



# Te Kawa Mataaho

## Public Service Commission

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# Frequently Asked Questions

## General questions

### 1. Why have the Workforce Assurance Model Standards been developed, and what is the issue they are looking to solve?

In recent years there have been situations where an employee who has been found to have engaged in serious misconduct has subsequently been employed by another agency without the recruiting agency being aware of the past situation. While previous serious misconduct offences may not be a reason to not hire someone, it is important that hiring agencies have all the information available to make a sound decision. As public sector staff, we must all conduct ourselves with integrity, and previous indiscretions may indicate that someone does not meet the standards required.

### 2. What is serious misconduct?

Misconduct can be at two different levels: misconduct and serious misconduct.

Serious misconduct is misconduct that has the effect of destroying or undermining the relationship of trust and confidence between an employee and an employer. More detail on what constitutes serious misconduct is provided by Employment New Zealand at <https://www.employment.govt.nz/resolving-problems/types-of-problems/misconduct-and-serious-misconduct/>.

What constitutes serious misconduct may differ between agencies depending on their nature. It is important that, in coming to a finding, an agency confirms whether the finding is of misconduct or serious misconduct, and that the employee is aware that it is a serious misconduct matter.

The serious misconduct check from the Workforce Assurance Model Standards only applies to serious misconduct. Other misconduct must not be reported by agencies when responding to this check.

### 3. How is the new requirement different from what was done previously?

It has always been the expectation that robust checks are undertaken when recruiting someone into an agency to ensure they meet the high integrity expectations of all staff. However there have not always been the systems set up to support this and checks have not necessarily been consistently applied. This new standard strengthens the existing expectations and provides a process to ensure agencies can meet what is expected of them.

### 4. What other resources are available?

The integrity and conduct programme of Te Kawa Mataaho Public Service Commission aims to build trust by supporting the institutional integrity of agencies and trustworthiness of staff. A link to He Aratohu - A guide on integrity and conduct is available here: <https://www.publicservice.govt.nz/guidance/guide-he-aratohu>.

## **Additional useful links from Employment NZ, Department of Internal Affairs and Office of the Auditor-General**

### **Recruitment**

When recruiting employees it is important employees use a good recruitment process.

<https://www.employment.govt.nz/starting-employment/>

### **Identification Management Standards**

The Identification Management Standards provide guidance for government agencies about the process for initial establishment and subsequent confirmation of an individual's identity.

<https://www.digital.govt.nz/standards-and-guidance/identification-management/identification-management-standards/>

### **Resolving employment relationship problems**

There are many types of problems that can arise in the workplace. There are processes to follow when working through employment relationship problems. Employers and employees should use these and try to resolve problems in a positive way. The Employment New Zealand website provides some helpful advice on resolving employment relationship problems.

<https://www.employment.govt.nz/resolving-problems/>

### **What is mediation?**

Mediation is a safe, voluntary and confidential way where employers and employees can talk about their work problems with the help of an independent person (a mediator) and try to find their own solution. Mediation can help parties understand each other's point of view and find a resolution they can both agree with. If there is an agreement reached at mediation, the mediator will write up what both parties agreed to as a Record of Settlement (legal document). Once it is signed by the parties and the mediator, this document becomes confidential, binding, final and enforceable through the courts. A link to the records of service template is also provided.

For further information regarding mediation services see <https://www.employment.govt.nz/resolving-problems/steps-to-resolve/mediation>.

### **Severance payments**

The Auditor-General says "Public sector employers need to make sure that they have good reasons for making a severance payment, that the level and form of the payment is appropriate, and that the decision is properly authorised." <https://oag.parliament.nz/2019/severance-payments>

The Office of the Auditor-General also addresses the matter of confidentiality of settlements, noting that there are specific legal obligations to disclose in a number of Acts, including the Crown Entities Act.

