



Guidance on misconduct and serious misconduct reporting requirements

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Purpose

The Public Service Act 2020 has recently been amended to introduce a new requirement for organisations to report annually to the Public Service Commissioner (the Commissioner) on the outcomes of any investigations into alleged misconduct or serious misconduct that year (see section 94B).

This guidance sets out the information for organisations to include in their reports to the Commissioner. Transparent and consistent public reporting on employment investigations into misconduct and serious misconduct promotes trust and confidence in the public sector. It helps to identify systemic trends and emerging risks, so that targeted support can be put in place.

As well as supporting transparency and providing valuable insights for the Public Service Commission’s (the Commission) integrity promotion function, this information will be used for aggregated and non-identifiable reporting annually. This reporting will include commentary from the Commission, explaining how we have analysed the data and what is being done to respond to the emerging risks and trends that we have identified.

Application of this guidance

Organisations covered

These guidelines apply to all organisations referred to in section 17(2) of the Public Service Act 2020, excluding school boards. This includes:

- Public service departments
- Departmental agencies
- Interdepartmental executive boards and ventures¹
- Crown agents
- Crown entities (excluding tertiary education institutions, and Crown Research Institutes and their subsidiaries)
- companies named in Schedule 4A of the Public Finance Act 1989
- the Parliamentary Counsel Office

Timing for submission of reports

Organisations are required to provide a report on the outcomes of all employment investigations into alleged misconduct and serious misconduct by employees that have ceased or concluded during that financial year (from 1 July to 30 June). If an investigation is ongoing or the action that will be taken in response to an investigation has not yet been determined, this investigation should be included in the report for the following year.

Reports must be submitted after 30 June and before 1 October each year. Templates and specific instructions for submitting reports will be emailed to organisations in advance of reporting rounds.

As organisations may not have previously collected this information in a consistent format, the first organisational report (covering 1 July 2026 to 30 June 2027) is not required until after 30 June 2027.

Staff covered

For the purposes of reporting, ‘employees’ includes both permanent employees and fixed term employees. Contractors and volunteers are not included in the scope of reporting.

Where staff are seconded, the obligation to report rests with the organisation that undertook the investigation.

Alignment to section 94A notification requirements

In addition to the general reporting requirements outlined in this guidance, the Public Service Act 2020 has also been amended to introduce a requirement for public service department chief executives and boards of interdepartmental ventures to notify the Public Service Commissioner before commencing an investigation into allegations of misconduct or serious misconduct by a senior public service employee (see section 94A). This requirement only applies to public service departments and only to investigations into senior public service employees, defined as direct

¹ If all staff supporting an interdepartmental executive board are covered in the report of the board’s servicing department, no separate report is required

reports to the chief executive or interdepartmental board. Separate guidance for this requirement can be accessed on the Commission's website.

Investigations into senior public service employees that have been notified to the Public Service Commissioner under section 94A must be included in an organisation's total investigation numbers when 94B reports are submitted at the end of the financial year, once the investigation has concluded or ceased.

Information for organisations to include in reports

Agency reports must include, for all employment investigations that have ceased or concluded into alleged misconduct or serious misconduct in the past financial year:

Outcome

The outcome of the investigation (select one):

- Serious misconduct found to have occurred
- Misconduct found to have occurred
- No misconduct or serious misconduct occurred, or insufficient evidence to determine if misconduct or serious misconduct occurred
- Investigation ceased and no findings made - please explain why

An outcome is determined by an employer following an investigation. Only one outcome should be recorded and where an investigation led to multiple outcomes the most serious outcome relating to the staff member should be recorded.

Category

What the investigation related to (select all that apply):

- Gifts, benefits or sensitive expenditure
- Political neutrality
- Information security and acceptable use of IT resources
- Use of social media
- Racial harassment
- Sexual harassment
- Bullying and/or other harassment
- Discrimination
- Fraud or corruption
- Theft
- Dishonesty
- Conduct outside of work
- Dangerous behaviour at work
- Failure to follow reasonable instructions or meet workplace expectations
- Other – please describe

Each investigation can relate to multiple categories. Only select a category if it was a substantive element of the investigation (not incidental or peripheral). The description of what each category covers is set out in Appendix 1.

