



15 May 2024

9(2)(a) privacy

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Official Information Request
Our Ref: OIA 2024-0096

I refer to your official information request received on 19 April 2024 where you have asked:

- “a copy of PSC's alternative dispute resolution policies, guides and resources (for dealing with low-level dispute resolution between PSC employees), and
- a copy of PSC's current change protocol (which sets out the process for the reconfirmation, reassignment, redundancy, etc of employees during a change/restructuring process)”.

Our Response

The Public Service Commissioner issued [model standards](#) which set out the Public Service Commissioner's minimum expectations for agencies and staff on specific issues. All public sector organisations should ensure that these standards are integrated into policies and processes for reporting wrongdoing within their Human Resource, Employment Relations and operational management systems.

In addition, the 2023-2024 Collective Agreement between the New Zealand Public Service Association and Te Kawa Mataaho Public Service Commission (the Commission) outlines the restructuring provisions for the Commission.

Please find enclosed and outlined in the below table the Commission's speaking up policy and process and the excerpt of the collective agreement that relates to restructuring provisions.

Item	Document Description	Decision
1	Internal Policy: Speaking Up Policy	Released in full
2	Speaking Up Process	Released in full
3	Restructuring provisions excerpt of the Commission's collective agreement	Released in full

If you wish to discuss this decision with us, please feel free to contact Ministerial.Services@publicservice.govt.nz.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that we intend to publish this letter (with your personal details removed) and enclosed documents on the Te Kawa Mataaho Public Service Commission's website.

Yours sincerely



Nicky Dirks

Manager – Ministerial and Executive Services
Te Kawa Mataaho Public Service Commission



Speaking Up Policy

Version	3.0	Contact	Pūmanawa Tangata People Team
Policy Owner	Deputy Commissioner, Organisational Capability and Performance	Approved	26 September 2023
SharePoint	Corporate Policies and Procedures	Due for Revision	September 2025

Our commitment

We are committed to providing a respectful work environment, that enables an open, trusting and accountable working culture. We provide a safe space for all employees to speak up without fear of punishment or retaliation or victimisation. Our people are encouraged to speak up on anything from minor concerns to serious wrongdoing committed in or by Te Kawa Mataaho. This demonstrates our *kawa*, particularly the *mātāpono* of *Matakite* – *we are bold and brave* (“we speak up and act with integrity”) and *Manaakitanga* – *we value each other* (“we are inclusive and treat each other with respect”).

Kōrero mai, kōrero atu. Mauri tū, mauri ora – Speak up and be well

Principles

- We take all concerns seriously and assess and act on concerns in an appropriate and timely way.
- Our policies and processes provide a safe space that enables individuals to report concerns without fear of retaliation or adverse consequences and will protect the confidentiality of those that raise concerns as far as reasonably possible.
- Any concern raised is considered for its potential as a protected disclosure under the [Protected Disclosures \(Protection of Whistleblowers\) Act 2022](#)
- Those considering and responding to a concern raised will remain impartial, fair and act in good faith.
- We comply with the principles of natural justice where applicable.
- The person who raised the issue is regularly updated, communicated with and supported throughout the process and receives culturally appropriate support.
- We provide practical support and protection to employees to keep them safe from retaliatory action or less favourable treatment and will take action should any such action or threat of action occur.
- Our leaders are provided with training and support to enable them to appropriately respond to any concerns or reported wrongdoing.
- There are proportionate disciplinary consequences when inappropriate behaviour at work is confirmed.
- Where people from other organisations are involved in the matter (e.g. cross agency work) or have an interest (e.g. Police, Serious Fraud Office or WorkSafe), we will communicate with them appropriately and in a timely manner.
- We will seek to learn from wider issues identified from concerns investigated, to strengthen processes, controls and practices and to improve staff awareness and understanding.

What can be raised?

We encourage and support our people to speak up on any concerns they have about the workplace. These may range from concerns regarding working environments to protected disclosures on serious wrongdoing.

Some concerns will be managed informally to find an appropriate resolution. Other concerns or reports of wrongdoing may require a formal process to be followed. We encourage people to raise their concerns with their manager in the first instance. They can also seek advice from others such as the Chief People Officer, the People Team, another manager a Public Service Association (PSA) delegate or a health and safety representative.

If an individual is concerned about the decision from their manager, or if a manager feels they are not suited to addressing these concerns, this will be attended to by an appropriate person within the Commission.

We will take concerns seriously

Concerns about wrongdoing, serious wrongdoing and unacceptable behaviour are addressed using our Speaking up Process (see [Internal Policies](#)). We provide a safe space for all employees to speak up without fear of punishment or retaliation or victimisation. Concerns about serious wrongdoing are addressed using our Serious Wrongdoing Process

Wrongdoing

The umbrella term ‘wrongdoing’ covers serious wrongdoing and unacceptable behaviours as defined below. It also includes conduct that is similar in nature but less serious.

Unacceptable behaviour

Some types of behaviour are unacceptable at the Commission. These includes a range of different behaviours e.g. harassment (racial or sexual), bullying, victimisation, discrimination, offensive language or behaviour and intimidation.

