

The following document outlines the procedures which will be undertaken by Organisational Development in the event that a formal complaint proceeds to investigation.

Process

The Team Leader Organisational Development is responsible for ensuring complaints in regard to behaviours that breach Council's *Appropriate Workplace Behaviours Policy* (eg. discrimination, harassment, workplace bullying and/or violence etc) are investigated as appropriate and, where possible, resolved.

Once a formal complaint has been lodged and Council has determined that an investigation will proceed, the Team Leader Organisational Development (or delegate) will commence steps to initiate the investigation.

Identification of suitable investigator

Providers	Organisational Development will maintain an internal list of possible external investigators. This will be used as a guide when engaging an external investigator.
Selection process	The selection of a suitable external investigator will give consideration to the following factors: ▪ qualifications; ▪ experience; ▪ the nature of the complaint; ▪ cost; ▪ cultural fit; ▪ appropriate insurances; ▪ availability to commence work when required; and ▪ reference checks.
Dispute or Appeal regarding selected Investigator	In the event that a Complainant (and / or Representative) believes that the selected investigator should not carry out the investigation due to a conflict of interest, an appeal to have the selected investigator reviewed or replaced may be raised with the Manager People and Procurement Services prior to the investigator commencing the process. The Manager People and Procurement Services will determine if the investigator is suitable, giving consideration to the concerns raised (except where the investigation is about the Manager People and Procurement Services, in which case the decision will be deferred to the CEO).

Investigation methods

Internal Investigation	Investigations of this type may be undertaken internally by the Team Leader Organisational Development or his/her delegate, which may include a Manager or Director.
External Investigation	Investigations of this type occur when Council decides to engage the services of an external investigator.
External Investigator Engaged Through a Legal Advisor	Council may decide to request legal advice about the situation from a preferred legal advisor. In order to provide this advice, the legal advisor may engage and brief an investigator.
Referral to external organisation including Victoria Police or IBAC	If Council reasonably believes a complaint may constitute a criminal offence or serious corruption (or is of a nature that otherwise warrants Council will refer complaints to other appropriate bodies for investigation, such as the Independent Broad-based Anti-corruption Commission (IBAC), in accordance with law. If appropriate, Council will also conduct its own internal investigation into the allegations. As a result, Council may take internal action against the person under its policies, including the Disciplinary Policies and Procedures. Council will consult with the relevant external body in an effort to prevent any internal investigation from hindering an external investigation.

Procedural fairness and natural justice

Any investigation carried out under Council policy should be conducted in accordance with due process to ensure the principles of natural justice are adhered to. Procedural fairness or natural justice requires that a person receives a fair and unbiased process before a decision that will impact on their rights or interests is made. What constitutes a fair and unbiased process will vary from case to case according to circumstances.

All parties to an investigation are also directed to maintain the confidentiality of the investigation and the matters under investigation, as specified in Council's policy and procedures.

The following principles are commonly understood to elaborate the process of natural justice and they inform the handling of complaints at Council. They are identified by the Victorian Equal Opportunity and Human Rights Commission (VEOHRC).

- The person who is the subject of the complaint must be treated as innocent;
- The respondent must be told of all the allegations in relation to their behaviour;
- The respondent must have a full opportunity and a reasonable time period in which to explain their version of events;
- All parties to the complaint must have the right to be heard;
- All relevant submissions and evidence must be considered;
- The employer must not take into account matters that are not relevant;

- If the complaint is substantiated, then any disciplinary action that is taken by Council needs to be commensurate with seriousness of the matter and in accordance with the appropriate Council policies. Mitigating factors should be taken into account when assessing what form of discipline will be implemented. (*** Mitigating factors can include an employee's disciplinary and work history, work performance and relevant personal circumstances.*)

Investigation Process

The steps in the investigation process may include the following (note the sequence may vary), especially where an external investigator is involved:

