

## Ministry of Education

### Terms of Reference for Independent External Workplace Culture Review

Reviewer: Ainsley Benefield

#### 1. Background and purpose

- 1.1 The Ministry of Education (**Ministry**) has received a protected disclosure made by an anonymous group of persons on a strictly confidential basis regarding aspects of the culture and practices within the Te Poutāhū | Curriculum group (the **Group**). The Ministry takes the concerns raised seriously and is committed to ensuring that its workplace meets the standards required under the Public Service Act 2020, the Public Service Code of Conduct, Ministry Policies, and Public Service best practice (collectively referred to in these Terms of Reference as "Ministry Standards").
- 1.2 As an initial step, the Ministry has decided to commission an independent Workplace Culture Review (**Review**) with a view to gathering more detailed information about the concerns, in a manner that is safe and accessible to staff. Once the Review is completed, the Ministry will consider what (if any) further steps are necessary to address the concerns.
- 1.3 The Ministry has appointed Ainsley Benefield (**Reviewer**) to conduct the Review on the terms set out in these Terms of Reference (**ToR**).

#### 2. Purpose and scope of the Review

- 2.1 The purpose of the Review is to provide a high-level analysis of the culture and working environment of the Group and identify opportunities for improvement.
- 2.2 If matters arise relating to individuals these will be separately handled by the Reviewer and may be referred for investigation (see clause 3.4).
- 2.3 The Reviewer will consider and comment on the following:
  - (a) whether the working environment of the Group is respectful, safe, and professional;
  - (b) where Group staff have had concerns regarding matters referred to in this clause 2.3, have those concerns been addressed in accordance with Ministry Standards;
  - (c) whether there are any concerns regarding discriminatory behaviour (particularly on the basis of gender, race, or other protected grounds) or inappropriate conduct such as bullying, harassment, sexual harassment, sexual misconduct; or aggressive or intimidating language or behaviour;
  - (d) whether there are any concerns about leadership and management practices, including:
    - (i) whether leadership practices within the Group reflect Ministry Standards;
    - (ii) whether recruitment and appointment processes within the Group have been conducted in accordance with the Ministry's policies and procedures and in a fair, transparent, and merit-based manner; and
    - (iii) whether Group staff/personnel have experienced or observed conduct suggesting any undisclosed (or incomplete disclosure of) conflicts of interest, including in relation to personal relationships between (a) Ministry personnel who may be in positions of relative authority and (b) those they manage or influence;

- (e) whether there are any workplace health and safety concerns in relation to psychosocial risks or hazards; and
  - (f) any other matters relevant to the culture, working environment, or conduct within the Group that come to the attention of the Reviewer and that they consider fall within the purpose of the Review as described in clause 2.1.
- 2.4 To allow the Reviewer to approach the issues with an independent perspective, they will not be provided with a copy of the protected disclosure.
- 2.5 Nothing in these ToR prevents a participant from raising an existing complaint or concern through any other avenue available to them. The Review does not affect, replace, or close any existing avenue of complaint or support available to staff. If a participant raises a specific complaint or allegation that falls outside the scope of the Review, the Reviewer should note that existing avenues remain open and, where appropriate, ensure the participant is aware of those avenues and of available support services, including the Ministry's Employee Assistance Programme (EAP).
- 3. The Reviewer's role**
- 3.1 The Review is not to make any factual findings on any alleged conduct of any particular individual. Rather, the Review will report upon participants' feedback and perceptions as reported to the Review, and may make observations as they consider relevant and appropriate in light of the information obtained.
- 3.2 Where concerns are identified in relation to any of the matters set out in clause 2.3, the Reviewer should also consider and comment on any gaps in the Ministry's systems, processes, policies, or practices that may have contributed to those concerns arising or remaining unaddressed.
- 3.3 The Reviewer will inform each participant, before the participant's interview commences, of the matters set out in clause 7 of these ToR.
- 3.4 In addition to reporting on the matters in clause 2.3 above, the Reviewer will assess whether the information gathered is likely to be sufficient to warrant a formal employment investigation into any specific matter or individual, particularly where the conduct identified could amount to misconduct or serious misconduct. Where the Reviewer considers that a referral for formal investigation is warranted, and that referral is based on information provided by a participant, the Reviewer will obtain the consent of that participant before making the referral, and will inform the participant of the purpose for which their information may be used. Any formal employment investigation based on a referral will be considered and carried out separately from this Review.
- 3.5 Any such assessment in clause 3.4 is the Reviewer's independent professional opinion based on the information gathered. It does not constitute a legal conclusion or a finding of fact by the Reviewer or the Ministry, and any decision to proceed to a formal investigation remains solely a matter for the Ministry having regard to the Reviewer's assessment.
- 3.6 The Reviewer will have access to all relevant Ministry policies, procedures, and other documentation relevant to the matters within scope under clause 2.3, upon requesting them from the Ministry. The Reviewer may also have access to any other relevant information (including data, records, and reporting) that the Reviewer considers necessary to form views on the matters within scope.
- 3.7 The Reviewer may conduct the review may in such manner as they consider appropriate and may modify their approach from time to time, provided that all procedures and methods comply with these ToR.
- 4. Interview methodology**
- 4.1 The Reviewer will conduct interviews using a consistent approach and in a safe and confidential manner.

