. (This applies whether or not the discloser has also made the disclosure to their organisation or to another appropriate authority.)

A discloser is entitled to protection even if

- they are mistaken and there is no serious wrongdoing; or
- they do not refer to the name of this Act when making the disclosure; or
- they technically fail to comply with some requirements as a discloser (as long as they have substantially complied); or
- they also make the disclosure to another person, as long as they do so
 - on a confidential basis; and
 - for the purposes of seeking advice about whether or how to make a protected disclosure in accordance with this Act.

A discloser is entitled to the following protections under the Act for a protected disclosure made (in accordance with the Act) to their organisation or to an appropriate authority.

- the receiver must use their best endeavours to keep the discloser's identity confidential (the limits to confidentiality are in section 17(2) of the Act, the Commission will consult with the employee before the discloser's identity is revealed); and
- there can be no retaliation against the discloser's employment (immunity from civil, criminal, and disciplinary proceedings); and
- the discloser (and their relatives and associates) cannot be treated less favourably; and
- the discloser has an immunity for the disclosure in court or disciplinary proceedings (see section 23); and
- the organisation cannot contract out of this Act or have internal procedures that are inconsistent with this Act.

A public sector organisation must provide practical assistance and advice to the discloser in relation to serious wrongdoing in or by that organization. Employees are entitled to representation or support in making the disclosure and the Commission will engage with the employee if any risks need to be assessed. The discloser can seek advice from the Ombudsmen at any time with regard to the duty of confidentiality. These protections extend to other employees who disclose supporting or additional information.

3.4.1 Exemptions from protection

- Any employee who makes a disclosure (believing the information to be true or likely to be true) is immune from criminal or civil proceedings by reason of making the disclosure. However, an employee is not immune from civil or criminal prosecution by reason of involvement in the wrongdoing itself.
- An employee is not protected under this Act if they disclose legally privileged material.

Any employee who makes a disclosure knowing that it is false or makes a disclosure in bad faith will not be protected by this Act.

4. Responsibilities and procedures

A discloser may raise their concern following their organisation's internal procedures (as set out below).

A discloser may also choose to raise their concern directly with an appropriate authority.

4.1 Reporting Procedures

In the first instance the disclosure must be reported to the employee's manager unless:

- they reasonably believe that their manager is involved in the Serious Wrongdoing; or
- the manager, for reasons of relationship or association with someone who is believed to be involved in the Serious Wrongdoing, cannot be approached.

If the employee is unable to approach their manager, the employee must report the wrongdoing to the Chief Electoral Officer unless:

- they reasonably believe the Chief Electoral Officer is involved in the Serious Wrongdoing; or
- the Chief Electoral Officer, for reasons of a relationship or association with someone who is believed to be involved in the Serious Wrongdoing, cannot be approached.

If the employee is unable to approach the Chief Electoral Officer, the employee must report the wrongdoing to another member of the Commission Board unless:

- they reasonably believe all members of the Board are involved in the Serious Wrongdoing; or
- all Board members, for reasons of a relationship or association with someone who is believed to be involved in the Serious Wrongdoing, cannot be approached.

If the employee reasonably believes they cannot approach any of the level of managers or Board members because they may be involved or associated with the Serious Wrongdoing, by reason of urgency/exceptional circumstances, or if there has been no action by Commission within 20 working days of making a disclosure, the employee may approach an appropriate authority.

4.2 The Commission's obligations

Protected disclosures may be made about wrongdoing concerning the Commission or when someone makes a protected disclosure to the Commission (as an appropriate authority) about another organization.

Procedure if an employee makes a protected disclosure concerning the Commission

A protected disclosure may be verbal provided it is confirmed in writing using the reporting form at the end of this section.

Once a disclosure has been submitted on the form required by this policy, the manager or Board member receiving the disclosure (the "Receiving Manager") will formally acknowledge receipt within 2 working days.

Within 10 working days of receiving the disclosure, the Receiving Manager will assess, in consultation with the Chief Electoral Officer and/or other members of the Board where appropriate, whether they believe the disclosure meets the Serious Wrongdoing criteria and that the disclosure has

substance. The Receiving Manager, or any other person appointed by the Commission, will carry out preliminary investigation to determine whether:

- the disclosure meets the criteria of ‘serious wrongdoing’. If the disclosure does not meet the Serious Wrongdoing criteria, the Commission will apply this policy to the disclosure to the extent it is practicable to do so
- the disclosure has substance
- an internal investigation will proceed, such as systems and processes investigation or disciplinary investigation
- the alleged wrongdoing will be referred to another agency.

