



Hyne Timber Workplace Investigation Training

OUR TEAM



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Menti

Your feedback is invaluable to us.



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Agenda



- 1 Introduction
- 2 Types of Investigation
- 3 Workplace Investigations Best Practice
- 4 Pointy Issues & Best Practice Solutions
- 5 What Happens Next?

Phase 1: Terms of Reference & Scope

Phase 2: The Allegations

Phase 3: Obtaining Information: Witnesses and Documents

Phase 4: The Respondent & Procedural Fairness

Phase 5: Assessing Evidence and Making Findings

Phase 6: Reporting



Introduction

What are workplace investigations, and why are they important?

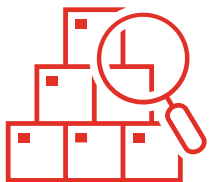
What are Workplace Investigations?



Procedurally fair process



Investigation of allegations raised in the workplace

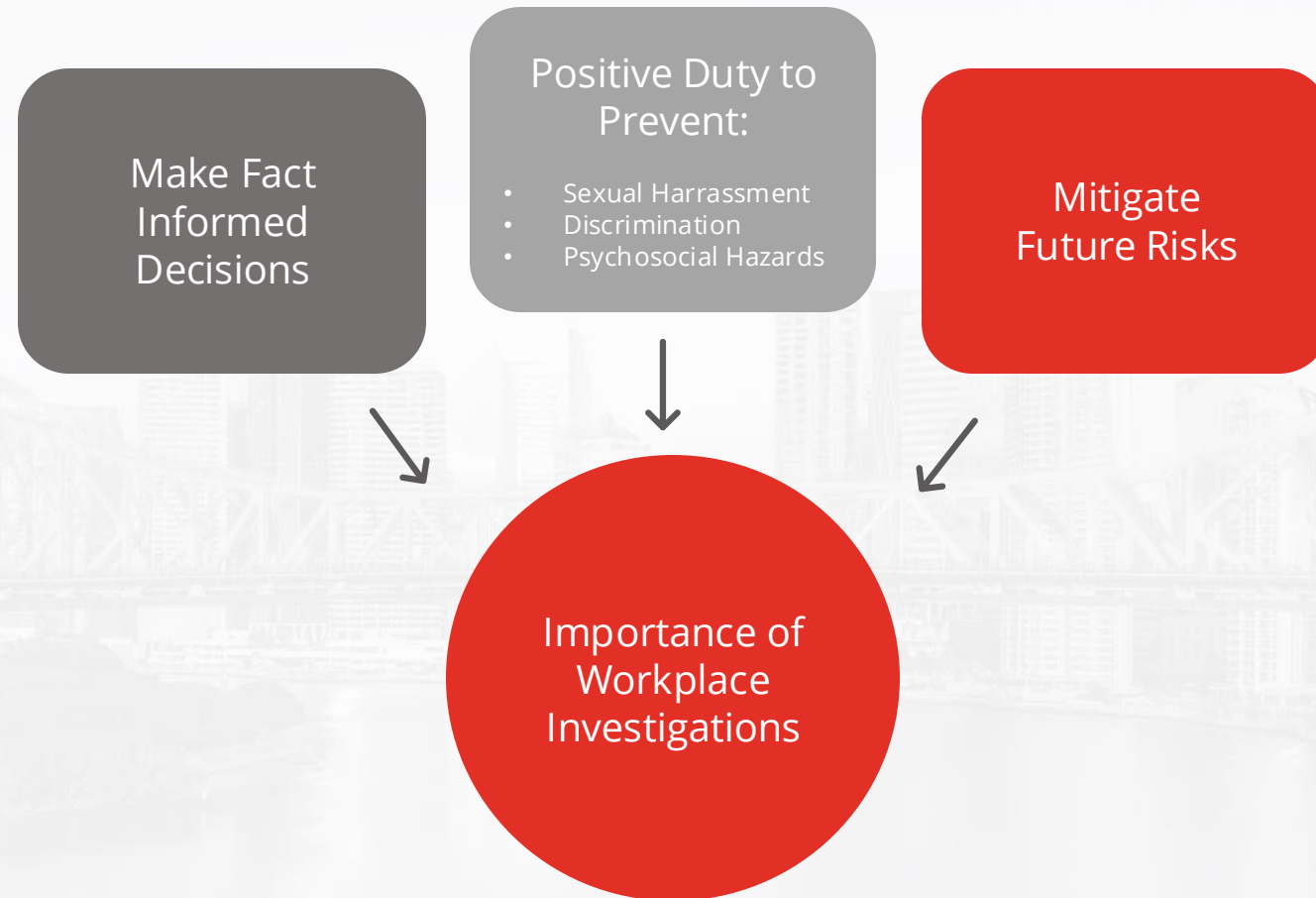


Involves collecting facts & evidence



Decision of whether alleged incidents occurred

Why are they important?



Types of Investigations

