

Purpose

Workplace investigations are conducted to gather evidence for the decision maker (the delegate) on matters under investigation.

The department is committed to ensuring all workplace investigations are undertaken in a fair and robust manner, and adhere to the principles of natural justice (also known as procedural fairness).

This document has been developed to serve as a guide for employees within the department who are involved in a workplace investigation process.

The Crime and Corruption Commission's guide "[Corruption in Focus](#)" provides advice on conducting investigations, particularly more complex cases.

Definitions and glossary of terms

Balance of probabilities - the civil standard of proof used to determine if allegations can be substantiated. This is also the standard of proof used in workplace processes. It means that to find an allegation substantiated the delegate must be satisfied that it is more probable than not that the situation described did occur (based on a consideration of all the evidence before them). The degree of probability varies according to the seriousness of the issues involved, that is, the more serious the allegation the higher the degree of probability that is required to satisfy the delegate that the claim is substantiated.

Case manager - a person nominated by the [delegate](#) (usually from the Workplace Relations team) who is the central contact for all employees involved in the investigation process. The [case manager](#) will liaise with the investigator, advise all parties on the investigation process, keep the [subject officer](#) up to date on progress of the matter and advise the delegate on robust decision making principles. The case manager is the first point of contact for any questions about the process.

[Complainant](#) - a person who has made a complaint, or lodges allegations.

Confidentiality - a duty of care not to disclose information that may be sensitive or damaging to the interests of another, whether or not the other person has specifically asked for the information to be kept in confidence.

Employees involved in workplace investigations are obligated to maintain confidentiality in relation to information or processes involved in the investigation, and should not discuss the matter with colleagues or any other person involved in the matter unless they are acting in a support capacity. If you are aware someone has knowledge of the matter, it is just as important not to discuss the matter with them.

External investigators engaged to conduct investigations will be bound by the confidentiality requirements in the Terms of Reference.

Corrupt conduct - Under the [Crime and Corruption Act 2001](#), corrupt conduct is conduct by anyone that adversely affects a public agency or public official so that the performance of their functions or the exercise of their powers:

- is not honest or impartial, or
- knowingly or recklessly breaches public trust, or
- involves the misuse of agency-related information or material.

Corrupt conduct is engaged in for the purpose of providing a benefit to the person or another person, or causing a detriment to another person. In addition, the conduct must be serious enough that, if proved, would constitute a criminal offence or a disciplinary breach providing grounds for dismissal.

Under the *Crime and Corruption Act 2001*, corrupt conduct includes an attempt or a conspiracy to engage in the conduct, as well as neglect, failure or inaction that adversely affects a public agency or official in the ways described above.

Delegate - The officer within the department who has the delegated authority under the department's HR Delegation to determine investigation and disciplinary matters.

Electronic recording - is a digital, tape or video recording.

Finding contained in a workplace investigation report - is a finding of whether or not an allegation contained in the Investigation Report can be substantiated or not, based on the balance of probabilities. Findings provided by workplace investigations are not disciplinary findings. However, in making a determination as to whether disciplinary action is warranted, the delegate may consider findings generated by a workplace investigation. However it is the ultimately the delegate's responsibility to consider all of the evidence and draw their own conclusion.

Investigator - A person engaged by the delegate to conduct an investigation into the allegation/s. The investigator must be appropriately skilled, qualified, and independent of the allegations.

Natural justice – All investigations will be conducted according to the rules of natural justice. This means that the investigator is objective and independent, free from bias, will give all parties a fair hearing by allowed them opportunity to comment on any information discovered during the investigation that may adversely affect them.

Subject Officer - an employee who is the subject of the complaint or allegation/s which have been assessed as requiring investigation.

Support person - A person who provides emotional support to a departmental employee who is party to a workplace investigation.

Witness – Anyone (a departmental employee or external person) identified as someone who may have witnessed a particular event, or may have been mentioned in a document or referenced in another way in relation to the matter or matters under investigation.

Workplace investigations

The role of the investigator

The investigator is appointed by the delegate to be an impartial and objective fact finder in a matter. Under no circumstances should the investigator make any recommendations with respect to disciplinary action. This is a matter for the delegate, and is determined through a separate process.

