



# **Review of the Ministry of Justice and Department of Corrections**

handling of complaints regarding  
inappropriate workplace behaviour

Debbie Power

19 December 2018

## EXECUTIVE SUMMARY

1. In 2016 concerns were raised about inappropriate workplace behaviour in the context of a joint project between New Zealand Police (Police), the Ministry of Justice (Justice) and the Department of Corrections (Corrections). A subsequent inquiry conducted by Mary Scholtens QC made detailed factual findings in relation to these events but did not assess how these concerns were received and handled by Justice and Corrections.
2. As required by the terms of reference, we considered the way in which Justice and Corrections (the Departments) received and handled the concerns. We did not look at the merits of the allegations, that is a matter for the IPCA. We have compared the factual narrative in the Scholtens report to the *Acting in the Spirit of Service - Speaking Up* model standards, which came into effect in July 2017. We have also spoken to two of the women who raised concerns in 2016 and received additional information from Justice and Corrections ('the Departments').
3. We have concluded that the conduct of the Departments would not have met two of the three elements of the model standards, if they had applied at the relevant time. The two elements that would not have been met relate to making sure processes are robust and keeping people safe.
4. Both Departments have provided an assurance that they have implemented the model standards. Justice has introduced new bullying and harassment policies and training. Similarly, Corrections is currently consulting on proposed new policies. Despite the developments since 2016 there are some matters that still need to be addressed, so we have made four recommendations. These relate to the specific challenges represented by cross-agency projects, the need for organisations to evaluate whether their changes are having the desired effect, and the importance of developing a plan for support as required by the model standards.

## INTRODUCTION

### Background

#### The joint project

5. In late 2015 the Justice Sector Māori Outcomes project began (the joint project). This involved the establishment of a working group, which initially consisted of:
  - Three members from the Ministry of Justice (Justice);
  - One member from the Department of Corrections (Corrections); and
  - One member from the New Zealand Police (Police).

A senior leader from each of these agencies also acted as project sponsors.

6. The project sponsor for Police was the current statutory Deputy Commissioner of Police, Wallace Haumaha. At the time of the project, he was a Superintendent and deputy chief executive of the Māori, Pacific and Ethnic Services Division. Throughout this report, however, we refer to him as Deputy Commissioner Haumaha.
7. Deputy Commissioner Haumaha arranged for the working group to be physically located at Police National Headquarters alongside Police employees working in the Māori, Pacific and Ethnic Services Division. After approximately seven months, following an incident on 2 June 2016, the non-Police members of the working group relocated to the Ministry of Justice. Work on the joint project then continued from the two separate locations until mid-2017.

#### The Government Inquiry into the Appointment of a Deputy Commissioner

8. In May 2018, a year after the joint project ended, Deputy Commissioner Haumaha was appointed to his current position. This prompted Survivors Advocate Louise Nicholas to contact Deputy Commissioner Mike Clement to express her significant disappointment and frustration at the appointment. This led to a meeting between Ms Nicholas, Deputy Commissioner Haumaha, the Commissioner of Police Mike Bush, Deputy Commissioner Clement and others. At that meeting, Ms Nicholas stated that she did not trust Mr Haumaha because of statements he made in the mid-2000s during Operation Austin, which was an investigation into allegations of sexual assault by police officers in the 1980s. Ms Nicholas also said she knew that Deputy Commissioner Haumaha disrespected and bullied women because of the complaints she had received from the women involved in the joint project. Ms Nicholas had previously told Deputy Commissioner Clement about these complaints in August 2016.



9. Prior to Ms Nicholas' views becoming public, the Government established an inquiry to consider the process for the selection of the Deputy Commissioner. The inquirer, Mary Scholtens QC, was asked to establish whether all relevant information was obtained by the State Services Commission and provided to Ministers to enable them to make sound decisions.
10. Prior to publishing her report, Ms Scholtens clarified in a minute that she would consider the allegations of bullying as part of the inquiry. Given that the allegations were said to have been the subject of a complaint in 2016, Ms Scholtens' task was to determine whether information about the complaint was potentially available during the appointment process.
11. Specifically, the minute stated that:
  - Ms Scholtens and the Police Conduct Team had recently received two written complaints about the allegations. The Police Conduct Team had referred the complaints to the Independent Police Conduct Authority (IPCA) to investigate; and
  - Given the IPCA investigation, the inquiry would not investigate the merits or otherwise of the complaints.
12. Ms Scholtens published her report on 2 November 2018. Chapters 7 and 8 address the allegations of bullying. It contains a publicly available and detailed factual narrative of the relevant events in 2016, which is based on interviews with 28 witnesses and a review of a significant number of documents. Ms Scholtens concluded that no official complaint was made to Police about Deputy Commissioner Haumaha at the time and that information about the allegations was not known, nor should have been known, by those involved in the appointment process in 2018.