<https://oag.parliament.nz/2019/severance-payments/part3.htm>

## Employing (Recruiting) Organisation

### **5. Why is it important if the person is already employed in a public service department or statutory Crown entity? Surely, they would have been checked before they came in, so why do we need to do that again?**

Previous or current employment in agencies covered by the model standards does not mean someone is exempt from integrity issues. While checks may have been completed prior to a person being employed, this cannot be guaranteed. The expectation is on the recruiting manager to ensure they are aware of anything that may cause future issues and so relying on the judgement and previous practices of another agency or hiring manager does not meet the expectations set in the model standards.

### **6. Does this apply to candidates who are currently employed in my agency?**

Generally, the model standards do not apply to internal appointments. However where a candidate is internal, the organisation should consider whether previous verification checks were undertaken or done as rigorously 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).

### **7. If the candidate does not give consent to the checks being done, can I still employ them?**

While not giving consent is not a reason to not hire someone, the reason for them withholding consent may be. The candidate should be asked why they are not prepared to consent to disclosure. Any information provided should be considered by the hiring manager when deciding whether to progress the application.

### **8. If the candidate's current direct line manager declines to give a reference, can I still employ them?**

The candidate's current direct line manager declining to give a reference is not a reason in itself not to employ them. The candidate should be asked if they know of any reason why their direct line manager has declined to give a reference, and whether there are other referees from that agency who can assist in giving the assurance sought. The hiring manager will take this into account when deciding whether to progress the application.

### **9. If a serious misconduct claim was upheld, does that mean I cannot employ the person?**

All information gathered through screening checks must be considered by the manager on a case-by-case basis against the risk profile of the role, the requirements of the position, how recent any serious misconduct 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.

### **10. Why do we only need to check for serious misconduct in public service departments and statutory Crown entities? Why not in other state sector entities, local government, or private sector organisations?**

The expectation is that through the recruitment stage, agencies must gather the appropriate information to ensure that the person they are hiring meets the expectations of all staff. The reason agencies do not have to undertake a serious misconduct check outside of the public service and statutory Crown entities is that organisations outside of this are not subject to the model standards and therefore may not record or share this information in the required format. When checking the suitability of someone from outside the agencies covered by these model standards, reference checks are an important way to understand their serious misconduct history.

### **11. Why is the focus of the Workforce Assurance Model Standards on serious misconduct and not criminal charges, which are more significant?**

The Protective Security Requirements already require agencies to complete a Ministry of Justice criminal record check on all prospective employees and contractors. These model standards do not change that requirement.

### **12. Does serious misconduct as defined in the Model Standards include findings of professional misconduct?**

Serious misconduct and professional misconduct are different and separate, with the model standards checks being about serious misconduct. If there is a finding of professional misconduct against a person, the employer will decide whether to conduct an employment investigation which may result in a serious misconduct finding.

When recruiting, if qualifications are vital to a role, the employing agency should undertake a qualifications/professional membership check. Additionally, reference check questions that are direct and specific as outlined in the [Workforce Assurance Support pack \(pg. 5\)](#) can be asked. The guidance provided in question 9 above can also apply to findings of professional misconduct.

### **13. Can we use reference checking software provided by a third party?**

Reference checking software can be used to support the recruiting manager in the reference checking process under the model standards. Agencies must ensure the process used provides the level of assurance sought in the model standards. This includes verbal follow-up conducted where additional information is required or the points made in online references are not clear.

## **Previous Employer**

### **14. There was a serious misconduct investigation, but it was settled through a confidential settlement. Do I need to disclose this?**

Whether or not you can disclose this will depend on the terms agreed to in the confidential settlement. You can only disclose it if the settlement agreement does not prohibit you from doing so.

### **15. We have been investigating an employment matter that is likely to result in a settlement. Can we use a confidentiality clause?**

The model standards set out that consideration should be given to wording used in any record of settlement and specifically whether a confidentiality clause is necessary. The parties should consider agreeing what words can be shared should consent be given to disclosure at a future date, specifically for referee checks. The parties should actively turn their minds to these issues at the point a record of settlement is being considered.