

Managing workplace investigations

A practical guide for the Queensland public sector



Managing workplace investigations guideline

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An electronic version of this document is available at [Workplace Investigations \(Directive 01/24\)](#)

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1. Overview

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

In most cases early management action or performance management will negate the need for a formal process, such as a workplace investigation.

Less formal management enquiries can determine:

- relevant facts
- if a complaint or an allegation relating to work performance or conduct is likely to be substantiated or unsubstantiated
- the appropriate action, including whether a workplace investigation process should commence.

There will be some matters where a workplace investigation will be warranted. This could include where the alleged conduct is sufficiently serious and where management action, alternative dispute resolution, or implementation of positive performance management strategies would not be appropriate in the circumstances.

It is important to understand the impact that a workplace investigation may have on the subject employee, complainant(s), witnesses and the workplace as a whole. It is critical that investigations are well managed and conducted in an appropriate, fair, timely and cost-effective manner.

A workplace investigation, whether internal or external, is not a disciplinary step. It is a separate process to any formal disciplinary process as provided for under chapter 3, part 8, division 3 (Disciplinary action) of the *Public Sector Act 2022* (the Act).

1.1. Purpose of the guideline

This guideline supports implementation of the [Workplace investigations directive](#) (the directive). In accordance with clause 6.4 of the directive, chief executives, decision makers and investigators must consider this guideline when commencing and managing a workplace investigation under the directive.

This guideline is a practical resource to assist public sector entities to respond to and manage the investigation of a grievance or allegation relating to a public sector employee's work performance or personal conduct.

1.2. Collection of work performance data

The Public Sector Commission (PSC) collects conduct and performance management data from public sector entities where required, about work performance matters to identify developing issues, supporting best practice, and opportunities to improve capability across the public sector. The data is [published](#) annually as part of our commitment to being transparent and accountable, and to adhere to section 128 of the Act.

To assist public sector entities, a framework has been developed for categorisation of conduct and performance matters from least serious to most serious, each with their own benchmarks for timely management. Each entity should determine the category of a work performance matter and the appropriate action to be taken to address the issue.

1.3. The legislative framework

Workplace investigations are to be conducted in accordance with the Queensland public sector employment framework which is structured around:

- [Public Sector Act 2022](#)
- [Public Sector Ethics Act 1994](#)
- [Industrial Relations Act 2016](#)
- [Human Rights Act 2019](#) (HR Act)
- subordinate legislation, directives, and guidelines
- [Code of Conduct for the Queensland public service](#) (or an entity's relevant Code of Conduct in accordance with the requirements under the *Public Sector Ethics Act 1994*) (Code of Conduct).

This guideline is to be read in conjunction with:

- [Public Sector Act 2022 chapter 1, part 3 – Reframing of the State's relationship with Aboriginal peoples and Torres Strait Islander peoples](#)
- [Public Sector Act 2022 section 40 – Work performance and personal conduct principles](#)
- [Public Sector Act 2022 chapter 3, part 8, division 3 – Disciplinary action](#)
- Public Sector Commissioner (Commissioner) [directives](#) relating to:
 - workplace investigations
 - discipline
 - suspension
 - positive performance management
 - individual employee grievances
 - preventing and responding to sexual harassment
- [Crime and Corruption Act 2001](#) (CC Act)
- [Corruption in Focus: A guide to dealing with corrupt conduct in the Queensland public service \(June 2023\)](#)
- [Public Interest Disclosure Act 2010](#) (PID Act)
- [Managing the risk of psychosocial hazards at work Code of Practice 2022](#)
- any equivalent legislation relating to a public sector entity and its employees.

2. What to do when a work performance or personal conduct matter arises

There are several ways an entity may become aware of a work performance or conduct matter, including through a complaint from an employee or a member of the public.

Considering the circumstances of the case and any additional information at hand, an entity's complaints assessor (who may also be the decision maker for the matter) must first determine if referral to the Crime and Corruption Commission (CCC), Queensland Police Service (QPS), or another external entity is required.

The complaints assessor must also consider if the matter meets the subjective and objective tests to be considered a Public Interest Disclosure (PID) as defined in the PID Act and take any action in accordance with their entity processes.