#### The need for this review

13. Following publication of the Scholtens report, the State Services Commissioner formed a view that questions remained outstanding concerning how Justice and Corrections discharged their responsibilities in receiving and handling the allegations of bullying. Ms Scholtens had no jurisdiction to review the conduct of the Departments. The IPCA investigation also has no jurisdiction to address these matters.
14. The State Services Commissioner has a responsibility to provide assurance that where allegations of wrongdoing arise within the Public Service they will be handled proportionately, appropriately and expeditiously. For that reason, there was a need to undertake this review.

#### **The scope of this review**

15. The terms of reference require us to consider the Departments' receipt and handling of the allegations of bullying in 2016, as identified in the factual

narrative in the Scholtens report. We are to compare that conduct to the State Services Commissioner's model standards *Acting in the Spirit of Service – Speaking Up 2017* (the model standards).

16. As stated in the terms of reference, the review did not consider the merits of any complaint of inappropriate workplace behaviour, concerning the joint project. That is a matter for the IPCA. Whether a complaint has merit or not, the model standards require organisations to take certain steps in receiving and handling it. That is what this review looked at. By necessity this report contains descriptions of Deputy Commissioner Haumaha's alleged behaviour. Those descriptions are drawn directly from the Scholtens report and should not be read as an assessment on the merits of any allegations in this case.
17. In addition, our review will not examine how Police responded to the allegations in 2016. The State Services Commissioner's powers to investigate do not extend to operational decisions made by Police. In any event, the Scholtens report found that (beyond Deputy Commissioner Haumaha) senior leadership within Police was not made aware of the allegations until August 2016. When that occurred Police approached the Departments and was advised, in effect, that the matter had been resolved. In that context, it is the conduct of the Departments that is of relevance to the State Services Commissioner.

#### **The model standards**

18. The model standards outline the State Services Commissioner's minimum expectations for public sector organisations to support staff to speak up in relation to wrongdoing in the workplace. The standards contain three key elements:
  - **Getting the foundations right from the start:** This requires organisational commitment to leadership, raising awareness, and supporting staff and managers through regular communication and training.
  - **Making sure processes are robust:** This requires taking concerns seriously when they are raised by ensuring systems are in place for monitoring, reporting, investigation, and effectively communicating with those involved in a report or disclosure.
  - **Keeping people safe:** This requires ensuring that staff can feel safe in making reports and trust that organisations will act upon them. It also requires ensuring that organisations provide tailored and dedicated support and protections to staff to keep staff safe from reprisal.
19. The model standards came into effect in July 2017, over a year after the women raised concerns about Deputy Commissioner Haumaha's behaviour on the joint project. Nevertheless, valuable lessons can be learned by examining whether the Departments' conduct in 2016 would have met the minimum standards that apply today.



## **Methodology**

20. Our starting point in conducting this review was to compare the factual narrative in the Scholtens report to the model standards. Given the two-year time difference between the Scholtens inquiry and the events in 2016, this narrative contains the expected gaps and uncertainties. Nevertheless, our preliminary assessment revealed several potential deficiencies in how both Departments handled the complaints.
21. We then contacted the chief executives of the Departments and asked them to put us in touch with the women identified as making allegations in the Scholtens report. This resulted in two of the women agreeing to talk to us. These conversations covered whether our preliminary assessment accurately reflected their experiences in 2016.
22. When we contacted the chief executives we also sought additional information about their current policies, practices and any other initiatives underway in relation to bullying and harassment.