Action taken

The action taken following the investigation (select one):

- No further action taken
- Letter of expectations
- Warning (including verbal, written and final warnings)
- Dismissal (including on notice dismissal or summary dismissal)
- Staff member resigned before an action could be determined or applied
- Other – please describe

For each investigation only the most serious sanction applied should be recorded.

Job level

The job level of the staff member being investigated (select one):

- Senior Manager (tier 1, 2 or 3)
- Manager
- Staff member

These job level classifications align with those used in the public service workforce data collections. In small organisations, tier 3 managers may function as team managers and may not ordinarily be considered senior managers, however for reporting purposes tier 3 should be grouped as senior managers.

Employee names, job titles or employee ID numbers should not be included in reporting.

Free text responses should be concise and not include unnecessary personal information. Reporting may identify high-level themes from free text responses but will not include verbatim responses.

To support accuracy and minimise effort at the conclusion of the reporting period, we suggest organisations keep a record of investigations as they occur over the year. It may be useful to utilise a table like the example in Appendix 2 to ensure an accurate record of investigations is kept.

Reporting should record individual employees separately

For reporting purposes, where an employment investigation involves multiple employees facing allegations of misconduct or serious misconduct, please record the outcome for each employee separately. This ensures that outcomes of investigations are counted per individual, rather than as a single case covering multiple employees.

Thresholds for reporting

Reporting is only required where an allegation of misconduct or serious misconduct leads to an employment investigation

The Public Service Act 2020 requires organisations to report “**the outcomes of investigations into alleged misconduct or serious misconduct**”. Reporting is therefore triggered by the commencement of an employment investigation or process, not by the receipt of allegations or information alone.

An allegation of misconduct or serious misconduct may arise from a complaint (including from another employee or member of the public) or from an employer becoming aware of information that suggests misconduct or serious misconduct may have occurred (for example, by reviewing financial records or system logs).

Definition of misconduct and serious misconduct

Organisations have discretion to determine what constitutes misconduct and serious misconduct within their organisation, based on their organisation’s context and policies.

The [Employment New Zealand website](#) advises that misconduct is generally considered serious if the employee’s behaviour has undermined or destroyed their employer’s trust in them and impacted the employee’s ability to do their job.

What constitutes an employment investigation for reporting purposes

For reporting purposes, “investigation” refers to an employment investigation or processes undertaken in response to an allegation of misconduct or serious misconduct. An employment investigation is a purposeful and structured process undertaken to establish the facts of a matter. It occurs within an employment framework, is likely to involve human resources expertise from within the organisation or an independent investigator, and goes beyond routine supervision or immediate corrective action by a manager.

An investigation may be simple or complex depending on the situation. Even if an investigation concludes quickly, for example, because all parties agree what happened, it is still an employment investigation and must be recorded in agency reporting.

More information about employment investigations can be found on the [Employment New Zealand website](#).

Investigations outside of scope

Investigations undertaken outside an employment framework and primarily for other purposes are not within scope for reporting. This includes audits, security investigations and investigations by statutory oversight bodies (for example the Office of the Ombudsman).

Where a non-employment investigation identifies information suggesting potential misconduct or serious misconduct by an employee, and this results in a separate employment investigation, the employment investigation is within scope of reporting and must be reported once concluded.

Out of scope for reporting – routine management and employee performance

Routine management and supervision of staff should not be included in reporting. Minor behavioural issues (for example one-off lateness or inappropriate language) that are dealt with by

managers at the time the issue occurs and do not involve an employment investigation do not need to be reported.

Performance issues related to how well an employee is meeting the expectations of their role (including productivity, timeliness and quality of work) are also out of scope, even where they result in performance-related employment outcomes for the employee. Performance issues relate to capability rather than conduct and will usually be managed through performance plans, coaching or development discussions.

Where an issue is initially managed as a performance matter, but later information indicates potential misconduct or serious misconduct may have occurred and an employment investigation is commenced, the misconduct related employment investigation is within scope for reporting.