2.1. Consider if the matter should be referred

Complaints about alleged corrupt conduct must be referred to the CCC. Complaints can be referred directly, or through an entity's ethical standards area or CCC liaison officer. Through the course of an investigation, should an investigator form a reasonable suspicion that the conduct could be corrupt conduct, they should report it immediately to the entity's decision maker or the entity's case manager.

Complaints that may involve an alleged breach of criminal law should be referred to the QPS.

A complaints assessor may also need to consider whether there are other referrals required. For example, Office of the Health Ombudsman, Queensland College of Teachers, or other organisation as it may relate to the professional registration of an individual who is the subject of a matter. Information about whether other referrals are required can be obtained from an entity's human resources or ethical standards area.

2.2. Consider if the matter is corrupt conduct

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

There are two different types of corrupt conduct defined in section 15 of the CC Act, as summarised below:

Type A corrupt conduct

Type A corrupt conduct involves conduct that affects, or could affect, a public officer (an employee of a public sector entity) in the performance of their functions or the exercise of their powers in a way that:

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

Common examples of Type A corrupt conduct include fraud and theft, extortion, unauthorised release of information, obtaining or offering a secret commission and nepotism.

Type B corrupt conduct

Type B corrupt conduct involves specific types of conduct that impairs, or could impair, public confidence in public administration.

This may include:

- collusive tendering
- fraud relating to an application for a licence, permit or other authority relating to public health or safety; the environment; or the State's natural, cultural, mining or energy resources
- dishonestly obtaining public funds or State assets
- evading a state tax, levy or duty or fraudulently causing a loss of State revenue
- fraudulently obtaining or retaining an appointment.

Both Type A and Type B corrupt conduct must be either a criminal offence or serious enough to warrant dismissal.

Further information to support assessment of matters against the corrupt conduct definition and how to determine [what is corrupt conduct](#) can be found on the CCC website.

If there is reasonable suspicion of corrupt conduct, the entity should advise their CCC Liaison Officer and follow all CCC requirements and any relevant entity specific policies and procedures.

The CCC may issue directions about the way a matter should be managed, or an entity may have standing directions from the CCC issued under section 40 of the CC Act about how certain matters should be managed. The CCC website provides information about [assessing allegations of corrupt conduct and recordkeeping requirements](#).

Where the CCC receives a complaint alleging corrupt conduct in the public sector, they assess how it should be handled considering the 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 entity may not be equipped to handle the investigation.

Complaints about corrupt conduct that are not considered to be sufficiently serious or systemic to require the CCC's direct involvement, are referred by the CCC to the appropriate entity to deal with. Taking the CCC's directions into account, the entity must then determine the resolution strategy.

In some cases, the entity will be required to provide the CCC with a detailed report about the outcome. All matters referred by the CCC to an entity are subject to audit by the CCC.

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 entity specific policies and procedures.

2.3. Consider if it is a criminal offence

When assessing a matter, if it is identified that a criminal offence may have occurred, the entity should refer the matter to the QPS.

In some circumstances, when the matter has been referred to, or is in the hands of the police, the entity may continue the investigation process to establish if a breach of the employment framework has occurred.

The existence of criminal proceedings (ongoing or finalised) does not always prevent a decision maker starting a workplace investigation, making a disciplinary finding on the balance of probabilities (the civil standard of proof) or taking disciplinary action.

Whether a workplace investigation process should be placed on hold awaiting the outcome of criminal proceedings, will be determined on a case-by-case basis in consultation with QPS.

Should it be determined that a workplace investigation is to be placed on hold, pending the conduct/outcome of criminal proceedings, consideration may be given to whether an employee should be suspended from duty. The decision maker must comply with the [Suspension directive](#) when determining whether it is appropriate to suspend an employee from the workplace.

2.4. Public interest disclosures (PID)

A PID is a disclosure, in the public interest, of information about wrongdoing in the public sector. For an allegation to be considered a PID, it must meet the subjective and objective tests set out in the PID Act.

PID processes will be detailed in an entity's policy on this topic. Additionally, there are protections for reprisal action against a discloser under the PID Act. For further information please visit the Queensland Ombudsman website: [public interest disclosures - Queensland Ombudsman](#).

2.5. Protecting a complainant, discloser or witness

All employees should be treated with respect and supported during an investigation process.

