

## What is a workplace investigation?

A workplace investigation is an information gathering process. The purpose of the investigation is to establish the facts and circumstances relating to a complaint or grievance and to determine what occurred, or what is most likely to have occurred, having regard to all relevant and available information and evidence. The findings and conclusions reached by the investigator are then used to guide subsequent management decision making.

## Standard of proof

In reaching findings and conclusions, the investigator relies on the civil “balance of probabilities” test as the appropriate *standard of proof* to determine whether there is sufficient evidence to substantiate the allegation/s made. This is the standard of proof that a court or tribunal would be likely to rely on where the matter does not include a criminal action.

## What is the role of the investigator?

The investigator is a neutral and independent professional who provides a perspective that is free of internal bias. The investigator’s role is to gather information in order to establish the facts, clarify events and ultimately determine if, on the balance of probabilities, the complaint or grievance is substantiated.

## What is the investigation process?

1. The complainant (the person making the complaint) is interviewed first to clarify the details of their complaint and gather available information and evidence including the names of potential witnesses.
2. The respondent (the person about whom the complaint is about ) is then interviewed and asked to give their response and version of events about the allegations made against them and to provide any additional information they think should be considered by the investigator.
3. The investigator will prepare a draft written record of interview for all persons interviewed.
4. Each person interviewed is asked to check and correct their statement before it is finalised and signed. They are allowed to provide additional information if they think it directly relevant to the matter being investigated.
5. The investigator will then determine what further inquiries they need to make to reach a properly informed position about the allegations that have been made, and this may include conducting witness interviews or researching and obtaining supporting documentation such as emails, other official correspondence, file and diary notes etc.
6. Once the statements are finalised and all necessary inquiries and information gathering has been completed, the investigator will write a report outlining their findings and conclusions against each of the allegations made, and will determine whether the complaint is considered by them to have been proven or not having regard to the “balance of probabilities”.
7. Once the organisation receives the investigation report it is their responsibility to:
  - determine whether to accept the findings and conclusions reached, and/or implement any recommendation made;
  - decide what action to take in response to the findings and conclusions; and
  - inform the complainant and respondent of the outcome and of any action to be taken.



## For more information contact:

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## Some common questions

### ***Can I have a support person present during my interview?***

Yes! This is your entitlement and you are encouraged to have one present.

### ***Can my support person speak at the interview?***

Yes, providing of course you are happy for them to do so, and so long as they do not interfere with the interview process or show unreasonable behaviour towards any person present. However, please remember that your support person cannot give statements on your behalf.

### ***Will my interview be recorded?***

It is our normal practice to make a recording of all interviews. The recording will be sent out for transcription and a 'record of interview', sometimes called a statement, will be prepared. Recordings are not provided to employers and they are usually only held until such time as the 'record of interview' has been finalised and signed.

### ***Are investigations confidential?***

Yes! Only those people who have a need to know, will be told that this process is occurring, or about the outcomes. Information shared by you is treated confidentially, however, you need to be aware that:

- any information you provide may be included in the investigation report; and
- your "record of interview", or direct extracts from it, may be provided to your employer as part of the report.

### ***Does the other person or any witnesses get to see my "record of interview"?***

No!

### ***Can I request anonymity?***

Anonymity can be requested by witnesses. If that is able to be agreed, then the witness will not be mentioned by name in the report as having been interviewed and any statements they make will not be attributed to them by name.

Witnesses requesting anonymity will still be required to complete and sign a formal statement.

Anonymity cannot be offered to complainants or respondents.

Anonymity will cease to apply if a matter proceeds to a court, such as FairWork Australia, and the court has powers to compel us to present witness statements or any other evidence to the court.

### ***Can I speak with my co-workers about the investigation and what we speak about?***

No! You must not speak with others about the complaint, the investigation or what we speak about. This is to avoid:

- creating a breach of confidentiality;
- compromising the integrity of the investigation process; or
- compromising your position or the position of another person by deliberately or inadvertently influencing what they might say if they are subsequently interviewed.

### ***What happens if I make allegations about the conduct of another person that is relevant to the investigation?***

The rules of "procedural fairness", sometimes call natural justice or administrative fairness, require that any allegations that may influence the findings of the investigation or the subsequent management action, must be put to the person concerned for response before a balanced opinion can be reached.

### ***Can the investigator direct my employer to take specific action as a result of the findings and conclusions reached by them?***

No! The employer is ultimately responsible for deciding what action to take, or not take.