



Workplace Investigations

Following an event or incident where it is alleged that one or more parties have behaved in an inappropriate manner, Council may initiate a formal workplace investigation.

A workplace investigation is the process of systematically working through information for the purposes of determining fact (i.e. whether something did or didn't occur as stated). In the context of Council's *Workplace Behavioural Concerns Resolution Policy and Guidelines*, a workplace investigation is used to determine the following:

1. Whether or not, on the balance of probabilities, the alleged behaviour(s) occurred.
2. If so, did the alleged behaviours constitute inappropriate behaviour, breach of Council policy and/or law?

The decision whether to undertake a formal workplace investigation rests with Council.

When is an investigation appropriate?

Investigations may be appropriate in circumstances such as those where –

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- the allegations relate to misconduct and disciplinary action would be a likely outcome;
- informal resolution could compromise the rights of the parties;
- there is alleged criminal activity or the concerns relate to physical harm;
- there are significant differences in the version of events and which cannot readily be explained;
- the allegations, if proven, would constitute a breach of a workplace right or unlawful conduct;
- potential reputational or legal issues could arise from the alleged behaviour;
- the parties have previously attempted other informal resolution processes and this has been unsuccessful;
- the allegations relate to victimisation of a person who has raised a concern or made a formal complaint; or
- the allegations are against a more senior member of staff or there is a significant imbalance of power between the parties.



When is an investigation not appropriate?

To determine the appropriateness of an investigation, Council will assess the facts at hand (*'preliminary assessment'*) when a complaint is made or concern raised. Once that has been carried out, a decision will be made as to whether a formal investigation is warranted.

Some examples of where a workplace investigation may not be appropriate includes where -

- the facts have already been established and/or are not in dispute;
- a person has admitted the alleged behaviour;
- the concerns are likely to have arisen because of interpersonal conflict, poor communication, poor management practices, an error of judgement or misunderstanding;
- the concerns have arisen because of reasonable management action that has been taken;
- similar concerns have been expressed by more than one person and which indicate a workplace cultural issue that requires analysis of the team culture;
- the nature of the concern is such that it should be managed in accordance with Council's *Staff Grievance Resolution Policy*. (A grievance is a problem about any act, behaviour, omission, situation or decision, usually by Council, which an employee thinks is unfair or unjust, and is work related. Some examples may include: performance reviews, promotion opportunities or applications for leave, etc); and/or
- the remedy being sought by the Complainant can be obtained through a different avenue (such as mediation, facilitated discussion or by having a cooperative conversation).

If Council decides that a workplace investigation will not be undertaken, it will explore other options to resolve the concerns.

Who will investigate the matters?

Council will determine who conducts any investigation. The investigator may be internal to Council (such as a member of the Organisational Development team or a Manager) or a suitably qualified and independent external person.

What is the standard of proof?

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



What are counter-allegations?

It is not uncommon for a Respondent to a complaint to make allegations against the Complainant.

Council is obliged to treat any 'counter-allegations' seriously and this may lead to an investigation into the behaviour of the Complainant. Council will decide whether the counter-allegations will form part of the same investigation or be dealt with under a separate process.

What happens after an investigation ends?

Once an investigation has ended, Council will act on the findings.

There are a range of possible outcomes that may be considered. Some of these are:

- participation in an informal dispute resolution process (such as mediation or a facilitated discussion);
- disciplinary action for one or more of the parties in accordance with Council's *Policy and Procedure for Performance and Behavioural Issues*;
- coaching and/or training of an individual or group;
- a formal apology (which may be confidential);
- changed or new work practices and/or procedures;
- group team building.

Is an investigation the best option?

Sometimes a Complainant feels an investigation is the only way by which to 'prove' something inappropriate has occurred, and is not willing to consider alternative ways to try to resolve their concerns.

However, a formal investigation does not always result in justification for the Complainant and may not be the most appropriate process or result in the best outcome, even for the Complainant.

- An investigation only determines facts and does not lead to resolution of the concerns that triggered the investigation. At some point, the parties will need to work to resolve the concerns.
- An investigation may not be able to reach conclusive findings. Matters can be found to be 'unsubstantiated', 'inconclusive' or 'part substantiated' when there is a lack of evidence available. This doesn't necessarily mean the behaviour didn't occur, it simply means that the investigation couldn't prove it. This can be frustrating to a Complainant who is seeking to prove a point or that they have been wronged.



- The process of participating in an investigation can irreparably damage the working relationship, not only between the parties but with others who may work with the parties or are asked to act as a witness.
- An investigation frequently means that witnesses are required to participate in the process. This results in other parties becoming aware of, and being asked to make statements in relation to, the matters between the Complainant and Respondent.
- Investigations can take several weeks, if not months, to complete. This can be stressful and frustrating for the parties concerned. (It is therefore important to make use of the support that is available, such as EAP).

Is an investigation confidential?

All parties are expected to maintain the strictest confidentiality of the investigation process. This includes witnesses, support persons and any others who may be involved in the process and outcome.

Information about an investigation should only be communicated on a need-to-know basis. The only information that is shared will be information relevant to each person concerned. For example, the Respondent needs to be told sufficient details of the allegations to be able to respond, and the Witnesses may need to be told details of the complaint to be able to share what they have seen or heard. A person's manager may need to be told the outcome of an investigation.

If disciplinary action is taken against a person, that information is confidential between the person and Council.

Further information

Further information is available from Organisational Development on 8571 5136