

A guide to engaging and providing workplace investigation services



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Introduction

The Queensland Government supports employees to maintain a high standard of professionalism, conduct and work performance, and to ensure inappropriate conduct or performance is dealt with effectively, and in a timely manner, that is proportionate to the allegations.

To assist public sector agencies, the Conduct and Performance Excellence service (CaPE), within the Public Service Commission (PSC), has developed a [case categorisation framework](#), with three categories of conduct/performance (from least serious to most serious) each with their own benchmarks for timely management. Each agency has responsibility for determining the categorisation of a *work performance or conduct matter*¹ and the appropriate approach to be taken to address the issue.

In the majority of matters, timely management action or performance management will negate the need for more formal proceedings, including a formal workplace investigation. For many other matters, management enquiries or an informal investigation by an agency will be sufficient to determine the facts; if a complaint or an allegation relating to work performance or conduct is substantiated or unsubstantiated; and the appropriate action, including whether or not a discipline process should commence.

However, it is expected there will be some matters where a formal workplace investigation will be warranted. In these instances, it is critical that the investigation be well managed by the agency to ensure the investigation is conducted in an appropriate, timely and cost-effective manner.

The PSC's CaPE service is available to offer advice and guidance on conduct and work performance. The team can be contacted via email cape@psc.qld.gov.au or telephone (07) 3003 2777.

Purpose of the guide

This guide is a practical resource to assist agencies to deal with allegations of inappropriate conduct or poor performance where consideration is being given to a workplace investigation. It should be used as a guide only and is not prescriptive.

As noted in the guiding principles for engaging and providing workplace investigation services contained in this document, the first important consideration is to determine the most appropriate response to a work performance or conduct matter. This includes considering whether an investigation is required or if an alternative intervention or resolution strategy should be undertaken to address matter. Where it is determined that a workplace investigation is warranted, a decision should be made as to whether it be formal or informal and conducted by an internal or external investigator.

The guide also provides advice on:

- engaging a suitable person or service provider² to conduct the workplace investigation

¹ A *work performance or conduct matter* also refers to a *work performance matter* as defined in Section 88H, *Public Service Act 2008* (see Definitions below) in this document.

² A panel of external workplace investigators will be available to agencies through the Standing Offer Arrangement for Workplace Investigations which forms part of the Professional Services SOA (details to be advised in due course).

- instructing an investigator and ensuring terms of reference clarify scope and set realistic timeframes and reporting expectations
- maintaining transparent communication throughout the process
- practical tips for internal investigators.

All workplace investigations should be provided in accordance with the *Queensland public sector employment framework* which is structured around the:

- [Public Service Act 2008](#)
- [Public Sector Ethics Act 1994](#)
- subordinate legislation, directives and guidelines
- [Code of Conduct for the Queensland Public Service](#).

This document is a guide only and is to be read in conjunction with:

- *Public Service Act 2008* – Section 26 Work performance and personal conduct principles
- *Public Service Act 2008* – Chapter 6 Disciplinary action for public service employees and former public service employees
- [Commission Chief Executive Guideline 01/13: Discipline](#)
or
- any equivalent legislation relating to a public sector agency and employees.

Investigating corrupt conduct

The [Crime and Corruption Commission](#) (CCC) is a statutory body set up to combat and reduce the incidence of major crime and corruption in the Queensland public sector. Its functions and powers are set out in the [Crime and Corruption Act 2001](#).

Where the CCC receives a complaint alleging corrupt conduct in the public sector, the CCC assesses how it should be handled, taking into account the particular circumstances of the case. The CCC retains and investigates only the most serious allegations of corrupt conduct, including those with a strong public interest element or where the relevant agency is not equipped to handle the investigation.

Complaints about corrupt conduct (or information provided) that are not considered to be sufficiently serious or systemic to require the CCC's involvement, are referred by the CCC to the appropriate agency to deal with.

Although the processes outlined in this guide are similar to those for investigating allegations of corrupt conduct, agencies should refer to the CCC's publication [Corruption in focus \(2014\)](#) when engaging or providing a workplace investigation into suspected corrupt conduct. If the matter is referred to a public sector agency, that agency must decide how to deal with the complaint.

This includes determining if a formal investigation is required and, if so, whether it is conducted by an external or internal investigator. Where it is anticipated there may be disciplinary proceedings, a formal, well-documented investigation is required. In some cases, the agency will be required to provide the CCC with a detailed report on the outcome. All matters referred by the CCC to an agency may be subject to audit by the CCC.

