



HYNE TIMBER WORKPLACE INVESTIGATION TRAINING

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INTRODUCTION

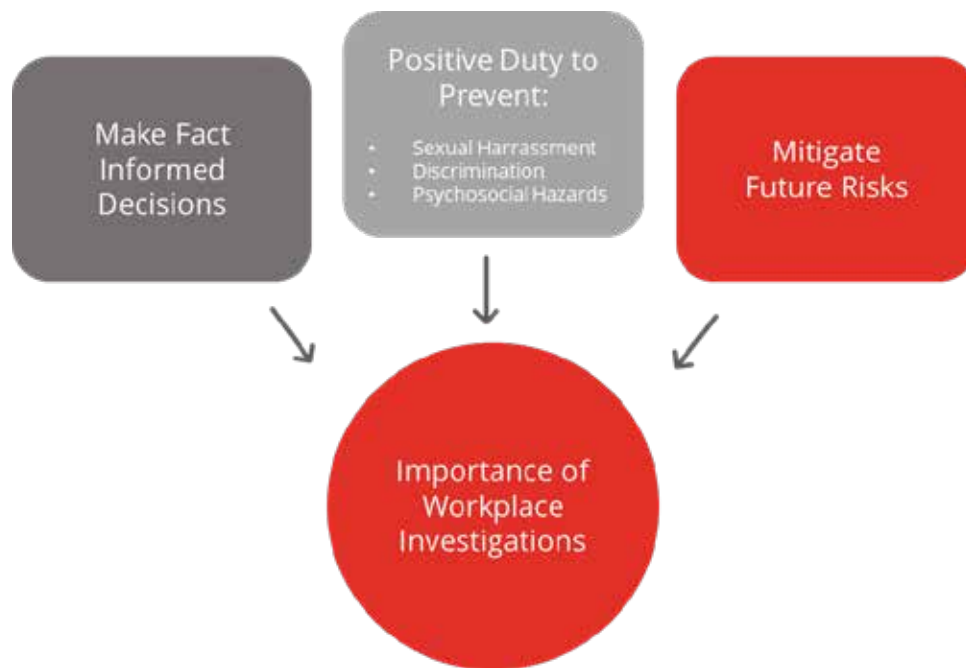
WHAT ARE WORKPLACE INVESTIGATIONS?

A workplace investigation is a procedurally fair process of determining whether allegations raised against another person in the workplace are substantiated or not. It involves collecting facts and evidence to decide on the balance of probabilities, whether the alleged incidents occurred or not.

WHY ARE THEY IMPORTANT?

Employers are required to make decisions based on independent and objective findings of fact, which must be obtained in a manner that is procedurally fair to all stakeholders involved.

Employers have an obligation to provide a workplace that is physically and psychologically safe and free from all forms of discrimination, harassment, and bullying. In some aspects of law (e.g. sexual harassment, discrimination and psychosocial hazards), employers have a **positive duty** imposed on them. This means that employers are required to actively prevent these occurrences in the workplace rather than responding to them after the events occur.



Employers have an obligation to investigate any known issues of discrimination, harassment, and bullying, including psychosocial hazards once known as well as when reported. Workplace investigations are a critical tool for employers to mitigate future risks which may arise from workplace related legislation such Workplace Health and Safety, Discrimination and Workers Compensation, and other legal and regulatory requirements.



TYPES OF INVESTIGATIONS

FORMAL & INFORMAL

Both formal and informal workplace investigations are used to address allegations of misconduct or policy violations. The approach and circumstances of each can differ significantly.

Formal

Formal investigations are structured, impartial processes designed to gather and analyse facts related to serious allegations. They are typically required when there are allegations of misconduct such as bullying, harassment, discrimination, workplace health and safety concerns, or incidents involving behaviour such as theft, fraud, or misuse of confidential information.

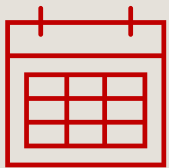
These investigations involve interviewing complainants, respondents, and witnesses separately, with a formal report being prepared that includes findings and recommendations. Formal investigations are important to ensure accountability and guide appropriate corrective action.



Well Documented



Follow Relevant
Protocols and
Structures



Consistent in
Application

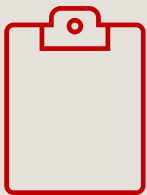


Required for
Allegations of
Misconduct

Informal

Informal investigations are typically used for less severe workplace disputes, such as personality clashes. They may be more suitable for addressing general complaints or comments about the company's culture or strategic direction, issues of poor performance (rather than misconduct), or interpersonal differences between colleagues that do not amount to bullying, harassment, or discrimination.

These investigations involve conducting interviews informally and taking contemporaneous notes. Facilitated discussions and/or mediation, where a neutral third party helps facilitate discussion between the involved individuals, can often resolve conflicts. Mediation can only be used when both parties are willing to participate.



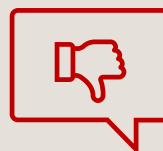
Cursory



Not as comprehensive
as formal investigation











Undertaken to
understand what the
root issue is



Suitable for general
complaints, poor
performance, or minor
interpersonal issues

How to Decide?

It's important to note that not every complaint or conflict requires a complete and comprehensive workplace investigation. The decision to conduct a formal or informal investigation should be based on the seriousness and complexity of the allegations; potential risk of harm to anyone; requirement to meet employer obligations; minimise potential liabilities and protect the business's reputation.

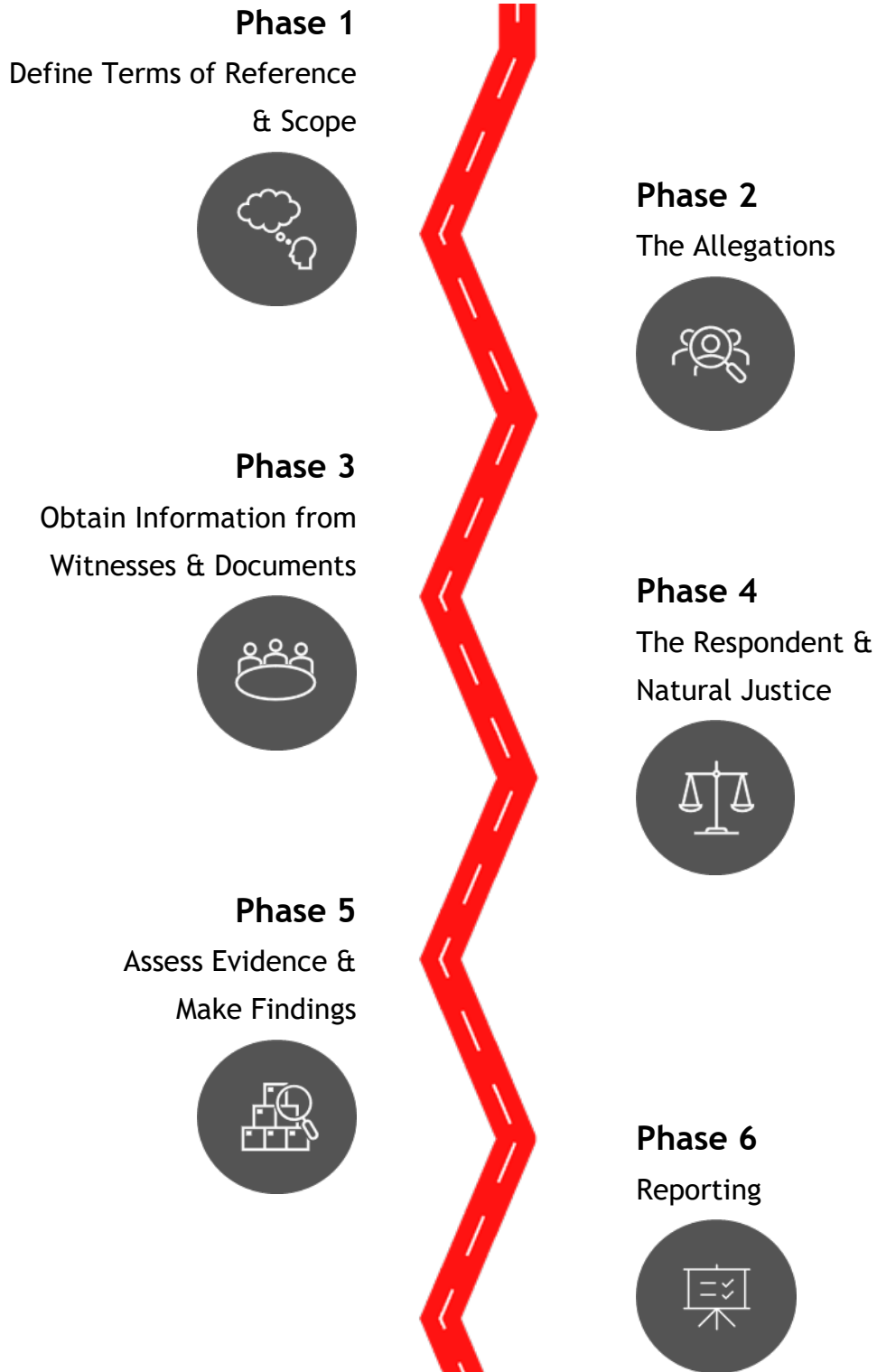
 <p>What are the complainants' expectations?</p>	 <p>How serious is the complaint?</p>	 <p>Are the facts likely to be in dispute?</p>	 <p>Has litigation been threatened or initiated?</p>
 <p>Is there sufficient connection between the alleged conduct and the person's employment?</p>	 <p>Is it a complaint of inappropriate treatment?</p> <p>Is a large power differential involved?</p>	 <p>Consider the personalities of parties to the dispute/issue/complaint.</p>	 <p>What do your policies say about this?</p>



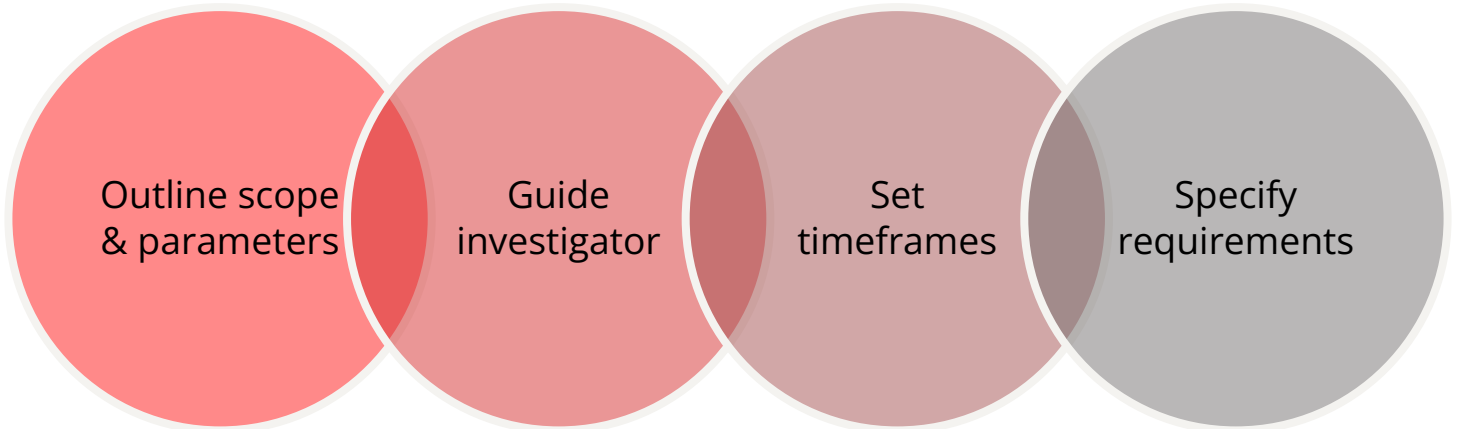
WORKPLACE INVESTIGATIONS

BEST PRACTICE

KEY PHASES OF THE INVESTIGATION



PHASE ONE: TERMS OF REFERENCE



The terms of reference provide a clear framework and guideline for the investigation process. They are an essential tool for maintaining the integrity and effectiveness of the investigative process.

“Checklist: Briefing the Investigator” available at page [71](#)

“Checklist: Terms of Reference” available at page [69](#)

See Template Terms of Reference

Purpose

The terms of reference for a workplace investigation set the scope and parameters of the investigation. They guide the investigator on what needs to be investigated and the nature of the investigation. They also set up the overall expectations for all stakeholders on what form part of the investigation. These terms should specify whether the investigator is only required to conduct a fact-finding investigation to determine the facts of what occurred, or whether they must also determine if the proven conduct constitutes misconduct or breaches any policies, codes of conduct, or standards.