Out of scope for reporting – initial assessment of allegations or information

Organisations may undertake an initial assessment of information of an allegation to determine whether it is credible, could relate to misconduct or serious misconduct, and warrants an employment investigation. An initial assessment or triage of an allegation of misconduct or serious misconduct is not within scope of reporting. If an initial assessment results in an employment investigation this is within scope of reporting.

Reporting is still required where an investigation ceases and no findings are made

In some circumstances, an investigation may cease before any findings are made. In these cases, the outcome should be recorded as “Investigation ceased and no findings made” and the reason for this briefly noted.

Reporting is still required when an employee resigns during an employment investigation

The Workforce Assurance Model Standards provide that where an employee resigns when an investigation is underway and the disciplinary process ceases, the investigation should continue. In these circumstances the outcome determined following the investigation should be recorded and the action taken recorded as “Staff member resigned before an action could be determined or applied”.

How the data will be used

How data will be stored and accessed

The data provided by organisations will be stored in accordance with the Commission’s data storage and management protocols. Access to individual records will be limited to the Commission’s Data and Insights team, while access to aggregated data will be controlled via standard IT controls (for example, username and password with appropriate permissions).

How data will be reported

The Commission will use the data provided by agencies to publish an aggregated and non-identifiable report that provides a sector wide picture of misconduct and serious misconduct outcomes. Reporting will be publicly available and may also include additional integrity related indicators to provide further context and information.

The aggregated report is likely to include the:

- number of investigations into allegations of misconduct or serious misconduct that occurred
- number of misconduct outcomes
- number of serious misconduct outcomes
- number of outcomes where no misconduct or serious misconduct occurred, or that there was insufficient evidence of misconduct or serious misconduct
- number of investigations that ceased and no findings were made, and most frequent reason(s) why this happened.
- categories of misconduct and serious misconduct that occurred most frequently.
- actions taken in response to misconduct or serious misconduct.
- number of misconduct or serious misconduct findings by job level

The report may also include cross-variable analysis to identify themes and relationships within the data. This could include identifying the most common action taken in response to different categories of misconduct and serious misconduct or trends by job level.

In addition to publishing an aggregate report, the Commission may publish some organisational specific information, where doing so does not identify an individual. As the numbers of investigations for individual organisations will be much lower than the aggregate public-sector wide total, it is likely that far less information could be published at an organisation specific level than in the aggregate, system wide report.

In all reporting, where numbers are very small or combining different pieces of information (such as entity, job level, misconduct category and outcome) could identify an individual, the information would not be published. All publication of data will adhere to the Commission's Data Release rules, which includes requirements for the mandatory suppression of small counts.

Reporting will include analysis and commentary that contextualises findings and makes it clear there is no optimal or benchmark number of misconduct investigations that should occur each year across organisations. Variations between organisations may reflect different risk environments and high numbers of investigations may indicate mature detection, investigation and assurance frameworks. Commentary may also identify risks or signal areas where strengthened training, assurance activity, leadership development, or targeted engagement may help improve outcomes or help address inappropriate behaviour.

Appendix 1: Description of categories for reporting purposes

The below table outlines what each of the categories of misconduct or serious misconduct may typically involve and is intended as a guide to assist categorisation for reporting purposes only. Organisations will continue to make their own determinations about what constitutes misconduct or serious misconduct for their employees.

The conduct covered in these categories may breach an organisation's policies or code of conduct, the code of conduct for the public sector, model standards issued by the Commissioner or other relevant standards and guidance.