Where required, external investigators can be sourced through the Professional Services Standing Offer Arrangement with terms of reference that provide clear instruction, clarify scope and set realistic time frames. Investigations into alleged corrupt conduct, whether provided internally or externally, should be conducted in accordance with the CCC guide [Corruption in focus](#) and any relevant agency specific policies and procedures.

Guiding principles for conducting workplace investigations

1. Due consideration

Due consideration is given to the most appropriate response to a work performance or conduct matter and whether a workplace investigation is warranted or if an alternative intervention or resolution strategy is more appropriate in the circumstances.

2. Clarity, ethics and transparency

Workplace investigations are based on clearly articulated terms of reference and are conducted in an ethical manner that ensures transparency.

3. Natural justice, fairness and respect

Parties to an investigation are afforded natural justice (procedural fairness) and are treated fairly and with respect at all times.

4. Confidentiality

Steps are taken to safeguard the confidentiality of the investigation, in the interests of the persons involved and for the integrity of the investigation, without guaranteeing anonymity or complete confidentiality.

5. Lawfulness

Provisions, directives, guidelines and procedures required by law are observed throughout the process.

6. Timely and proportionate

Investigations provide value for money and are conducted in a manner that is timely and proportionate to the allegations.

7. Logical and justifiable

Recommendations are supported by evidence. Reports are logical and provide a sound basis for decisions to be made on the merits of the case and on the balance of probabilities.

1. Determining the most appropriate response to a work performance or conduct matter

- Consider whether a workplace investigation is warranted or if an alternative intervention or resolution strategy is more appropriate.
- Undertake a preliminary assessment or an analysis of the nature of the allegation (e.g. seriousness, quantum of funds involved, the role/seniority of the staff involved etc.).
- Identify the circumstances when a workplace investigation is warranted (either formal, informal, internal or external). Considerations include, but are not limited to:
 - requirement for specialist skills—do the nature of the allegations require specific expertise not available within the agency?
 - conflict of interest—is there a real or perceived conflict of interest or bias—does the matter require an investigation by someone external to the work area or agency?
 - risk to public confidence—is there a risk to public trust and confidence?
 - funding resources—are the resources to be expended on the proposed response proportionate to the seriousness of the matter? Is it more cost effective to engage a suitably skilled internal person (within the agency or a representative from another agency) to conduct enquiries or undertake an investigation?
 - capability and capacity—does the agency have the capability required to conduct an investigation and the capacity to do so in a timely manner? Does the matter provide an opportunity for capability development by partnering with a more experienced leader/manager from within the agency or another agency?

Other practical considerations

The decision maker (delegate), on advice from human resources (HR), is responsible for determining the most appropriate response to a work performance or conduct matter.

An assessment of the appropriate response may change if, or as, further information becomes available.

Comply with Public Interest Disclosure (PID) requirements as required and as necessary seek advice from agency's PID coordinator.

The CaPE team is available to provide advice on how to manage any real or perceived conflicts of interest.

An independent investigator could include a suitably skilled representative from another public sector agency.

If corrupt conduct is identified, the agency should advise their CCC liaison officer and the CCC, as required, and follow all requirements of the CCC and any relevant agency specific policies and procedures.

If it is identified that a criminal offence may have occurred, the agency should refer the matter to the Queensland Police Service (QPS). In some cases, an investigation to establish if a breach of the employment framework has occurred and if discipline grounds exist can be conducted concurrently with a QPS investigation. The decision maker is responsible for determining if a matter is placed on hold pending the outcome of a criminal process and determining the risks and costs of doing so. Where appropriate, the agency should seek input from the QPS with this decision.