Serious wrongdoing

Serious wrongdoing has a particular meaning under the [Protected Disclosures \(Protection of Whistleblowers\) Act 2022](#). Serious wrongdoing under the Act includes an act, omission or course of conduct that is:

- An offence
- A serious risk to public health, or public safety, or the health or safety of any individual, or to the environment
- A serious risk to the maintenance of the law including the prevention, investigation and detection of offences or the right to a fair trial
- An unlawful, corrupt or irregular use of public funds or public resources
- Oppressive, unlawfully discriminatory, or grossly negligent or that is gross mismanagement by a public sector employee or a person performing a function or duty or exercising a power on behalf of a public sector organisation or the Government.

Safe space

A safe space means the Commission is an environment where people can feel comfortable reporting any concerns or serious wrongdoing through available channels without fear of retaliation. A safe space allows for supporting managers and other involved employees to appropriately action and address concerns, and ensure they are

supported to do so.

Retaliation or victimisation

Retaliation means any direct or indirect detrimental action that adversely affects the employment or working conditions of an individual, or subjects them to any detriment or disadvantage. It is an action taken for the purpose of punishing, intimidating or injuring an individual because they intend to speak up or make or have made a protected disclosure or are cooperating with authorised investigations. Victimisation means treating them less favourably than other employees.

How can a concern be raised?

We have a number of internal channels that our people can use to raise concerns. The appropriate method will depend on whichever channel the person feels most comfortable with. The channel chosen may limit the range of responses available. For example, if anonymity is to be maintained a formal investigation may not be possible. We will protect the confidentiality of those involved as far as is possible, limiting knowledge on a need to know basis as appropriate.

Channels for Raising Concerns

Informal	Formal	Leadership Team	Public Service Commissioner / Deputy Public Service Commissioner
<p>I can ask a question or speak privately to someone I trust in Te Kawa Mataaho for more information or advice.</p> <p><i>Channels include:</i></p> <ul style="list-style-type: none">• Team meetings• Catch-ups• Coaching sessions• Someone your trust• People Team• Your PSA delegate• A health and safety representative	<p>I can discuss an issue or make a formal complaint to a manager.</p> <p><i>Channels include:</i></p> <ul style="list-style-type: none">• My direct line manager, their manager, or any manager I trust• Chief People Officer• People Team	<p>I can raise any concerns about possible wrongdoing with a Leadership Team member.</p> <p><i>Channels include:</i></p> <ul style="list-style-type: none">• A Deputy Commissioner• Chief Disclosures Officer.	<p>I can contact the Public Service Commissioner or a Deputy Public Service Commissioner directly</p> <p><i>Channels include:</i></p> <ul style="list-style-type: none">• By email or in person

All concerns or reports, irrespective of severity, can be reported anonymously. To raise a concern anonymously click [here](#).

Considerations

When a formal channel is chosen the Chief Disclosures Officer will be informed of a concern raised for the purpose of including the concern in the Commission's Employment Complaints Register. Should the concern involve the Chief Disclosures Officer, staff are able to raise concerns directly with the Public Service Commissioner or a statutory Deputy Public Service Commissioner.

Where a concern is about the Public Service Commissioner the individual can raise this with a statutory Deputy Public Service Commissioner. Where a concern is about a statutory Deputy Public Service Commissioner, the individual can go to the Public Service Commissioner.

We encourage people to use all appropriate internal options. However, on rare occasions, it will not be appropriate to use internal channels. For example, you might choose to go externally if there has been a crime and you wish to notify the appropriate authorities. Appropriate authorities include the Police, the Serious Fraud Office, the Inspector General of Intelligence or WorkSafe.

Consider the circumstances and context of the concerns. We encourage individuals to seek advice from their direct line manager, the Chief People Officer or another manager they trust on how to have concerns appropriately addressed, and the range of options open them.

Roles and Responsibilities

How the concern is responded to depends on the channel the individual has chosen to voice their concern and on the nature of the concern.

Leadership Team	Chief Disclosures Officer	Chief People Officer	Managers	Employees
<ul style="list-style-type: none"> • Provide a clear statement of their commitment and expectations to enable reporting of wrongdoing • Ensure that there are policies and procedures for receiving and raising concerns of wrongdoing without prejudice or risk of reprisal 	<ul style="list-style-type: none"> • Be the impartial person within the organisation who is independent of the possible wrongdoing or escalate to the Commissioner • Ensure concerns reported are assessed and acted on in a timely way • Consider each concern raised for its potential as a protected disclosure • Assess any risk of reprisal and take action where any risk is identified • Ensure a tailored dedicated support is available and steps are taken to protect the person from retaliation • Maintain, audit and report on the Commission's Employment Complaints Registrar • Once a concern is raised, give consideration as to whether the organisation has the skills required to respond appropriately or whether it is necessary to seek external specialist support, for example from sexual abuse support organisations 	<ul style="list-style-type: none"> • Develop internal policies and processes that enable concerns to be raised in a confidential and secure way • Be an impartial person within the organisation staff can approach with concerns • Ensure that culturally appropriate support is available to those raising a concern • Maintain and regularly review (quarterly) the Commission's confidential Employment Complaints Register and identify learnings • Provide training for managers on receiving and dealing with conflicts, complaints, public interest disclosures and on identifying red flags • Ensure training on the policy, practice and guidance is provided to staff 	<ul style="list-style-type: none"> • Create a team culture where people feel safe to discuss workplace behaviour, wellbeing, inclusion and workload pressures and where people are encouraged to raise any issues • Respond appropriately to any concern of wrongdoing or unacceptable behaviour raised • Ensure that culturally appropriate support is available to those raising a concern • Assess any risk of reprisal and take action where any risk is identified 	<ul style="list-style-type: none"> • Adhere to the Kawa and public service code of conduct • Be aware of roles and responsibilities in relation to appropriate behaviour at work • Be aware of different options for raising issues and concerns • Raise issues and concerns • Ask for support • Support others as appropriate

The Chief Disclosures Officer role is currently held by the Deputy Commissioner, Organisational Capability and Performance.