Formal and informal – what's the difference, how to decide what is appropriate and factors to consider including Hyne Policies

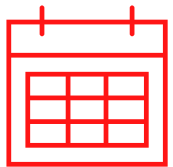
Formal Investigations



Well Documented



Follow Relevant Protocols and Structures

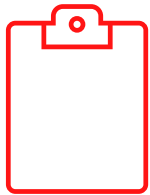


Consistent in Application



Required for allegations of misconduct

Informal Investigations



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

Types of Investigations



FORMAL

- ✓ Well Documented
- ✓ Follow Relevant Protocols and Structures
- ✓ Consistent in Application
- ✓ Required for allegations of misconduct

INFORMAL

- ✓ 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?

Factors to Consider



Complainants' expectations



Seriousness



Facts in dispute



Litigation threatened or initiated?



Sufficient connection between alleged conduct and persons employment?



If inappropriate treatment - power differential involved?



Personalities of parties / bias / cohesion / conflict



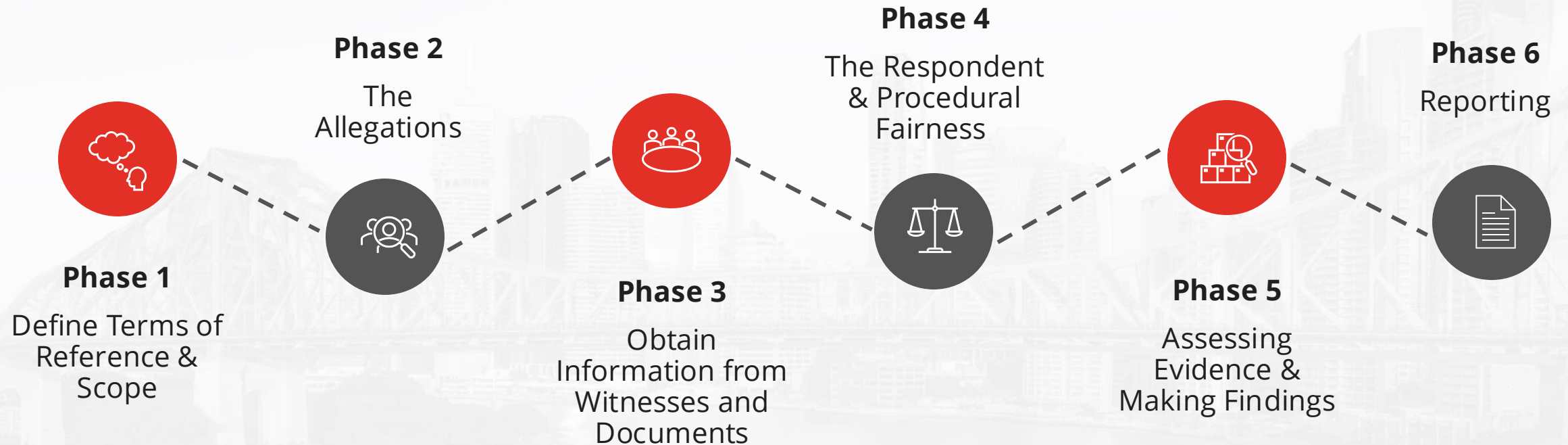
Company policies?