2. Engaging a suitable person or service provider to conduct the workplace investigation

- Identify the decision maker, case manager, contract manager and contact officer, in accordance with the appropriate delegation.
- In consultation with HR, determine the authority for the investigation, governance of the investigation and the authorisation channels.
- Develop terms of reference that provide clear instructions, clarify the scope of the investigation, set realistic timeframes and milestones, and specify reporting requirements (including any interim reporting requirements).
- Identify the skills required from a prospective investigator prior to engagement.
- Consider and source funding, if required.
- Follow procurement and contract management guidelines when engaging an external investigator.³ Other considerations include:
 - clarifying what/if any support is to be provided by the agency (e.g. administrative support, legal advice etc.)
 - establishing how fees are to be calculated and paid
 - negotiating and developing a contract, as required.
- Establish criteria for assessing an investigator if engaging an internal investigator or not using a service provider under the SOA.
- As required, determine the suitability of an investigator by:
 - conducting a preliminary interview to determine skills and capabilities, ascertain relevant expertise and verify qualifications
 - undertaking referee checks, if required
 - ensuring they have relevant insurances and licences, as required
 - identifying and managing any conflicts of interest.
- Brief the investigator and clearly articulate deliverables and specify timeframes.
- Determine and agree upon the process regarding the retention of records and documentation at completion of the process with the investigator in accordance with relevant legislative requirements.
- Provide a copy of the *Code of Conduct for the Queensland Public Service* and relevant legislation, policies, procedures and/or guidelines relevant to the matter to the investigator.

³ A panel of external workplace investigators will be available to agencies through the Standing Offer Arrangement for Workplace Investigations which forms part of the Professional Services SOA (details to be advised in due course).

Other practical considerations

It is in the interests of all parties to ensure matters are finalised in a timely manner.

A suitably skilled officer should be responsible for case management, including coordinating action and taking responsibility for ensuring timeframes are met.

Consider if specialist skills are required (e.g. forensic accountant, information technology expertise).

Ensure that the terms of reference clearly specify the investigator's role i.e. finding factual information and making recommendations for the decision maker to consider - not making findings about whether a discipline ground does or does not exist.

Regular communication should be maintained with the investigator and their performance should be managed throughout the period of the contract.

If the allegations are refined or fresh allegations emerge during an investigation, the terms of reference should be amended by agreement between the agency and the investigator, and documented.

3. Maintaining transparent communication

- Maintain regular communication with the complainant/s, subject officer/s and decision maker to ensure transparency of process and nominate a contact officer within the agency.
- Prepare documentation, including correspondence to the complainant/s and subject officer/s outlining the proposed process, estimated timeframes and obligations, as required.
- Keep the parties informed, at regular intervals throughout the process, regarding the status of the matter.
- Ensure interim reports are provided, as required, in the terms of reference.
- Inform the complainant/s, subject officer/s and witnesses of the availability of support, including any employee assistance service or support person.
- Remind witnesses of their obligation to maintain confidentiality.
- Comply with record keeping requirements.

Other practical considerations

Determine what information (if any) is going to be released to the complainant/s and/or subject officer/s, and when it is released, including if the terms of reference, final report, or parts of the report are released.

Ensure accurate file documentation and note that investigation reports, including transcripts of interviews, statements and other material, may be required to be disclosed to a subject officer to afford that person natural justice, may be discoverable in any legal proceeding and may be obtainable under Right to Information legislation.

Where possible/practicable, avoid changing a contact officer during the course of a matter to ensure consistent communication to the complainant/s, subject officer/s and witnesses.

Be sure to maintain contact with the subject officer throughout the course of a matter, including if they are out of the workplace, as in many instances the employment relationships will continue after the resolution of the matter.

4. Practical tips for conducting a workplace investigation by an internal investigator

- Understand the Queensland public sector employment framework including the *Public Service Act 2008*, *Public Sector Ethics Act 1994*, subordinate legislation, directives and guidelines, and the Code of Conduct for the Queensland Public Service.
- Understand administrative decision-making processes and natural justice (procedural fairness).
- Determine the authority for conducting the investigation and collecting evidence (this may include written authority from the chief executive or decision maker).
- Undertake a planning process that includes outlining the objectives of the investigation, scope of investigation, identifying and managing risks, identifying possible lines of inquiry, sources and methods to be used to obtain evidence, resources required, timelines and milestones.
- Comply with internal procedures for dealing with PIDs, as required, and seek advice from agency's PID coordinator.
- Collect factual evidence only to inform the reasoning. Never rely on assumptions.
- Collect oral evidence, documentary evidence and/or expert evidence where necessary.
- Consider the order in which the witness/es and subject officer should be interviewed.
- Record and/or photograph evidence, as required. Record only relevant information.
- Ensure interviews are conducted in a suitable and private location.
- Ensure that any observations made (e.g. on the credibility of witness evidence or witness motivations) are based on logical reasoning.
- Use open questioning and do not lead witnesses.
- Be clear about the role of a support person—they are to provide support they are not to speak on behalf of the subject officer and are not an advocate.
- Safeguard the confidentiality of the investigation without guaranteeing anonymity or complete confidentiality.
- Ensure investigation is timely and conducted in a manner that is proportionate to the allegations.
- Ensure any employee surveillance undertaken or monitoring or retrieval of email and/or phone records is appropriately authorised pursuant to relevant agency delegations and policies.
- Endeavour to meet the benchmarks (timeliness) specified in the CaPE case categorisation framework.
- Deliver succinct and clear reports setting out the allegation/s, supporting evidence (including documentary evidence) discussion of evidence, findings based on available evidence, sound reasoning and logic and provide clear recommendation/s (substantiated, not substantiated or unable to be substantiated).
- Deliver reports on time and ensure any unforeseen issues are raised as soon as possible with the case manager.
- Make conclusions based on the balance of probabilities (civil standard of proof).
- Manage all documents, evidence and information in accordance with agency record keeping procedures.
- Ensure you are aware of the process required regarding referral to the agency's CCC liaison officer, the CCC or QPS if you uncover or identify corrupt conduct or a criminal issue during the course of an investigation.