Support

In addition to the tailored dedicated individual support provided by the people team we also provide a confidential employee assistance programme through Vitae. They can be contacted online at www.vitae.co.nz or by calling 0508 664 981.

An individual may also want to have a support person who is independent from the process to act as an impartial confidant (e.g., someone from a network that you may be part of). Employees are welcome to draw on cultural support to attend meetings and discussions with them as a support person. It is important that support people maintain the privacy and confidentiality of those involved.

Scope and Fit

This policy applies to all current and former permanent, fixed term and casual employees, seconded employees, contractors or volunteers engaged in Commission business.

Further information

[Speaking up Model Standards](#)

Maintaining a Positive Workplace Policy (see [Internal Policies](#))

[Protected-Disclosures](#) (whistleblowing)

[Standards of Integrity and Conduct](#)

[He Aratohu-Aguide for public servants on matters of integrity and conduct](#)

[Worksafe guide Preventing Bullying at Work](#)

Speaking Up Process

Creating a positive, safe, inclusive workplace



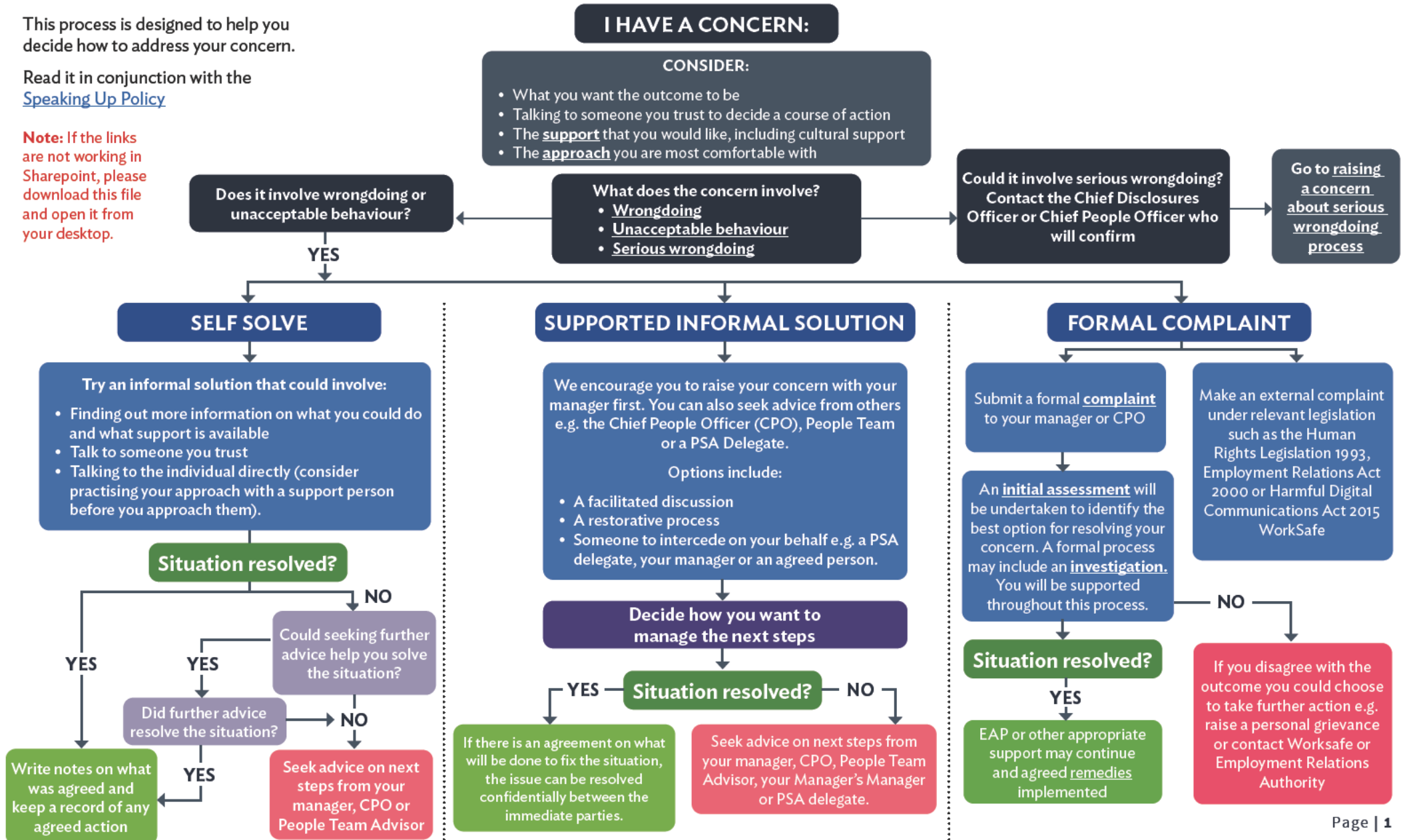
Te Kawa Mataaho
Public Service Commission