The terms of reference should outline the timeframe for completing the investigation, the matters to be included in the final report, the person responsible for managing the investigation on behalf of the employer, and any special protocols or requirements that must be followed.

Sometimes, during the course of the investigation, the investigator may identify additional matters outside the initial scope that logically should be included. In such cases, the investigator should request an amendment to the terms of reference to include these new issues before proceeding to investigate them. It is essential that the investigator can conduct the investigation without interference or undue influence, even though the terms of reference are set by the employer. Terms that are overly restrictive or attempts to limit the investigator's lines of inquiry will result in a flawed investigation that will not withstand scrutiny.



Outline Scope &
Parameters



Guide Investigator



Set Timeframes



Specify Requirements

Key Elements

Scope of the Investigation: Define the circumstances and issues to be investigated and the specific questions to be answered. Clarify what is being investigated, which may relate to the complaint but could also be broader, such as a range of complaints including harassment or management inaction on processes.

Reporting Requirements: Determine if the situation is particularly sensitive, requiring interim oral reports to help the organisation plan for the likely ultimate findings.

Findings or Recommendations: Specify what findings are required and what are not, as well as whether recommendations are needed. This could include recommendations related to specific events or systematic changes.

Recipient of the Report: Define who the report is to be addressed to and who is likely to access it.

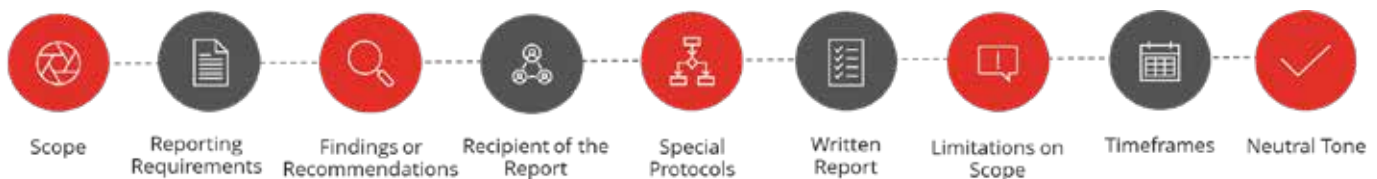
Special Protocols: Are there any special protocols or requirements that must be followed including contacting/not contacting specific people.

Written Report: Decide whether a written report is necessary or if some cases might only require an initial briefing.

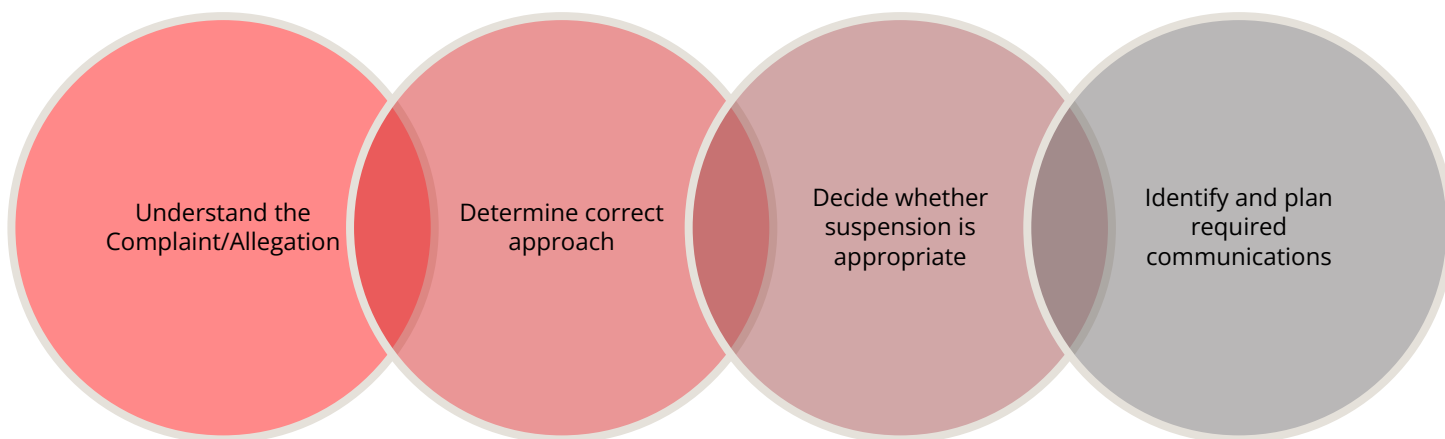
Limitations on Scope: Note any limitations on the scope of the investigation, such as restrictions on witnesses or documents.

Timeframes: Determine the expected timeframe that the investigation will need to be completed in.

Neutral Tone: Ensure the terms are written in a neutral tone, not suggestive of any particular outcome.



PHASE TWO: THE ALLEGATIONS



In the early stages of a workplace investigation, the focus is on understanding and documenting the allegations. This stage follows the same process and principles whether the issue is related to workplace conduct or Work Health and Safety (WHS).

[“Checklist: Receiving a Complaint”](#) available at page [67](#)

See Template Letter to Complainant with Direction to Attend Interview

See Template Letter to Subject Employee for Suspension

Understand the Complaint/Allegation

The first step is to identify the source of the complaint and gather initial information about the issue. Meet with the complainant to ensure all details of the issue are accurately captured and to understand their expectations for the outcome. Determine if the facts are likely to be in dispute and consider the personalities of the parties involved.



Evaluate the seriousness of the complaint, particularly if it involves inappropriate treatment with a significant power differential. Assess whether litigation has been threatened or initiated and review your organisation's policies related to the complaint. Ensure there is a sufficient connection between the alleged conduct and the person's employment to warrant the employer's consideration of the matter.

Approach & Immediate Actions

Assess whether the nature of the complaint warrants a less formal approach for safety or other reasons. Consider if the investigation should be managed under Legal Professional Privilege (LPP) to protect sensitive information. It may be necessary to take some immediate action, to preserve evidence or protect those involved. Examples could include securing CCTV footage, building access records, or computer records.



Suspension

In some circumstances, it may be appropriate to suspend an employee with pay while investigations are carried out. Suspension should be seriously considered and only applied in limited situations. The suspension should be confirmed in writing, with reference to any applicable clauses in the employment contract, policies, or other relevant documents. Suspension of an employee can be perceived by some (e.g. Union) like the employer has already made a decision in relation to the matter and therefore suspension of an employee needs to be managed appropriately.

It is important to handle suspensions sensitively to preserve the working relationship. This could look like:

- ❖ Agreeing with the employee on how to communicate the suspension to the rest of the business;
- ❖ Conducting meetings regarding the suspension privately and discreetly;
- ❖ Facilitating collection of personal belongings discreetly and at a quiet time.

Suspending employees during a workplace investigation can cause legal risks, so it is crucial to follow relevant policies or laws properly to mitigate these risks. If there are reasonable grounds to suspend, the employer should do so as soon as is reasonably practicable. When deciding whether to suspend an employee, employers must balance the potential health and safety risks to investigation participants with the obligation to conduct a procedurally fair investigation and ensure fair treatment of the employee. For instance, if the employer is concerned that the employee may pose a danger to themselves or others, they may suspend the employee to maintain a safe workplace.



Confirm suspension in writing, referencing employment contract/policies/relevant documents



Balance health and safety risks with fair investigation and treatment



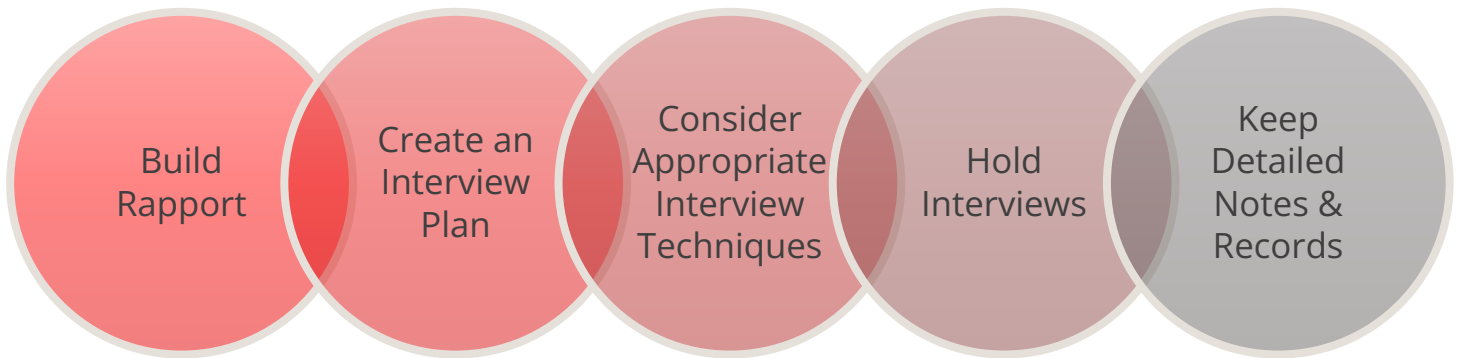
May be perceived as though employer has already decided outcome

Communication

Identify who needs to be informed internally or externally, including senior management, media, WHS authority, police, and other relevant parties. Assess the involvement of the Union and determine the extent of communication required with them. Consider if clients are involved and how to communicate with them, and determine if other companies, such as subcontractors or consultants, are involved and how to manage these relationships.



PHASE THREE: OBTAINING INFORMATION FROM WITNESSES AND DOCUMENTS



In the second stage of a workplace investigation, the focus is on gathering information from witnesses and relevant documents. This information is ordinarily gathered through a series of interviews.

[“Checklist: Taking the Witness Statement”](#) - Available at page [73](#)

[“Checklist: Assessing Interviewee Evidence”](#) available at page [75](#)

Questioning Guides available from page [78](#)

See Template Interview Statement

See Template Letter to Employee Witness with Direction to Interview

Building Rapport

Rapport is built when the interviewee feels trust and confidence in the interviewer, believing that the interviewer is willing to listen, understands them, and is genuinely focused on them. It's important to develop this connection naturally and avoid excessive, obvious, or forced attempts at rapport.

Misinterpreted behaviours can hinder rapport-building efforts. Investigators should also ensure their behaviour does not create unrealistic expectations or perceptions of bias.

Establishing rapport with interviewees encourages the parties to share information that they might not typically disclose. Building rapport leads to better quality information and favourable outcomes in interviews.



Listen, understand,
and genuinely focus
on interviewee



Develop connection
naturally



Misinterpreted
behaviours hinder
rapport-building



Do not create
unrealistic
expectations or
perceptions of bias

Interview Plan

Creating an interview plan is a good practice, however it's important not to over-plan or rely on a rigid script, as the witness might provide unexpected information that could change the direction of the inquiry. The investigator should stay adaptable and adjust their questions based on the witness's responses.

The interview plan may include:



The specific allegations being investigated



A summary of the relevant evidence already collected and any gaps that need to be filled



Applicable policies or procedures



The topics the witness may have information about



The sequence in which you intend to address these topics during the interview



Any special arrangements that need to be made in advance



Documents, photographs, or other materials you plan to show the witness

Interviews: Time & Place

Consider the timing and location of interviews carefully. If conducted at the workplace, interviewees might feel uncomfortable being seen by other employees entering or exiting the interview room. Choose a time and place that ensures privacy and minimises discomfort for the interviewee. Face-to-face interviews are generally preferred for their effectiveness. However, using online video conferencing software with video can also be a viable option if in-person meetings are not possible.



Face to Face

- ❖ Better sense of the individual
- ❖ Higher level of engagement
- ❖ Easier to read body language & non-verbal cues



Online Video Conference

- ❖ Convenience & flexibility
- ❖ Time & cost effective
- ❖ Participant may feel more comfortable participating from their own space

When conducting interviews online, consider the following:

- ✓ Can you see the interviewee and any other person in the room?
- ✓ Can you ensure that the interviewee has sufficient privacy and that the interview will not be overheard?
- ✓ How will the interview be recorded?
- ✓ How will support persons, interpreters, and others participate?
- ✓ How will you show the interviewee any documents, videos, or images?
- ✓ Are you familiar with the technology, or do you have access to skilled support in case of technical problems?
- ✓ How secure is the platform being used?