## **The timeline of events**

23. The Scholtens report identifies five incidents of alleged inappropriate workplace behaviour by Deputy Commissioner Haumaha. These incidents occurred in the first half of 2016 and culminated in the non-Police members of the working group relocating to Justice on 2 June. Ms Scholtens notes that these incidents occurred in the context of a very difficult and stressful project. The working group members and project sponsors were all heavily invested in producing a good result. But the joint project was established without clear terms of reference and the feedback from Ministers on the initial approach of the working group, was negative.
24. Incidents 1, 2 and 3 are not discussed in any detail in the Scholtens report. Incident 4 is only mentioned briefly. It occurred on 5 May 2016 and is described as 'the stand-up argument'. According to the Scholtens report this incident appears to have involved Deputy Commissioner Haumaha allegedly yelling at and belittling female staff, including the working group member from Corrections, in front of others. The date is unclear, but the Corrections manager became aware of this incident at some point and briefly discussed it with the deputy chief executive of Corrections.
25. Incident 5 was a project group meeting on 2 June. That meeting, and its immediate after-math, are discussed at length in the Scholtens report. Ms Scholtens summarises that the three female members of the working group:  
  
... felt bullied and belittled by DC Haumaha who they say was angry, advising initiatives they did not think their organisations had signed up to, and sought their commitment to the project/him personally by going around the room.

26. Shortly after the meeting the women spoke to managers at Justice about their concerns. In this report we refer to this as 'the allegation of bullying'. It is unclear whether the Corrections manager was told about the allegation of bullying at this time. The relevant witnesses did not agree on this point and there is no factual finding in the Scholtens report.

## GETTING THE FOUNDATIONS RIGHT FROM THE START

The model standards state that the following channels should be available for receiving complaints: informal; through the line (to a manager or supervisor); directly to the Chief Executive; and protected disclosure. There should be a designated person that people can talk to about any concerns of wrongdoing. Reported concerns must also be assessed and acted upon in a timely way.

### Would the standard have been met?

27. When we looked at the facts in the Scholtens report, it was evident that concerns were raised with immediate managers in both Departments on at least one occasion each. For Corrections, this was the 'stand-up argument'. For Justice, this was the allegation of bullying on 2 June. This allegation was also made directly to the Acting Chief Executive of Justice.
28. In relation to the 'stand-up argument' we were told by both Corrections and the relevant member of the working group, that the manager at Corrections spoke to Deputy Commissioner Haumaha about the incident at around the time it occurred. This shows that some action was taken in a timely way. However, since this incident is not addressed in any detail in the Scholtens report, we have not made any further specific finding as to how Corrections assessed the concern and responded.
29. In relation to the allegation of bullying on 2 June 2016, our preliminary conclusion was that it was assessed and acted on straight away by managers at Justice. The managers spoke to at least six people who had been at the meeting and arranged for the concerned members of the working group to work from Justice from that day onwards. The Justice managers also checked that they could speak on behalf of the working group member from Corrections. The manager at Corrections, however, did not have an active role in resolving the matter. He was on leave at the relevant time and only became aware that some of the working group members had relocated to Justice, when he returned. This illustrates the importance of having multiple channels available to raise concerns.
30. The women we spoke to largely agreed with our preliminary thinking but stressed that there were lost opportunities to address their concerns earlier in 2016. As noted in the Scholtens report, all the project sponsors were aware of the rising tensions in the working group. The report observes that it is something Deputy Commissioner Haumaha specifically raised with his counterparts at Corrections. The difficulty appears to have been that – while managers were aware of some incidents and tension – the women did not feel like they appreciated the impact this was having on them. Nor did the women get the impression that the managers wanted to identify and address the underlying issues. Both women told us that they felt like there were gender issues at play.



