Investigations guide

Conducting internal investigations into misconduct
Authorised and published by the Independent Broad-based Anti-corruption Commission (IBAC) and the Victorian Ombudsman.

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This publication is a practical guide for people conducting an internal investigation into misconduct. It is not intended to be a comprehensive instruction manual. It may be necessary to seek your own legal advice or consult with your supervisor or internal audit section.

This guide is adapted from the NSW Independent Commission Against Corruption’s 2012 publication *Fact finder - a guide to conducting internal investigations*, and has been revised to meet the jurisdictional requirements of IBAC and the Victorian Ombudsman.

If you would like to receive this publication in an accessible format, such as large print or audio, please phone IBAC’s Communication team on 1300 735 135, using the National Relay Service 13 36 77 if required, or email communications@ibac.vic.gov.au

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**Affected person**

An *affected person* is anybody about whom an adverse comment or finding might be made as a result of the investigation. This might be an employee, a supervisor, a contractor, a source of information or a member of the public.

**Allegation**

An unsupported claim or assertion that someone has done something illegal or wrong. A complaint can contain more than one allegation.

**Complaint**

An expression of dissatisfaction with a specific action or service of a public sector employee or agency, including the alleged failure to comply with the agency’s code of conduct, charter or mission. Complaints may be received from both internal (for example, from an employee within the organisation) and external (for example, a member of the public) sources.

**IBAC**

IBAC is Victoria’s anti-corruption agency responsible for preventing and exposing public sector corruption and police misconduct. It is responsible for:

- investigating serious corruption and police misconduct
- informing the public sector, police and the community about the risks and impacts of corruption and police misconduct, and ways in which it can be prevented.

IBAC assesses complaints and may choose to investigate, refer or dismiss. It can also conduct an investigation as a result of a complaint, or initiate its own motion.

**Local Government Investigations and Compliance Inspectorate**

The Local Government Investigations and Compliance Inspectorate (LGICI) is an independent administrative office, whose key role includes promoting voluntary compliance with the *Local Government Act 1989* and encouraging best practice, accountability and transparency in local government.

**Principal officer**

A relevant principal officer is defined in the IBAC Act to include:

- the public sector body Head (as set out in the *Public Administration Act 2004*)
- the Chief Executive Officer of a council
- the Chief Executive Officer of Court Services Victoria.
Protected disclosure
A protected disclosure, previously known as a ‘whistleblower’ complaint, is a complaint about the improper conduct of public bodies or public officers. If assessed by IBAC as a PD, the person making the complaint (disclosers) will be legally protected under the Protected Disclosure Act 2012 (PD Act). The PD Act encourages people to come forward and make complaints by offering legal protection, and encourages openness and accountability across the Victorian public sector.
Section 54 of the PD Act also imposes significant restrictions on discussing the issues in question. There are limited exceptions. It must be realised however that protected disclosure complaints can only be investigated by IBAC, the Victorian Ombudsman or Victoria Police (if the subject is a member of Victoria Police).

Protected Disclosure Coordinator
Protected Disclosure (PD) Coordinators play a vital role in supporting and protecting potential disclosers to speak out about wrongdoing in the public service. Employed by public sector agencies, Protected Disclosure Coordinators are nominated to receive and notify the Independent Broad-based Anti-corruption Commission (IBAC) of potential protected disclosures.

Public sector bodies
Public sector bodies include government departments, and state government or statutory authorities and corporations.

Source
A source is a person who provides information. In this guide, the source is referred to as the person being interviewed.

Witness
A witness refers to someone who has, who claims to have, or is thought to have, knowledge relevant to an event or other matter of interest.

Victorian Ombudsman
The Victorian Ombudsman is an independent officer of the Victorian Parliament who investigates complaints about state government departments, most statutory authorities and local government. The Ombudsman can also initiate own motion investigations into government bodies in the public interest, even without a complaint. The office also looks at whether people’s human rights have been respected and protected.
Introduction

Being able to conduct an effective internal investigation is essential for the day-to-day operation of an organisation.

There are many types of investigations, including those into complaints of poor service, discrimination or harassment, unsafe work practices, unfair personnel decisions or inefficient business practices.

This publication addresses a complex subset of investigations – those examining allegations of staff misconduct.

A well-conducted internal investigation helps ensure those who have engaged in improper conduct are identified and dealt with appropriately. It can also help clear those who have been wrongly suspected or accused. A good internal investigation process also ensures the boundaries of acceptable behaviour within your organisation are clarified.

A fair investigation process can boost support for the investigation process within the workplace and acceptance of its outcomes. It can also set the tone for how people are treated within the organisation. A person can come to work and be confident that if their conduct is questioned, they will be afforded a fair and thorough investigation process.

Purpose of this guide

This publication is a practical guide for people conducting an internal investigation into alleged misconduct.

It is not intended to be a comprehensive instruction manual. For more information, consult with your supervisor, legal department, internal audit section or human resources area.

The guide comprises five chapters:
1. Receiving allegations
2. Assessing the allegations
3. Planning the investigation
4. Conducting the investigation
5. Analysis and reporting

It also examines three key considerations: confidentiality, record-keeping, and natural justice and procedural fairness.
What is misconduct?