Interview Techniques

Familiarisation with recognised interviewing structures and techniques enhances interview effectiveness. By understanding and applying these methods, interviews are generally more structured, comprehensive, and productive.

Active Listening:

During an interview, interviewers must listen attentively to the interviewee. Failing to do so can result in missing important information, overlooking opportunities to ask key questions, or not probing inconsistencies. It may also discourage the interviewee from fully cooperating and sharing all the information they have.

To practice active listening:



Give the interviewee your full attention and avoid interrupting.



Give brief affirmative responses, such as "OK," "I see," "Yes," or nodding.



Note down points to return to later.



Paraphrase or summarise what the interviewee said to confirm understanding.



Ask encouraging questions like "What else did you see?" Or "What else happened?"

Questioning:

Using a variety of questioning techniques can help elicit comprehensive information from the interviewee. Some questioning techniques include:

Free Recall	Ask the interviewee to provide a full account of the event/s. "What do you want to tell me?"
Reframe and Further Recall	Rephrase questions to prompt the interviewee to recall more information. "Are you able to describe what was happening while you were in... (the room, the car, the house, etc.)?"
Open Questions	Require a longer answer. Cannot be answered with Yes/No. "What, Where, Who, How, When, and Why?"
Closed Questions	Only Yes/No Answers. Only use after exhausting open questions & free recall. "Were you on site yesterday?"
Encouraging Questions	To prompt further information. "And what else?", "What happened next?"
Silence	Indicates that more information is expected.

Special Considerations

Ensure that all interviewees can participate in the investigation process equally, as far as reasonably practicable. To do this, investigators must be mindful of and accommodate any special considerations.

Examples of individuals who may require special consideration include:

- ❖ Children
- ❖ People with a history of trauma or those who have experienced trauma
- ❖ Aboriginal and Torres Strait Islander people

Several bodies have issued guidelines for best practices in conducting investigations involving individuals with special needs. The investigator should consult these guidelines where relevant. Examples of such guidelines are provided below.

Children: [National Office for Child Safety: Complaint Handling Guide](#)

Persons with a history of trauma or those who have experienced trauma: [Blue Knot Foundation](#)

Aboriginal and Torres Strait Islander people: [Queensland Health: Communicating Effectively with Aboriginal and Torres Strait Islander people](#)



Ensure all interviewees can participate equally in investigation process



Be mindful of & accommodate special considerations



Consult guidelines for best practices when relevant

Records

The investigator should record all correspondence and communications concerning evidence and the sources of the evidence obtained for the purpose of the investigation. If you decide not to pursue certain evidence, record the reason why, in case this is queried later. Written submissions from the employee under investigation are not evidence. They contain opinions. They may refer to facts in issue, however, which should be pursued by seeking relevant evidence.

To claim Legal Professional Privilege, it must be shown that the primary purpose of the communication or document was to obtain legal advice or prepare for litigation. Detailed records support this by providing evidence of the context and intent behind the documents. Legal Professional Privilege relies on the confidentiality of the communication, and maintaining thorough records helps preserve this by tracking access and ensuring documents are not disclosed to unauthorised parties. If confidentiality is breached, the privilege can be lost. Each document claiming Legal Professional Privilege must be individually justified with detailed information such as authors, recipients, dates, document types, and the basis for the privilege. This detail is necessary to meet legal requirements. Detailed records also help prevent inadvertent waiver of Legal Professional Privilege by clarifying the terms under which privileged information was shared, thereby maintaining its confidentiality.



Record all correspondence
& communication
concerning evidence

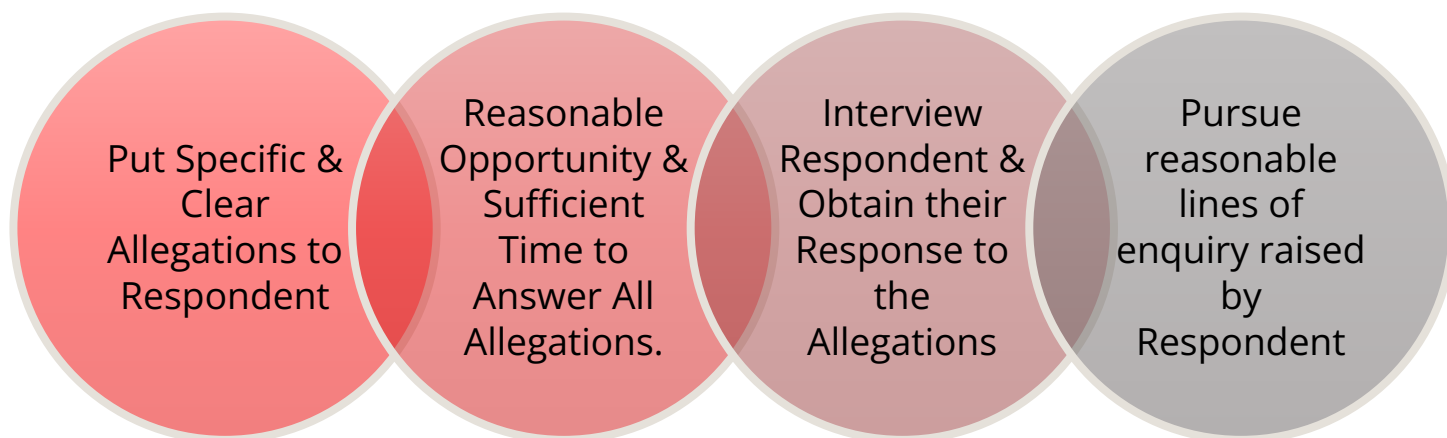


Record sources of evidence
obtained



If certain evidence is not
pursued, record the reason
why

PHASE FOUR: THE RESPONDENT & PROCEDURAL FAIRNESS



The purpose of investigative interviewing is to obtain accurate and reliable information relevant to the facts in issue. The aim with the respondent is to afford them the chance to offer their account of events and respond to the allegations made.

See Template Letter to Subject Employee with Allegations and Direction to Interview

See Template Interview Statement

Procedural Fairness

Procedural fairness is essential in workplace investigations to ensure that decisions affecting an employee's rights are made fairly. The bias and hearing rules are key principles of procedural fairness.



Bias Rule

Decision makers must act without bias when making a decision, ensuring impartiality throughout the investigation process.



Hearing Rule

The employee must be informed of the allegations in sufficient detail to enable them to respond effectively.

The employer must allow sufficient time and opportunity for the affected person to present his or her side of the matter.

Procedural fairness requirements can vary according to the circumstances, as it is a flexible standard. For example, more time might be allowed for an employee to respond to numerous and detailed allegations than for a single allegation.

To ensure procedural fairness, it is best practice for employers to ensure:

- ✓ The investigation is as full and extensive as reasonable under the circumstances.
- ✓ The investigator gives the employee every reasonable opportunity and sufficient time to answer all allegations.
- ✓ There are reasonable grounds for the employer to believe the employee committed the alleged misconduct.
- ✓ Mitigating circumstances are taken into account.

Support Person

As this is not a disciplinary process, a right to a support person is not required. However, where organisations blend the investigation and disciplinary processes, the investigator must advise the respondent of their right to have a support person present as one must not be unreasonably declined for disciplinary proceedings. Blending the two processes is not recommended as it often compromises a disciplinary investigation and can create future liability for the employer. Where the process is blended with a disciplinary process, it is likely that the investigator will not be able to obtain as much information. In any case, it is not unreasonable for an employee under investigation to have a support person present during the interview. The support person must not be involved in the facts being investigated. It is advisable to obtain their details beforehand to confirm this.

The support person's role is to support the employee, act as an observer, and provide advice, especially if they are a union representative or legal adviser. They should not speak on behalf of the employee during the interview.

Refusing to allow a support person without a valid reason can result in disciplinary decisions being successfully challenged which is another reason why the two processes should be completely separated. In the context of unfair dismissal, the unreasonable refusal of a support person is a factor when assessing whether a dismissal was harsh, unjust, or unreasonable.



The Support Person's Role

- ❖ Supports the employee, acts as observer, & provides advice, but should not speak on behalf of the employee
- ❖ Must not be involved in the facts being investigated; obtain their details beforehand

Putting the Allegations to the Respondent

The investigator should inform the respondent of the specific allegations against them and allow a few days for them to consider their response and prepare for the interview. Providing specific allegations is crucial, as it can be procedurally unfair to present vague or unspecific allegations. The respondent must understand the exact behaviour being alleged to have a fair opportunity to respond.

Interview Respondent & Obtain their Response

The investigator's questions should be neutral and open-ended, ensuring they do not imply any predetermined conclusions. When interviewing the respondent, present the full allegations to them, take detailed and accurate notes, ask open-ended questions, avoid leading questions, and clarify any unclear or ambiguous responses.

When interviewing an employee regarding alleged criminal conduct, standard interview procedures should be followed. However, the investigator must inform the employee that they are not required to answer any questions. This precaution is necessary to prevent any future claims that the employee was denied their right against self-incrimination.



Take detailed and accurate notes



Avoid leading questions



Clarify unclear or ambiguous responses



Ask open-ended questions

Pursuing Other Reasonable Lines of Inquiry

Ask the employee under investigation if they are aware of any sources of evidence they believe are relevant. This would include asking for further witnesses and the details of those witnesses including name, role and contact details. If you determine that this evidence could be pertinent, either for or against the employee, take reasonable steps to obtain it.

Difficult Respondents - Uncooperative, Hostile, and Emotional

If the respondent refuses to participate in the interview, the investigator can choose to either stop the interview, proceed with other questions, or provide a summary of the evidence and request the respondent's comments. Before ending an interview where the respondent remains silent, the investigator should inform them that this is their chance to respond to the allegations and remind them that the investigation will proceed without their input.

In situations where the respondent becomes hostile or emotional, the investigator must stay calm and professional, avoiding any emotional reaction. The investigator may offer a break or ask the respondent to calm down, explaining that expressing anger will not aid in addressing the allegations. If the respondent does not calm down, the investigator should consider ending the interview and rescheduling it for a later time.



Uncooperative

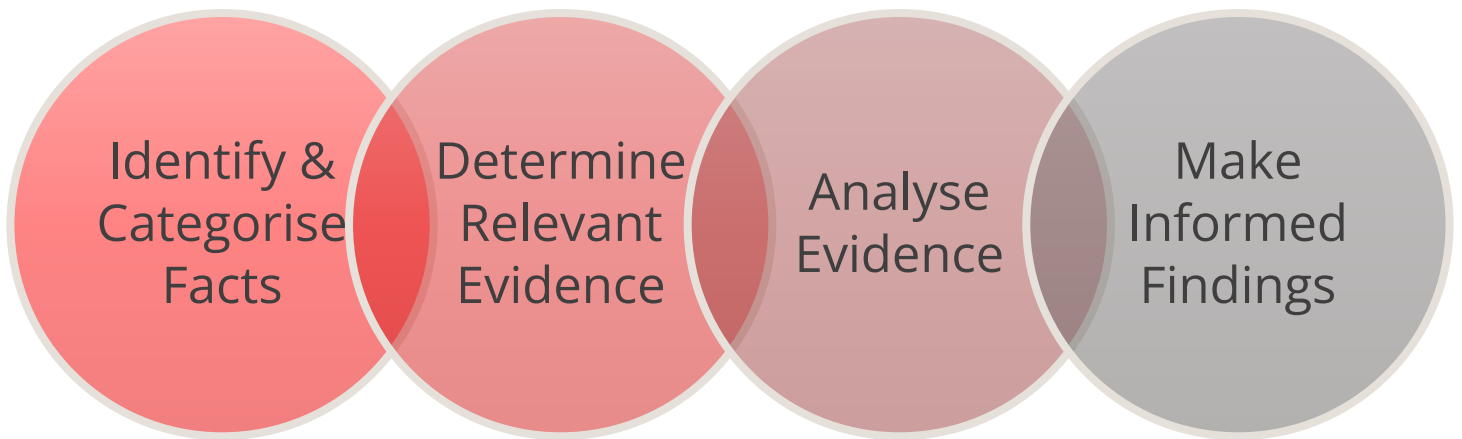
- ❖ Investigator can stop interview, proceed with other questions, or summarise evidence & request comments
- ❖ Remind respondent - this is their chance to respond & investigation will proceed without their input



Hostile & Emotional

- ❖ Stay calm and professional - avoid emotional reaction
- ❖ Offer a break or ask respondent to calm down
- ❖ Explain that anger won't help address the allegations
- ❖ If respondent doesn't calm down, consider ending the interview & rescheduling it

PHASE FIVE: ASSESSING THE EVIDENCE AND MAKING FINDINGS



[“Checklist: Assessing Interviewee Evidence”](#) available at page [75](#)

See Template Evidence Matrix

Identification and Categorisation of Facts

Investigators need to reach conclusions where often the facts may be contentious, complicated, or both. Findings should be based on evidence that is logical, probative and relevant. When conducting a workplace investigation, consider all the relevant evidence gathered.

