



**Te Kawa Mataaho**  
Public Service Commission

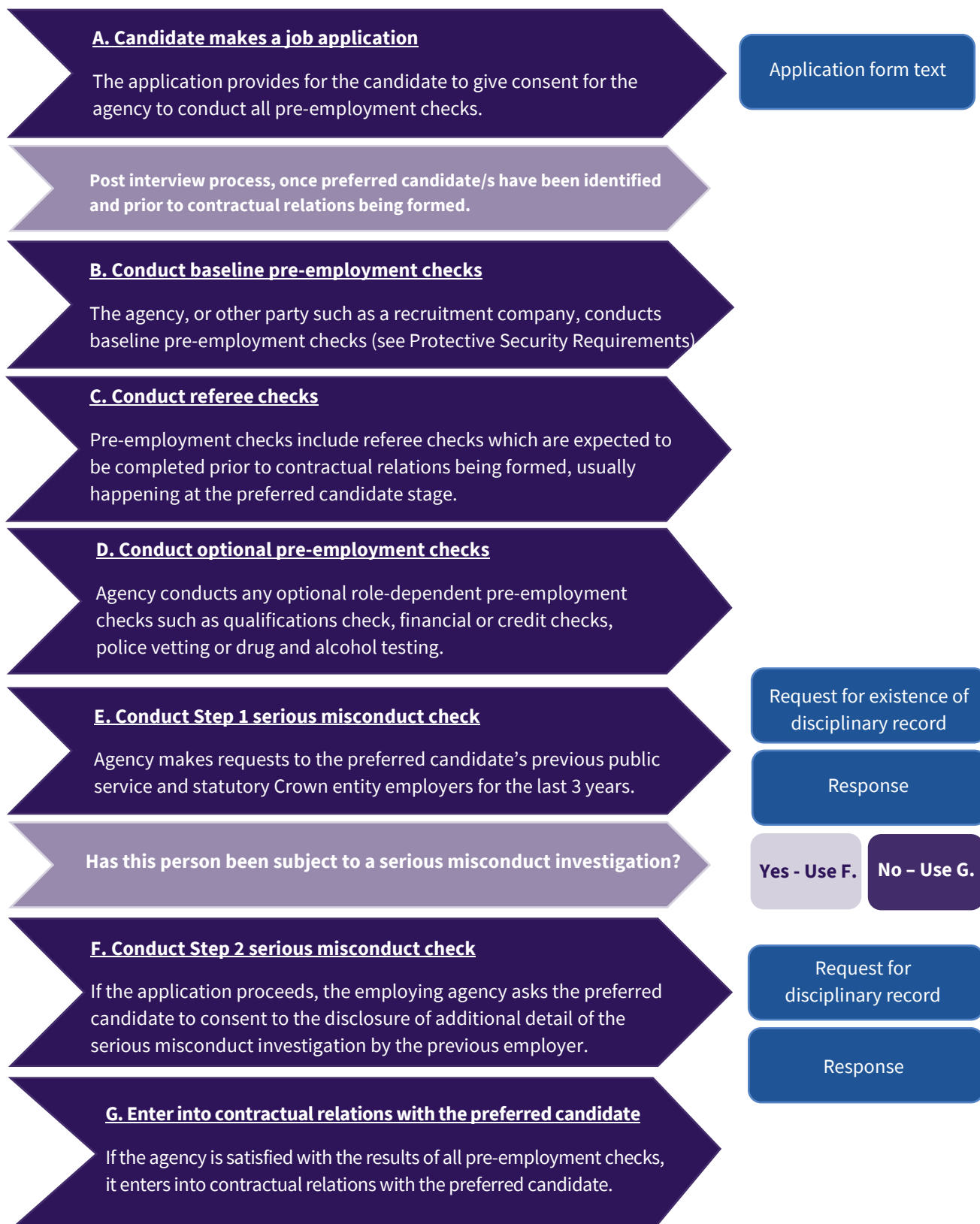
# Workforce Assurance Model Standards

**Support pack**

March 2021 | 2<sup>nd</sup> Edition

## Step-by-step guide

Please see more detail about these steps in the [‘Protective Security Requirements Recruit the Right Person’](#) and in the [‘Workforce Assurance Model Standards’](#).