31. In relation to getting the foundations right, the model standards emphasise that organisational culture, tone from the top and a level of awareness are critical in determining whether people will raise concerns about wrongdoing. It is important that staff feel able to raise such concerns, even when they are uncertain or lack evidence. To facilitate a speaking up culture, the standards state that managers need to be given good training on how to recognise red flags. This includes recognising the significance of non-verbal cues and the surrounding context. Individual incidents may not seem noteworthy in isolation but can be indicative of a wider issue.
32. The women also advised us that it may have made a difference if they had been able to talk to someone other than their line managers about their concerns. At the time of the allegation of bullying the working group member from Corrections was physically separated from her manager, both because she was working from a different location and because he was away on leave at the critical time. In addition, both women commented that their managers had competing priorities as they were heavily invested in the substantive work of the joint project. As a result, the women felt like emphasis was placed on delivering the work of the project, as opposed to taking any steps to respond to the allegations of inappropriate workplace behaviour. As noted in the Scholtens report one of the women texted a friend to this effect at the time.
33. In terms of the alternative channels available for making a complaint, we discussed the option of raising concerns with the chief-executive. While this channel was used by one of the women to contact the chief executive at Justice, it was available largely due to a personal connection. At Corrections this channel would have been available at the relevant time through the email address 'Ask Ray' (now 'Ask Rachel', discussed further below). However, both women commented that elevating the issue to such a senior level was not necessarily what they would have felt most comfortable with. Nor did they particularly want to raise the issue with an external party. The lack of structure around their "secondment" arrangement also left them with some uncertainty as to who it was appropriate to talk to. In addition, one of the women commented that, if there had been more diversity in human resources or the senior leadership team, she might have felt more comfortable in raising her concerns through one of those avenues.
34. To us, it appears that what may not have been readily available (in the sense that the women knew about it and felt comfortable accessing it) was the informal channel. The model standards explain that staff should be able to speak informally and privately to someone they can trust within the organisation. This person may be a designated person or team, with specialised training, who is regularly exposed to these types of issues but who is removed from the individual's day to day work. As stated in the standards, impartiality is one of the highest priorities in considering, and if appropriate investigating, concerns of wrongdoing.

## Developments since 2016

35. Both Departments have provided us with an assurance that they have now implemented the 2017 Speaking Up model standards.
36. At Justice the standards have been embedded in their new policies on bullying and harassment, which replaced the previous policies that had applied 2016. The new policies were issued in September 2018, following extensive consultation with staff. They were accompanied by the launch of an online training module on preventing and responding to harassment, which as at 30 November 2018, had been completed by 2,296 employees. Justice is also in the process of conducting an internal audit of its complaints process to answer the question: "Does the Ministry deal effectively with complaints on a timely basis?". This will inform the review of its policies and procedures in this area which is scheduled to be undertaken by the Senior Leadership Team in February 2019. These initiatives demonstrate an organisational commitment to creating a culture that promotes speaking up.
37. Similarly, Corrections recently launched a Speak Up online training module for new managers and is currently in the process of consulting on its new bullying and harassment policies, which will be presented to its Executive Leadership Team early in the New Year for approval. This will replace the current policies and procedures, which were in place in 2016, and have been in place for several years. Notably, between October 2015 and August 2017, Corrections also had an integrity learning course available, which covered a range of topics including bullying, that was completed by approximately 70% of staff members.
38. Both Justice's *Bullying Policy* and Corrections' proposed *Preventing Bullying, Harassment and/or Discrimination Policy* contain examples of the types of behaviour that are, and are not, associated with bullying. This guidance is helpful in assisting staff in recognising red flags in the workplace. Both policies also identify multiple channels for raising concerns and discuss a range of informal and formal options for resolution. This includes:
  - At Justice, what is called the 'explore' step. This encourages staff to informally discuss potential concerns with their own manager alongside representatives from People & Performance. Employees are also able to seek support from representatives from Health, Safety and Security or the Public Services Association.
  - At Corrections, an 0800 Integrity Support phone line and 'Ask Rachel' an email address that allows and staff member to discuss workplace issues that need to be resolved directly with the chief executive. These are both long-standing initiatives. The proposed policy also states that if it is not appropriate to talk to a line manager, staff can talk to a trusted



person such as a friend, a co-worker, a different manager, a union delegate or a Safety and Wellbeing team member.

## **Conclusion**

39. The model standards did not apply to the Departments in 2016. Nevertheless, the Departments both had multiple channels available for raising concerns about inappropriate workplace behaviour and did take some action in response to the matters that were raised with them in a timely way. Accordingly, we have concluded that their conduct did meet the expectation in model standards, from the point of view of having the relevant structures in place. However, for these women and in the context of a cross-agency project, there was not a clear understanding of how to raise concerns, beyond informing their line managers.
40. Since 2016, the Departments have demonstrated a commitment to improving their organisational culture, by reviewing their bullying and harassment policies and the associated training. Changing organisational culture, however, takes time and requires all staff to be aware of and adopt the change.