Facts can be identified and categorised as:



Relevant Evidence

Relevant evidence is any information that is logically connected to the issue being decided. Irrelevant evidence should not be considered or relied upon, because it may invalidate any decision made on the investigation report, and only relevant evidence can affect the probability that a fact in issue exists.

To determine the relevance of evidence, consider whether it would “affect the probability of the existence, or non-existence, of a fact in issue”. Even a slight logical connection between the evidence and a fact in issue is sufficient to make the evidence relevant. This includes evidence that might reasonably be expected to exonerate the employee under investigation.

When assessing the relevance of evidence, focus on its capacity to be relevant rather than its quality or weight. For example, if there is evidence that a witness has been proven to lie in a previous investigation, this information might be relevant to assessing whether the person is a credible or reliable witness.

Analysing Evidence

When dealing with disputed facts in a workplace investigation, consider the following factors:

- ❖ **Reliability:** Assess whether the evidence is trustworthy. Evidence from a witness who appears less credible or whose account has inconsistencies may not be reliable. Reliability may also be affected by factors such as the passage of time or environmental conditions.
- ❖ **Plausibility and Logic:** Evaluate if the evidence makes sense. Evidence that seems illogical or unbelievable should be given less weight compared to evidence that is logical and plausible.
- ❖ **Corroboration:** Look for evidence that supports other pieces of evidence. Corroborated evidence is more probable and should be given more weight.

Ultimately, determine which evidence is more credible and reliable. If you encounter two conflicting accounts of an event, consider whether there is any additional evidence that might support one version, or help you draw a logical inference. If there is no direct evidence for a specific fact, consider whether you can draw a logical conclusion or inference based on the other available evidence. However, in some cases, there may not be sufficient evidence to prove the allegation.



Reliable



Credible



Corroborated



Consistent



Plausible



Logical

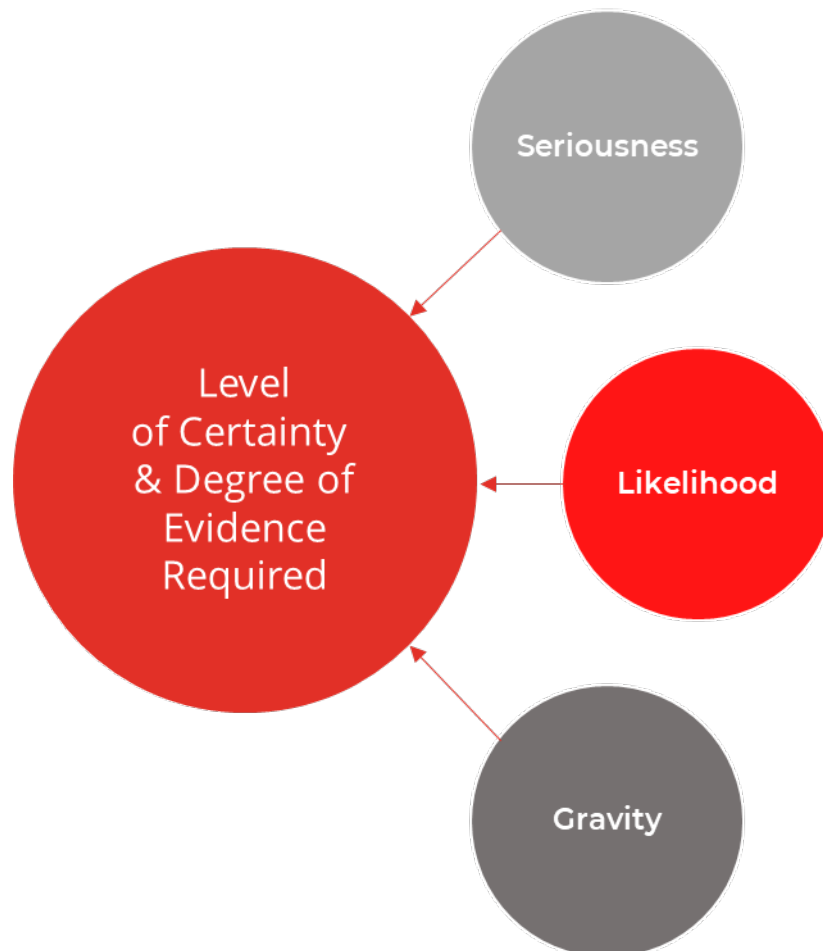
Standard of Proof

The standard of proof refers to the level of certainty and degree of evidence necessary to establish proof. It is the level of assurance and the amount of substantial evidence required to validate a claim. The standard of proof in workplace investigations is the civil standard, known as the 'balance of probabilities.' This means an allegation is proven if it is more likely than not to be true. An investigator should not find a fact to be established unless it is “more probable than not” that it occurred or to “reasonable satisfaction”.

The strength of evidence needed may vary depending on the seriousness of the allegation. If the allegation is particularly serious (e.g. assault, theft, sexual harassment), the degree of “satisfaction” required needs to be higher.

When applying this test, investigators must consider:

- ✓ The seriousness of the allegation
- ✓ The inherent likelihood of the conduct occurring based on the evidence
- ✓ The gravity of the consequences resulting from the finding



Making Findings

When making findings in a workplace investigation, the key question is whether the evidence, taken as a whole, establishes that it is more probable than not that the alleged conduct occurred. The affected employee's response must be taken into consideration.

If it is alleged that a workplace policy, law, or other standard was breached, the investigator must determine whether the proven conduct constitutes such a breach.

Mitigating factors, such as illness, heavy workload, or lack of training, are not relevant to determining whether the alleged conduct occurred. However, they are important for assessing the seriousness or culpability of the employee. These factors should be considered when deciding on the action to take.

When making findings that an employee has engaged in conduct at work that could also amount to criminal conduct, the workplace investigator should not make a finding as to whether the employee has breached criminal law. Instead, the question is whether the employee has, on the balance of probabilities, committed the alleged conduct. The standard of proof applied remains the civil standard of proof.

Findings are expressed as substantiated, partially substantiated, or unsubstantiated/not substantiated. Substantiated means the allegation is proven on the balance of probabilities. Partially substantiated indicates that some facts making up the allegation are proven on the balance of probabilities, but others are not. Unsubstantiated/not substantiated means the allegation is not proven on the balance of probabilities, either because the evidence does not meet the required standard of proof, or the evidence is insufficient.



Substantiated

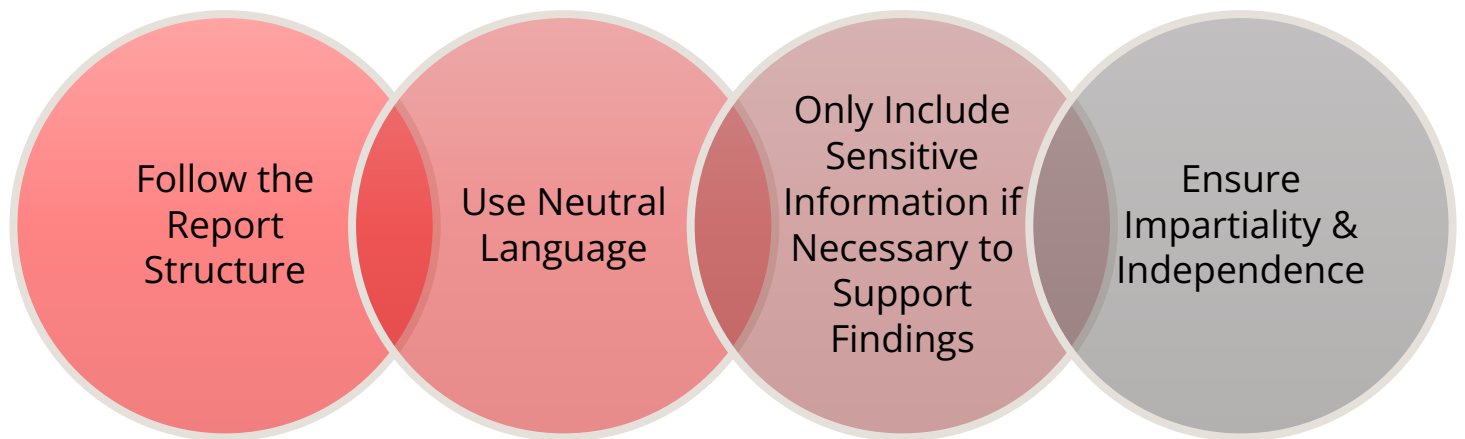


Partially Substantiated



Unsubstantiated/Not
Substantiated

PHASE SIX: REPORTING



The purpose of a workplace investigator's report is to gather relevant evidence and present the investigator's findings in a coherent and clear manner, assisting the employer in deciding the appropriate course of action

[“Checklist: Finalising the Investigation Report”](#) available at page [77](#)

See Template Workplace Investigation Report

Key Considerations

The report should be clear, concise, well structured, logically reasoned, and refer to the terms of reference. It should use neutral language and avoid unnecessary comments on anyone's character, personal affairs, appearance, or behaviour. Include only information relevant to determining the facts at issue. When citing evidence, identify its source, referencing an annexure if necessary. Summarise witness evidence that is undisputed or non-crucial, but if the evidence is disputed or crucial, include the exact words used.



Clear, concise, well-structured, logically reasoned, & refer to terms of reference



Use neutral language & avoid unnecessary comments



Include only information relevant to determining facts in issue



Cite evidence & identify its source, referencing annexure if necessary

Report Structure

A typical structure for a workplace investigation report is:

- i) **Relevant factual background**
- ii) **Identify allegations:** identify the allegations and any relevant particulars.
- iii) **Investigation process and methodology:** summarise the investigation process and the methodology used
- iv) **Evidence, analysis, and findings:** present detailed findings with supporting evidence and analysis. Reference the balance of probabilities test. The report should not include findings that are outside the terms of reference.
- v) **Conclusions & recommendations:** include recommendations, if required, in a separate section or separate report.
- vi) **Annexures:** annex all relevant material, including documents, photographs, etc.



Privacy, Confidentiality, & Sensitive Matters

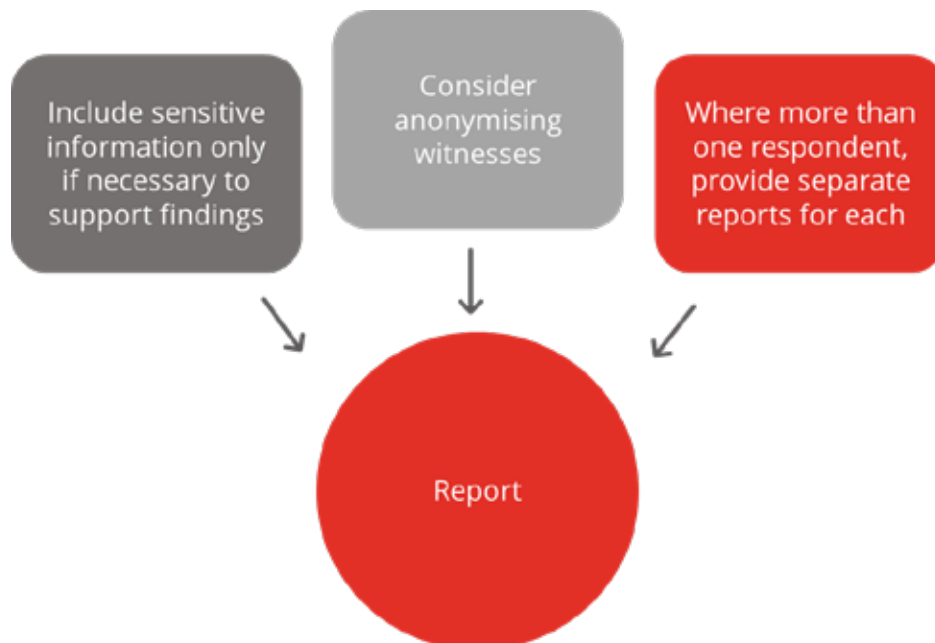
The report may contain sensitive information, such as:

- ❖ Details that could reveal the identity of a whistleblower
- ❖ Information protected by legal professional privilege
- ❖ Information subject to privacy laws
- ❖ Information related to children
- ❖ Sensitive personal information regarding health, sexuality, or similar personal matters.

