

These guidelines have been developed to help Government agencies conduct administrative investigations. They are designed to contribute to fairness, integrity and good public administration.

The guidelines provide direction on key matters to be considered in the preparation and course of an investigation raising administrative or disciplinary issues only. They must be read in conjunction with any statutory provisions and guidelines applicable to the particular investigation being undertaken.

In addition to listing the key steps to be followed in an investigation, we have also included tips to help the investigator navigate some of the more complex challenges which arise in any investigation.

The investigation of complaints involving allegations of serious improper conduct, corruption, fraud or other criminal conduct must be referred to the appropriate authority.

Step 1: Assess the complaint

Not every complaint requires investigation. The majority of concerns raised by complainants will be able to be resolved at an informal level or through other processes such as mediation. Many complaints involve communication problems or misunderstandings that can be resolved by discussion between the parties or with a supervisor.

Relevant factors to take into account in assessing the complaint include:

- whether an alternative and satisfactory means of redress is available;
- whether the complaint is trivial, frivolous or vexatious;
- the time that has elapsed since the events the subject of the complaint took place;
- how serious the complaint is and the significance it has for the complainant and the agency;
- whether it indicates the existence of a systemic problem; or
- whether it is one of a series of complaints, indicating a pattern of conduct or a widespread problem.

Some investigations are subject to particular legislative requirements. The assessment of the complaint and determination of the nature of the investigation must be undertaken within the relevant framework and having regard to the particular requirements. Examples include:

- the *Public Interest Disclosure Act 2003*, which sets out requirements for the investigation of “public interest disclosures” (see also the guidelines issued by the Office of the Public Sector Standards Commissioner)
- disciplinary investigations as a result of complaints about police officers, which are governed by the *Police Force Regulations 1979* and the Commissioner’s Orders and Procedures
- the *Public Sector Management Act 1994*, which sets out the procedures for dealing with suspected or alleged breaches of discipline by public sector employees.

Step 2: Determine the nature of the investigation

This includes determining whether it is about:

- policies, procedures and practices, or
- conduct of individuals.

The nature of the investigation has a bearing on the powers necessary to conduct it, the resources needed, whether any authorisation may be required, and the nature of the possible outcome.

At this stage a decision should be made as to whether the complaint needs to be investigated internally or should be referred externally.

Step 3: Determine powers of investigation

The effectiveness of an investigation is influenced by the available powers. Investigators must be aware of their power to require witnesses to talk, to obtain information from people about policies, procedures and practices, and to access relevant records.

If lack of sufficient powers is an issue, the investigator should consider referring the investigation to some other person or body with the necessary powers.

Step 4: Develop the investigation framework

It is critical that one person be responsible for the conduct of the investigation, and thus for establishing the framework for the investigation. This framework should include:

- the appropriate authorisation to conduct the investigation;
- terms of reference which establish a focus and set limits on the investigation; and
- an investigation plan.

Ensuring that this planning stage is well done will have a major influence on the ultimate success of the investigation.

Step 5: Gather evidence

The task of an investigator is to prove or disprove, if possible, any matter or matters of fact raised by a complaint. The investigator does this by gathering evidence. In an investigation, the main sources of evidence are:

- oral evidence (recollections);
- documentary evidence (records);
- expert evidence (technical advice); and
- site inspection.

Although only one witness may be required to prove any fact or set of facts, additional evidence in the form of corroboration is desirable.

If legal proceedings might arise at some future stage, evidence should be gathered in accordance with the rules of evidence. A basic awareness of these rules is useful to ensure that the evidence obtained is the best available and, where applicable, will be admissible in any subsequent legal proceedings that may arise.

Step 6: Apply the appropriate standard of proof

In disciplinary and administrative investigations, allegations must be proved “on the balance of probabilities”. It must be more probable than not that the allegations are made out.

This standard of proof is that found in the often-cited case of *Briginshaw v Briginshaw* (1938) 60 CLR 336. The Briginshaw test (or Briginshaw standard as it is often called) possesses a measure of flexibility, so that the more serious the allegation the higher the degree of probability required.