Workplace Investigation Best Practice

Key Phases and Skills

Key Phases of the Investigation





Phase One:
Terms of Reference & Scope

Terms of Reference & Scope

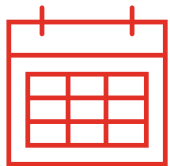
Purpose



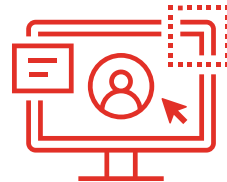
Outline Scope &
Parameters



Guide
Investigator



Set Timeframes



Specify
Requirements

Terms of Reference & Scope

Key Elements



Scope



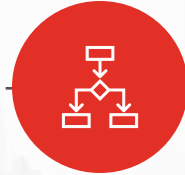
Reporting
Requirements



Findings or
Recommendations



Recipient of the
Report



Special
Protocols



Written
Report



Limitations on
Scope



Timeframes



Neutral Tone

Scenario

Activity 1



Complete the **“receiving a complaint”** checklist.



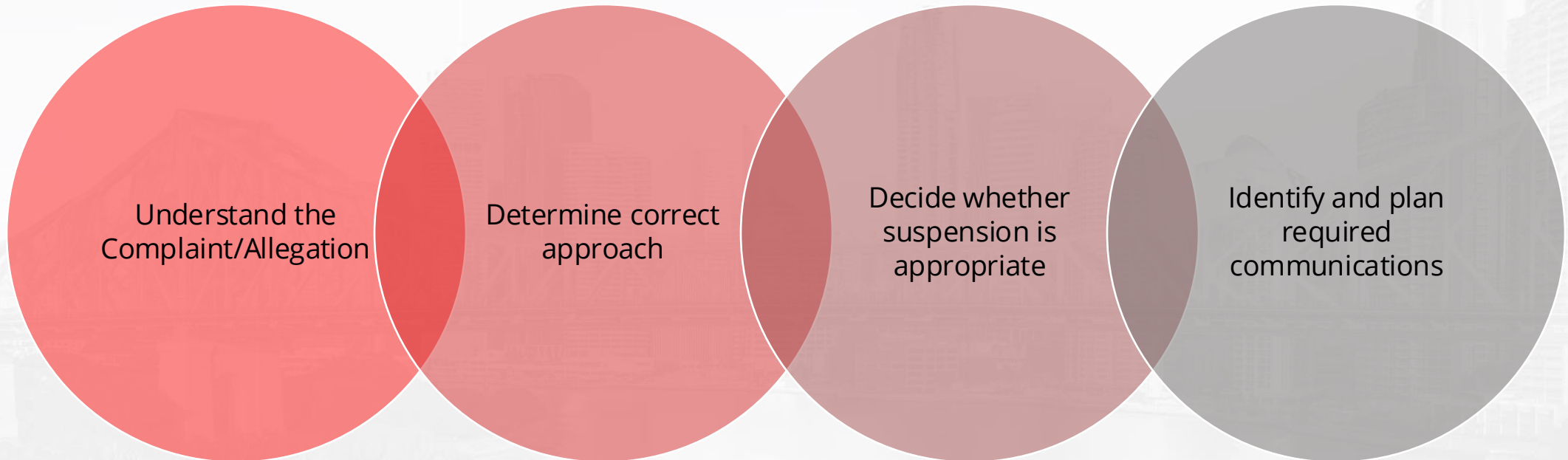
Draft the **Terms of Reference** - template provided.



Phase Two:
The Allegations

The Allegations

At a glance



Understand the Allegation



Identify the source



Gather initial information



Meet with complainant - capture details & understand expectations



Consider personalities of parties



Evaluate seriousness



Ensure sufficient connection with employment

Approach



Assess nature of complaint



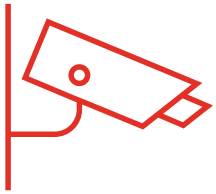
Is less formal approach required for safety/other reasons?



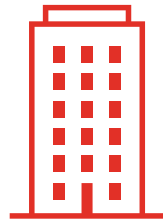
Is LPP required to protect sensitive information?