This information should only be included if it is necessary to support the findings. In some cases, you may need to anonymise witnesses, but first consider if this will make the findings harder to understand. If you have investigated allegations against multiple individuals, it is preferable to provide a separate report for each person rather than combining them into one report. This approach ensures that confidential information about one employee is not disclosed to others.


There are situations where modifications or redactions to the report may be necessary, such as:

- When the report includes sensitive information not directly related to the allegation.
- When de-identification is required to balance confidentiality and natural justice.
- When confidentiality obligations are imposed on the employee and their representatives

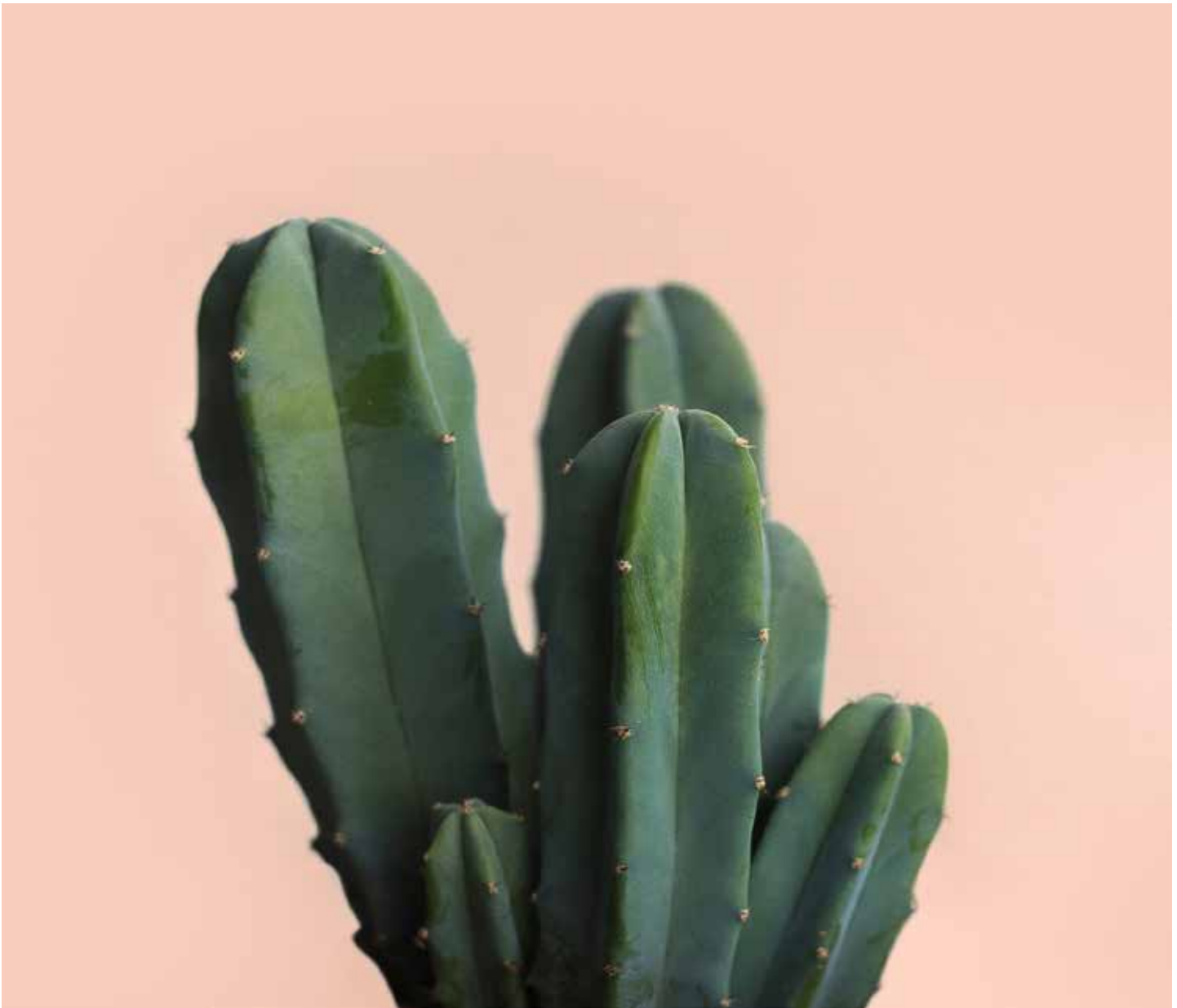


Impartiality and Independence

It is not desirable to provide a draft report for approval before issuing a final report, as this can suggest that the investigator is not independent or that the findings were influenced by the employer. If it is necessary to clarify any factual matters, this should be done before submitting the report. If the employer later requests minor amendments such as correcting names or titles or rewording a passage that is not clear, this will not jeopardise the independence of the report. Any changes and the reasons for them should be recorded in a note to the report.



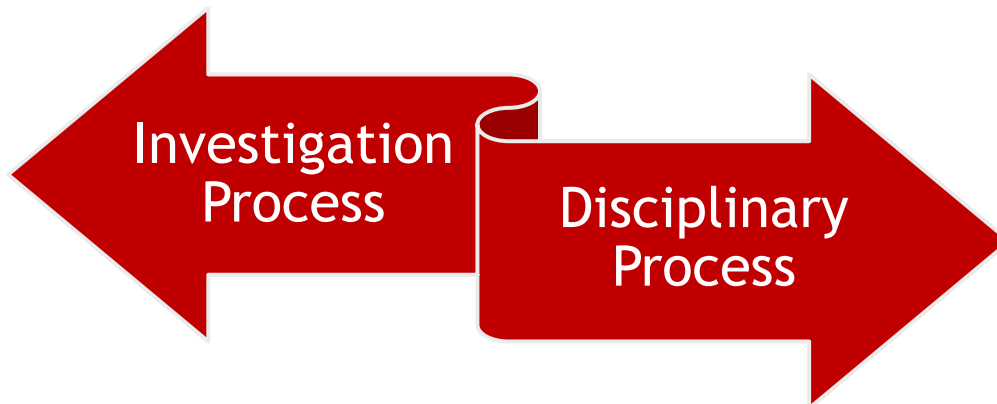
Document
all changes
& the reason
for them



POINTY ISSUES AND BEST PRACTICE SOLUTIONS

BLENDING THE INVESTIGATION & DISCIPLINARY PROCESS

The investigation of a complaint, including safety breaches and the disciplinary process are two distinct procedures as foreshadowed previously in relation to support employees. In order to maintain the investigation's integrity, it is crucial that these processes are not blended. When they are, key issues arise regarding procedural fairness, integrity of evidence, and legal compliance.



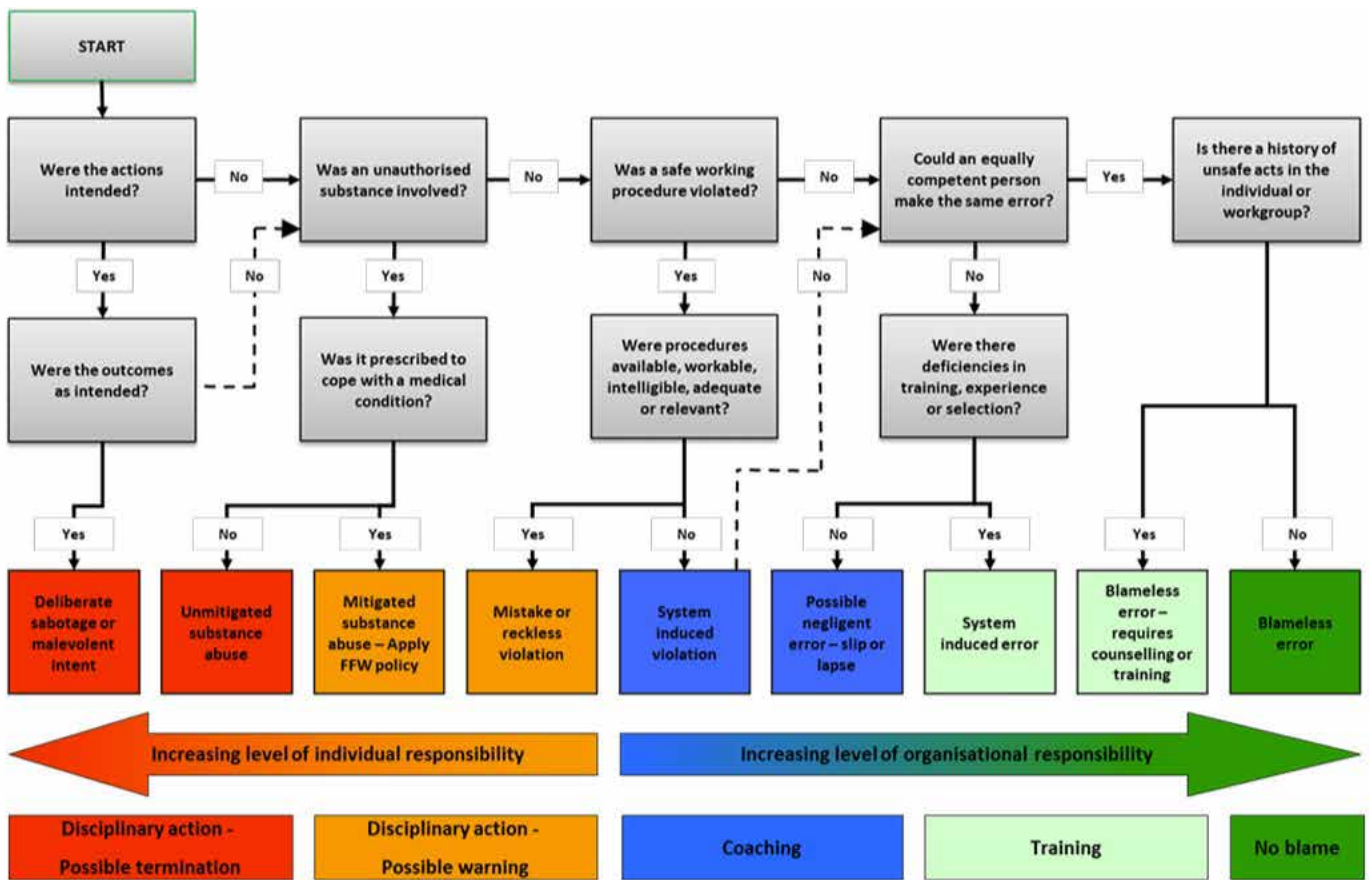
Consequences

When outcomes are predetermined, investigators often prioritise evidence that supports a specific result, rather than objectively evaluating all information. This can lead to evidence being overlooked or inadequately documented where it does not align with the desired outcome, compromising the integrity of the investigation and evidence obtained.

Mixing the investigation process with potential outcomes can undermine impartiality, diminishing the investigation's credibility and potentially leading to disputes between employers and employees.

Just Culture

The Just Culture Decision Guide that many organisations use is a systematic approach for making decisions regarding disciplinary actions concerning WHS risks associated with behaviours and conditions. It is a critical tool for decision making in relation to WHS events. It is a decision making tool that must be used after the facts have been established and that is, AFTER an investigation into the matter has been completed. The Just Culture matrix should be used by the relevant decision maker. This is typically not the investigator or a safety representative. A safety representative may work with the relevant decision maker to help guide them and/or advise them. The Matrix allows for ‘at risk’ behaviours or conditions to be considered and responded to in a consistent manner.

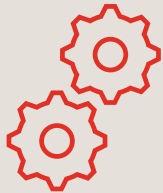


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Parallel Proceedings

Parallel proceedings include where the respondent is subject to two processes occurring at the same time. This could be where an investigation is required as a result of complaint against an employee who is currently subject to a disciplinary investigation for another matter or who has recently submitted or is threatening to submit a workers compensation claim.