Category of misconduct or serious misconduct	Description of category
Gifts, benefits or sensitive expenditure	Misconduct or serious misconduct that relates to giving or receiving gifts, benefits or sensitive expenditure. For example, inappropriate spending on a work credit card or spending that does not align with an agency's gifts and benefits policy.
Political neutrality	Public servants are required to act in a politically neutral manner at work. Misconduct or serious misconduct related to this requirement could include using work time or resources to campaign for a political party.
Information security and acceptable use of IT resources	Misconduct or serious misconduct that relates to information security and acceptable use of IT resources. For example, sharing information without authorisation, using a work device to access inappropriate websites or using a non-secure email for work purposes.
Use of social media	Misconduct or serious misconduct that relates to use of social media. For example, posting offensive content on a personal social media page that lists where the employee works, potentially bringing their agency into disrepute.
Racial harassment	Racial harassment is when someone expresses hostility or ridicules someone else on the basis of race, colour, ethnic group or national origin, is hurtful or offensive to you, and it is serious or frequent enough to have a negative effect on your job performance or job satisfaction. This could include things like racist remarks or mocking someone for their ethnicity.
Sexual harassment	Sexual harassment is any unwelcome or offensive sexual behaviour that is repeated, or is serious enough to have a harmful effect, or includes a promise of preferential treatment or a threat of detrimental treatment. This could include things like making unwanted sexual comments or sending offensive messages or images to a colleague.
Bullying and/or other harassment	Bullying is repeated and unreasonable behaviour directed towards an employee or group of employees that can lead to physical or psychological harm. Bullying can be physical, verbal, psychological or social. It can include victimising, humiliating, intimidating or threatening. Workplace bullying is not one-off or occasional instances of rudeness, constructive peer review, a manager requiring

	reasonable verbal or written work instructions to be carried out, warning or disciplining workers in line with the organisation's code of conduct. Examples of bullying include belittling remarks, yelling at staff or ignoring and excluding a staff member. Harassment includes any unwanted and unjustified behaviour that another person finds offensive or humiliating, which is serious or repeated, and has a negative effect on the person's employment, job performance or job satisfaction.
Discrimination	Discrimination is treating someone unfairly based on personal characteristics such as gender, age, ethnicity, country of origin, disability, sexual orientation or religious beliefs. Examples of discrimination include someone being denied a career development opportunity due to a personal characteristic or being denied a reasonable accommodation for an impairment/disability.
Fraud or corruption	Misconduct or serious misconduct that relates to fraud or corruption. Fraud is an intentional act using deception to obtain an unjust or illegal advantage. Corruption is a type of fraud. It is the abuse of entrusted power for private gain (such as soliciting or receiving gifts or other gratuities to perform an official duty). Examples of fraud and corruption could include submitting false travel claims or accepting bribes.
Theft	Unauthorised taking or using of property or resources belonging to the organisation, colleagues or a member of the public.
Dishonesty	Providing false, misleading or incomplete information. Examples may include falsifying timesheets or lying about work related matters.
Conduct outside of work	Behaviour outside of work that has a negative impact on the employment relationship, such as bringing the employer into disrepute or engaging in criminal activity outside work.
Dangerous behaviour at work	Dangerous behaviour at work is conduct that puts the employee, their colleagues, or the public at risk of harm. This includes violent behaviour, dangerous or reckless driving while undertaking work duties, being drunk and disorderly at work or using illegal drugs at work. Such behaviour can compromise safety, wellbeing, and the ability of others to perform their roles. Conduct of this nature could result in criminal charges.
Failure to follow reasonable instructions or meet workplace expectations	Failure to follow reasonable instructions or meet workplace expectations. For example: repeated lateness or absenteeism, continued failure to follow reasonable work-related instructions, ongoing inappropriate language or disrespectful behaviour to colleagues or the public.
Other – please describe	Misconduct or serious misconduct that is not covered by another category.

Appendix 2: Example recording table

To support accuracy, we suggest organisations keep a record of investigations as they occur over the year. It may be useful to utilise a table like the example provided below to ensure an accurate record of investigations is kept.

Record number	Outcome	Categories	Action taken	Job level
1	Serious misconduct found to have occurred	Bullying and/or other harassment	Dismissal (including on notice dismissal or summary dismissal)	Staff member
2	Misconduct found to have occurred	Failure to follow reasonable instructions or meet workplace expectations.	Warning (including verbal, written and final warnings)	Staff member
3	Serious misconduct found to have occurred	Fraud or corruption, Theft.	Dismissal (including on notice dismissal or summary dismissal)	Staff member