The Receiving Manager will then, , inform the employee of the decision to proceed or not proceed with an investigation, the specific reasons for which will be detailed in the decision.

Where an investigation is initiated and whenever possible, a preliminary finding will be made within 20 working days of receipt of the disclosure. If the matter cannot be assessed within the 20 days, the Commission will inform the discloser, give an update and provide reasons.

The Commission may refer the protected disclosure to another appropriate authority after consultation with the discloser.

Procedure if someone makes a protected disclosure about another organisation to the Commission (as an Appropriate Authority)

The commission will manage and investigate the disclosure in the same manner as a disclosure about the Commission and may decide to refer the protected disclosure to the relevant organization or to another appropriate authority after consultation with the discloser.

4.3 Investigations

An investigation may include:

- preliminary investigation into criteria, substance and individuals involved
- audit into the possible failure of systems and processes
- disciplinary investigation into an individual(s)

4.5 Confidentiality

The Commission will use its best endeavours to keep the identity of the employee who made the disclosure confidential. However, the Commission may be required, in accordance with the principles of natural justice, to provide to the alleged wrongdoer any information relating to them. This may include the identity of the employee who alleged the wrongdoing and/or the information on the reporting form.

The Commission may also be required to disclose identifying information if that is essential to the effective investigation of the alleged wrongdoing or to prevent serious risk to the public health, the public safety, or the environment.

Where the Commission is required to disclose identifying information the Commission will inform the employee.

4.6 Victimisation

Where an employee feels they have been victimised or retaliated against for making a disclosure under the Protected Disclosures Act they may take a personal grievance under the Employment Relations Act 2000 or make a complaint under the Human Rights Act 1993. These specific rights are limited to disclosure of Serious Wrongdoing

The Commission will treat any allegation of victimisation or retaliation seriously. Where the Commission considers that victimisation or retaliation has occurred disciplinary action, including dismissal, may result.

4.7 If the employee is dissatisfied with the Commission's decisions about the protected disclosure

Where the Commission decides not to take action in respect of a disclosure, or decides not to investigate the disclosure, or there has been no progress in the investigation within a reasonable time, and the employee continues to believe on reasonable grounds that the matter is true, the employee may make the disclosure to a Minister of the Crown or the Ombudsman.

Further Information

The Manager Enterprise Services or the Manager Legal and Policy can provide further information about protected disclosures and this policy.

The Ombudsman website also contains detailed information about protected disclosures and how the Ombudsman may assist you: <http://www.ombudsman.parliament.nz/what-we-do/protecting-your-rights/protected-disclosures-whistle-blowing>

5. Related Electoral Commission Policies & Legislation

Related Policies

- Code of Conduct
- Managing Employee Conduct and Performance

Legislation

- Employment Relations Act 2000
- Human Rights Act 1993
- Protected Disclosures Act 2000

6. Treaty of Waitangi Acknowledgment

This policy (Name of the Policy) commits to giving effect to Te Tiriti o Waitangi.

By operating in the spirit of Te Tiriti o Waitangi and acting in good faith, our intention is to foster mutual regard and understanding as we work alongside Māori, thereby ensuring Māori have opportunities to participate fully in all levels and aspects of our organisation.

- Remember to incorporate the Treaty of Waitangi principles when developing or reviewing the policy. For example, operating in good faith, foster mutual regard and understanding as we work alongside Māori.
- Reflect the aspirational and interest of Māori. For example Māori have opportunities to participate fully in all levels and aspects of the policy.
- Reflect the Treaty of Waitangi practices. For example, Having a bilingual title, translation of words in the body of the policy from English to Te Reo Māori need to be accurate and used within best practice.

Document control

Document information

This document contains the Electoral Commission's policy relating to (main subject of the policy).

It includes the accompanying processes and procedures to be followed to (main audience and implementor of the policy) during (situation or event) as a result of (after-effect) in a separate document.

Document history

Version	Date	Author	Description of change
Format is V0.2	July 2022	Leon Botha	Updates to reflect changes in the Act

Please note: Do not make unauthorised electronic copies or new versions (drafts) of this corporate policy. Contact People and Culture to have new drafts initiated and recorded in the appropriate manner.

Status

Policy status	SMT Endorsement <input type="checkbox"/>	For consultation <input type="checkbox"/>	Further revision <input type="checkbox"/>
Approval date	Not applicable		
Policy owner	Senior Management Team (SMT) Member/Sponsors		
Revision cycle	Every three years		
Next review	July 2025		

Contact

The following business units were consulted in the development of this brief

Contact person	Not applicable, general Commission-wide consultation will happen
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Document sign-off

Delegated authority

Title

Signature

Date