## Introduction

The [Workforce Assurance Model Standards](#) were issued by the Public Service Commissioner in August 2020 to Public Service agencies and statutory Crown entities (Crown agents, Autonomous Crown entities, Independent Crown entities)<sup>1</sup> under Section 19 of the Public Service Act 2020. Full implementation is expected for recruitments commencing from 15 March 2021. The operation of the model standards will be reviewed in 2022, to ensure they are working as intended.

Integrity and ethical behaviour are core and we do not want to see people moving from one government agency to another when serious integrity issues have not been disclosed. While rare, these situations have the potential to erode the public's trust and confidence in the public sector.

The Workforce Assurance Model Standards outline expectations of enhanced reference checking backed up by consent-based disclosure of records of serious misconduct for agencies when recruiting staff. They also set out expectations in regard to investigations into serious misconduct and settlement agreements.

## Purpose

**The purpose of this implementation support pack is to provide good practice resources to assist agencies with implementation of the model standards.**

The intended audience for this pack is Public Service agencies and statutory Crown entities (Crown agents, Autonomous Crown entities, Independent Crown entities) who are developing their implementation resources.

These resources have been developed in consultation with an HR Advisory Group, a working group of agency representatives. Te Kawa Mataaho Public Service Commission will continue to update this support pack with good practice materials and experience from agencies as they progress through implementation of the model standards. This implementation pack is version 2 – we have updated the pack with process improvements to reflect additional guidance we have received from the office of the Government Chief Digital Officer, the Government Chief Privacy Officer and Office of the Privacy Commissioner.

## Contact Us

If you have any questions about the materials in this support pack, please contact:

[integrityandconduct@publicservice.govt.nz](mailto:integrityandconduct@publicservice.govt.nz)

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<sup>1</sup> [New Zealand's central government organisations | Te Kawa Mataaho Public Service Commission](#)

## A. Application Forms

### Candidate makes a job application

The candidate applies for a position with the agency. The application provides for the candidate to give consent for the agency to conduct all pre-employment checks, including referee checks and the serious misconduct check.

### Consent to serious misconduct check

Consent must be given by the candidate prior to Step 1 of the serious misconduct check, before you can use the serious misconduct check process.

### Text to add to Agency Application Forms (both paper forms and online forms)

**Do you consent to the disclosure to [insert your agency name] of whether you have been subject to a serious misconduct investigation, either concluded and upheld or currently under investigation, from all previous Public Service and statutory Crown entity employers for the last three years? Should you be selected as the preferred candidate, your response will be checked with your previous employer(s) at that stage. We will not conduct this check prior to you being selected as the preferred candidate.**

The suggested drop-down selections are:

- Yes, I consent
- No, I do not consent
- I would like to discuss this before it is undertaken\*

*\*Note that in this case the agency will need to separately document the candidate's consent following that discussion.*

## B. Pre-employment Checks

**Conduct baseline pre-employment checks:** The agency, or other party such as a recruitment agency, conducts baseline pre-employment checks (see Protective Security Requirements) <https://protectivesecurity.govt.nz/personnel-security/managing-insider-risk/>.

## C. Referee Checks

### Conduct referee checks

Pre-employment checks include referee checks which are usually undertaken by the agency. One of the referee checks will be with the preferred candidate's current line manager, or in some cases with the HR manager of the current employing agency and a previous line manager. Referee checks are expected to be completed prior to contractual relations being formed, usually happening at the preferred candidate stage.

Employers are responsible for ensuring they have all the information required to make a sound selection decision. The model standards require that employing agencies are aware of any previous concerns relating to serious misconduct of preferred candidates.

These model standards (including the agency-to-agency serious misconduct check, see below), apply to Public Service agencies and statutory Crown entities. For people coming from organisations outside of the agencies covered by these model standards, referee checks are a good opportunity to find this out.

Referee checks are the process of 'interviewing' previous employers to understand more about their experiences of working with the applicant and their perception of the applicant's performance in the role.

There are several ways to enhance the referee check process.

Referee check with direct line manager, if possible: The model standards require (with some exceptions) the employing agency to complete a referee check with the applicant's current direct line manager. This is to ensure reliable information is obtained and reduce the ability for the applicant to select only referees who would say positive things about them. For most people, a required referee may just be the current manager, but for people who have moved around a lot (which may or may not signal a problem) more may be necessary.

In some circumstances it may not be possible to complete a referee check with the candidate's current/last direct line manager (e.g. unavailability) or it may not be appropriate. The model standards provide that in these situations a referee check should be conducted with the HR manager of that organisation and a previous line manager.