An investigator is required to:

- keep to the scope of matters outlined in the authorised Terms of Reference;
- research the relevant departmental policy, procedure and legislation relevant to the allegation/s;
- gather all relevant documentation;
- interview all relevant parties and witnesses (and record the interviews where necessary);
- collate all evidence, which could include (particularly when investigating corrupt conduct):
 - forensic examination of computer systems
 - examination of telephone records
 - data search and seizure
 - enquiries with other third parties
 - tracing funds/assets/goods
 - enquiries with banks and other financial institutions (subject to appropriate Court orders)
 - expert witness and specialist testimony
 - liaise with police and other law enforcement or regulatory agencies
- check evidence is complete;
- accurately consider all evidence obtained with respect to the allegation/s and make suggested findings;
- provide a report of the outcome of the investigation, ensuring outcome is firmly supported by evidence;
- act impartially and maintain confidentiality; and
- abide by the requirements of the *Code of Conduct for the Queensland Public Service* (the Code of Conduct), the Crime and Corruption Commission's guide "[Corruption in Focus](#)", section 5.3 of AS8001-2008 *Fraud and Corruption Control* and departmental processes when undertaking the investigation process.

Terms of Reference

A Terms of Reference is the document which outlines the scope of the investigation, and will be provided by the delegate to the Investigator to formally commence the investigation.

The Terms of Reference sets the expectations of the investigation and the particular principles and legislation that needs to be considered and complied with (such as natural justice, the [Public Service Act 2008](#) and the Code of Conduct, Crime and Corruption Commission requirements, privacy principles, and the [Criminal Code Act 1899](#)).

Where new information may lead to a substantial change to the terms of reference (e.g. a new range of allegations), the authorised delegate must be advised, and where required the Investigation Terms of Reference should be updated.

Conflict of Interest

A [conflict of interest](#) arises where there is a conflict, or possible conflict between a personal interest of an employee and the employee's official responsibilities.

An **actual** conflict of interest exists where a reasonable person, in possession of the relevant facts, would conclude that there is a direct conflict between an employee's current duties and responsibilities and existing personal interests.

A **perceived** conflict of interest exists where it could be perceived, or appear, that a public official's personal interests could improperly influence the performance of their duties, whether or not this is in fact the case. A perceived conflict of interest is interchangeable with an apparent conflict of interest.

A **potential** conflict of interest exists where a public official has personal interests that could conflict with their official duties in the future.

A conflict of interest may arise from a range of factors including, but not limited to:

- personal relationships;
- personal beliefs or opinions;
- disparity between public service ethics and professional codes of ethics;
- employment outside the department;
- previous employment history;
- membership of special interest groups; or
- employee ownership of shares, companies, or property.

Before agreeing to be the delegate on a matter, a potential delegate must consider and declare whether they may have any actual, perceived or potential conflict of interest.

The investigator is also asked to declare any conflict of interest as part of the Terms of Reference.

Any conflict of interest that arises during the course of the investigation must be appropriately declared, considered and resolved.

Natural Justice (procedural fairness)

The department is committed to ensuring all workplace investigations are undertaken in accordance with the principles of [natural justice](#).

Specifically, all workplace investigations must:

- be undertaken by an impartial and objective investigator;
- be undertaken in a sensitive and respectful manner;
- seek to examine all relevant facts surrounding the matters contained in the Terms of Reference;
- ensure any relevant evidentiary avenues of enquiry are explored as they become apparent to the investigator;
- where the issue relates to a complaint, seek statements from both the complainant/s and the employee subject to the allegation/s (the subject officer);
- afford the employee subject to the allegation/s reasonable notice of their interview and the purpose of the interview; and

- afford the employee subject to the allegation/s reasonable notice of the time, date, nature of the allegations or complaint against them

Rights of employees

It is important for investigators to remember the rights of employees, whether they are a complainant, witness, or employee subject to the allegation/s.

A subject officer can expect the investigator to:

- maintain confidentiality as far as is reasonably possible;
- maintain appropriate record keeping;
- provide them with the broad nature of any allegations prior to interview;
- discuss allegations and evidence in detail during the interview;
- allow an opportunity to respond to the allegations and evidence, and provide their own documents and evidence to support their side of the story; and
- conduct the investigation in accordance with the principles of natural justice.

Timeframes

The entire investigation process should be completed as a matter of priority, ideally no longer than three months. However, it is acknowledged that this timeframe may be impacted on by a number of factors including, but not limited to:

- the complexity of the investigation;
- the location of the parties involved;
- involvement of external agencies in the process (e.g. the CCC);
- the availability of physical evidence; or
- the availability of the parties involved to be interviewed.

The Terms of Reference will set out the expected timeframe for the investigation. The Investigator should provide regular updates on the status of the investigation to the case manager, and any deviation from this timeframe should be discussed and agreed with the case manager and/or the delegate.

Corrupt conduct and criminal matters

All allegations of suspected corrupt conduct or criminal activity must be reported to the Manager of Workplace Relations as soon as the issue is recognised. The Manager of Workplace Relations will manage the obligations of the department to report such matters to the Crime and Corruption Commission (CCC) and/or the Queensland Police Service (QPS), as appropriate. The CCC has its own specific procedures on dealing with corrupt conduct.