The public service Code of Conduct provides obligations with respect to supporting employees:



“We will support employees who report genuine concerns of wrongdoing and manage any reports of wrongdoing in a fair, transparent and consistent manner.”

Employees will have performed their duty by participating in an investigation and must not be treated adversely because of their involvement. Any substantiated allegations of reprisal or victimisation on these grounds may result in disciplinary action being taken.

When interviewing a subject employee and any witnesses, they should be reminded that discipline action may be taken if there is found to be any reprisal action or victimisation as a result of the complaint.

The duty of care for a complainant or discloser should be demonstrated by:

- considering the appropriateness of allowing individuals involved in, or where there is potential for, workplace conflict to continue working in close proximity prior to resolution of the matter
 - If the matter relates to a sexual harassment, the employee that reports they have witnessed or experienced alleged sexual harassment should be consulted about their workplace options and should not be automatically relocated from their usual workplace. The directive relating to preventing and responding to workplace sexual harassment must be followed in relation to these matters.
- documenting decisions and demonstrating appropriate consideration of risks, including considering the views of affected individuals, when working arrangements continue as normal, or alternate arrangements are put in place
- advising the complainant or discloser of the availability of the Employee Assistance Program (if relevant)
- advising the complainant or discloser or witnesses that if they experience any form of reprisal action, it should be reported immediately
- advising the complainant or discloser of an estimated time frame for the investigation process, including when they may be asked to participate
- allowing fair and reasonable time to offer the opportunity for a support person or industrial representatives to be present for any meetings and/or interviews
- maintaining regular contact regarding the progress of the workplace investigation that is appropriate to the circumstances.

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

There are a range of possible responses to a work performance or conduct matter. The response to a matter must be reasonable and proportionate to the issue or complaint. Consideration should always be given to the nature of the allegation/s (for example, seriousness, quantum of funds involved, the role/seniority of the staff involved).

Management enquiries

Management enquiries (for example, preliminary or administrative enquiries, desktop reviews) may help to inform decisions about whether a workplace investigation is required.

Management enquiries are less formal than an investigation but should be conducted in a way that is mindful of the principles of procedural fairness, for example:

- be timely and is proportionate to the seriousness of the allegations or concerns
- be free from conflict of interest or bias, both conscious and unconscious.

A management enquiry with a review of all available information may provide all the information required to respond to the matter without the need for an investigation. Depending on the nature or severity of the complaint, a management enquiry may be more appropriate before deciding whether to commence a formal investigation.

A management enquiry involves a manager (or other assigned person) making enquiries into a matter to inform a decision about how to progress. The enquiries may involve conversations with employees and/or a review of documents, obtaining a version of events – in writing or verbally. Management enquiries do not generally involve a terms of reference or any formal investigative interviews¹.

Workplace investigation

A workplace investigation occurs when a decision maker decides that an investigation should be conducted either internally (e.g. by human resources or an ethical standards area) or by an external investigator.

An investigation can be defined as the unbiased gathering and evaluation of evidence. A workplace investigation must occur in accordance with the directive, which requires a terms of reference or formal scope to be established, and an investigation report to be completed for the decision maker to consider to determine the next steps.

3.1. Management actions that may resolve a work performance matter without an investigation

Management actions can set clear performance expectations or resolve interpersonal conflict without the need for a workplace investigation or disciplinary process.

Depending upon the circumstances of the matter, some of the options available to a decision maker to resolve the issue without an investigation include:

- seeking information directly from the individual who is the subject of the matter and documenting the discussion and response

¹ Interviews that are recorded, transcribed or included as an appendix to an investigation report

- supporting the employee to self-resolve by putting supports in place. Examples include coaching an employee about how they might attempt to resolve an interpersonal dispute with another colleague
- undertaking management enquiries and gathering information to inform a matter (e.g. gathering evidence)
- following the steps in the positive performance management directive, which could include additional training or retraining to support improved performance
- conducting a facilitated discussion aimed at resolving issues between the complainant and individual who is the subject of a matter (ideally by encouraging them to resolve the conflict themselves)
- engaging a mediator (either external or internal) who is appropriately trained
- providing the employee with a reminder of obligations letter, to clearly identify the expectations of conduct or behaviours in the workplace
- increasing supervision of (or engagement with) a work team and/or implementing a group facilitation or team building exercise.

