



The New Zealand Public Service is internationally recognised as one of the world's most trustworthy. This comes down in very large part to the integrity, decency and commitment that the vast majority of public servants bring to their role every day.

- **PETER HUGHES, PUBLIC SERVICE COMMISSIONER**

Robust standards of integrity and personnel security enable organisations to have trust and confidence in the workforce. The [Protective Security Requirements](#) (PSR) outline the Government's mandatory expectations for managing personnel, physical and information security in agencies covered by the requirements. The PSR [Personnel Security Mandatory Requirements](#) cover processes for identifying suitable people to employ or engage, educating them about their responsibilities, evaluating their continuing suitability and managing a person's departure. Organisations that are not covered by the mandatory requirements are encouraged to adopt the best practices set out in the PSR.

These Workforce Assurance model standards outline the Public Service Commissioner's additional expectations on organisations when recruiting employees and contractors. The standards help ensure the suitability of the people organisations engage and that the workforce continues to meet high standards for integrity and honesty.

## Definitions

These model standards cover employees and contractors. For clarity:

- **Employees** have an employment agreement, with their employment records including wage, holidays and leave records maintained by the organisation. Employees include fixed-term employees, part-time employees, temporary staff, casual staff and secondees.<sup>1</sup>
- **Contractors** are engaged on a contract for services, are paid on invoice and are responsible for their own tax and ACC levies. Contractors can be engaged directly or through a third party (e.g. recruitment agency).

The definition of 'contractor' for these standards does not include consultants who work independently from the agency for a consultancy company to deliver a specific piece of work and are responsible for their own resources. The definition of 'contractor' for these standards also does not include those providing services outside of core business such as cleaning or trades services. Assurance regarding such people comes from the providing company.

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<sup>1</sup> These definitions vary slightly from the PSR Personnel Security Mandatory Requirements which refer to employees, contractors and temporary staff. For these model standards, temporary staff are regarded as employees if they have an employment agreement with the organisation.



## Recruitment

### Screening

The aim of screening is to obtain information to confirm the identity and credentials of people and assess their suitability before they are employed or engaged and given access to an organisation's information and resources. Prior consent of the person being assessed is required for each screening activity.

Organisations must confirm identity, confirm nationality, confirm the right to work in New Zealand, undertake robust reference checks and undertake a criminal record check through the Ministry of Justice. The [PSR Recruit the right person](#) has more information on these checks.

Where external recruitment companies are used, organisations must be clear whether the recruitment company is to conduct any of the screening checks with any decisions being made by the recruitment company subject to clear and agreed decision-making guidelines (and this is included in the All-Of-Government Recruitment Services Contract managed by the Ministry of Business, Innovation & Employment).

Referee checks should usually be undertaken by the organisation, preferably the hiring or contract manager. Where referee checks and other screening checks are undertaken by a recruitment company, the organisation must obtain assurance that the checks have been completed satisfactorily, including the correct referees being interviewed and being asked the right questions. The request for a serious misconduct disciplinary record from previous public service employers (see below) must be conducted by the organisation.

Referee checks for prospective employees and contractors are expected to be completed prior to any contractual relations being formed, with checks usually happening at the preferred candidate stage. As one of the referee checks, recruiting organisations will conduct referee checks with the candidate's last direct line manager unless it is not able to be done, including for candidates from the private sector. In some circumstances it may not be possible to conduct a referee check with the immediate past line manager. In these cases, the recruiting organisation should clearly document the reasons and conduct a reference check with the HR manager of the immediate previous employing organisation, and a previous line manager, to receive adequate assurance.

Referee checks include questions on whether the candidate has ever, to their knowledge, had a serious misconduct investigation, upheld or currently occurring, or has been dismissed from employment. Guidance and tools are available to assist managers to identify warning signs, for example unexplained gaps in employment history, that may signal concerns about a person's integrity and suitability for employment or engagement.

Screening checks should be undertaken on all people even if they come from another Government organisation or have previously been in a Government organisation. Where an applicant is internal, the organisation should consider whether previous verification checks were undertaken, whether the checks were as rigorous as the present screening process, and whether the previous checks are adequate for the work to be undertaken in the new role (e.g. for senior or high-risk roles).