Parallel proceedings during a workplace investigation can cause several legal risks. These include conflicts of interest arising from different standards or procedures, which may lead to inconsistent findings that undermine the investigation's credibility. Additionally, the information obtained in one proceeding might be shared in another, raising concerns about confidentiality and legal privilege. Moreover, parallel proceedings can delay resolution of workplace issues, making it harder to address underlying problems effectively.



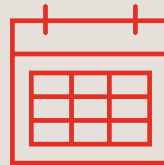
Respondent is subject to two processes occurring



May lead to inconsistent findings



Undermine the investigation's credibility



Can delay resolution of workplace issues

Employee Absences

It is important to address absences promptly by reaching out to the absent employee to understand their reason for absence and determine if it is legitimate or an attempt to avoid the investigation. If it is a witness who is absent, the investigation may be able to proceed without them if they are not a critical witness. If they are a respondent, it will be important to obtain their statement if possible.

Offer alternative participation methods for employees unable to attend in person due to illness or injury. Possible options include responding to questions in writing, conducting interviews by phone or video call. If an employee claims they are unable to participate due to medical reasons, employers may request clarification from their doctor or direct them to an independent medical examination.

Continue the investigation where possible. Don't let one person's absence halt the process. Continue interviewing other witnesses, collecting evidence, and reviewing documents while waiting for the absent employee to become available.

Document all communication and decisions. Record all attempts to contact the absent employee, any accommodations offered, and reasons for any delays. Maintain confidentiality throughout the process. Share information about the investigation and the absent employee's situation only on a need-to-know basis.

Be flexible but set boundaries. Set clear expectations and deadlines for participation and communicate that the investigation will proceed with or without their input if necessary. Consider the impact on other participants by keeping them informed of the process while maintaining confidentiality.

Assess potential patterns of absence. If an employee has a history of being absent during investigations or disciplinary processes, document this pattern and address it separately. Consult legal counsel if needed, especially in complex cases or with prolonged absences, to balance the needs of the investigation with employee rights and workplace laws.

Where a respondent employee will is unable or unwilling to participate in the investigation, the investigation will be able to proceed and determinations made in most instances on the information gathered.



Address promptly



Set boundaries



Continue the investigation - offer alternative participation methods



Document all communications and decisions

CONFIDENTIALITY & PRIVACY

The *Privacy Act 1988* (Cth) governs how organisations handle personal information, including during workplace investigations.

Confidentiality

It's important to maintain confidentiality wherever possible throughout the investigation process. Remembering that the allegations are just that until substantiated or not substantiated. It is also important to ensure information being received is not tainted and employees are respected throughout the process.

Employee Record Exemption

There is an exemption under the Privacy Act if the use or disclosure pertains to personal information about an employee contained in a record held by the employer, provided that the use or disclosure is directly related to the employment relationship between the employer and the employee. This means the investigation report could be discoverable or disclosable without the consent of the Individual's identified in the report.

Collection and Use of Personal Information

Workplace investigations are considered a "genuine operational reason" for employers to require employees to provide sensitive information, provided the collection is proportionate. Privacy obligations remain crucial, especially for non-employees involved in the investigation, necessitating careful consideration of the purpose and proportionality of data collection.

Handling Personal Information

During investigations, employers and investigators must manage personal information meticulously. They need to consider whose data is collected, the purpose of its collection, and its disclosure. Proper handling includes restricting access to investigation materials and final reports to protect privacy rights.

Witnesses and Respondents

Witnesses and respondents typically do not have the right to access others' personal information included in workplace investigations. Access is usually restricted to ensure privacy, with rare exceptions. Using pseudonyms and preparing executive summaries can help mitigate privacy concerns.

LEGAL PROFESSIONAL PRIVILEGE

When a lawyer conducts an investigation, it may be protected by legal professional privilege if the main purpose of the investigation is to provide legal advice or prepare for litigation. When employers claim this privilege, the Fair Work Commission (FWC) will assess whether the documents were primarily created to obtain or give legal advice or for litigation, and if the employer has waived this privilege through their actions. This privilege can extend to related documents prepared by the lawyer or client that reveal the legal advice's nature. It may also cover internal documents or third-party communications if directed by the client to obtain legal advice. Additionally, it can apply to communications prepared by third parties acting as agents of the client for communication with the legal adviser.



Investigation protected if main purpose is legal advice or litigation preparation



Covers related documents, internal documents, and third-party communications




Includes third-party communications directed by the client to the legal adviser

Waiver of Legal Professional Privilege

Legal Professional Privilege (LPP) will be waived if the confidentiality of the communication is compromised. This waiver can occur either expressly or by implication, including through inadvertent actions. LPP can be waived if the conduct of the employer is inconsistent with the maintenance of the privilege. It is important to seek legal advice before waiving LPP.

When LPP has been waived, information obtained during an investigation will not be protected from being considered by a court in any legal proceedings subsequently. The confidential communications between client, their legal representatives and certain third parties in specific circumstances will no longer be protected.

Employers must balance maintaining privilege with providing the employee under investigation sufficient information to respond to any findings. Disclosing details in disciplinary proceedings will waive LPP, so careful consideration is required.

	Confidentiality of communication is compromised		Expressly, by implication, or inadvertently
	Employer's conduct is inconsistent with maintaining privilege		Seek legal advice before waiving LPP

Tips for Maintaining Legal Professional Privilege

To ensure legal professional privilege is maintained, start by setting clear expectations. Inform participants that they will not receive copies of the investigation report or related documents unless required by policy, and have them sign an interview protocol outlining confidentiality obligations.

Access to the investigation report and privileged documents should be limited to those who need to know. All documents, including drafts and final reports, should be marked as “strictly confidential and subject to Legal Professional Privilege.”

Carefully plan the dissemination of findings, especially in disciplinary proceedings, to avoid unnecessary disclosures. It may also be necessary to manage how the report is used in legal proceedings to maintain privilege.

Direct key communications to the legal advisor to limit employer involvement in logistical matters, and ensure all correspondence aligns with the purpose of the investigation and maintains confidentiality.



Set Expectations



Limit Access



Mark Documents



Plan
Dissemination of
Findings



Legal Proceedings



Key
Communications

NO FURTHER ACTION

Employee Does Not Want to Escalate

An investigation can be initiated without an informal or formal complaint. Employers have an obligation to investigate and address any misconduct, including potential misconduct that is brought to their attention.

If a complainant chooses to remain anonymous, declines to formalise their complaint or advises that they do not wish for their complaint to be investigated, the employer should inform them of their legal duty to investigate the matter. The complainant should be reassured that their interests will be protected and that employees who act inappropriately as a result will be subject to disciplinary action. A lack of participation from the complainant is not a valid reason for inaction. If the issues raised are significant to the business, the employer must investigate.

Not all workplace investigations are necessary and appropriate. An investigation is unnecessary under several circumstances: when a complaint is about an employee's performance or a conflict between employees (unless it escalates to misconduct); when the complaint lacks evidence of misconduct; when the alleged facts, if true, do not constitute misconduct; or when the subject of the complaint has already been investigated in another way (except in cases where new evidence comes to light which justifies further investigation). Potential alternative resolutions include mediation, facilitated discussion, performance management, etc.



Investigation can be initiated without complaint



Obligation to investigate and address any misconduct



Inform complainant of your legal duty to investigate



Reassure complainant that their interests will be protected

Anonymous Complaints and Whistleblowers

Employers can initiate investigations in response to anonymous complaints. These complaints may be received in the form of an anonymous letter or phone call. Whistleblowers are granted specific legal rights and are protected by law and are encouraged to report concerns about corporate misconduct or breaches of the law. Whistleblower disclosures can be made anonymously to the organisation via specific representatives or to the ATO, APRA or ASIC.

It is a criminal offense to disclose a whistleblower's identity to unauthorised parties without their consent. Certain entities, including public companies, large proprietary companies, and corporate trustees of APRA-regulated superannuation entities, are required to maintain whistleblower policies outlining procedures for investigating disclosures and safeguarding whistleblowers from reprisals.

Vexatious complaints

Vexatious allegations are those made in bad faith, fabricated, or deliberately intended to harm the respondents. The employer should not tolerate such allegations and the person making the complaint may be subject to disciplinary action up to and including termination of employment.

In such circumstances, a preliminary inquiry is advisable to determine whether it is practicable or necessary to investigate. Be cautious when deciding if a complaint is vexatious, as even unproven complaints may still be made in good faith. It may be necessary to conduct a separate investigation to ascertain if a complaint is indeed vexatious.

Unsubstantiated complaints

Unsubstantiated complaints refer to allegations that, after investigation, lack sufficient evidence to confirm their occurrence. It's important to note that an unsubstantiated complaint does not necessarily mean the complaint was false or made with malicious intent. It simply indicates that there was not enough evidence to support or rule out the complaint. This could be due to various reasons, such as a lack of witnesses, conflicting accounts, or insufficient documentation.

No disciplinary or other actions should follow if the allegations are determined to be made in good faith but remain unproven. Be sensitive to the complainant's position, especially if there is still a possibility that the conduct may have occurred.

IMPLEMENTING RECOMMENDATIONS

Disciplinary Outcomes

An investigation process may lead to disciplinary action against the respondent. As noted earlier, it's important to understand that the investigation of a complaint and the disciplinary process are two distinct procedures. To ensure natural justice in disciplinary proceedings, parts of the investigation report may need to be disclosed to the employee when asking them to respond to the allegations.

Disciplinary actions include:

- ❖ Counselling with their immediate supervisor or manager. It is used for immediate correction of minor performance or behavioural failings.
- ❖ Disciplinary meeting with manager. The employee shall give the opportunity to bring a support person and respond to the allegations. At a disciplinary meeting, after having considered the facts and the employee response, the manager may issue a disciplinary sanction following approval by the relevant manager and appropriate consultation with the People Team.
- Disciplinary Inquiry with the manager and witnesses. Please note that no sanctions may be issued during a disciplinary inquiry. The purpose is purely to hear the employee's response to serious allegations and to collect relevant information relating thereto.
- Disciplinary Sanctions which include:
 - Written warning
 - Final written warning
 - Dismissal
 - Other sanctions include suspension, demotion, transfer and remedial action.



Counselling



Disciplinary Meeting



Disciplinary Inquiry



Disciplinary Sanctions

Implementing WHS Recommendations

When handling a complaint related to an alleged Work Health and Safety (WHS) breach, it's important to implement the recommendations if they are sensible and technically logical. However, be aware that doing so may inadvertently imply that the original processes were unsatisfactory. Additionally, consider the overall WHS obligations and the potential future liability that may arise.



Implement sensible and technically logical recommendations



May imply original processes were unsatisfactory



Consider overall WHS obligations



Assess potential future liability

OTHER LEGAL RISKS

Unfair Dismissal

If an employee is dismissed and brings an unfair dismissal claim, a lack of procedural fairness in the investigation may result in the employee being reinstated or awarded compensation. Several factors related to procedural fairness are considered when determining whether the dismissal was unfair, including:

- 1) **Valid Reason for Dismissal:** The employer must have a valid reason for the dismissal, which could be related to the employee's capacity or conduct.
- 2) **Notification of Reason for Dismissal:** The employer should notify the employee of the reason for dismissal, ensuring the employee is aware of the issue that led to the dismissal.
- 3) **Opportunity to Respond:** The employee should be given an opportunity to respond before the employer makes a final decision. This includes being given a reasonable opportunity to improve prior to termination.
- 4) **Refusal of Support Person:** The employer must not unreasonably refuse to allow the employee to have a support person present to assist at any discussions relating to dismissal.
- 5) **Differential Treatment:** The FWC may consider whether the employee received differential treatment compared to other employees. Any examples of differential treatment where no termination occurred must be properly comparable.
- 6) **Impact of Dismissal:** The impact of the dismissal on the employee's personal or economic situation may be taken into account, such as their ability to find alternative work, especially in areas with limited employment opportunities.
- 7) **Work Performance or History:** The employee's work performance or history is a factor that can be taken into account. A long unblemished record will weigh in the employee's favour.
- 8) **Employer's Procedures:** The employer should follow its own procedures for dismissing an employee to ensure fairness and consistency.