- 4.2 The Reviewer may conduct interviews in person at a neutral venue, by video conference, or by telephone, as agreed with each participant. At their discretion the Reviewer may conduct these interviews with individuals or in groups.
- 4.3 Participants may, if they wish, bring a support person to their interview. The support person must not be a staff member (or other personnel) of the Group or otherwise involved in the Review as a participant, unless that person is a union representative.
- 4.4 Participants may, if they prefer, share their experiences or perspectives in writing rather than (or in addition to) an interview, by submitting a written account to the Reviewer via the dedicated confidential email address referred to in clause 5.3. Written submissions will be treated with the same confidentiality protections that apply to information gathered through interviews. The Reviewer should make participants aware of this option when engaging with them.

## **5. Participation**

- 5.1 Participation in the Review is voluntary. A voluntary "opt-in" model will apply, where current Group staff/personnel are made aware of the Review and provided with a dedicated, independent contact point, allowing them to engage on their own terms within the timeframe of the Review. Former staff/personnel of the Group may also participate in the Review, provided that the matters they wish to raise relate to events or conduct that are alleged to have occurred within the 12 months preceding the commencement of the Review.
- 5.2 Where the number of persons who opt in to participate in the Review exceeds the number that can reasonably be interviewed within the timeframe and resources available, the Reviewer will determine, at their discretion, which participants to prioritise for interview, having regard to the likely relevance and significance of the information each participant may be able to provide. All persons who opt in may, as an alternative or in addition to an interview, provide information by way of written submission in accordance with clause 4.4.
- 5.3 A dedicated, confidential email address [mooreview@hiveconsulting.nz](mailto:mooreview@hiveconsulting.nz) will be established by the Reviewer for the purpose of the Review. Any Group staff/personnel, or former Group staff/personnel eligible to participate under clause 5.1, who wish to participate should contact the Reviewer at that address.
- 5.4 If any Group staff/personnel who appear likely to have direct knowledge of any matters relevant to clause 2.3 do not volunteer to participate in the Review, the Reviewer may, at their discretion, proactively contact any such individual to ask them to participate. Any such contact should be undertaken sensitively and with due regard to the wellbeing of the individual concerned.
- 5.5 The Ministry will ensure that appropriate wellbeing support is made available to all Group staff/personnel during the course of the Review, including access to EAP.

## **6. Confidentiality**

- 6.1 Feedback from participants will be presented to the Ministry by the Reviewer in a non-identifiable manner, and the Review report (**Report**) will be drafted in a manner that does not identify individual participants (or reasonably enable their identification), so as to protect the confidentiality of their participation to the extent reasonably possible, unless an individual advises the Reviewer that they consent to some or all of the information they provide being attributable to them.
- 6.2 In addition to the above, where the number of participants who have raised a particular theme, concern, or category of feedback is sufficiently small that, in the Reviewer's assessment, there is a reasonable risk that one or more participants could be identified (whether directly or by inference) from the content of the Report (including by reference to the size of a particular team, the nature of a role, or the specificity of the matters reported) the Reviewer must take appropriate steps to mitigate that risk, which may include aggregating feedback across themes, generalising the level of detail reported, or omitting specific details that could enable identification.

- 6.3 The Reviewer must avoid including in the Report specific contextual details (such as team names, role descriptions, reporting lines, timeframes, or other particulars) to the extent that such details could, individually or in combination, reasonably enable the identification of any participant, unless the relevant participant has consented to such inclusion in accordance with clause 6.1.
- 6.4 All personal information collected by the Reviewer during the course of the Review is subject to an obligation of confidence and must not be used or disclosed by the Reviewer other than for the purposes described in these ToR.
- 6.5 All records and documents created or received by the Reviewer in connection with the Review (including interview notes, written submissions, and working papers) (**Review Records**) will be securely held by the Reviewer. The Review Records will only be accessed by the Ministry where necessary to comply with statutory obligations (such as the Privacy Act 2020) or Court orders.
- 6.6 Notwithstanding clause 6.5, where a referral for formal investigation has been made or is contemplated under clause 3.4, the Reviewer may retain any Review Records to the extent reasonably necessary to support that referral. Any such records may be provided to the Ministry on a restricted basis, accessible only to such persons as the Ministry nominates for the purpose of conducting or overseeing the formal investigation, and subject to the consent of the relevant participant(s) being obtained in accordance with clause 3.4.