### **Disclosure of whether the person has been subject to a serious misconduct investigation, concluded and upheld or currently under investigation**

**Step 1:** All prospective employees (not contractors) are asked to authorise the disclosure of whether the person has been subject to a serious misconduct investigation, concluded and upheld or currently under investigation, from all previous State services employers (see note below for coverage) for the last three years.

Serious misconduct is conduct that can have the effect of destroying or undermining the relationship of trust and confidence between an employee and employer. Without this trust and confidence an employment relationship can't continue.<sup>2</sup>

Agencies should ensure the prospective employee has a full and fair opportunity to put forward their view of events.

**Step 2:** Following that, if the application proceeds, the prospective employee is asked 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 organisation approached for the information must be shown evidence that the person concerned has approved the disclosure.

The previous employer providing the additional detail of the serious misconduct investigation should ensure the privacy of other people who might have been involved in the investigation is respected. The person should then have a full and fair opportunity to put forward their view of events and seek correction of any incorrect or misleading information the report contains.

If the person is not employed or engaged, the serious misconduct investigation report should be destroyed. If the person is employed or engaged the report should be placed on the person's personnel file. Templates for requesting and reporting are available for organisations to use when sharing a serious misconduct investigation report.

**Overall:** The checks for whether the person was subject to a serious misconduct investigation concluded and upheld or currently under investigation with the previous employing organisations, should usually be conducted at the preferred candidate stage, i.e. before contractual relations are formed.

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.

The organisation approached for a check for serious misconduct should provide the information within five working days. These checks are organisation to organisation i.e. not with the previous direct line manager or other referee. This check should be conducted with Public Service departments and statutory Crown entities (Crown agents, Autonomous Crown entities, Independent Crown entities) only. Other State sector entities are not covered by these model standards and are not expected to maintain records and respond to requests in the required format.

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<sup>2</sup> [Employment New Zealand – Misconduct and serious misconduct](#)



The disclosure of a serious misconduct investigation, concluded and upheld or currently under investigation, is conducted for employees, not contractors, because serious misconduct records for contractors are not maintained by State services organisations. The reference check for contractors must cover whether the candidate has ever to their knowledge had a serious misconduct investigation upheld or currently occurring or has been dismissed from employment. If a contractor's last previous role was as a State services employee, a check for serious misconduct investigation, concluded and upheld or currently under investigation, must be conducted.

For senior or high-risk roles, organisations should consider conducting the checks for disciplinary history for serious misconduct with previous State services employers for a longer period if appropriate.

Agencies should especially note that:

- Disclosure of disciplinary investigations from previous employers must be based on consent from the person concerned
- These provisions only apply to serious misconduct, not to other misconduct.

In conducting checks agencies should involve their Privacy Officer in designing a privacy-friendly way to collect, store, secure and dispose of information. The Government Chief Privacy Officer is available to help guide agencies in protecting personal information.

### **Fair consideration**

All information gathered through screening checks must be considered by the manager on a case-by-case basis including against the risk profile of the role, the requirements of the position, how recent any integrity or conduct issue was, any counselling, retraining or rehabilitation a person has undergone and the explanation provided by the candidate. The 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.



### Model standards:

- Policies and procedures include guidance on when and how screening is undertaken for prospective employees and contractors and the standards that apply, including screening overseas applicants, and the roles and responsibilities of third-party providers supporting recruitment processes.
- There is a clear statement included as part of the application process that screening will take place, and the purposes for which the information will be used. The applicant's written consent is obtained to allow the organisation to gather such information. This includes consent to the disclosure of whether the person has been subject to a serious misconduct investigation, either concluded and upheld or currently under investigation, from all previous State sector employers for the last three years.
- Referee checks are expected to be completed prior to any contractual relations being formed, with checks usually happening at the preferred candidate stage. If referee checks and other screening checks are undertaken by a recruitment company, the organisation must obtain assurance that the checks have been completed satisfactorily, including the correct referees being interviewed and being asked the right questions.
- As one of the referee checks, the recruiting organisation will conduct referee checks with the candidate's last direct line manager. In circumstances where that is not able to be done, a referee check is conducted with the HR Manager of that organisation, and a previous line manager, to receive adequate assurance.
- Referee checks include questions on whether the candidate has ever, to their knowledge, had a serious misconduct investigation upheld or currently occurring or has been dismissed from employment.
- Serious misconduct investigation checks are conducted by the recruiting organisation. These are:
  - Step 1: A check with all previous State services employers for the last three years on whether the person has been subject to a serious misconduct investigation, concluded and upheld or currently under investigation.
  - Step 2: if the application proceeds and subject to further consent, a request for additional detail of the serious misconduct investigation from the previous employer.
- The organisation approached for a check for serious misconduct should provide the information within five working days.