27 FEBRUARY 2024

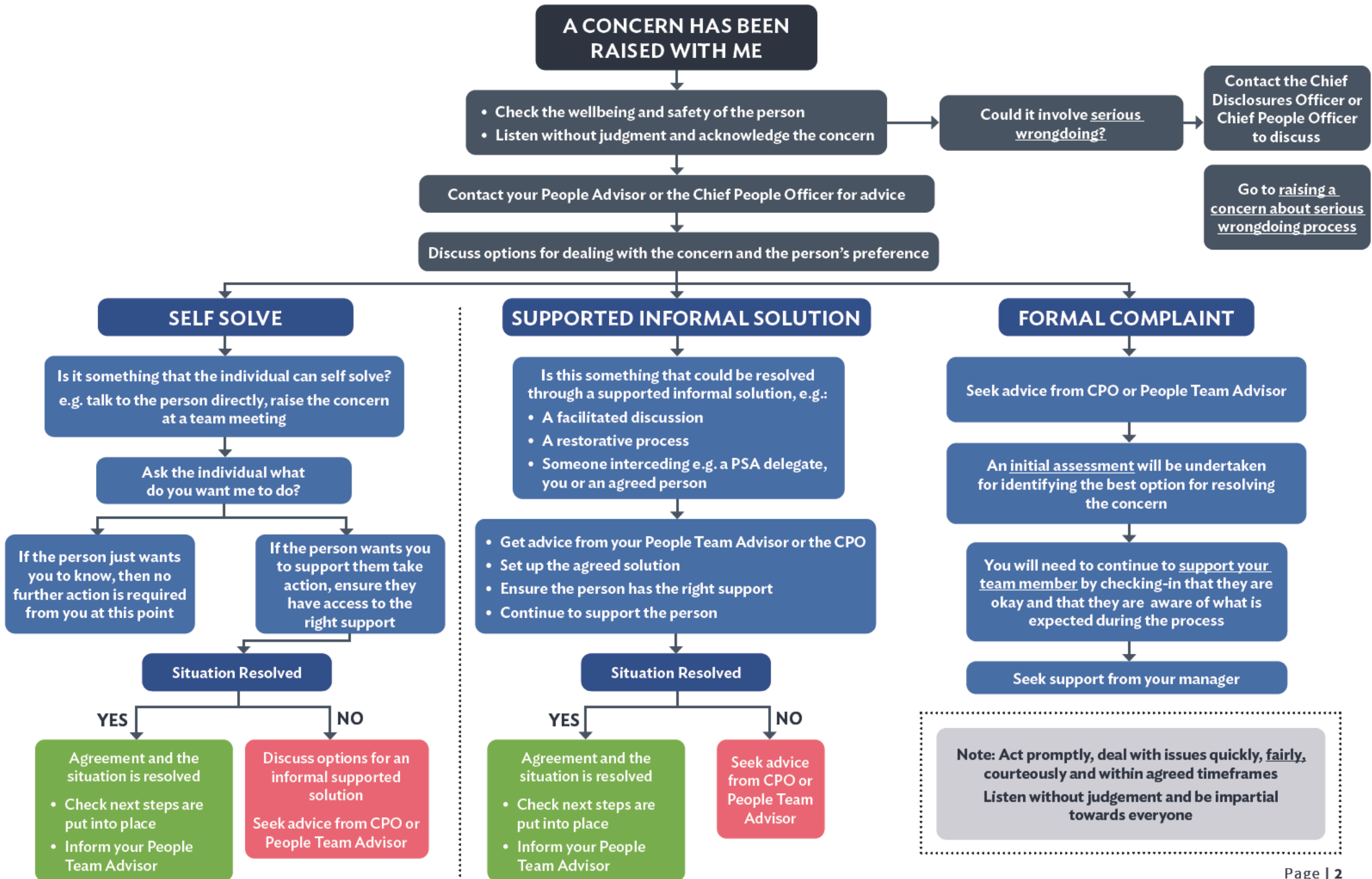
This process is designed to help you decide how to address your concern.

Read it in conjunction with the [Speaking Up Policy](#)

Note: If the links are not working in Sharepoint, please download this file and open it from your desktop.



MANAGER



WRONGDOING

The umbrella term 'wrongdoing' covers serious wrongdoing and unacceptable behaviours as defined below. It also includes conduct that is similar in nature but less serious.

UNACCEPTABLE BEHAVIOURS

Some types of behaviour are unacceptable at the Commission. This includes a range of different behaviours e.g. harassment (racial or sexual), bullying, victimisation, discrimination, offensive language or behaviour and intimidation. Non-compliance with Commission policies and guidelines or with the Standards of Integrity and Conduct or one's employment agreement may also be unacceptable behaviour. Misuse of organisational resources and/or information is also unacceptable behaviour.

SERIOUS WRONGDOING

Serious wrongdoing has a particular meaning under the Protected Disclosures (Protection of Whistleblowers) Act 2022. Serious wrongdoing under the Act includes an act, omission or course of conduct that is:

- An offence
- A serious risk to public health, or public safety, or the health or safety of any individual, or to the environment
- A serious risk to the maintenance of the law including the prevention, investigation and detection of offences or the right to a fair trial
- An unlawful, corrupt or irregular use of public funds or public resources
- Oppressive, unlawfully discriminatory, or grossly negligent or that is gross mismanagement by a public sector employee or a person performing a function or duty or exercising a power on behalf of a public sector organisation or the Government.