Immediate Action

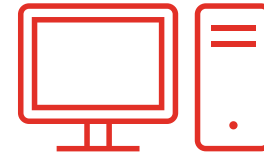
Preserve Evidence



CCTV Footage



Building Access
Records



Computer Records

Suspension



✓ 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



Senior
Management



WHS Authority



Unions



Police



Other
Companies



Media



Clients

Scenario

Activity 2



Complete the Allegations table in ***“Template Letter to Subject Employee with Allegations and Direction to Attend Interview”***.



Phase Three:

***Obtaining Information from
Witnesses & Documents***



Obtaining Information

At a glance



Building Rapport



Listen, understand,
and focus



Develop connection
naturally



Misinterpreted
behaviours can
hinder rapport-
building



Do not create
unrealistic
expectations or
perceptions of bias



Leads to higher
quality information
& favourable
interview outcomes

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

Time & Place

Choose a time and place that ensures privacy and minimises discomfort for the interviewee.



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

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 Techniques

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.

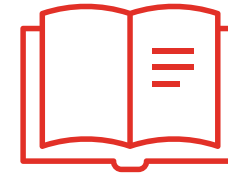
Special Considerations



Ensure all interviewees can participate equally in the investigation process

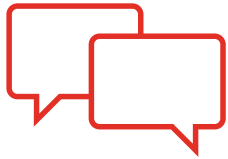


Be mindful of and accommodate special considerations for young persons, children, and those from different cultural backgrounds

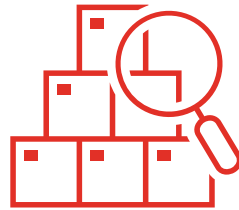


Consult guidelines for best practices when relevant

Records



Record all correspondence & communication concerning evidence



Record sources of evidence obtained



If certain evidence is not pursued, record the reason why

Scenario

Activity 3 : Brainstorm



What questions should the **witnesses** be asked?



What **other sources of information** might be available?



Phase Four:

***The Respondent &
Procedural Fairness***



The Respondent

At a glance



Put Specific &
Clear
Allegations to
Respondent

Reasonable
Opportunity
& Sufficient
Time to
Answer All
Allegations

Interview
Respondent
& Obtain their
Response to
the
Allegations

Pursue
reasonable
lines of
enquiry
raised by
Respondent

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 respondent to **present their side of the matter**.

Support Person



The 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



The Right

- Investigation **is not** a disciplinary process – a right to a support person is not required
- Blending processes **not recommended** – it compromises investigations and can create future liability

The Allegations

Putting Allegations to the Respondent



Inform respondent of **specific** allegations



Allow a few days for respondent to consider their response & prepare for interview



Respondent must understand **exact behaviour alleged** to have fair opportunity to respond

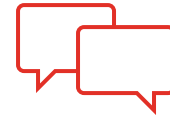
Interview & Response



Take detailed and accurate notes



Avoid leading questions



Clarify unclear or ambiguous responses



Ask open-ended questions

Reasonable Lines of Enquiry



- ✓ Ask employee under investigation for any sources of evidence they believe are relevant
- ✓ If the evidence could be pertinent, take reasonable steps to obtain it
- ✓ Record all correspondence and communications concerning evidence and its sources
- ✓ If certain evidence is not pursued, record the reason why for future reference
- ✓ Written submissions from the employee are opinions, not evidence

Difficult Respondents



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

Scenario

Activity 4 : Brainstorm



What questions should the **respondent** be asked?