- Investigator appointed by Council or through Council's lawyers;
- Investigator determines process for investigation in conjunction with Council or Council's lawyers;
- Complainant confirms or provides a statement to the investigator and / or any additional information required;
- Council prepares allegations;
- Allegations put to Respondent/s;
- Investigator interviews Complainant(s) and Respondent(s) and any relevant Witnesses (this may involve contradictory evidence being put to the parties);
- Investigator gathers other relevant evidence;
- Investigator evaluates evidence and makes findings of fact based on evidence;
- Investigator provides Council or its lawyers with a confidential report on findings and whether, on the balance of probabilities, the allegation(s) can be substantiated, not substantiated, part-substantiated or the finding is inconclusive. Depending upon the terms of reference of the investigation, the Investigator may also make recommendations to Council or its lawyers in relation to outcomes;
- Council's lawyers provide legal advice to Council;
- Council makes its own findings of fact;
- Complainant(s) and Respondent(s) informed of findings;
- Council determines and implements action in relation to the findings.

Council may conduct, or have conducted, an investigation on the papers.

Findings

The purpose of the investigation is to establish findings in relation to the allegations made. Both the Complainant and the Respondent/s will be told the finding in relation to each allegation that has been made, in terms of whether or not and to what extent the allegation has been substantiated.

The standard of proof for the establishment of findings is the 'balance of probabilities' – that is, *it is more likely than not that the alleged circumstances occurred in the manner described.*

The findings will be relayed using terminology similar to this:

Finding	Explanation
Substantiated	On the balance of probabilities, the evidence provided satisfies Council that it is more likely than not that the incident or circumstances <u>occurred as alleged.</u>
Not Substantiated/ Unsubstantiated	On the balance of probabilities, the evidence provided satisfies Council that the incident or circumstances <u>did not occur as alleged.</u> <i>Alternatively, this finding may also mean:</i> On the balance of probabilities, the evidence provided is <u>not able to satisfy</u> Council that it is more likely than not that the incident or circumstances <u>occurred as alleged.</u> This finding does not necessarily mean that the allegation did not occur or that Council considers the allegation was made without basis or was unreasonable. It means the evidence provided was insufficient to satisfy Council that, on the balance of probabilities, the conduct or allegation occurred as described.
Part Substantiated	On the balance of probabilities, part, but not all of what was alleged occurred as stated. The finding will outline which matters were substantiated and which matters were not substantiated within the allegation.
Inconclusive	The evidence is insufficient to determine whether it was likely or not to have occurred in the manner described.

Actions arising from an investigation

Once an investigation has concluded, Council will take appropriate actions to address the matters arising from the complaint. Possible outcomes are listed in more detail within the *Behavioural Concerns Resolution Policy & Guidelines*.

Actions arising from substantiated allegations may include disciplinary action in accordance with Council policy. Neither party will be told details of any disciplinary action as it applies to the other party, as this information is confidential between that person and Council.

Other matters

Depending on the circumstances -

- the Complainant and/or the Respondent may be moved internally or suspended on full pay during an investigation. This is not a pre-judgement of guilt. Any return to the person's usual workplace will be supported with appropriate communication;
- the investigator may visit the site of the alleged complaint and interview witnesses or other parties relevant to the complaint;
- Council may request the investigator to make recommendations;

- A complaint can be withdrawn at any time* (* except complaints involving alleged occupational health and safety breaches, alleged criminal behaviour or, in some cases, allegations of serious corruption) If a complaint is withdrawn, the Team Leader Organisational Development will let the Respondent know in writing and the complaint will be closed;
- A Respondent may make 'counter claims' in regard to the Complainant. Council will determine if the matters will form part of the same investigation or are to be dealt with under a separate process;
- Further allegations may arise during the course of an investigation regarding other matters that have occurred in the past, or new matters that occur while the investigation is in progress. Council will determine if the matters will form part of the same investigation or be dealt with under a separate process.

Post complaint review

After the matters have been resolved, Organisational Development may review the effectiveness of the procedure to deal with the complaint and consider any actions or changes to policy, procedure or resources that may assist in the prevention or early resolution of similar matters in future.