## Exit

### Exit when a serious misconduct disciplinary process or investigation is underway

While relatively uncommon, the situation can occur where a person has been employed, engaged or contracted by a government organisation and then found to be the subject of pending criminal charges or a serious misconduct investigation.

An employee can resign at any time by notifying the manager that they will be leaving and giving the correct notice period. Accepting a resignation request is not a formal requirement. Once an employee's notice period is completed there is no longer an employment or contractual relationship and the disciplinary process ceases, however an investigation can continue. An organisation should consider inviting the employee to stay (including possibly retaining them on the payroll) until the disciplinary process or investigation is concluded.

Where the employee or contractor leaves, they are informed the investigation will conclude with a record made, and that this record may be disclosed to future employers. The person should be given the opportunity to add their own statement to this record. Exceptions to this are where there are compelling and documented reasons not to conclude the investigation and specialist advice and authorisation by the organisation's chief executive is obtained.

If serious misconduct by an employee is found after the person has left the organisation, the organisation should consider whether any reference given by the organisation for that person which resulted in employment should be corrected. This may include informing the ex-employee and giving them the opportunity to respond to the investigation.



### Model standards:

- All investigations into serious misconduct should be concluded and the actions recorded even where the person has ceased to work for the organisation. This requirement applies except in exceptional circumstances and subject to obtaining organisation chief executive approval.
- When a person is the subject of a serious misconduct investigation and resigns before the investigation is concluded, consideration is given to asking the employee to remain in employment until an outcome is reached to give them an opportunity to fully participate.
- Where the employee or contractor leaves, they are informed the investigation will conclude with a record made, and that this record may be disclosed to future employers. The person should be given the opportunity to add their own statement to this record.
- When a breach is identified involving serious criminal activity, organisations should immediately report the matter to the Police or the Serious Fraud Office.
- When the breach is an issue of national security, it must be reported to the New Zealand Security Intelligence Service.
- Policies and procedures include expectations and guidance for people in the organisation who have been asked to be referees for current or past employees to ensure that their feedback is open and honest about the person's employment record. Where the referee is unable to comment on these matters due to a confidential settlement with the person concerned, they decline to provide a reference.
- If serious misconduct by an employee is found after the person has left the organisation, the organisation should consider whether any reference given by the organisation for that person which resulted in employment should be corrected. This may include informing the ex-employee and giving them the opportunity to respond to the investigation.





### Settlement agreements, confidentiality and non-disclosure statements

Settlement agreements can assist to minimise potentially drawn-out processes where the parties have not been able to resolve a dispute or problem or where trust and confidence has irretrievably broken down. Settlement agreements should not be used to shortcut an investigation into wrongdoing.

If a decision is taken to enter into a settlement agreement with an employee or contractor, organisations are expected to include confidentiality or non-disclosure statements only when they are genuinely necessary and in the interests of both parties. Confidentiality and non-disclosure statements should be written where possible, so they do not prevent the agency responding openly to reference requests from future employers. Finding the right balance is a matter for judgement in the particular circumstances of each case. Organisations must consider what interests need to be protected in the circumstances and whether a non-disclosure statement of some kind is genuinely necessary to achieve that protection. Any restrictions need to be lawful, proportionate and have a justifiable reason. These statements recognise that in some cases confidentiality and non-disclosure statements are appropriate.

As at all times, when conducting misconduct investigations and negotiating settlement agreements, organisations must follow good employer practices and treat employees fairly, reasonably, in good faith and with respect and must observe natural justice principles.

#### Model standards:

- Settlement agreements including confidentiality provisions should only be used where genuinely necessary.
- Any decision by an organisation to enter into a settlement agreement must be supported by documentation of the process and the rationale for the agreement. If confidentiality or non-disclosure statements are included in a settlement agreement, it should be approved by senior management.
- If entering into confidential settlement, agencies and the person need to discuss what information will be provided by the agency if asked for a reference. The agency needs to consider its responsibilities for ensuring the integrity of the system in those discussions.