Valid Reason



Notification of Reason



Opportunity to Respond



Refusal of Support Person



Differential Treatment



Impact of Dismissal



Work History



Employer Procedures

Criminal Conduct

If the matter involves criminal conduct, it is necessary to consider whether the Police should be contacted. It is however critical to ensure that any workplace investigation does not compromise a criminal investigation. This would be common in workplace health and safety breaches where there has been a serious injury or death at the workplace. Alleged criminal conduct may include sexual assault, workplace violence, theft and fraud, serious bullying, and similar offenses. Workplace investigations must also comply with laws relating to any duty to report criminal offenses. Additionally, health and safety legislation in all jurisdictions imposes strict duties on employers to provide and maintain, as far as reasonably practicable, a workplace that is safe and without risks to the health of their workers or employees, as well as others in the workplace, such as contractors and visitors to the premises.

Reporting criminal conduct to the Police must be reported by victims of the crime. For example, the employer can report where there has been theft or fraud as the employer is the victim. The employer can not report an assault or a rape on behalf of someone else. The victim may not wish to report the crime and that is at their discretion.



Ensure that workplace investigation does not compromise a criminal investigation.



Must comply with laws relating to any duty to report criminal offenses.



Victim may not wish to report the crime - that is at their discretion.

Defamation

All workplace investigation must comply with laws relating to defamation. It is important to distinguish facts and opinions. Defamatory statements can harm an employee's reputation which lead to potential lawsuits against the employer or individuals involved in the investigation.

Vicarious Liability

During workplace investigations, employers must consider various aspects of vicarious liability, where they can be held responsible for the actions of their employees. For instance, the employer must take all reasonable steps to prevent the employee from sexually harassing another employee. If this does not occur, the employer may be liable for the misconduct.



WHAT HAPPENS NEXT

DECISION MAKER CONSIDERATIONS

The investigation report should serve as the key source material for decision makers; however they must always make an independent decision. It is essential for the decision-maker to:

- ✓ Thoroughly read and understand the report;
- ✓ Verify whether the terms of reference have been adhered to;
- ✓ Assess if the process was conducted in a reasonable and effective manner;
- ✓ Identify any gaps in the process or areas of inquiry that were not pursued;
- ✓ Evaluate whether the conclusions appear valid or if there are glaring logical errors.

A decision maker should only reject an investigation report if it is flawed or incomplete. Rejecting a report without commissioning an amended or supplementary report introduces legal risk.



Read & understand



Verify terms of reference



Assess process



Identify gaps



Evaluate conclusions

INFORMED DECISION MAKING & LEGAL DEFENCE

Proper documentation during the investigation process provides a transparent record of the procedures and findings, which is crucial for justifying decisions, especially in cases of disciplinary action or termination.

In defending against employment law claims, a well-conducted investigation demonstrates that the employer followed fair and unbiased procedures and complied with relevant laws. It can provide evidence that the employer took reasonable steps to address the issue and acted promptly and appropriately. It can also serve as a record of the employer's compliance with any internal policies and legal requirements.



Followed fair and unbiased procedures



Complied with relevant laws and internal policies



Took reasonable steps to address issue



Acted promptly and appropriately

COMMUNICATION OF OUTCOMES

Complainants and respondents should be informed about the outcomes of the investigation. The communication should be tailored to each party and ensure confidentiality is maintained. Be cautious about disclosing disciplinary outcomes; these should not be shared with the complainant or anyone else. Instead, inform them that the organisation has considered the complaints and will take appropriate action. Discourage any ongoing discussion with complainants by stating that the outcomes are final and that employees need to move on.



Tailored
communication



Maintain
confidentiality



Outcomes are final

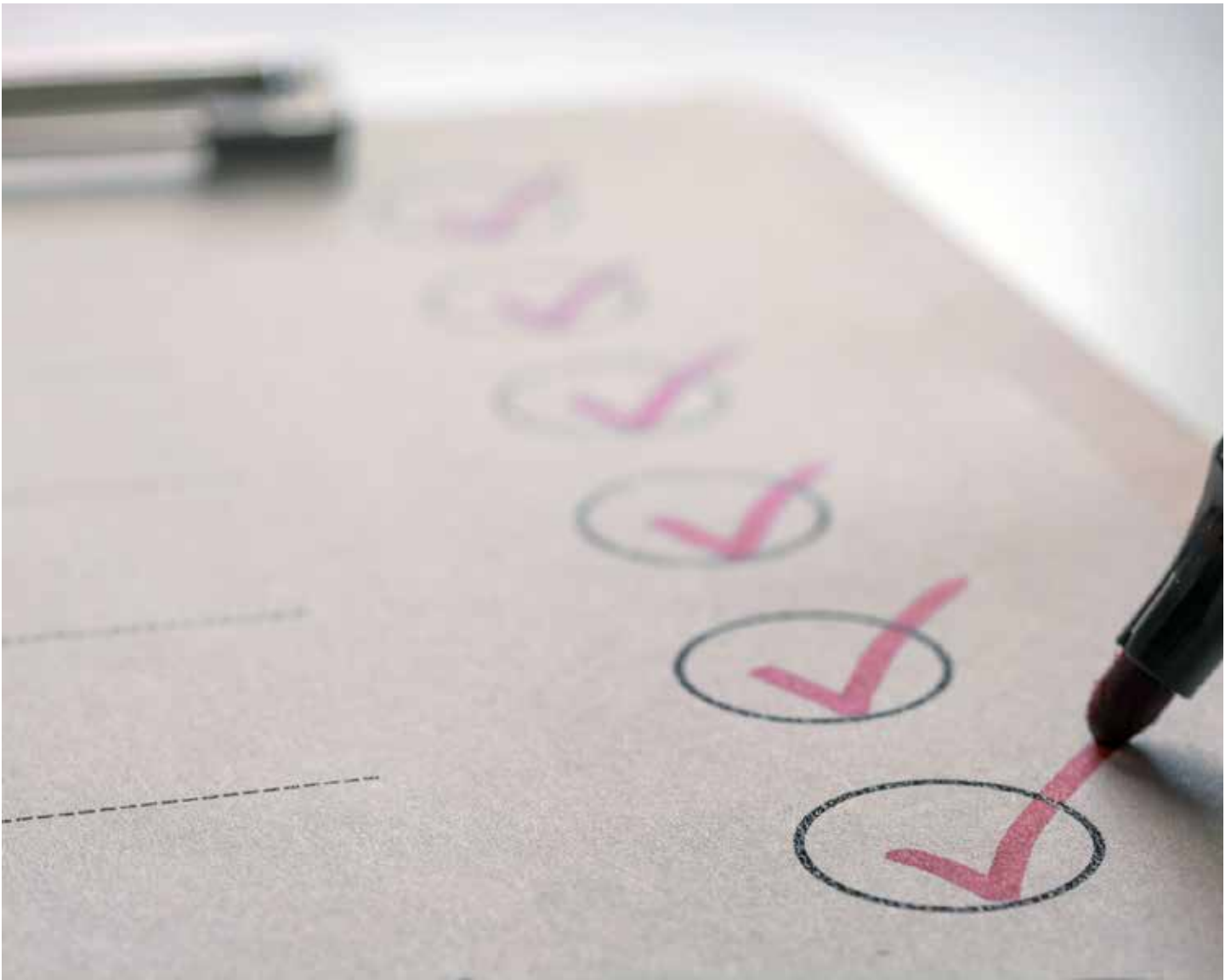


Encourage employees
to move on



DICTIONARY

TERM	DEFINITION
<i>Complainant</i>	Person who made the complaint/allegation.
<i>Respondent</i>	Person to which the complaint/allegation relates to.
<i>Witness</i>	Parties who may have information; may have seen or heard something in relation to the complaint/allegation.
<i>Parties</i>	Collectively the complainant, respondent and witnesses.
<i>Interviewee</i>	Person being interviewed.
<i>Stakeholders</i>	Management, parties, unions, media, clients etc who have a vested interest in the investigation.
<i>Decision-maker</i>	Generally a more senior manager who oversees the organisation in which the complaint/allegation occurred or part of the operations to which it occurred.



CHECKLISTS

CHECKLIST: RECEIVING A COMPLAINT

Do the allegations involve any legal issues, such as criminal conduct, workplace health and safety, or workers compensation? Should you seek legal advice before proceeding with the investigation?

Is it necessary to apply legal professional privilege to the investigation? Have you consulted legal counsel if needed?

Is it appropriate or mandatory for you to conduct this investigation? Are there any alternative approaches?

Do you need to manage expectations regarding the possible outcomes?

Should the matter be referred to an appropriate authority?

Have you identified the most suitable person to conduct the investigation? Who is this person determining any bias or conflict of interest?

Do the allegations touch on any sensitive organisational matters that may require a public response?

Who else needs to be informed about the complaint or incident?

Is there a risk of industrial action arising from this situation?



If the involved parties work together, can they continue to do so during the investigation? Is it necessary to temporarily stand down the respondent or alleged perpetrator with pay, or relocate them to another team or location?



Do any of the involved parties require access to the employee assistance program, if available?



Is there any evidence that you need to preserve?

NEXT STEPS:



Have you determined which policies are relevant to this situation?



If there is a complainant or informant, ensure they are asked to keep the information they have provided confidential.



Determine if more information is required from the complainant or informant before starting the investigation.



Identify the respondent or alleged perpetrator.



Determine relevant witnesses from the complainant and any knowledge of the complaint.



Plan the next steps for handling the complaint or incident, including preparing a witness list, formulating questions to ask and answer, and managing representatives and support persons.

CHECKLIST: TERMS OF REFERENCE

<input type="checkbox"/>	Scope of the Investigation: Define the circumstances and issues to be investigated and the specific questions to be answered. Clarify what is being investigated, which may relate to the complaint but could also be broader, such as a range of complaints including harassment or management inaction on processes.
<input type="checkbox"/>	Reporting Requirements: Determine if the situation is particularly sensitive, requiring interim oral reports to help the organisation plan for the likely ultimate findings.
<input type="checkbox"/>	Findings or Recommendations: Specify what findings are required and what are not, as well as whether recommendations are needed. This could include recommendations related to specific events or systematic changes.
<input type="checkbox"/>	Recipient of the Report: Define who the report is to be addressed to and who is likely to access it.
<input type="checkbox"/>	Special Protocols: Are there any special protocols or requirements that must be followed including contacting/not contacting specific people.
<input type="checkbox"/>	Written Report: Decide whether a written report is necessary or if some cases might only require an initial briefing.
<input type="checkbox"/>	Limitations on Scope: Note any limitations on the scope of the investigation, such as restrictions on witnesses or documents.
<input type="checkbox"/>	Timeframe: what is the expected timeframe that the investigation will need to be completed within.



Neutral Tone: Ensure the terms are written in a neutral tone, not suggestive of any particular outcome.

INVESTIGATOR'S AUTHORITY



Access to information: What information will be made available to the investigator? Relevant people will need to be informed and asked to cooperate.



Authority to contact and interview: Does the investigator have the authority to contact and interview relevant individuals?



Where additional matters outside the initial scope are uncovered during the investigation, the investigator should request an amendment to the terms of reference and include these new issues prior to proceeding to investigate them.

INVESTIGATOR'S OBLIGATIONS



Act fairly and without bias.



Provide those implicated in the investigation a full opportunity to participate and present relevant information.



Conduct all reasonable inquiries to gather evidence before making any findings.

INVESTIGATOR'S LIMITATIONS



Identify any limitations placed on the investigator, including whether they are asked to make findings, recommendations, or both.

CHECKLIST: BRIEFING THE INVESTIGATOR

<input type="checkbox"/>	Specifics of the allegation as confirmed by the complainant, including any supporting forms or written materials provided.
<input type="checkbox"/>	All correspondence with the complainant and copies of pertinent documents such as: <ul style="list-style-type: none">❖ Industrial instruments❖ Legislation❖ Contracts❖ Relevant policies and procedures❖ Training records.
<input type="checkbox"/>	Details of training received by either the complainant or the respondents.
<input type="checkbox"/>	Information on any sensitivities or background details that may assist the investigation, such as: <ul style="list-style-type: none">❖ Have similar complaints been made previously?❖ Has the complainant made similar complaints before?❖ Have the respondents faced similar complaints before?❖ Details of relevant interpersonal issues or conflicts.
<input type="checkbox"/>	A summary of the process to date, including a chronology of events, especially if there has been prior investigation or management of the complaint before referral to an investigator.
<input type="checkbox"/>	Any created statements.



Reporting requirements and organisational charts.



Identification of all stakeholders and potential witnesses.