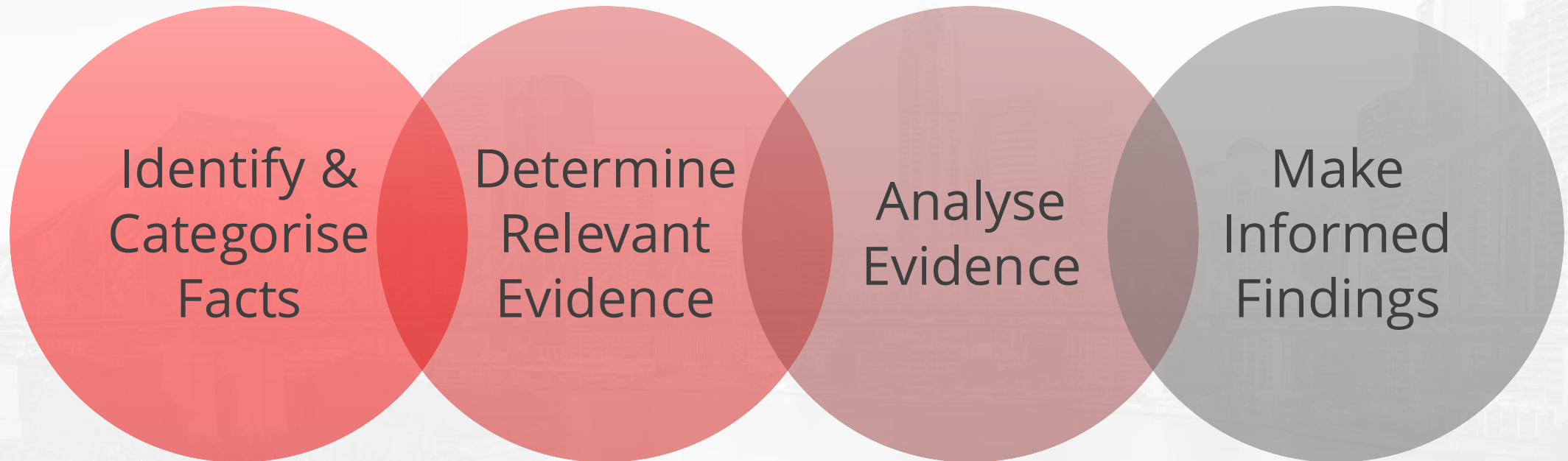
Should any **changes or additions** be made to the allegations?



Phase Five:
Assess Evidence, Make Findings

Assessing Evidence & Making Findings

At a glance



Identify & Categorise Facts



Facts that are agreed /
not in dispute;



Facts that are established by
objective, independent evidence;
and,



Facts that are in dispute.

Relevant Evidence



- ✓ Logically connected to the issue being decided. Slight logical connection is sufficient
- ✓ Irrelevant evidence should not be considered – may invalidate any decision made
- ✓ Only relevant evidence can affect probability that fact in issue exists
- ✓ Includes evidence that might exonerate respondent
- ✓ Focus on capacity of evidence to be relevant rather than quality or weight