Asking direct and specific questions: Most questions within a referee check will be general or open questions, to gain as much information as possible about an individual. While informative, these questions can be open to bias. To establish if there have been any previous occurrences of serious misconduct, some questions can be direct and specific such as those outlined below.

1. Has [candidate's name] been subject to a serious misconduct investigation, either concluded and upheld or currently under investigation, within the last three years?
2. Have they been dismissed from employment?
3. Have you ever had any reason to question their integrity?
  - If so, what was the situation?
4. Would you hire them again?
  - If not, why not?

These questions are in addition to the other reference check questions you will ask previous employers.

The model standards (in the Exit section) provide that where the referee is unable to comment on these matters due to a confidential settlement with the person concerned, they should decline to give a reference.

Note: The requirement in the model standards that “referee checks should usually be undertaken by the organisation, preferably the hiring or contract manager, rather than the recruitment company or other third party” does not conflict with the use of reference checking software including that provided by private sector companies. In some cases, such software is used to support the recruiting manager in the reference checking process, with verbal follow-up conducted where additional information is required or the points made in online references are not clear. Agencies must ensure the process used provides the level of assurance sought in the model standards and complies with the Privacy Act.

## **D. Pre-employment checks**

### **Conduct optional pre-employment checks**

Agency conducts any optional pre-employment checks such as qualifications check, financial or credit checks, police vetting or drug and alcohol testing (see Protective Security Requirements) <https://protectivesecurity.govt.nz/personnel-security/managing-insider-risk/>.

## **E. Step 1 Serious Misconduct Check**

The serious misconduct check is additional to the other elements of the pre-employment screening and reference checks (see model standards). It is a consent-based organisation-to-organisation check for a serious misconduct investigation, either concluded and upheld or currently under investigation, within the last three years. Care must be taken that only serious misconduct (see definition in the model standards) is reported by the responding organisation.

### **Coverage**

This check should be conducted with Public Service agencies and statutory Crown entities (Crown agents, Autonomous Crown entities, Independent Crown entities) only. Other State sector entities and the private sector are not covered by these model standards and are not expected to maintain records and respond to requests in the required format.

The check is conducted for employees, not contractors, because serious misconduct records for contractors are not maintained by government agencies. The referee check for contractors must cover whether the candidate has ever to their knowledge had a serious misconduct investigation upheld or currently occurring or has had their contract terminated for misconduct. If a contractor’s last previous role was as a public service or statutory Crown entity employee, a check

for serious misconduct investigation, concluded and upheld or currently under investigation, must be conducted with the previous employing agency (or agencies).

### **Agency contact for responding to serious misconduct check requests**

Every agency should have a serious misconduct check email address set up in the format Te Kawa Mataaho Public Service Commission has specified to receive these requests. This email inbox could be automatically forwarded to an existing email inbox for the agency.

Note that not all agency email addresses are in the .govt format. Some agencies use a .org or .co format. A full list of the serious misconduct check email addresses will be provided by Te Kawa Mataaho to each agency for requesting these checks.

### **Management of serious misconduct check email addresses**

We have asked agencies to appoint appropriate people (usually a senior HR person) to monitor and use these email addresses. Agencies are responsible for the process to ensure the requestor is notified by their authorised person monitoring their serious misconduct email address. Agencies should ensure mailbox access is limited and that any personnel / role changes take this into account - access should be constantly managed. As good practice, the mailbox owner should conduct regular reviews about mailbox access.

### **Consent not given**

If the candidate does not consent to serious misconduct disclosure, it does not mean they cannot be employed. The employing organisation can ask the person why they are refusing to consent and take into account those reasons in deciding whether to progress the application.

### **Fair consideration**

Agencies should ensure the prospective employee has a full and fair opportunity to put forward their view of events. All information gathered through screening checks must be considered by the hiring manager on a case-by-case basis including against the risk profile of the role, the requirements of the position, how recent the serious misconduct was, any counselling, retraining or rehabilitation a person has undergone and the explanation provided by the candidate. The employing manager should consider whether strategies need to and can be put in place to minimise potential risk to the organisation, co-workers, and others the person may come into contact with. Disclosure of serious misconduct does not mean the person cannot be employed but allows the agency to make an informed decision and ensure any risks are mitigated.

### **Use of email for serious misconduct checks**

Agencies need to have appropriate processes in place for checking emails before sending them. This includes correctly entering the email address and the individual's details, and the use of SEEMail. Note that for technical reasons, not all agency email addresses are in the same format, depending on their particular requirements.