For more information, visit [Protected Disclosures \(Protection of Whistleblowers\) Act 2022](#) and [Speaking up in the Public Sector](#).

[BACK TO HOME](#)



SUPPORT

We will make sure that anyone speaking up about a genuine concern is protected, and that everyone involved is supported.

Depending on the situation, support could be provided by your manager, a Deputy Commissioner, the Chief People Officer or a member of the People Team.

You may also want to have a support person who is independent from the process to act as an impartial confidant such as another staff member. Cultural support is welcomed. The PSA also provides support for its members.

Where appropriate, a dedicated support person will be available to provide regular updates and communication throughout the process. Support will be provided from when the concern is raised through to completion.

As a support person it is important that you maintain the confidentiality and privacy of those involved in the matter.

The Commission provides a confidential employee assistance programme that is provided by Vitae. You can contact Vitae online at www.vitae.co.nz or by calling 0508 664 981.

[BACK TO HOME](#)



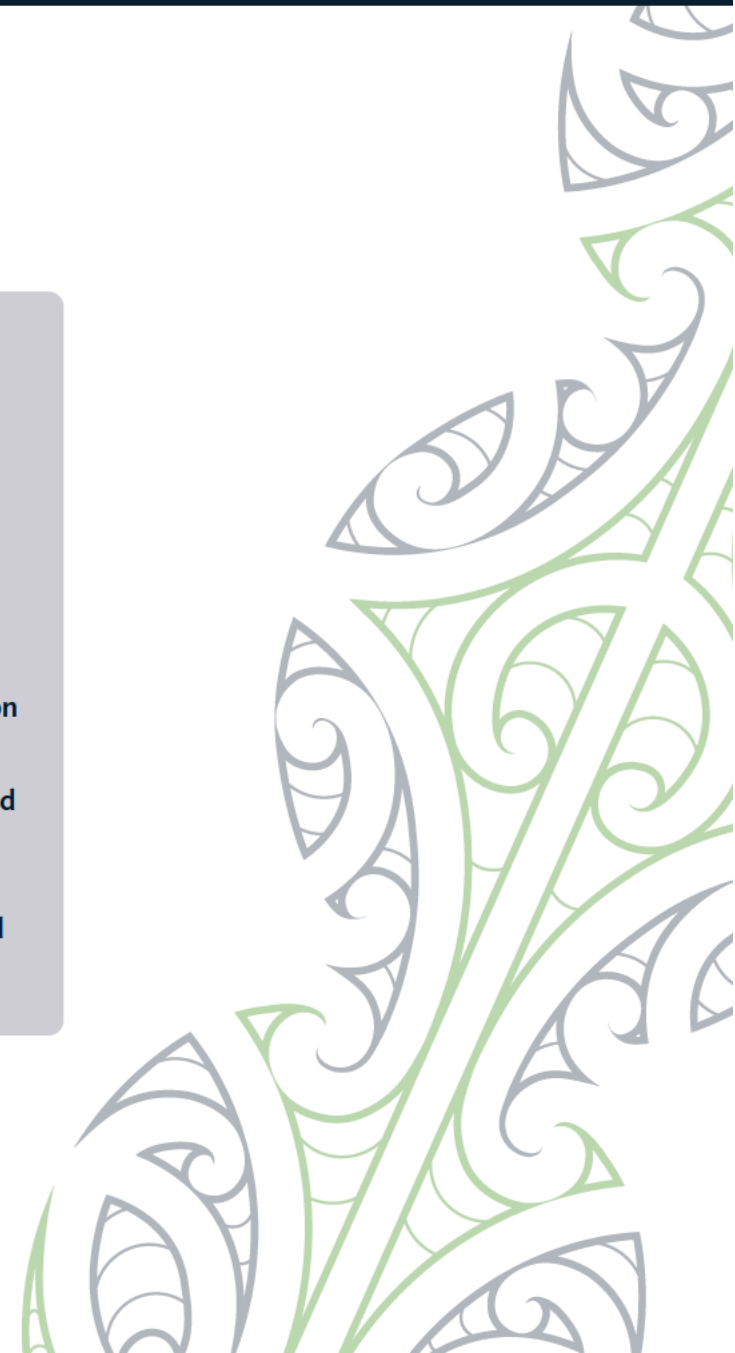


APPROACH

Employers and employees are obliged to deal with each other at all times fairly, reasonably and in good faith. In broad terms, this means that both employers and employees must:

- act honestly, openly, and without hidden or ulterior motives
- raise issues in a fair and timely way
- be constructive and cooperative
- be proactive in providing each other with relevant information and consider all information provided
- respond promptly and thoroughly to reasonable requests and concerns
- keep an open mind, listen to each other and be prepared to change opinion about a particular situation or behaviour, and
- treat each other respectfully

[BACK TO HOME](#)





MAKING A COMPLAINT

When making a complaint you will be asked:

- What has happened (date, time, location, who was present, what happened, who did what)
- How this behaviour made you feel
- How this behaviour has impacted you at work
- If you have taken any actions/If so, what?
- As a result of the complaint, what you want to happen?