Analysing Evidence



Reliable



Credible



Corroborated



Consistent



Plausible



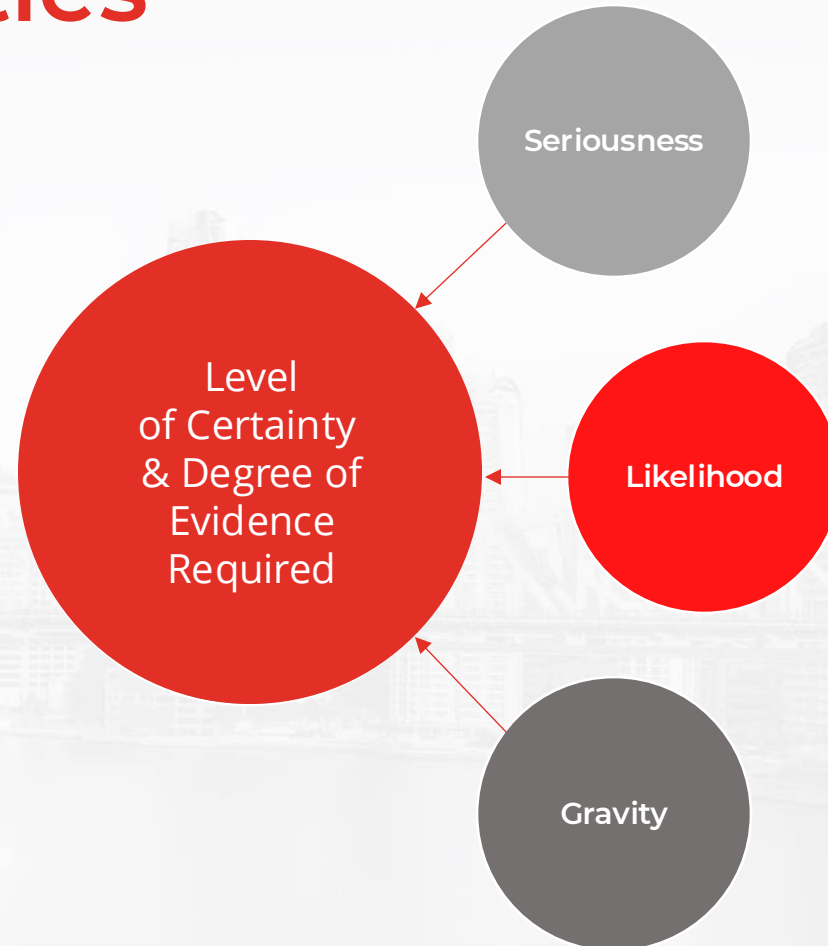
Logical

Standard of Proof – Balance of Probabilities



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



Does evidence (as a whole) make it more probable than not that alleged conduct occurred.



Must consider affected employee's response.



Does proven conduct constitutes a breach of policy, law, or standard?



Mitigating factors – only relevant for assessing seriousness & culpability.



For conduct that could be criminal - remains the civil standard of proof.

Express Findings



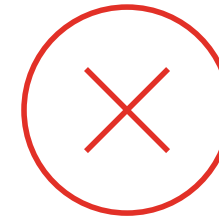
Substantiated

The allegation is proven on the balance of probabilities.



Partially Substantiated

Some facts making up the allegation are proven on the balance of probabilities, but others are not.



Unsubstantiated/Not Substantiated

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.

Scenario

Activity 5



Brainstorm: what **other enquiries** could be made?



Complete evidence matrix & make findings.
See "**Template Evidence Matrix**".



Phase Six:
The Report

The Report:

At a glance



Follow the
Report
Structure

Use Neutral
Language

Only Include
Sensitive
Information if
Necessary to
Support
Findings

Ensure
Impartiality &
Independence

The Report



What?

Gather relevant evidence & clearly present findings



Why?

Assist employer in deciding appropriate course of action

Key Considerations



- ✓ 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
- ✓ Summarise undisputed or non-crucial witness evidence; include exact words if evidence is disputed or crucial

Report Structure



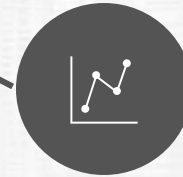
Relevant
factual
background



Identify
allegations



Investigation process
and methodology



Evidence,
analysis, and
findings



Conclusions &
recommendations



Annexures

Privacy & Confidentiality

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.



Impartiality & Independence



Do not provide a draft report for approval before issuing final report; can suggest lack of independence



Clarify factual matters before submitting report



Minor amendments requested by employer are acceptable (e.g., correcting names or titles, rewording unclear passages)



Record any changes and reasons in a note to the report



Document **all** changes & the reason for them

Scenario

Activity 6 : Discussion



How would you approach **reporting**?

Pointy Issues and Best Practice Solution

Common issues including legal risks, keeping the investigation on course, employee absence and participation