## **MAKING SURE PROCESSES ARE ROBUST**

The model standards state that organisations should: communicate clearly and regularly with complainants to ensure they understand next steps and with anyone outside the organisation who needs to be informed; make external contacts available as points of escalation; have clear and documented responsibilities for managers receiving and dealing with complaints, including specifying who will make decisions and how; ensure that resolutions and actions are fair and reasonable; centrally record and monitor all cases of potential wrongdoing; and treat all wrongdoing concerns seriously.

### **Would the standard have been met?**

41. When we reviewed the facts in relation to this standard, our preliminary conclusion was that communication was the major issue.
42. There was regular communication between the managers at Justice and the women who raised concerns in the week immediately following their allegation of bullying on 2 June. But no options were put to the women around making a formal complaint or seeking external advice or support. Then from 8 June onwards the response from Justice seems to have become disjointed. This culminated in a significant miscommunication concerning whether senior leadership within Police, beyond Deputy Commissioner Haumaha, would be informed about the allegation.
43. The communication between the managers at Justice and Corrections also seems to have been poor, or non-existent. We could not identify whether there were any clear and documented procedures in place, that were communicated to the women who raised the concerns. And we also saw no indication as to whether the concerns were centrally recorded and monitored in Justice.
44. However, on the issue of whether the 2 June allegation was taken seriously, our first impression was that it was. While the managers at Justice were not able to secure the desired apology, they escalated the matter to the deputy chief executive at Justice straight away, sought advice from human resources and were immediately willing to facilitate the women's request not to return to Police National Headquarters (PNHQ).
45. The women we spoke to confirmed that there were some really good elements in the way the Justice managers responded. For instance, they arranged for the women's belongings to be collected from PNHQ by other people, so that the women would not need to return to the building. That was thoughtful and appreciated. But these actions were not part of a well-developed plan. Instead, one of the women explained that the plan for responding to their allegation seemed to be developed on the fly. Both women also got the sense that the managers saw the move to Justice as a convenient and fast way to resolve the issue and move on with the work of the project. So, they actioned

it without really considering the next steps. A few days later one of the managers suggested that the women should consider adjusting their language and behaviour to enable the work on the project to effectively continue. While well-meant and followed by an apology, the nature of this comment and the context (in that the women had previously been informed by the manager that Deputy Commissioner Haumaha did not consider that he had anything to apologise for) left the women with the impression that their allegation may not have been taken that seriously after all.

### **Developments since 2016**

46. Justice's internal audit of how it handles complaints is still underway. The early indications are positive, particularly around the accessibility of policies, logging and monitoring complaints and dealing with complaints in a timely way. However, the internal audit has reached a preliminary view that more emphasis should be placed on the regularity with which complainants and parties are updated during any investigation process. This reinforces our observations in this report, about the importance of good communication and the need for both Departments to work on improving in this area.
47. In terms of process, we were encouraged to see that Justice has produced a one-page *Bullying Process Guide* to sit alongside its *Bullying Policy*. This is a simple and user-friendly guide to support all parties in developing an appropriate and agreed process for responding to a bullying allegation.

### **Conclusion**

48. In relation to making sure processes are robust, we have concluded that the conduct of the Departments would not have met the expectation in the model standards if they had applied at the relevant time. This is because:
  - there was poor communication, both with the women who made the allegation and between the two Departments and Police.
  - The requirement in the standards to have clear and documented responsibilities for those receiving and dealing with allegation was not met.
49. The Departments are both in the process of developing and reviewing new bullying and harassment policies. These implement the model standards. As part of that process, the Departments should include an evaluation process to enable them to confirm that their changes are having a positive effect. We note that Justice is in the process of conducting an internal audit to determine how effectively it responds to complaints.



## KEEPING PEOPLE SAFE

The model standards state that there should be active risk management strategies in place as soon as a complaint is made and a range of standard and tailored support available. This should include a person designated to communicate with the complainant. The designated person should monitor the complainants experience throughout, including debriefing them following resolution. There should be processes that support making acknowledgements, sharing lessons learned and making apologies where appropriate.