3.2. Considering a workplace investigation

Queensland Government [conduct and performance data](#) shows most workplace investigations result in outcomes where the same people work together in the same workplace, and without any formal disciplinary action being taken.

There are often high costs associated with workplace investigations in terms of time, resources, distraction from work and workplace morale and relationships. Prior to making the decision to proceed with an investigation and without predetermining an outcome, a complaints assessor or decision maker might consider the possible outcomes, if an allegation/s is found to be substantiated, to determine whether a less formal intervention, such as a management enquiry, may deliver the same result.



Considering matters that are one person's word against another

When matters arise that comprise of one person's word against another, these matters can be complex and damaging for a workplace. However, the quality of evidence alone does not provide grounds to treat the matter any less seriously. In some cases, evidence that comprises of one person's word against another can be the only evidence available and may require a decision maker to, on the balance of probabilities, favour one version of events over another. Decision makers must consider the strength and quality of the evidence prior to making a decision. In some cases though a line in the sand approach, with clear expectations set for all and with ongoing monitoring and support, may be a better option.

3.3. Factors to consider prior to commencing a workplace investigation

Clause 8 of the directive sets out what chief executives must consider when deciding whether to commence a workplace investigation, including:

- the seriousness of the alleged conduct
- whether or not there is enough evidence already available, and whether a workplace investigation in these circumstances is an appropriate use of entity resources
- how procedural fairness requirements will be met
- whether there is a more appropriate option to resolve the matter through management action, alternative dispute resolution, or implementation of positive performance management strategies
- any other factors that the chief executive deems appropriate.

When considering whether there is a more appropriate option to resolve the matter, a chief executive may wish to consider factors such as:

- the seriousness of the matter (i.e. if the allegation/s were substantiated, what would be the most serious penalty?)
- whether there are counter allegations, and the seriousness of these
- the likelihood that the required standard of proof will be obtained (in a one person's word against another scenario without witnesses, this evidence may be difficult to obtain)
- whether the matter is primarily about interpersonal communication issues. If so, are there records that the individual who is the subject of a matter has been given clear expectations about their communication style or placed on a performance improvement plan?

If it is likely that the outcome of a matter would be a discussion, training, setting expectations, or other management action, an investigation may not be warranted due to the time and costs involved.

The Preventing and responding to workplace sexual harassment directive outlines a number of possible outcomes for resolving allegations of sexual harassment, which could involve management action or formal investigation.

Management action is not appropriate to address allegations of corruption, bullying, criminal activity or where the allegations, if proved, would likely result in a serious disciplinary outcome (for example, demotion or dismissal).

4. Roles and responsibilities

The different roles and responsibilities for people who are generally involved in a workplace investigation are outlined below. In some instances, it may be appropriate for one person in an entity to undertake multiple roles in an investigation, for example, complaint assessor, contact officer and case manager. However, any actual, potential or perceived conflicts of interest should be carefully considered by the entity where a single person has multiple roles in an investigation.

Case manager

A case manager is a Queensland public sector employee who has been designated by the decision maker (or in some instances human resources) to take responsibility for managing a matter, 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

A complainant may be a Queensland public sector employee who has made a complaint or raises issues either formally or informally. The complainant may also be a member of the public, for example a patient, a client, or a parent of a student.

Complaints assessor

A complaints assessor receives a complaint and determines (or recommends to a decision maker) how the matter might be handled, having regard to the requirements of the Act and any relevant directives. A complaints assessor may also make recommendations as to whether a referral to an external entity is required. The role of a complaints assessor may be performed by the decision maker or a case manager. Complaints assessors will also need to consider any obligations under other relevant legislation, such as the PID Act and the CC Act.

Contact officer

A contact officer is a Queensland public sector 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 complainant and/or the employee who is subject to the allegations with information about the investigation 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. Ideally, and particularly in relation to bullying or harassment complaints, separate contact officers should be appointed for both the complainant and the individual who is the subject of a matter.

Contract manager

A contract manager is a Queensland public sector employee who has been designated by the decision maker to take responsibility for managing the contract with an external investigator, monitoring the contract and organising payment of the fees.