Blended Processes



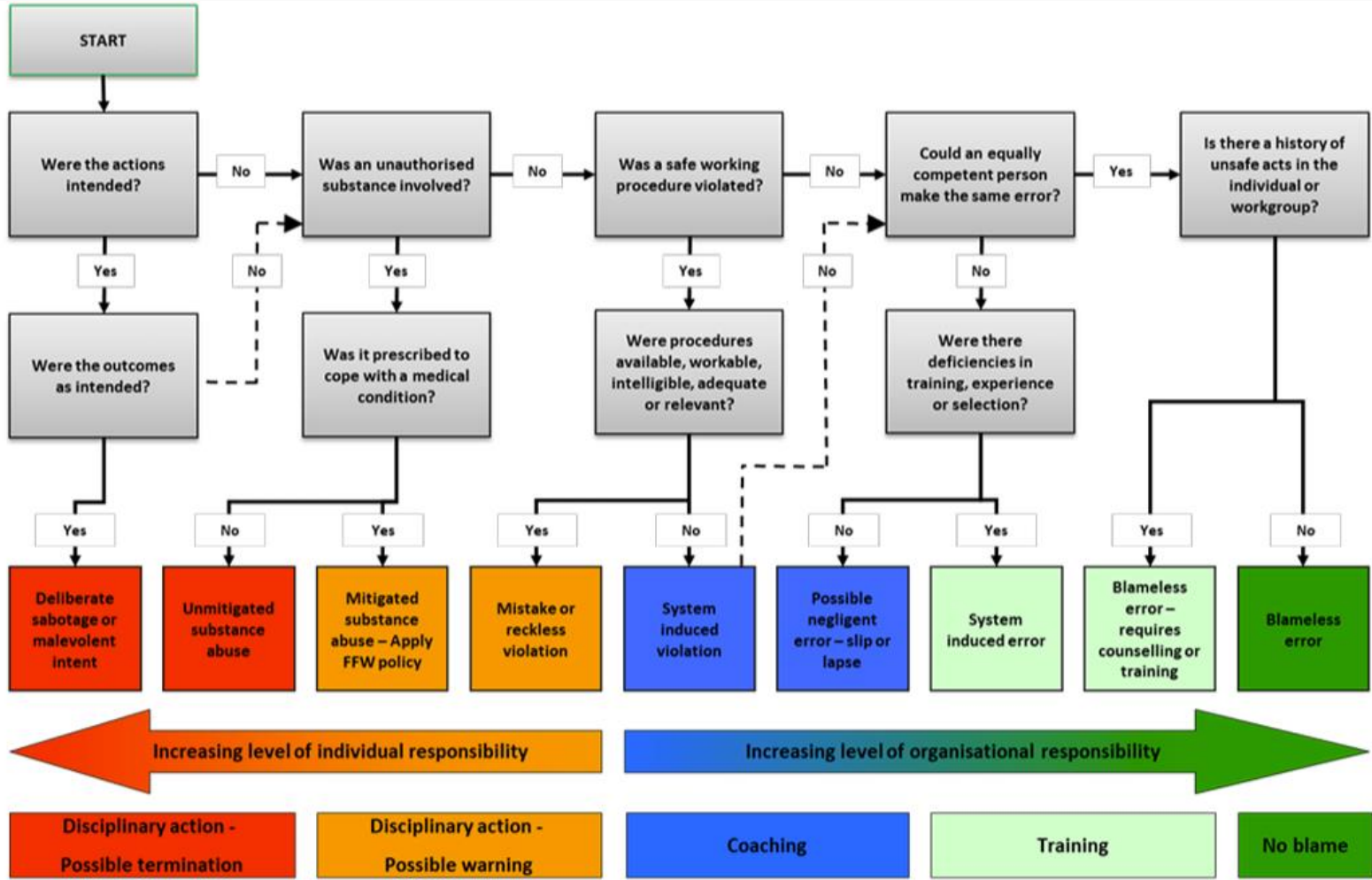
Investigation
Process

Disciplinary
Process

Decision Making Tool

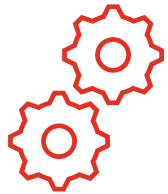


Just Culture



After Reason 1997

Parallel Proceedings



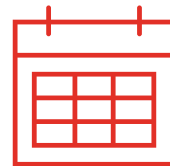
Respondent is subject to two processes occurring at the same time



May lead to inconsistent findings



Undermine the investigation's credibility



Can delay resolution of workplace issues

Employee Absences



Address promptly



Set boundaries



Continue the investigation – offer alternative participation methods



Document all communication & decisions

Confidentiality & Privacy

Privacy Act 1988 (Cth)



- ✓ Maintain confidentiality throughout the process
- ✓ Allegations are not substantiated until proven
- ✓ Respect and protect employee information
- ✓ Employee Record Exemption allows use/disclosure related to employment
- ✓ Investigations justify collecting sensitive information if proportionate
- ✓ Manage personal information carefully, restrict access to documents & reports
- ✓ Use pseudonyms and executive summaries to protect privacy