### Would the standard have been met?

50. We were concerned when we first reviewed the Scholtens report that the issue of poor communication which we identified, extended to the important step of debriefing the women who made the allegation.
51. As we have explained, when the allegation was made on 2 June, the three women stated that they did not feel safe returning to PNHQ. In response the Justice managers facilitated the shift in workplace and arranged for other working group members to ensure that the continued work of the joint project was well co-ordinated. But no other risk management strategies were put in place. As such it was not clear to us whether there was an active discussion with the women about the ongoing potential impact of the allegation on their wellbeing.
52. It is, however, apparent from the factual narrative in the Scholtens report that one of the managers at Justice offered support to the two Justice members of the working group and took on the role of designated communicator with them. This included attending what was, in effect, a de-brief with the women, on 15 June. But there were significant miscommunications at this meeting and, it appeared to us, that the women had been left without any sense of resolution.
53. We also formed the preliminary view, based on the Scholtens report, that there was no tailored support, designated communicator or de-brief for the member of the working group from Corrections. When we asked her about our preliminary view in our recent meeting, she stated that she did receive some support from Justice and was invited to and attended all the key meetings with management, including the one on 15 June. The other woman we spoke to similarly observed that the Justice managers did their best to help all members of the working group.
54. Both women agreed with our assessment though, that the 15 June meeting did not leave them with an understanding of what the outcome of their complaint was and why. In contrast, as noted in the Scholtens report, the Justice deputy chief executive saw this meeting as bringing matters to a close.



55. There is no contemporaneous record of this meeting, beyond a note made by one of the women describing it as “not good”. According to the Scholtens report the Justice deputy chief executive’s recollection was that he acknowledged the issues and observed that Deputy Commissioner Haumaha worked for Police, not Justice, so a different process was required. It was a matter for Police, not Justice.
56. The Scholtens report explains that the women understood from this that nothing more could be done because Police was treating their allegation as an employment matter. As such, they probably would not receive any further updates. There are sound privacy and employment law reasons why this may have been the case, if Police was looking into this as an employment matter. Those reasons may not have been adequately explained to the women. But for us the more concerning issue is that, despite what was said at the meeting, no-one in the senior leadership within Police (beyond Deputy Commissioner Haumaha) was told about the women’s allegation until early August 2016. At that point Police was effectively advised that the matter had been resolved.
57. The managers at Justice may have assumed that the reason for some of the working group members relocating to Justice, had been explained to senior leaders within Police. According to the Scholtens report however, that was not the case.
58. The women we spoke to told us that, ultimately, they were left hanging in relation to their allegation. There was nothing to close it off and the 15 June meeting simply didn’t make sense at the time.

### **Developments since 2016**

59. When we reviewed the additional information provided to us by the Departments, it was clear that both have put considerable effort into improving the front-end of how complaints of inappropriate workplace behaviour are received and handled. Less work, however, has been put into improving the back-end of the process. This includes the steps of identifying and mitigating ongoing risks and debriefing those who raise concerns.

### **Conclusion**

60. In relation to keeping people safe, we have concluded that the conduct of the Departments would not have met the expectation in the model standards if they had applied at the relevant time.
61. Specifically, there would have been non-compliance with the section of the model standards entitled Keeping People Safe – Plan for Support. This section requires active risk assessment strategies to be in place, constant communication with the person who raised a concern, monitoring of that person’s experience throughout and debriefing the person following resolution to ensure that they understand what the outcomes were and why.

## RECOMMENDATIONS

62. We recommend that the State Services Commission update the model standards to ensure that the specific challenges represented by cross-agency projects are addressed.
63. We also recommend that you should direct:
- the chief executive of Justice to act on the findings of its internal audit;
  - the chief executive of Corrections to confirm that its programme to introduce new bullying and harassment policies includes an appropriate evaluation process; and
  - the chief executives of both Departments to review their new and proposed policies, procedures and training in this area to ensure that there is compliance with the section of the model standards entitled Keeping People Safe – Plan for Support.



Debbie Power

19 December 2018