Throughout the conduct of a workplace investigation, if previously unidentified matters of suspected corrupt conduct become apparent, the investigator must report this through to the case manager immediately, who will then advise delegate.

Powers of the Investigator

All departmental employees have an obligation to follow a reasonable and lawful direction. This obligation also extends to employees who are required to participate in workplace investigation interviews.

The Terms of Reference provides the [investigator](#) with all relevant information about the scope of the investigation and the required deliverables from a workplace investigation process. It also bestows on them the power to give reasonable directions to employees who are party to a workplace investigation.

An employee who unreasonably refuses to cooperate in a workplace investigation may have breached a requirement placed on them, and this could lead to a discipline process being commenced against them.

Record and Storage of investigation information, and privacy

A confidential file should be created for each workplace investigation, and must remain with the nominated case manager. All records generated through the workplace investigation should be stored on this file.

These confidential files must be stored securely to prevent unauthorised access, damage or alteration, and must abide by the requirements of the [Information Privacy Act 2009](#).

Under the *Information Privacy Act 2009*, personal information held by Queensland Government agencies must be responsibly and transparently collected and managed (including transfer of personal information held by agencies to other agencies, other levels of Government or the private sector) in accordance with the requirements of the Information Privacy Principles. By their nature workplace investigations often collect personal information, so the requirements of the *Information Privacy Act 2009* are of particular importance.

The *Information Privacy Act* defines personal information as:

Information or an opinion, including information or an opinion forming part of a database, whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

The department may disclose personal information to other organisations, and in some instances, individuals, where this disclosure is permitted or required by law. When seeking to obtain personal information from an individual, the investigator must ensure that the individual from whom the information is sought is specifically informed of:

- why the information is being collected;
- under what authority it is being collected;
- what the information may be used for; and
- to whom the information, or parts of the information may be provided.

Should a query arise with regard to matters of privacy, the department's [privacy team](#) should be contacted for further advice.

All records will also be retained and disposed as per the Queensland State Archives [General Retention and Disposal Schedule](#).

Conducting the workplace investigation

Selecting the investigator

It is recommended that professional, external investigators be appointed to conduct workplace investigations. This is to ensure that the investigation process is as robust, thorough and independent as possible.

Organising and Resourcing the Investigation

Complex matters requiring investigation may require substantial allocation and organisation of resources and materials. The case manager is the point of contact within the department for the investigator, will assist the investigator to obtain any relevant internal information and provide employee contact information to the investigator to coordinate interviews.

The case manager may require the assistance of other employees (e.g. managers, local business areas, HR etc.), and it is expected that such assistance will be provided as needed and that confidentiality be maintained by any employee assisting the process.

All employees must cooperate fully and honestly in any workplace investigation process. A failure to cooperate or providing false or misleading information in a workplace investigation process may be considered grounds for discipline.

Where an employee refuses to cooperate in a workplace investigation, the investigator should remind the employee of these obligations. Should the employee still refuse to cooperate after being informed of their obligations, the investigator should advise the case manager, who will in turn discuss appropriate action with the delegate.

Interviews

As a general rule the complainant should be interviewed first, any relevant witnesses will be interviewed next, and the subject officer will be interviewed last. This methodology provides strength to the principles of natural justice, in that the subject officer is afforded an opportunity to respond to the full allegations and information gathered from the other interviews.

In the interests of natural justice, it is very important that when contacting employees to arrange interviews, they are:

- made aware of the purpose of the investigation (this will depend on the information that can reasonably be disclosed to them);
- made aware of the investigation process;
- made aware of their role in the investigation process;
- given a reasonable amount of time prior to the interview to consider this information and arrange for a support person (if desired); and
- made aware of their obligation to keep details of the investigation confidential.

Interviews are generally face-to-face meetings. In exceptional cases, the investigation may be conducted via the telephone or via a request for a written statement (e.g. where an individual may live a great distance away, and be leaving on holiday before the interviewer can travel to them).

Investigators and case managers should be particularly aware of the location/s chosen to undertake interviews. These locations should offer reasonable levels of convenience and privacy to the individual being interviewed. It is not appropriate to undertake interviews in view, or within hearing of the individual's colleagues. Similarly it is not appropriate to conduct interviews in a public place.

Recording of interviews

Usually the interviews will be recorded with an electronic recording device. This is best practice, and will ensure that an accurate record of what was said can be captured. If the interview is recorded a transcript or summary of that interview will be produced, and the investigator should provide a copy of this to the interviewee for confirmation that what has been produced is correct.

The support person

An interviewee is entitled to have a [support person](#) with them during the interview.

Prior to the interview commencing the investigator will clarify with the support person that they understand their role as a support person.