If the concern is about your manager, then the complaint can be made to your manager's manager, a Deputy Commissioner or the People Team. You may wish to involve a support person or representative and may talk to that person in confidence about your concerns.

You will be informed of the next steps in the process and supported.

If an investigation is carried out, you will also receive support from others. For example - a manager will keep you informed about the process.

Even if you decide not to proceed with the complaint, where allegations have been made, as a good employer we may have an obligation to act on the complaint.

[BACK TO HOME](#)





INITIAL ASSESSMENT

During the initial assessment, the Chief People Officer or a Senior People Advisor assesses the complaint to identify the best option for resolving it. This could be providing support to self solve, initiating a supported informal solution or undertaking an investigation. The decision as to whether an investigation is required is made by the Chief People Officer. Advice will be obtained from the Chief Legal Officer where required.

[BACK TO HOME](#)





INVESTIGATION

When a formal complaint has been received or allegations of behaviour such as bullying, harassment or discrimination have been made, an investigation may be required.

An investigation gathers and tests the relevant information to enable an investigator to make factual findings about what occurred (on the balance of probabilities).

The decision-maker then considers those factual findings, and other relevant information and make final decisions, including as to the nature and seriousness of any allegations upheld and any disciplinary action that may be considered appropriate.

Investigations must be done in good faith and use natural justice principles. These principles include:

- taking all reasonably practicable steps to progress the matter(s) without undue delay (whether by formal investigation or such other means as considered to be appropriate in the circumstances)
- providing the employee who is the subject of the concerns/allegations with relevant information regarding the concerns/allegations being raised against them
- providing the employee who is the subject of the concerns/allegations with a reasonable opportunity to seek advice (if they wish) and to respond to the matters being raised against them, before any final decisions are made
- advising the employee that they have the right to be accompanied by a support person and/or representative in any meetings and during the process
- consideration by the decision-maker of the matter with an open mind, free of bias and pre-determination.

Terms of Reference

The Terms of Reference (TOR) for an investigation provides a description of what the person undertaking the investigation needs to do and how the investigation should be conducted. It includes key information about the roles of the different people involved and the timeframe to work to.

The Investigator

The investigator's role is to gather the facts and present these in a balanced way. The person investigating the complaint could be a Manager, a Deputy Commissioner, the Chief People Officer, a member of the legal team or a suitably qualified external investigator.

It is not a requirement to use an independent investigator as long as the person who undertakes the investigation is neutral, has the required expertise and considers all information in a balanced way.

Witnesses

Witnesses are other people who saw the act or behaviour and/or have direct knowledge or experience of the act or behaviour that has been said to have happened.

- The person being investigated is entitled to know the identity of witnesses so they can respond them fully (fair process).
- Witnesses will be told that the information they give will be confidential to the investigation, but that the person whose conduct is under investigation will be given the notes/summary of meeting notes and this will identify them.

The person who the allegations have made about will be provided all documents and summaries of what the other people interviewed (witnesses) said.

The Decision Maker

Depending on the seriousness of the allegations the decision maker could be your manager, your Deputy Commissioner or the Statutory Deputy Commissioner. Where possible, the decision maker will be specified at the start of an investigation.

At the end of the investigation the decision maker will make a careful balanced assessment of what has been learned and whether the allegation(s) are more likely to have been true than not. This assessment will:

- address each concern or issue raised
- contain the thinking/reasons for the findings
- have a clear link/reference back from the findings to the evidence
- be provided to the employee for comment (and may need to be provided to the complainant – refer terms of reference) before being finalised

The DC Organisational Capability and Performance, Chief People Officer and the Chief Legal Officer must be consulted before formal disciplinary action is taken. If the relevant people manager is not at level 2, they should also consult their level 2 manager before formal disciplinary action is taken.



SUPPORT YOUR TEAM MEMBER

Where a concern has been raised managers are responsible for supporting their team member(s). This is where a team member has raised a concern and and/or also has had allegations made about them.

REMEDIES

If the matter is investigated and it has been found that you have been disadvantaged, we will take steps to remedy the situation and prevent the matter reoccurring.

[BACK TO HOME](#)



J. SECTION J: RESTRUCTURING PROVISIONS

1 Scope and Intent

- 1.1 The parties to this agreement recognise the serious consequences that loss of employment can have on individual employees and propose to minimise this as far as possible by using the provisions of this agreement to keep as many employees as possible in employment.
- 1.2 In the event the Commission requires a reduction in the number of employees; or an employee's position ceases to exist, at their current grade (pay band) or work location (i.e., the terms of appointment to their present position are significantly altered) the provisions of this section will apply.
- 1.3 This section will not be applicable to fixed-term employees, irrespective of length of employment.

2 Principles

- 2.1 The parties recognise and agree that:
 - The process of change is ongoing. Change may be brought about by the impact of Government policy or by the Commission continually looking for ways to improve quality and delivery of services.
 - There are positive ways in which the process of change can be approached and utilised to the benefit of all. Planning, prior to and during change, is recognised as an important part of any continued managed approach. This produces effective measures for dealing with the impact upon employees and the Commission.
 - Effective and successful changes to the Commission require the involvement of employees and the PSA. This includes timely and appropriate consultation.
 - The Commission has the right to plan, manage, organise, and make decisions on the operations and policies of the Commission.
- 2.2 Quality management of change means:
 - Each management of change process is designed to meet the needs of the unique change situation,
 - Change processes are timely, fair, and consistent, and look to maximise the opportunity for employee choice, where practicable,
 - Employees and the PSA actively participate in change processes,
 - Certainty is provided for employees as soon as possible to minimise disruption to them and to the Commission,
 - Communication between managers, employees and the PSA is open, transparent, timely and regular,
 - Employees and their families (as required) are provided with support through the process,
 - Previous management of change experiences are drawn on.