Decision maker

A decision maker is the chief executive of a public sector entity or a delegate of the chief executive responsible for making the decision about a work performance or conduct matter under Chapter 3 of the Act. The decision maker will consider whether/what information is required and how this information will be obtained. The information may be obtained through management enquiries or through a workplace investigation.

The decision maker must weigh up and evaluate all the available evidence and make their own decision in relation to whether an allegation is substantiated and a breach in legislation or policy has occurred. It is not the role of the decision maker to conduct an investigation.

Individual who is the subject of a matter

Sometimes referred to as the subject officer or subject employee. An individual who is the subject of a matter is an employee, a former employee, or in some cases a volunteer of a Queensland public sector entity who is the subject of a work performance or conduct matter or complaint.

Investigator

An investigator is appointed by the decision maker to collect evidence and make findings of fact in relation to the allegations. An investigator's role is not to make or recommend decisions on action that must be taken following an investigation. The investigator makes findings as to whether, in their opinion, the evidence is, on the balance of probabilities, capable of substantiating each allegation. The role of the investigator and the role of the decision maker must be clearly defined and separated.

Support person

A support person is someone that an employee can nominate to attend a meeting with them to provide emotional support and reassurance. They are not permitted to advocate on behalf of the employee however they will be able to observe proceedings, assist with clarifying the process and take notes. A support person must respect the confidentiality of the process. Investigators should accommodate, where possible changes to meeting times and dates to allow a support person to attend.

A support person could be a work colleague, friend, family member, industrial representative or lawyer, however there are circumstances where it may not be appropriate for a particular person to take on this role.

A person cannot be a support person if they are also a witness or otherwise involved (or implicated) in the investigation.

Refer to [employee support person](#) for more information.

Industrial representative

An industrial representative is someone that can advocate on behalf of the subject employee and has a role to support their member's interests in line with industrial legislation and their union rules, including advocating for procedural fairness to be afforded to their member. An industrial representative may not answer questions on behalf of the subject employee in an interview; however they may take a more active role. They might ask clarifying questions, prompt the subject employee, or give the subject employee advice to ensure the process is fair and adheres to industrial legislation. An industrial representative may also act as a support person.

5. Guiding principles for conducting a workplace investigation

In addition to the principles outlined in the directive workplace investigations must be conducted in a way that ensures:

- appropriate management of conflicts of interest or bias – a conflict of interest occurs when a person has an interest that could influence the performance of their professional duties and responsibilities. It can be actual, perceived, or potential. A decision maker who has a conflict of interest should remove themselves from the decision-making process, and a new decision maker should be appointed. Additionally, an investigator who has a conflict of interest, must notify the decision maker. A chief executive is required to demonstrate consideration has been given to conflicts of interest and ensure all conflicts are declared and appropriately managed
- clarity, ethics and transparency – workplace investigations are based on clearly articulated terms of reference and are conducted in an ethical manner that ensures transparency. Parties to an investigation are always treated fairly and with respect
- cultural safety – in the context of promoting cultural safety during a workplace investigation, the matters a chief executive may consider include, but are not limited to:
 - recognising culturally significant connections for Aboriginal peoples and Torres Strait Islander peoples involved with a concern, complaint or grievance
 - ensuring that a person(s) involved in an investigation that involves Aboriginal people and Torres Strait Islander people or any support person or contact officer has an adequate level of cultural capability
 - ensuring support and communication is culturally appropriate during investigations
 - any elements of conscious or unconscious bias that may impact the Aboriginal person and Torres Strait Islander person from raising concerns about the investigation, including mitigation strategies
 - the cultural rights of Aboriginal peoples and Torres Strait Islander peoples under the HR Act
- procedural fairness – procedural fairness is a concept at common law, that requires a fair and proper procedure be applied to the decision making process and when making a decision. It is necessary for the findings of the investigation to be defensible and legally sound. Procedural fairness is recognised at law and comprises two elements:
 - the fair hearing principle – a person must be given sufficient information to know the case against them and be given the opportunity to respond before a decision is made