If an interviewee wishes to speak to their support person in private at any time during the interview, the interview can be paused for this to occur. The investigator will manage this process.

The investigation report

Analysis of evidence

Once all evidence has been gathered the investigator will then analyse the evidence and compile it in a logical manner under each allegation.

Evidence may take the form of, but is not limited to:

- a witness statement
- documentary evidence
- expert witness and specialist testimony
- Emails, computer files, telephone records etc.; or/and
- Any other evidence (e.g. photographs, video recordings etc.).

The investigator must ensure that all evidence obtained is given careful consideration. Where evidence is not taken into account by the investigator, there must be a strong rationale documented as to why this is the case.

Relevance of evidence

The most fundamental consideration for any evidence is relevance. There must be some logical connection between the evidence and the facts at issue.

Hearsay

A common issue that may arise in the consideration of evidence is the use of 'hearsay' evidence from a witness, which cannot be substantiated from another source. Hearsay evidence is evidence based on what has been reported to a witness by others, rather than what the witness has heard or seen themselves.

Hearsay evidence carries less weight than direct evidence and the primary source of evidence should always be used whenever possible. Because of this there is a common rule against using hearsay evidence, but there are some exceptions to this rule.

Hearsay evidence can be a useful source of leads to other relevant witnesses and in all situations the investigator should make every effort to track down the original source and get the direct evidence. If this is not possible, then the report should record this.

An example of hearsay evidence may be:

“I heard in the lunch room that employee X saw employee Y doing.....”

In this case, the investigator should seek to interview “employee X” to determine what they directly saw.

Also, where a number of otherwise unrelated parties all offer the same hearsay evidence, there may be cause to consider it. Each instance of hearsay evidence should be determined on a case by case basis.

Opinion

An investigation is about finding the facts of what happened, and why. A witness’s opinion about a person, or about what happened or should have happened, are irrelevant. So, as a general rule a witness interview should not contain expressions of opinion about something or someone, unless the witness is an expert who has been asked to provide an expert opinion.

Weighting evidence

All evidence obtained through the investigation process must be carefully analysed, weighted accordingly, and take into account:

- the inherent strength of the evidence;
- the significance of the evidence to the allegation/s; and
- the seriousness of the allegation/s.

The weighting of evidence is also crucial to ensure a robust and accurate workplace investigation, in that the strength of evidence necessary to establish an allegation on the balance of probabilities may vary according to the seriousness of the issues involved.

Many investigations will come down to an issue of one person’s word against another. In deciding which witness is more credible, a range of factors should be considered such as any inconsistencies in evidence, and the credibility of the witness.

For a finding to be substantiated on the balance of probabilities, there must be evidence that the allegation “more likely than not” occurred. The more serious the allegation, the higher is the standard of evidence required.

Making Findings

Once all the evidence has been carefully analysed and weighted, the investigator is required to make a determination, based on the balance of probabilities, as to whether each allegation is capable of being substantiated, or not substantiated by the decision maker. In making findings, the investigator must not

use language such as 'I think' or 'I believe'. Each finding must also remain free from any personal opinion of the investigator, and be formed through careful consideration of the evidence.

Findings should be expressed as '*The evidence collected during the course of this investigation, on the balance of probabilities, if accepted by the decision maker is capable of substantiating/not substantiating the allegation*'. This is because the investigator is merely presenting all of the evidence in a logical format for the delegate to consider. It is then up to the delegate to decide if the allegation can be substantiated or not.

Investigation report

The investigation report is the formal document which contains all of the evidence gathered, and presents it in a logical format for the delegate's consideration.

The investigation report should be comprehensive, accurate, truthful, written in plain English and presented professionally.

Where requested, the investigation report may also include details of any systemic or procedural issues, not relevant to the allegations/complaint, yet identified in the course of the investigation as of potential concern to management or requiring remedial action.

The investigator must forward the final report, along with an electronic copy, to the nominated delegate via the case manager. Due to privacy restrictions, an employee may not be privy to all of the details contained in the Investigation Report, as it is developed for the purposes of the delegate's decision making and may contain confidential or sensitive information regarding other employees or persons.

After Investigation

The delivery of the final investigation report closes off the investigation process.

Subject officers will kept regularly informed throughout the process by the case manager.

Relevant information from the investigation report will be provided to the subject officer through the appropriate process once the delegate has fully considered all the information and has decided how they wish to proceed. If the investigation originated from an employee complaint, finalising this process will be under the [Managing Employee Complaints HR Protocol](#).

Regardless of what action is taken next, all parties will be appropriately informed.

Further information

Should you require any further information please contact the Workplace Relations team at ethics@dnrm.qld.gov.au