## **7. What the Reviewer must tell each participant**

- 7.1 Before commencing each interview, the Reviewer must inform the participant(s) of the following:
- (a) the Review is an independent workplace review into the culture and working environment of the Group – it is not a formal employment investigation into specific individuals and no findings will be made about any individual;
  - (b) what they say will be treated as confidential and will not be attributed to them by name in the Report, (unless and to the extent that they advise the Reviewer that they consent to specific information they provide being attributable to them), however the Report (or a summary of it) may be made publicly available by the Ministry;
  - (c) notwithstanding these confidentiality protections, if the Reviewer considers that a referral for formal investigation may be warranted under clause 3.4 in respect of matters raised by the participant, the participant's identity and the information they have provided may need to be disclosed for the purposes of that investigation, provided the participant consents to any such disclosure for that purpose in accordance with clause 3.4;
  - (d) to protect the integrity and confidentiality of the process, they must not discuss the content of their discussions with the Reviewer with any other person. However, they may discuss matters with their lawyer, union, or other support person, if they choose to have one. Any support person must confirm to them they will similarly keep all such matters confidential;
  - (e) nothing in the Review prevents a participant from raising an existing complaint or concern through any other avenue available to them. The Review does not affect, replace, or close any existing avenue of complaint or support available to staff; and
  - (f) appropriate wellbeing support (including EAP) is available to them during the Review process.
- 7.2 If a participant raises a specific complaint or allegation that falls outside the scope of the Review, the Reviewer should note that existing avenues remain open and, where appropriate, ensure the participant is aware of those avenues and of available support services, including the Ministry's Employee Assistance Programme (EAP).

## **8. Reporting**

- 8.1 The Reviewer will provide the Ministry with a written report structured as follows:

- (a) a description of the methodology and scope of the Review, including the number of participants and the general approach taken;
  - (b) findings about the culture and working environment of the Group at a thematic level, without making formal findings of fact about named individuals, addressing each of the matters set out in clause 2.3 above;
  - (c) the Reviewer's observations and any recommendations arising from the information gathered, including gaps in the Ministry's systems, processes, policies, or practices that may have contributed to identified concerns;
  - (d) a summary of any referrals that have been made in accordance with clause 3.4.
- 8.2 The Reviewer should acknowledge in their report that the Review is for a specific purpose (as set out in Section 2, above) and that the information received has not been fully tested, nor have natural justice principles been applied in the circumstances.
- 8.3 The Review will not make findings as to the civil, criminal, or disciplinary liability of any person but may identify further steps that could be taken.
- 8.4 The Report will be provided in draft to the Secretary for Education before it is finalised, to allow the Ministry to confirm the Reviewer has complied with the ToR.
- 8.5 The final Report will be provided to the Secretary for Education. The Report will be treated as confidential however the Secretary for Education may release the report in full, in part, or by way of summary at her discretion or as required under the Official Information Act 1982.
- 9. Time frame**
- 9.1 The time frame for completing the review will be determined by Doug Craig in consultation with the Reviewer. The time frame will be determined having regard to the number of people responding and the information being received.
- 9.2 The Review must be undertaken thoroughly, yet as efficiently as possible and without undue delay, so that the final Report can be completed as soon as reasonably practicable.
- 10. General**
- 10.1 The Ministry will provide reasonable administrative support to the Reviewer for the purposes of the Review, including (without limitation) assistance with scheduling interviews, booking meeting rooms or other suitable venues, and facilitating general communications with Group staff/personnel regarding the Review process. Any Ministry personnel providing such administrative support will be required to maintain the confidentiality of all information to which they become privy in the course of providing that support.
- 10.2 The Ministry reserves the right to amend these ToR at any time.
- 10.3 Doug Craig will be the Reviewer's point of contact for the purposes of accessing any additional relevant information, including contact details for potential participants. The Reviewer will provide Doug Craig with regular updates on the progress of the Review.

Dated:

  
Signed by Ellen MacGregor-Reid  
Secretary for Education