- the principle against bias – a person is entitled to a decision that is made by a disinterested and unbiased decision maker
- confidentiality – without guaranteeing anonymity or complete confidentiality, steps must be taken to safeguard the confidentiality of the investigation in the interests of the persons involved and for the integrity of the investigation
- they are lawful – provisions, directives, policies, guidelines and procedures required by law are observed throughout the process
- they are timely and proportionate – investigations should be conducted in a manner that is timely and proportionate to the allegations. Chief executives and decision makers should ensure they conclude an investigation as quickly as possible, and endeavour to meet the benchmarks (for timeliness) specified in the CaPE [Case Categorisation Framework](#)
- they are logical and justifiable – findings and recommendations are supported by evidence. Reports are logical and provide a sound basis for decisions to be made which are supported by the evidence and on the balance of probabilities
- there is separation of the roles of investigator and decision maker – the decision maker must come to an independent conclusion, based on the evidence presented by the investigator, but is not bound by the conclusions of the investigation. It is the role of the investigator to present evidence in relation to the allegations and whether that evidence, on the balance of probabilities, upholds the allegations. It is not the role of the investigator to make conclusions about:
 - whether there has been a breach of legislation or policy
 - whether a discipline ground exists
 - what the appropriate next steps may be after the investigation
- regular and transparent communication – a case manager and/or contact officer should maintain regular communication with the complainant/s and the individual subject/s of a matter, including by:
 - outlining the proposed process to gather information relating to the matter, estimated timeframes and obligations
 - providing regular updates throughout the process
 - keeping a record of any communication on file to demonstrate key parties have been kept informed about the process
 - advising all parties to the process of the availability of the Employee Assistance Program
 - demonstrating a duty of care for all involved.
- consideration of human rights – give proper consideration to human rights and document decision making in relation to human rights decisions. Under the HR Act, decision makers (and investigators, both internal and external) have an obligation to:
 - act and make decisions in a way that is compatible with human rights
 - give proper consideration to human rights when making a decision under the Act and Commissioner directives.

6. Starting a workplace investigation

Once the decision has been made to conduct an investigation, the investigation must be conducted in accordance with the directive. The decision maker and investigation must consider the CCC's [Corruption in Focus guide](#) (if relevant) and any relevant entity specific policies and procedures.

6.1. Deciding to use an internal or external investigator

An internal investigator is a suitably skilled Queensland public sector employee who is appointed by the chief executive to conduct a workplace investigation. A suitably qualified internal investigator may be from another public sector entity who is appointed by the decision maker to investigate a matter.

An external investigator is a person or service provider that is engaged through a contract arrangement to conduct a workplace investigation. Suitably qualified external investigators may be sourced through the Professional Services Standing Offer Arrangement (SOA). Where the required expertise is not available under the SOA, Commissioner approval must be sought to engage an external investigator that is not on the SOA.



Professional Services Standing Offer Arrangement (SOA)

A panel of external workplace investigators is available to entities through the [SOA for Professional Services](#). Under the relevant SOA, providers are evaluated against the following criteria: organisation structure, organisational support, corporate experience, value for money, and staff and training.

Entities are advised to follow their own procurement guidelines when selecting and engaging external providers. All panel providers have signed an SOA contract with specific terms and conditions and are subjected to referee checks.

An external investigator must only be used where it is necessary or expeditious to do so. Circumstances outlined in the directive that may lead to a chief executive deciding to engage an external investigator include:

- the requirement for specialist skills – if the nature of the allegations require specific expertise not available within the entity
- managing conflict of interest – if there a real or perceived conflict of interest or bias and the matter requires an investigation by someone external to the work area or entity
- considering capability and capacity – if the entity does not have the capability required to investigate and the capacity to do so in a timely manner, or if the matter provides an opportunity for capability development by partnering with a more experienced leader/manager from within the entity or another entity
- managing risk to public confidence – if there a risk to public trust and confidence by using an internal investigator
- the cost of an external investigator – the cost of the proposed external investigation must be proportionate to the seriousness of the matter. Consider if it would be more resource effective to engage a suitably skilled internal person (within the entity) to conduct enquiries or undertake an investigation.

If a decision is made to engage an external investigator who is also a legal practitioner, the investigator's legal practice must not be engaged by the entity to act for it or provide advice in any subsequent legal proceedings that may arise from the workplace investigation.