Legal Professional Privilege



Investigation protected if main purpose is legal advice or litigation preparation



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



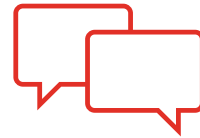
Includes third-party communications directed by the client to the legal adviser

Legal Professional Privilege

Waiver



Confidentiality of communication is compromised



Expressly, by implication, or inadvertently



Employer's conduct is inconsistent with maintaining privilege



Seek legal advice before waiving LPP

Legal Professional Privilege

Tips to Maintain It



Set Expectations



Limit Access



Mark Documents



Plan Dissemination
of Findings



Legal
Proceedings



Key
Communications

No Further Action...

When the Employee Does Not Want to Escalate



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

Complaints

Anonymous & Whistleblower



Employers can initiate investigations from anonymous complaints



Whistleblowers have specific legal rights and protections



Disclosures can be made anonymously to the organisation or to ATO, APRA or ASIC



Disclosing a whistleblower's identity without consent is a criminal offense

Potential Outcomes



VEXATIOUS COMPLAINTS

- ✓ Made in bad faith or intended to harm respondent/s
- ✓ Employers should not tolerate such allegations
- ✓ Complainant may face disciplinary action
- ✓ Separate investigation may be needed

UNSUBSTANTIATED COMPLAINT

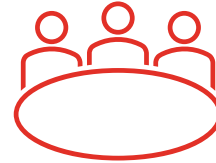
- ✓ Lack sufficient evidence to confirm their occurrence
- ✓ Does not mean false or malicious
- ✓ No disciplinary action should follow
- ✓ Be sensitive to complainant's position

Implementing Recommendations

Disciplinary Outcomes



Counselling
(minor performance/
behavioural issues)



**Disciplinary
Meeting**



**Disciplinary
Inquiry**



**Disciplinary
Sanctions**

Implementing Recommendations

Workplace Health & Safety



✓ Implement sensible and technically logical recommendations

✓ May imply original processes were unsatisfactory

✓ Consider overall WHS obligations

✓ Assess potential future liability

Unfair Dismissal



If an employee is dismissed and brings an unfair dismissal claim, lack of procedural fairness can result in reinstatement or compensation.



Valid Reason
for Dismissal



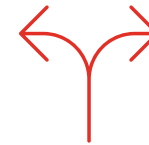
Notification
of Reason



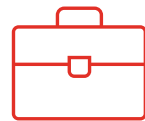
Opportunity
to Respond



Refusal of
Support Person



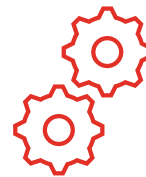
Differential
Treatment



Impact of
Dismissal



Work
Performance
/ History



Employers
Procedures

Criminal Conduct



✓ 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



ppp6t.com

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Vicarious Liability



Consider this hit done, Boss,
but as my employer you must
accept vicarious liability...

Rozston



What Happens Next

How workplace investigations inform decision making and can provide a defense to some employment law claims

Decision Maker Considerations



Read & understand



Verify terms of reference



Assess process



Identify gaps



Evaluate conclusions

Decision Maker Considerations



OUR VALUES

What we stand for

We are passionate about living and breathing our values in everything we do.

Care

We care about our impact on our people, customers, community, legacy, and the planet.

Courage

We have the courage to be responsive, try different things and back each other.

Commitment

We are committed to giving our best every day.

Informed Decision Making

A well-conducted investigation demonstrates that the employer:



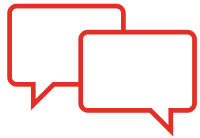
✓ Followed fair and unbiased procedures

✓ Complied with relevant laws and internal policies

✓ Took reasonable steps to address issue

✓ Acted promptly and appropriately

Communication of Outcomes



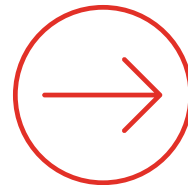
Tailored
Communication



Maintain
Confidentiality



Outcomes
are final



Encourage
employees to
move on

Menti

Your feedback is invaluable to us.



A large, empty white rectangular box with a thin grey border, intended for user input or feedback.



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