Terminology

Balance of probabilities

A legal standard of proof that requires the investigator to determine that it is 'more probable (likely) than not' that the facts are true. (Note: depending on the nature of the allegation the strength of evidence required to meet the standard of proof may change. The more serious the allegation the higher the probability. This is called the Briginshaw Principle).

Code of Conduct for the Queensland Public Service

The Code of Conduct is based on the public sector ethics principles as outlined in the *Public Sector Ethics Act 1994*. For the purposes of this guide only, employees (other than judicial officials) are defined as:

- any Queensland public service agency employee whether permanent, temporary, full-time, part-time or casual
- any volunteer, student, contractor, consultant or anyone who works in any other capacity for a Queensland public service agency.

Corrupt conduct

Corrupt conduct is conduct defined under Section 15 of the *Crime and Corruption Act 2001*.

Discipline guideline

Discipline guideline refers to the PSC Commission Chief Executive Guideline 01/13: Discipline

Investigation

An investigation is a process of seeking information and gathering evidence relevant to an allegation of a work performance or conduct matter.

Misconduct

Misconduct is defined under Section 187 of the *Public Service Act 2008* as:

- (a) inappropriate or improper conduct in an official capacity; or
- (b) inappropriate or improper conduct in a private capacity that reflects seriously and adversely on the public service.

Public Service Act 2008

This Act is about the administration of the public service and the management and employment of Queensland public service employees.

Work performance matter

A work performance matter involves a Queensland public service employee's work performance or personal conduct, for example an allegation against the employee that constitutes or would, if proved, constitute ground for disciplinary action.

Roles and responsibilities

Case manager*

The case manager is a Queensland Government employee who has been designated by the decision maker (or in some instances HR) to take responsibility for managing the case, including coordinating action and ensuring timeframes are met. (The case manager should be suitably skilled and of a seniority that is proportionate to the severity the allegations and seniority of the employees involved).

Complainant

The complainant is a Queensland Government employee who has made a complaint, or lodges allegations either formally or informally.

Contact officer*

The contact officer is a Queensland Government employee (preferably independent of the work unit and the decision making process) that is nominated by the decision maker. The role of the contact officer is to provide the employee who is subject to the allegations with information about the investigation/discipline process, such as the steps involved and the role of a support person, and to act as a point of liaison for any queries to the decision maker/investigator.

Contract manager*

The contract manager is a Queensland Government employee who has been designated by the decision maker to take responsibility for managing the contract with an external investigator, monitoring the contract and paying the fee.

*Note: in some agencies all or some of these roles may be performed by the same person.

Decision maker

The decision maker is the chief executive of a public sector agency or delegate responsible for making the decision about a work performance or conduct matter under Chapter 6 of the *Public Service Act 2008*.

Investigator

An investigator is the person or service provider appointed by the decision maker or engaged through a contract arrangement to conduct a workplace investigation:

- **External investigator**
An external investigator is a person or service provider that is engaged through a contract arrangement to conduct a workplace investigation. Suitable qualified external investigators should be sourced through the Professional Services SOA⁴, unless the required expertise is not available under the SOA.
- **Internal investigator**
An internal investigator is a suitably skilled Queensland Government employee that is appointed by the decision maker to conduct a workplace investigation.

Subject officer

The subject officer is a Queensland Government employee, including a person who was a Queensland Government employee, who is the subject of a work performance or conduct matter or complaint.

⁴ Details to be advised in due course.

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