## PROCESS FOR REQUEST FOR SERIOUS MISCONDUCT DISCIPLINARY RECORD

Requestor	Responder
Sends email to responding agency’s serious misconduct check address with candidate’s full name and dates of employment.	If the response = <b>NO</b> the responder emails the requesting agency (using the responder’s serious misconduct check email address)
	If the response = <b>YES</b> the responder emails the requesting agency <b>to and from</b> their respective serious misconduct check email addresses only and must not copy any other address
<p><b>Notes:</b></p> <ul style="list-style-type: none"> <li>• All emails in relation to the serious misconduct check will have ‘serious misconduct’ in the subject line and only authorised staff should access them</li> <li>• The organisation approached for a check for serious misconduct should provide the information within five working days</li> <li>• If the responder agency has any concern about email authenticity, they must contact the requestor agency before proceeding</li> <li>• If the candidate detail possibly matches more than one employee, the responder agency must contact the requestor agency before proceeding</li> <li>• All emails for a <b>YES</b> response should be made between the agency’s respective serious misconduct email addresses using SEEMail encrypted email, with [SEEMail][IN-CONFIDENCE] in the subject line or body of the email, unless that is not possible because one or other of the agencies do not have SEEMail</li> <li>• If you are unclear whether an agency has SEEMail, ring and ask. If your agency or the other agency does not have SEEMail, the agencies should consider how best to exchange the information and respective privacy officers should be consulted when making that decision (for instance, mailing the information or walking it over to the other agency’s office).</li> <li>• The Protective Security Requirements allow for manual transmission of information if SEEMail cannot be used between agencies. The applicant’s personal information can be sent from one agency to another by commercial courier in a sealed closed envelope. The envelope must clearly show a return address in case delivery is unsuccessful. It is preferred that an agency use a commercial courier with a track and trace capability to provide assurance of delivery. The printed personal information inside the envelope should be marked IN-CONFIDENCE in the header and footer on each page.<sup>1</sup></li> </ul>	

<sup>1</sup> It is expected that “Yes” responses, where SEEMail is not in place, will be handled on a case-by-case basis involving the appropriate specialists.

### Conduct Step 1 serious misconduct check

Agency makes requests (to a specified [email inbox](#)) to the preferred candidate’s previous public service and statutory Crown entity employers for the last three years - “has the person been subject to a serious misconduct investigation, concluded and upheld or currently under investigation in the last three years?”. An agency can request this information only with the consent of the individual concerned and only for the purpose of pre-employment or engagement



screening for a role within the agency, when the individual is either the preferred candidate or part of a preferred candidate group.

Agencies receiving this request, respond within five working days – “the person has/has not been subject to a serious misconduct investigation, concluded and upheld or currently under investigation in the last three years”.

*Please see example Request and Response forms for undertaking a Step 1 serious misconduct check.*

## **Serious misconduct check for undertaking Step 1**

### **A. REQUEST FOR STEP 1 SERIOUS MISCONDUCT DISCIPLINARY RECORD**

Date

Name of agency the request is being made to

Address of agency the request is being made to

#### **Serious misconduct - Step 1 request for disciplinary record**

We are seeking information as to whether the following person has been subject to a serious misconduct investigation, concluded and upheld or currently under investigation, in the last three years by your agency.

- Full name:
- Dates of employment with your agency:

Please note:

- This is not a request for the serious misconduct record itself, details of the investigation or the nature of the investigation. Only a ‘yes’ or ‘no’ response is required.
- The response should not include serious misconduct investigations that were not upheld.
- We have obtained the consent of the person named to conduct this check.

Yours sincerely

Name of person making the request

Name of agency making the request

Contact details (email and phone)

## **B. STEP 1 SERIOUS MISCONDUCT DISCIPLINARY RECORD RESPONSE**

Date

Name of person making the request

Name of agency making the request

Address of agency making the request

### **Serious misconduct - Step 1 disciplinary record response**

Thank you for your request of [insert date] as to whether the following person has been subject to a serious misconduct investigation, concluded and upheld or currently under investigation, in the last three years by our agency.

- Full name:
- Dates of employment with our agency:

Either (delete that which does not apply): Yes, this person has been subject to a serious misconduct investigation, concluded and upheld or currently under investigation, in the last three years by our agency.

Or: No, this person has not been subject to a serious misconduct investigation, concluded and upheld or currently under investigation, in the last three years by our agency.