Step 7: Record and store information appropriately

Investigators must maintain a central investigation file, which is a complete record of the investigation, documenting every step, including all discussions, phone calls, interviews, decisions and conclusions made during the course of the investigation. This file must be stored securely to prevent unauthorised access, damage or alteration, and to maintain confidentiality.

Step 8: Prepare the investigation report

This must be done at the conclusion of the investigation. The report will be for the records of the agency concerned, and may be subject to outside scrutiny. Ensure you have observed procedural fairness in preparing your final report.

Step 9: Close the investigation

Complete and file all paperwork. It is best practice to conduct a review of the investigation, preferably done by someone more experienced than the investigator and independent from them. This enables the investigation to be assessed and may highlight some improvements in investigative mechanisms for future reference.

An investigation may lead to one of a range of possible outcomes, including:

- disciplinary action
- dismissal of a disciplinary charge
- referral of a matter to an external agency for further investigation or prosecution
- introduction of administrative policies, procedures or practices
- changes to administrative policies, procedures or practices
- redress for the complainant.

Tips for a successful investigation

The role of the investigator

There are two key tasks for the investigator:

- Ascertain all relevant facts pertaining to the complaint; and
- At the conclusion of the fact-finding exercise, report findings; the reasons for the findings, referring to the material on which they are based; and, if appropriate, make relevant recommendations.

Recognise and avoid conflict of interest

All investigations must be conducted without bias, in an impartial and objective manner. No-one with an actual or perceived conflict of interest should be appointed or remain the investigator.

The more serious the complaint, the more important it is that the investigator be someone as independent of the events being investigated as possible.

Ensure you have addressed this issue at an early stage in the investigation process.

Ensure confidentiality

Make sure you abide by any confidentiality requirements applying to the investigation. Likewise, impress upon all witnesses their obligation to keep details of the investigation confidential.

Observe procedural fairness

Due process must be observed in every investigation. Procedural fairness requires you as investigator to:

- inform people against whose interests a decision may be made of the substance of any allegations against them or grounds for adverse comment in respect of them, and give them an opportunity to respond;
- provide all parties with a reasonable opportunity to put their case, whether in writing, at a hearing or otherwise;
- consider all submissions carefully;
- make reasonable inquiries or investigations before making a decision;
- take into account all relevant factors and no irrelevant factors;

- ensure that no person decides a case in which they have a direct interest;
- act fairly and without bias; and
- conduct the investigation without undue delay.

Deciding whether to allow the person who is the subject of the complaint to inspect documents related to the investigation

As investigator, be aware of any statutory rights of access the person who is the subject of the complaint may have (e.g. under the FOI Act) as well as any statutory exemptions or obligations of confidentiality which may apply. Where no statutory guidance is available, you will need to make a careful assessment based on the following competing interests:

- the right of the person the subject of the complaint to know the case against them
- the wish of any third party to have their identity remain confidential
- the general interest in ensuring the integrity of the investigation.

Dealing with the parties involved

The complainant

Manage the complainant's expectations to ensure they are based on a realistic understanding of what the complaint can achieve.

Ensure their confidentiality and explain the importance of confidentiality generally.

Provide them with support, information, and regular feedback.

Inform them of the outcome of the complaint or other action, and the reasons.

The person who is the subject of the complaint

Before approaching the person who is the subject of the complaint, satisfy yourself that the allegations have some substance. If they have no substance and the person is unaware, then little is gained from raising the matter with them.

Where there is a case to answer, ensure you provide the person with procedural fairness.

Other witnesses

Be sensitive to the needs of other witnesses, for instance in supporting them through any trauma they may experience as a result of being involved in the investigation process.

Impress on them the requirements of confidentiality.

Only tell them as much about the investigation as is strictly necessary for the purpose of obtaining the required information.

Acknowledgement

Ombudsman Western Australia wishes to thank the [NSW Ombudsman](#) for allowing us to draw upon their excellent publication "*Investigating complaints - A manual for investigators*" in the development of these Guidelines, and for their ongoing advice and assistance.