3 Notification to PSA of formal review

- 3.1 In accordance with the principles contained within clause J.2.1 of this Agreement, the PSA National Organiser will be advised by the Commission of any formal review which is likely to recommend significant changes (as per clause J.1.2), at the earliest practicable point. The Commission will

provide the PSA with an opportunity to be involved in the review. Where the decision to make a change or to undertake a review is beyond the control of the Commission, this notification will be made as soon as possible after the decision is announced.

- 3.2 The aim of this mechanism will be to reach agreement, or failing agreement, make recommendations to management who will endeavour to take the views into account as far as possible before making decisions on next steps.
- 3.3 The Commission will consult with the PSA on the use of temporary employees, if required, during a review

4 Consultation on change proposals

- 4.1 Where a change proposal is released for consultation (whether following a review or otherwise) the PSA and affected and potentially affected employees will be consulted, which includes being given an opportunity to make submissions (orally and in writing) at all stages of the process including options and implementation.
- 4.2 When it is a structural organisational change, there will be an initial comparison of existing and new positions within the scope of the proposal and reconfirmation or reassignment of employees affected by the change.
- 4.3 The Commission will provide assistance with counselling, career advice, financial advice and paid time off for job searching, applications and interviews during this period, where appropriate in the circumstances.

5 Change Options

- 5.1 The parties may, from time to time, agree a change protocol to guide the parties' approach to change or to a particular change, which may include any or all of the following options:
- 5.2 **Reconfirmation:** applies where an employee's position is to remain substantially unchanged and transferred into a new structure within or outside the Commission and:
 - The new job description is the same (or very nearly the same);
 - The salary for the new position is the same;
 - The terms and conditions, including career prospects are no less favourable; and
 - The location is the same, or in the local area.
 - Where there is more than one suitable candidate who meets the criteria outlined above, the procedures for managing this will be those as for reassignment procedure.

Employees who are reconfirmed are not eligible to access the redundancy compensation provisions of this agreement.

5.3 Reassignment:

- 5.3.1 Following completion of the reconfirmation process, reassignment will apply. The objective will be to place the maximum number of employees who are affected by the change but not reconfirmed into positions by matching individual skills with suitable alternative positions that require similar skills and/or experience. Cases will

be dealt with on an individual basis and each applicant will be consulted prior to reassignment.

5.3.2 Where reassignment applies, affected employees will be advised of available reassignment options. They will be invited to submit an expression of interest in the available positions. An expression of interest may include the ability to explore other options as well as reassignment. There will be an ongoing conversation with affected employees about their options. Affected employees can choose to have a PSA representative involved in that ongoing conversation.

5.3.3 Decisions on reassignment will be based on best person for the position. The process to determine best person for the position may vary according to the situation and may include a variety of selection processes, which may include:

- Expression of Interest Form
- Interview
- References

5.3.4 Decisions on reassignment will be made by a manager with relevant delegated authority.

5.3.5 Any training needs will be identified before a reassignment occurs. Preferential applicants may be required to undertake on the job training and or attend training courses.

5.3.6 Where an employee accepts an offer of reassignment to a position with a lower salary, the employee will receive an allowance equivalent to the difference between their old and new salary and be able to have this paid either:

- As a lump sum calculated on the basis of two years' equalisation; or
- As an ongoing allowance that will be abated by any subsequent salary increases.

5.3.7 Where the new position is at a location outside the local area (up to 25km), assistance with transfer expenses shall be provided on an actual and reasonable basis to ensure the employee does not suffer financial loss as a result of the acceptance of the reassignment position.

5.3.8 Employees who decline an offer of reassignment to a suitable alternative position where that offer does not require or include an equalisation allowance under clause J5.3 are not eligible to access the redundancy compensation provisions of this agreement.

5.4 A suitable alternative position is one:

- Where the employee accepts the offer; or
- Where the location of the new position is in the same local area; and
- Where the employee's salary is the same or a higher pay band or where the employee agrees to an equalisation allowance paid in accordance with clause J5.3.6 above; and
- Where the other terms and conditions are no less favourable overall.
- That involves clearly defined duties and responsibilities that are not unreasonable taking into account the employee's skills, abilities and potential to be retrained.

5.5 **Reasonable offer (into a suitable alternative position):** An affected employee who is not placed into a position may be made a reasonable offer of a suitable alternative position(s).