Entities who engage an external investigator must report through the CaPE return on their satisfaction with the service provided by the external investigator where required to do so under the directive relating to workforce profile and work performance information.

6.2. Drafting the terms of reference for the investigation

The terms of reference determine the scope of the investigation. They specify what subject matter will and will not be considered in an investigation — that is, what is within scope and what is outside of scope. Terms of reference provide clear instructions, set realistic timeframes and milestones, and specify reporting requirements (including any interim report required).

For external investigations, it is recommended the terms of reference require the investigator/s to prepare an investigation plan articulating their approach, timeframes, and their terms of business e.g. hourly rates, estimate of hours required, other costs. The investigation plan should provide an overall expected cost of the investigation and be accepted by the decision maker prior to the investigator being engaged.

The allegations contained in the terms of reference should detail the actions, that if proved may amount to breaches of legislation or policy and provide the grounds for discipline. Any change to the terms of reference, for example if the allegations are refined or fresh allegations emerge during an investigation, should be made by agreement between the entity and the investigator, and then documented.

The terms of reference for an investigation should:

- detail the allegations the investigator is being asked to investigate
- define the investigator's role is not to make decisions on the outcome of the investigation but is to present the evidence in relation to these allegations in order to make findings of fact
- clearly articulate the deliverables (reporting requirements) and specify timeframes
- clarify what support will be provided to the investigator (e.g. administrative support or legal advice).

See Appendix A: Template Terms of Reference

6.3. Engaging an external investigator

When engaging an external investigator, it is recommended that the case/contract manager:

- identifies the decision maker, determines the authority for the investigation, governance of the investigation and the authorisation channels
- briefs the investigator and provides them with a copy of the Code of Conduct (or an entity's relevant Code of Conduct), the directive, this guideline and any other relevant legislation, policies, procedures and/or guidelines relevant to the matter being investigated
- advises the investigator of any internal entity supports to be afforded to parties such as access to a support person and provision of a copy of the electronic recording or transcript of their interview
- maintains regular communication with the investigator and monitors and manages their performance throughout the period of the contract
- determines and agrees upon the process regarding the retention of records and documentation with the investigator in accordance with entity record keeping requirements and legislation
- creates a plan to provide agreed regular updates on the progress of the investigation against the terms of reference to both the decision maker and participants.

7. Conducting a workplace investigation

7.1. Duty of care owed to the individual who is the subject of a workplace investigation

Employers owe a duty of care to provide adequate support to employees who are the subject of workplace investigations. Chief executives should consider their obligations under the [Managing the risk of psychosocial hazards at work Code of Practice 2022](#) when conducting a workplace investigation.

Employers can demonstrate their duty of care to the subject employee by:

- providing the individual who is the subject of a matter with details of the employee assistance program and a contact officer who is different to the complainant's contact officer
- giving careful consideration for the wellbeing of an employee who is being advised of any matter that could reasonably be expected to cause distress and, in addition to advising of the services provided through an employee assistance program, provide practical support as appropriate, including for example, arranging transport home
- giving careful consideration to the appropriateness of allowing individuals involved in (or where there is potential for) workplace conflict to continue working in close proximity, prior to resolution of the matter
- documenting the decision to demonstrate appropriate consideration of the risks, including taking into account the views of affected individuals where a decision is made to continue working arrangements 'as normal' or to put in place alternate arrangements
- providing the individual who is the subject of a matter with adequate time to arrange a support person and/or an industrial representative to attend any meetings or interviews
- keeping in contact with the individual who is the subject of a matter based on their needs, especially if the investigation is lengthy, and providing updates on the investigation process remembering that in most instances the employment relationships will continue after the resolution of the matter
- not unreasonably refusing leave requests especially if the investigation process is expected to be lengthy
- continually reviewing the arrangements in place to support the wellbeing of all involved until the matter is resolved.

7.2. The investigation report

The investigation report should be succinct and clear. It should:

- outline the authorisation, scope and purpose of the investigation
- detail the complaint and set out the allegation/s
- set out the evidence that supports or does not support substantiation of the allegation/s
- outline if on the balance of probabilities each allegation is capable or not of substantiation
- include relevant attachments.

