

## 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 probability, 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 detail of their complaint and to enable information, evidence and witness names to be obtained.
2. The witnesses named by the complainant are usually interviewed next to determine what evidence exists to corroborate the complaint made.
3. The respondent (the person the complaint is about) is then interviewed. They provide their response to the allegations made together with any additional information and evidence they think should be considered by the investigator.
4. The witnesses named by the respondent may then be interviewed about their knowledge of the allegations made.
5. Draft statements are prepared for each person.
6. Each person interviewed is asked to check and correct their statement before it is finalised and signed. All people interviewed 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 made. This may include conducting other interviews or obtaining supporting documentation such as emails and 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 prepare the investigation report. The report outlines the findings and conclusions against each of the allegations made. This usually includes a statement about whether or not the complaint is considered to have been proven when having regard to the evidence requirements of 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 of the 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. However, your support person must not be a person who is likely to be interviewed during the investigation.

### ***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. It is important that you understand 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 may be sent out for transcription and a statement will be prepared. Recordings are usually only held by us until such time as the statement has been finalised and signed.

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

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

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

Support people are bound by the same confidentiality requirements applying to participants.

### ***Does the other person or any witnesses get to see my “statement”?***

While your statement may be attached to the investigation report provided to the employer, your statement is not shown by the investigator to any participant in the investigation.

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

Anonymity can only be requested by witnesses. If that is able to be agreed by the Investigator, then the witness will not be named in the report as having been interviewed in the investigation 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 normally cease to apply if a matter proceeds to a court, such as the FairWork Commission. Courts have legal powers to compel us to present witness statements and any evidence we obtain.

### ***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; or 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?***

The rules of “procedural fairness”, sometimes called 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.