- 5.6 **Voluntary redundancy:** Where a change proposal may result in fewer positions than there are affected employees, the Commission may seek expressions of interest, on a without prejudice basis, in voluntary redundancy from employees.
- 5.6.1 Where expressions of interest are received, the Commission may, at its sole discretion, choose to accept or decline any expression of voluntary redundancy where there would be an adverse impact on the business.
- 5.6.2 By way of example, and without limiting the sole discretion of the Commission, voluntary redundancies may not be accepted in circumstances where:
- An applicant has skills and experience that the Commission wishes to retain; or
 - Where approving the voluntary redundancy may result in insufficient skilled employees from which to appoint to remaining positions in the impacted area.
- 5.6.3 Where the Commission accepts an expression of interest and offers voluntary redundancy, written acceptance of that offer by the individual will be binding.
- 5.7 **Temporary employment:** The Commission may agree to offer alternative employment for a period of up to 6 months, at the end of which the employee will be entitled to consideration of other options, subject to availability at that time.
- 5.8 **Special leave:** Special leave with or without pay may be granted, with or without the guarantee of a job placement at the end of the period. This may include an opportunity to retrain. Preferential applicant status is retained during the period of special leave. If not placed within the period of special leave, the employee will be entitled to redundancy calculated as of the day special leave commenced.
- 5.9 **Retraining:** Where a retraining opportunity is identified which the Commission agrees offers a genuine expectation of employment with the Commission on completion of training, a specific programme will be designed to meet the needs of the individual. The Commission will pay for the costs of the training to a maximum of the redundancy compensation payment that the employee would otherwise receive. In exceptional circumstances and by agreement between the parties, consideration may be given to additional assistance with significant specific costs such as fees.
- 5.10 **Redeployment to other public sector agency:** The Commission and the PSA agree to explore and where possible identify suitable alternative positions in other agencies, subject to the provisions of the Public Service Act 2020. In doing so the Commission will seek to understand the needs and aspirations of the employee.
- 5.11 Subject to the provisions of the Public Service Act 2020, both the Commission and the employee shall, where redeployment to other public sector agencies be an agreed or required consideration, make reasonable efforts to locate suitable alternative employment for the employee in the following areas:
- a) within the Public Service; or
 - b) within any Crown entities, Crown companies, or the NZ Police, NZDF, Reserve Bank and the Parliamentary Counsel Office; or
 - c) in the organisation acquiring some or all of the business of the Commission whether or not that organisation is within the public sector (where the position ceases to exist due to the

part of the Commission's business in which the employee's position is situated being sold or transferred).

- 5.12 Should a suitable position/s be identified and there is a successful match to the requirements of the relevant agency, redeployment could be offered where the terms and conditions are no less favourable.
- 5.13 Employees who decline the offer of redeployment to a suitable alternative position under clauses J5.10-J5.12 are not eligible to access the redundancy compensation provisions of this agreement.
- 5.14 Where an employee is offered an alternative position that does not meet the criteria set out in clause (J5.4) above and does not accept the offer then that employee will still be entitled to receive redundancy compensation, should they remain unplaced after all other options have been exhausted.
- 5.15 If an employee disagrees with the suitability of an alternative positions offered, they may seek urgent mediation assistance. Taking into account the mediation process, a reasonable period of time will be given to the employee to make a decision as to whether accept the offer.

6 Redundancy

- 6.1 Redundancy will be applied, after all other Change options have been considered and exhausted.
- 6.2 When redundancy is to be applied, the employee concerned will be given one month's notice of termination (inclusive of the general notice period set out elsewhere in this Agreement).
- 6.3 The PSA will be notified of the termination at the same time as the employee(s), where the Commission is aware that the employee(s) is or are PSA members.
- 6.4 If agreed between the Commission and the employee, the employee may not be required to work out the notice period.
- 6.5 Where it is payable under this Agreement, redundancy compensation will be provided as follows:

- The lesser amount of five (5) months' base salary (gross), or \$60,000 (gross) is payable on termination of employment for redundancy.

Plus: The cash equivalent of any annual leave and long service leave entitlement not taken.

7 Employee Protection Provision

- 7.1 If the Commission is to restructure (as defined in section 69OI of the Employment Relations Act 2000 (i.e., the sale, transfer or contracting out of all or part of the activities or operations of the Commission), and the proposal may result in the employee's work being performed by a new employer, the Commission will:
- Consult with the PSA for the purpose of developing procedures for managing the restructure.
 - Discuss and negotiate with the new employer (and noting that the final decision in this regard will generally rest with the new employer) as to whether the affected employees may:

- transfer to the new employer on the terms and conditions of employment set out in the Agreement; or
- transfer to the new employer on different terms and conditions of employment; or
- not transfer to the new employer.

7.2 After such discussions and negotiations, meet with the affected employees to convey the outcome of those discussions and negotiations (i.e., which of the options above will apply), and outline the affected employees' option and entitlements.

7.3 Where an employee is being made redundant by reason only of the restructure, no compensation for redundancy is payable to the employee if the employee is offered employment with the new employer; and the offer meets the following:

- The terms and conditions of employment offered are the same or no less favourable than the employee's current conditions; and
- The offer is to employ the employee in substantially the same position and in the same general locality as that in which the employee was employed by the employer, or in a position or location that the employee is willing to accept; and
- The new employer has agreed to treat service as if it is continuous.

7.4 Where the employee is made an offer of employment by the new employer on terms and conditions that do not satisfy (5.4 above) the employee will be entitled to decline the offer without forfeiting their entitlement, at that point and if otherwise eligible, to redundancy compensation. Where the employee is entitled to decline the offer and has done so, or where no offer of employment is made by the new employer, then the restructuring provisions of this agreement (including the redundancy clause) will then apply.