Refer to Appendix B: Investigation report suggested headings



Standard of proof

When making findings in an investigation, a decision maker must apply the civil standard of proof – the balance of probabilities and not the criminal standard of proof, which is beyond reasonable doubt. This means that for an allegation to be substantiated, the evidence must establish that it is more probable than not that the alleged conduct occurred.

The strength of evidence necessary to establish an allegation on the balance of probabilities may vary according to the:

- relevance of the evidence to the allegations
- seriousness of the allegations
- inherent likelihood - or improbability - of a particular thing or event occurring
- gravity of the consequences flowing from a particular finding.

This is known as the “Briginshaw test” (*Briginshaw v Briginshaw* (1938) 60 CLR 336).

7.3. Managing the outcomes of an investigation

At the conclusion of the investigation the decision maker:

- reviews the investigation report and all evidence at hand to make a decision on whether, on the balance of probabilities, that the allegation/s could be substantiated, either fully, partially or not at all, and then determines what, if any, action is required
- determines what information is going to be released to the complainant/s (for example, actions taken, complaint decision, reasons for decision) and/or individual subject/s of a matter (for example, the terms of reference, final investigation report, or parts of the report).
 - the investigation report or parts of it, transcripts of interviews, statements or other material may be required to be disclosed to the subject officer to afford that person procedural fairness during a disciplinary process. This material may also be discoverable in any legal proceeding and may be obtainable under right to information legislation.
- corresponds with the individual who is the subject of a matter. This may be in the form of:
 - a letter informing them that the allegations are not (or are unable to be) substantiated and no further action will be taken
 - a letter informing them that management action may be taken to resolve the matter
 - a letter which may be a first show cause on liability for disciplinary action letter setting out the allegations (any disciplinary action must be taken in accordance with the [Discipline directive](#))
- writes to the complainant to inform them that the investigation process has concluded and the necessary action has been taken, or the allegation was not substantiated and no further action has been taken. This correspondence should include any remedy and review options
- considers whether others, e.g. witnesses, should be informed that the investigation process has concluded - generally the decision maker does not write to witnesses who were interviewed to inform them of the outcomes of the investigation, and this should be advised at their interview
- determines what records and documentation need to be retained in accordance with legislative requirements and entity record-keeping procedures and ensure that all evidence e.g. recordings, statements, documents are secured and able to be provided to any external entity, for example, the CCC should it be required.

7.4. Reviews of workplace investigations

The directive outlines that for matters that are not considered corrupt conduct, an independent decision maker must review the workplace investigation at six months duration, and the chief executive must review the investigation at 12 months duration and every six months thereafter.

Following each review, the independent decision maker or chief executive should make a decision on whether the investigation should continue. This timeframe is measured from the date the chief executive signs the terms of reference authorising the commencement of the investigation. The investigation may continue whilst the review is being conducted.

An employee who is the subject of a workplace investigation may also request that the PSC conducts a review of a procedural aspect of the investigation, other than an investigation involving allegations of corrupt conduct.

The subject employee must identify the procedural elements of the directive they believe the chief executive has not complied with and must have exhausted all internal grievance pathways prior to requesting a review. The subject employee must provide evidence of this and request the review in writing by emailing employeereview@psc.qld.gov.au.

8. Definitions

Unless otherwise stated, the definitions contained within this guideline align to the definitions contained within the *Public Sector Act 2022* and the directive.

Code of Conduct for the Queensland public service

The Code of Conduct for the Queensland Public Service (the Code) is based on the public sector ethics principles as outlined in the *Public Sector Ethics Act 1994* (PSEA). The Code applies to employees, as defined in the Code, of Queensland public service agencies, as defined in the PSEA .

Public sector entities that are not a party to the Code should refer to their own entity's Code of Conduct.

Corrupt conduct

Corrupt conduct is conduct defined in section 15 of the *Crime and Corruption Act 2001*.

Investigation

An investigation can be defined as the unbiased gathering and evaluation of evidence. A workplace investigation requires a formal scope or terms of reference, and a written report for the decision maker to consider.

9. Appendices

Appendix A: Template terms of reference

Appendix B Investigation report suggested headings

Appendix C: Letter to individual who is the subject of a matter advising of investigation

Appendix D: Letter to witness inviting them to an interview

More information

Public Sector Commission

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