CHECKLIST: TAKING THE WITNESS STATEMENT

<input type="checkbox"/>	Have you explained your role as the investigator?
<input type="checkbox"/>	Have you clarified the role of the support person?
<input type="checkbox"/>	Have you informed the witness that you will be taking notes?
<input type="checkbox"/>	Have you explained how the information obtained in the interview will be used?
<input type="checkbox"/>	If the interview is to be recorded, have you obtained the interviewee's consent?
<input type="checkbox"/>	Have you collected the interviewee's background details, such as name, address, qualifications, and role in the company?
<input type="checkbox"/>	Have you addressed all necessary issues to meet the terms of reference?
<input type="checkbox"/>	Where applicable, have you presented all allegations to the interviewee and obtained their responses?

Have you recorded the following details in your notes:

- ❖ Date and time of the interview, and where it took place.
- ❖ Who attended the interview from the company.
- ❖ Whether the employee had a support person, and if so, who it was.
- ❖ Allegations put to the respondent and their responses.

Do your notes accurately reflect the words of the person you are interviewing?

Has the interviewee signed the statement?

CHECKLIST: ASSESSING INTERVIEWEE EVIDENCE

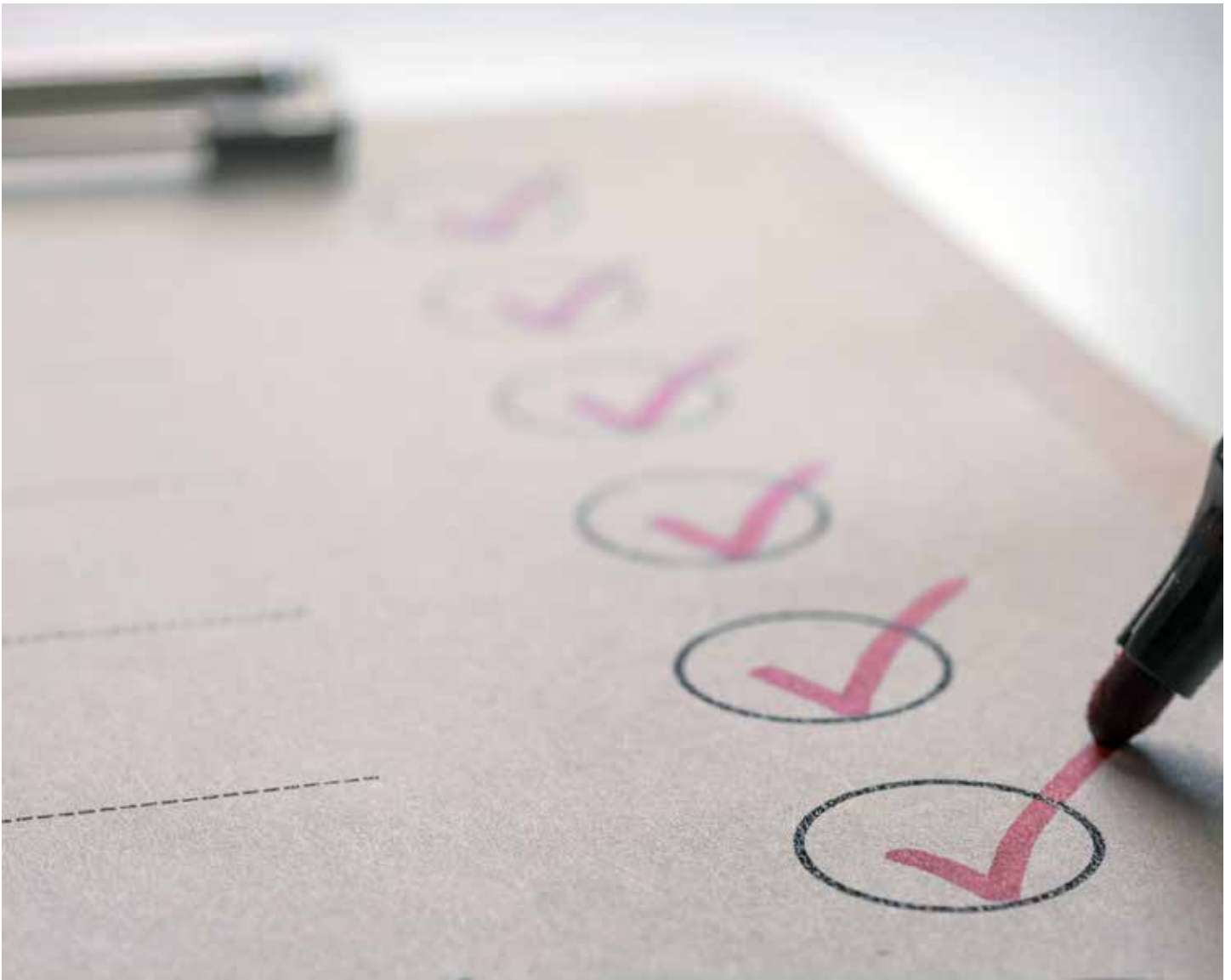
<input type="checkbox"/>	<p>IS THE EVIDENCE RELIABLE?</p> <ul style="list-style-type: none"><input type="checkbox"/> Were they truly in a position to see or hear what they claim?<input type="checkbox"/> Do they tend to exaggerate their statements?<input type="checkbox"/> Are they presenting assumptions as facts?<input type="checkbox"/> Is their evidence clear and detailed, or is it vague and confusing?<input type="checkbox"/> Do they have a strong reason to lie or exaggerate the situation?
<input type="checkbox"/>	<p>IS THE EVIDENCE PLAUSIBLE?</p> <ul style="list-style-type: none"><input type="checkbox"/> Is their version of events unlikely or hard to believe when common sense and experience are applied?
<input type="checkbox"/>	<p>IS THE EVIDENCE EXTERNALLY CONSISTENT?</p> <ul style="list-style-type: none"><input type="checkbox"/> Is their account inconsistent with or contradicted by other evidence available to the investigation?<input type="checkbox"/> Does their account conflict with a previous statement they made (for example, in an email or complaint) or with how they recorded it at the time of the alleged event (for example, in a file note)?
<input type="checkbox"/>	<p>IS THE EVIDENCE INTERNALLY CONSISTENT?</p> <ul style="list-style-type: none"><input type="checkbox"/> Has the person's story changed during their testimony, not just about one specific event, but across multiple alleged events?
<input type="checkbox"/>	<p>HAS THE EVIDENCE BEEN GIVEN IN A CREDIBLE WAY?</p> <ul style="list-style-type: none"><input type="checkbox"/> Does the person avoid giving clear answers when questioned?<input type="checkbox"/> Does the person dodge direct answers?<input type="checkbox"/> Does the person claim they "do not recall" whether something happened, instead of outright denying it, even when the situation

suggests they should remember (e.g., in extreme, memorable, or extraordinary situations)?

- Note: DO NOT rely on general observations of demeanour*

CHECKLIST: FINALISING THE INVESTIGATION REPORT

<input type="checkbox"/>	Have all issues outlined in the terms of reference been addressed?
<input type="checkbox"/>	Have all respondents, who might face an adverse finding, been informed of each relevant allegation and given the opportunity to respond?
<input type="checkbox"/>	Have all relevant witnesses been interviewed?
<input type="checkbox"/>	Have all interviewed witnesses signed their statements?
<input type="checkbox"/>	Have all relevant pieces of evidence, such as emails, photos, texts, policies, documents etc discovered during the investigation been obtained?
<input type="checkbox"/>	Where necessary, has relevant evidence been presented to witnesses?
<input type="checkbox"/>	If the investigation involves workplace health and safety, has an expert opinion been obtained if required?



QUESTIONING GUIDE

BREACH OF POLICY

- ❖ Was the employee aware of the relevant company policy?
- ❖ Is there any documentation proving that the employee was informed about the policy and its details?
- ❖ Did the employee sign any documents acknowledging their understanding of the policy?
- ❖ Has the employee received training on the policy requirements?
- ❖ When did this training take place?
- ❖ Does the employee understand the consequences of not following the policy?
- ❖ Are there any witnesses to the alleged breach of the policy?
- ❖ How have similar breaches been handled in the past?
- ❖ What other factors might be influencing this situation?

FAILURE TO FOLLOW A REASONABLE AND LAWFUL DIRECTION

- ❖ What direction was given?
- ❖ Was the direction reasonable and lawful?
- ❖ Who gave the direction, and when and why was it given?
- ❖ Did the person giving the direction have the authority to do so?
- ❖ When and why did the alleged failure occur?
- ❖ Did the employee know they were not following a reasonable and lawful direction?
- ❖ Was the employee able to comply with the given direction?
- ❖ Has the employee been previously counselled or warned?
- ❖ What was the reason for the previous counselling or warning?
- ❖ When did the previous counselling or warning occur?
- ❖ Has the employee failed to comply before? When did it happen and what were the consequences?
- ❖ Were there any witnesses to the failure to comply?
- ❖ How has the company handled similar incidents in the past?
- ❖ What was the impact of the failure to comply?
- ❖ Were there any other factors influencing this situation?

SAFETY RELATED INCIDENT OR BREACH

- ❖ What specific unsafe behaviour is being alleged?
- ❖ Has the employee completed a safety induction and related training?
- ❖ When did they complete this training?
- ❖ Did the training cover this type of issue?
- ❖ Did the employee undergo a drug and/or alcohol test immediately before/after the incident?
- ❖ What were the results of the test?
- ❖ Were there indications of potential impairment e.g. taking medication?
- ❖ Does this behaviour breach the relevant Work Health and Safety Act?
- ❖ Does it violate the Health and Safety Policy or Safe Work Methods?
- ❖ Does it breach any Code of Practice?
- ❖ Does it breach the company's procedures or policies?
- ❖ Is there documentation showing that the employee was informed about the safety requirement and its details?
- ❖ Were there any witnesses to the alleged unsafe behaviour?
- ❖ Could another employee, contractor, visitor, client, or any other person have been injured or killed due to this behaviour?
- ❖ Was anyone affected by this incident?
- ❖ How could others have been affected by this incident?
- ❖ Did this incident impact the company's reputation?
- ❖ Was this issue addressed in the Employment Contract or Enterprise Agreement?
- ❖ Was the Employment Contract signed? If so, when?
- ❖ Have there been any similar incidents in the past?
- ❖ How has the company handled similar incidents previously?
- ❖ Was the behaviour unlawful?
- ❖ Are there any other factors that might be influencing this situation?

PERFORMANCE RELATED ISSUE

- ❖ What is the specific performance issue/s being alleged?
- ❖ Does the employee understand the requirements of what is being assessed?
- ❖ Has the employee been warned about the gap in their performance?
- ❖ How does this performance issue impact the business, other workers, and clients/customers?
- ❖ Has the employee been given a reasonable opportunity to improve?
- ❖ Has the employee received the necessary training, development, or support to improve their performance?
- ❖ When did they receive this support or training?
- ❖ Was anyone affected by this performance issue?
- ❖ How could others have been affected by this performance issue?
- ❖ Did this issue have any consequences for the company's reputation?
- ❖ Is performance management addressed in the Employment Contract or Enterprise Agreement?
- ❖ Was the Employment Contract signed? If so, when?
- ❖ Have there been similar incidents in the past?
- ❖ Have there been previous counselling sessions or warnings?
- ❖ Were these for the same or similar reasons?

BEHAVIOURAL ISSUE

- ❖ What is the alleged breach? Specifically, what behaviour is in question, and was it inappropriate and why was it inappropriate?
- ❖ Are there any witnesses to the alleged breach?
- ❖ Could another employee, contractor, visitor, client, or any other person have been injured due to this behaviour?
- ❖ Was anyone impacted by this behaviour?
- ❖ Did this incident have any consequences for the company's reputation?
- ❖ Does the employee understand that the alleged behaviour is unacceptable to the organisation?
- ❖ Is there a policy or rule that the employee should have been aware of?
- ❖ Was this issue addressed in the Employment Contract or Enterprise Agreement?
- ❖ Was the Employment Contract signed? If so, when?
- ❖ Have there been similar incidents in the past?
- ❖ How has the company handled similar incidents previously?
- ❖ Did the employee know about the policy or rule?
- ❖ Is there evidence that the employee was aware of the policy or rule?
- ❖ When did this incident occur?
- ❖ How serious is the alleged behaviour?
- ❖ Was the behaviour unlawful?