Or: We were not able to identify this person in our records. As required, please contact the person named below with further details.

Your sincerely

Name of person replying to the request

Name of agency replying to the request

Contact details (email and phone)

### **Important notes**

1. An agency can request this information only with the consent of the individual concerned and only for the purpose of pre-employment or engagement screening for a role within the agency, when the individual is either the preferred candidate or part of a preferred candidate group.
2. An individual can request this information at any time.
3. The information provided must relate to events within the last three years from the date of the request. The information covers only serious misconduct items concluded and upheld or current/still in progress. The information should not include serious misconduct investigations that were not upheld.
4. If the information is not accurate the individual named on this report should advise the agency that holds the record in writing providing details of their concerns and any corrections. The agency will investigate the matter and if necessary, the records will be corrected.

## F. Step 2 Serious Misconduct Check

### Conduct Step 2 serious misconduct check

For candidates that have been subject to a serious misconduct investigation, concluded and upheld or currently under investigation in the last three years, agencies should ensure the prospective employee has a full and fair opportunity to put forward their view of events. If the application proceeds, the employing agency asks the preferred candidate to consent to the disclosure of additional detail of the serious misconduct investigation, concluded and upheld or currently under investigation, by the previous employer.

The employing agency requests (to a specified [email inbox](#)) the serious misconduct record or a summary of it from the previous employing agency. The previous employing agency responds, while respecting the privacy of other people who might have been involved in the investigation.

The preferred candidate should have a full and fair opportunity to put forward their view of events and seek correction of any incorrect or misleading information this report contains. If the person is not employed or engaged, the serious misconduct investigation report should be destroyed by the recruiting agency. If the person is employed or engaged the report should be placed on the person's personnel file.

*Please see example Request and Response forms for undertaking a Step 2 serious misconduct check.*

### **A. REQUEST FOR STEP 2 SERIOUS MISCONDUCT DISCIPLINARY RECORD**

Date

Name of agency the request is being made to

Address of agency the request is being made to

#### **Serious misconduct - step 2 request for disciplinary record**

Thank you for your response of [insert date] advising that the following person has been subject to a serious misconduct investigation, concluded and upheld or currently under investigation, in the last three years by your agency.

- Name:
- Dates of employment with your agency:

Could you please now provide the serious misconduct disciplinary record itself for this person or a summary of it. We enclose proof of the person's consent to this serious misconduct disciplinary record being provided to our agency.

In providing this record you should ensure the privacy of any other people involved in the serious misconduct investigation is protected.

Yours sincerely

Name of person making the request

Name of agency making the request

Contact details (email and phone)

### Important notes

1. An agency can request this record only with the consent of the individual concerned and only for the purpose of pre-employment or engagement screening for a role within the agency, when the individual is either the preferred candidate or part of a preferred candidate group.
2. An individual can request their own record at any time.
3. The information provided must relate to events within the last three years from the date of the request. The information covers only serious misconduct items concluded and upheld or current/still in progress. The information should not include serious misconduct investigations that were not upheld.
4. If the information is not accurate the individual named on this report should advise the agency that holds the record in writing providing details of their concerns and any corrections. The agency will investigate the matter and as necessary the records will be corrected.
5. If the individual concerned is employed or engaged by another agency this report should go in the individual's personnel file and the retention of the report must be in accordance with the organisation's policy and procedures.
6. If the individual is not employed or engaged the agency should destroy this report.

### **B. STEP 2 SERIOUS MISCONDUCT DISCIPLINARY RECORD RESPONSE**

Date

Name of person making the request

Name of agency making the request

Address of agency making the request

#### **Serious misconduct - step 2 disciplinary record response**

Thank you for your request of [insert date] for the serious misconduct disciplinary record for the following person.

- Name:
- Dates of employment with our agency:

The serious misconduct record for this person is:

- Date of action:
- Nature of serious misconduct item:
- Summary of the serious misconduct item:
- Decision made:
- Action taken:

Yours sincerely

Name of person replying to the request

Name of agency replying to the request

Contact details (email and phone)



## **G. Enter into contractual relations with the preferred candidate**

If the agency is satisfied with the results of all pre-employment checks, it enters into contractual relations with the preferred candidate. Note that letters of offer could be conditional on some of the pre-employment checks being satisfactorily completed (i.e. those checks are not finalised at this stage), but the referee check and serious misconduct check should be completed before contractual relations are entered into.