Public Service Commission
Te Kawa Mataaho

Guidance for Public Service Employers on Dismissal Rules for High Income Earners

Introduction

On 21 February 2026, the Employment Relations Amendment Act 2026 amended the Employment Relations Act 2000 by introducing different dismissal rules for an employee whose annual remuneration meets or exceeds the specified remuneration threshold (section 67I). The initial threshold is $200,000. It is subject to adjustment under section 113B, with any increase taking effect on 1 July of the relevant year.

Unless a transitional provision or an agreed opt-back-in term applies, an employee at or above the threshold cannot bring a personal grievance for unjustified dismissal or for unjustified disadvantage relating to the dismissal. The employee may continue to bring personal grievances on the other grounds preserved by section 113A. Certain employees who were already employed immediately before 21 February 2026 retain transitional protection for up to 12 months.

An employer and employee may agree in writing, as a term of employment, that sections 67I and 113A do not apply. This is referred to in this guidance as “opting back in to dismissal protections”. An opt-back-in term restores the ordinary statutory framework covered by those sections, including access to dismissal-related personal grievances and the associated dismissal protections.

This guidance is issued to Public Service agencies under s95 of the Public Service Act 2020. It assists Public Service employers to consider whether to agree to an opt-back-in term for Public Service employees either on an individual basis or through collective bargaining. Each employer remains responsible for its decisions and must comply with the Employment Relations Act 2000, the applicable employment agreement, collective-bargaining and good-faith obligations, relevant delegations, and any other legal requirements. Agencies should obtain specific legal advice where appropriate.

Further information is available from Employment New Zealand: Dismissal rules for high income earners, found here.

Principles

The Public Service Commissioner expects that agencies apply the following principles when considering an opt in request:

- Consider any requests to opt back in on a case-by-case basis in accordance with good faith obligations and any applicable contractual or other legal obligations.
- Approach any decision with careful consideration of the particular circumstances and ensure that there is clear and compelling rationale for any decision to agree to opt back in.
- be mindful of public confidence and the reputational implications of restoring access for senior employees.

Agency response and expectations regarding opting back in

Unions with collective employment agreements covering staff above the income threshold may seek to preserve or restore access to the ability to raise personal grievances for unjustified dismissals, and some employees on affected individual employment agreements may seek discussions over the amendment. While each negotiation or request to opt-in needs to be conducted/considered in good faith between employer and employee, agencies should consider:

- **The seniority and significance of the role in question**. Very senior leaders would not generally be expected to be eligible to opt back in to unjustified dismissal personal grievance provisions.
- **The ability to recruit and retain important or scarce resource without the opt back in**. That is whether labour market conditions (including international competition or skill shortages) create a compelling case for flexibility around the opt back in. Any proposal to enable whole workforces (e.g. through collective bargaining) to opt back in should be subject to a very high bar, noting that this should only occur where there is a strong labour market justification (e.g. internationally competitive or highly constrained workforce segments).
- **Have regard to the implications for public confidence**, organisational reputation, and fiscal stewardship of significant compensation payments or other additional terms made in recompense to senior employees in lieu of restoring access to personal grievance rights.

All such decisions should be carefully justified, documented, and aligned with broader system expectations. Agencies may wish to seek their own legal advice as they consider opt-in requests. Where the provision of access to dismissal protections has not been agreed, agencies may wish to consider their ability to negotiate other terms such as extended notice periods.

Expectation that workforce assurance standards be maintained

These changes to the Employment Relations Act do not diminish agencies' obligations in respect of the existing Workforce Assurance Model Standards.

Maintaining high standards across the Public Service workforce requires agencies to identify and where appropriate investigate and appropriately record instances where those standards are not met.