As defined in the *Public Administration Act 2004*, misconduct includes:

- contravention of the Public Administration Act or Code of Conduct for Victoria Public Sector Employees
- improper conduct in an official capacity
- contravention of a lawful direction given to an employee
- employees making improper use of their position for personal gain
- employees making improper use of information they have gained because of their position.

Improper use can be to gain financial benefits (or some other benefit) for themselves or someone else. It might be to cause detriment to the public sector.

An investigation is not a trial

If you have been tasked with carrying out a fact-finding investigation into allegations of misconduct on behalf of your organisation, you are responsible for gathering information and using this information to find the facts. An investigation is not a trial. You are not a prosecutor or plaintiff, but an impartial fact-gatherer and interpreter of evidence. You have a duty to both collect relevant information and to assess it.
1 Receiving allegations

You may receive allegations of misconduct from a variety of sources – both internal and external. It may be that an employee has become concerned about the conduct of their colleague, an unsuccessful bidder complains about a tender process, or IBAC or the Victorian Ombudsman refers allegations to your agency to investigate.

After you receive an allegation, you must first ask yourself if the alleged misconduct would constitute as misconduct. If you believe that it would, you need to then ask yourself if the misconduct is serious or systemic and if it should be reported to IBAC. If you determine the allegations are neither serious nor systemic, then you may choose to investigate internally. If you are unsure, you should consider reporting it.

Regardless of how you become aware of the allegations, you should closely analyse the information. This involves breaking it down to identify what is fact and what is suspicion, opinion or possible exaggeration. The first step is to get a full account of the allegations from the source.

1.1 Interviewing a source

It is important to be prepared for the first interview to ensure you can gather as much information as possible. This will support good initial planning and decision-making. Chapter 4 provides further information on investigative interviewing.

Setting the time and place

Make sure you schedule the first interview at a time and place that helps the source feel most comfortable.

If the source is a public official, try to conduct the interview away from their workplace and at a time that will not arouse suspicion. Choose a time that minimises inconvenience to the person and the organisation.

Allow plenty of time for the interview as you want to get as much detail as possible.

During the first interview, it is important to assess the credibility of the source.

Assessing credibility

Ask yourself:

- Why are they giving me this information?
  Consider the motives of the source and the reliability of the information they are providing. Try to be objective when considering their responses, and avoid making sweeping assessments. Just because a person is angry or upset does not mean that the information they provide is false.

- What aren’t they saying?
  The credibility of the source may also be questioned if certain details are omitted. Why was this information not offered initially?
Delegate

The seniority of the source is an important factor when first appointing an investigator. Interviewing a more senior officer within the organisation can be difficult because of the power imbalance. If you feel uncomfortable in this type of scenario, there is nothing wrong with having a co-interviewer of equal grade attend the interview.

1.2 Recording the allegations

Wherever possible, it is preferable to record, either on video or audio, the interview with the source. If this is not possible or agreed to by the person, commit their information to writing. Reduce the information to a description of:

- the exact nature of the conduct
- who is involved
- what functions and policies of the organisation are affected
- the time, date and location of any conduct described by the source.

Whether or not the source signs the record of information is immaterial to a fact-finding investigation, but by all means get them to read the summary, check it, and sign it if they want to.

Do not send the person away and demand they put information in writing. Drawing out appropriate information is your task.

What outcome do they want?

While you are not acting on behalf of the source, asking this question is a useful way of identifying and managing their expectations. After talking to the source it might be clear that a fact-finding investigation may not be the best approach; you may be able to assist the source by suggesting a different way to solve the problem.

Other useful questions to ask the source are:

- how did they become aware of the information?
- are there other people or evidence that might assist the investigation?
- who else have they told about the matter?
- have they reported the matter elsewhere (eg to IBAC, the Victorian Ombudsman or Victoria Police)?
- do they consent to their identity being revealed if necessary at a later stage?


\1.3 \ Following up with the source

If you decide you require additional information, you may follow up with the source. A useful way of doing this is via a confidential letter asking for more specific and detailed information.

You may also ask them to send through any additional information.

\1.4 \ Notifying external agencies

You may need to notify external agencies if you become aware of a complaint. A failure to report a serious indictable offence is a crime in Victoria.

It is important to report matters early because:

- your information may be highly relevant in the context of other information held by the external agency (that you may not be aware of)
- often the best investigative opportunities emerge early, particularly before the subjects of an investigation are aware of the investigation. A failure to report the matter at an early stage may jeopardise the prospects of an external investigation succeeding.

1.4.1 IBAC

IBAC is Victoria’s independent anti-corruption commission, responsible for preventing and exposing public sector corruption and misconduct.

Working towards the vision of a corruption-resistant public sector, IBAC:

- receives and assesses complaints and notifications of public sector corruption and misconduct, and investigates serious and systemic matters
- informs the public sector, police and the community about the risks and impacts of corruption and misconduct, and ways it can be prevented.

IBAC’s jurisdiction includes Victoria Police, state and local government bodies, the judiciary and parliament.

IBAC reports directly to the Victorian Parliament and operates under oversight by both state and Commonwealth authorities, including the IBAC Committee and the Victorian Inspectorate.

Under new legislation to be introduced by December 2016, principal officers (including council CEOs) will be required to notify IBAC when they become aware of suspected corrupt conduct.

Under section 57A of the IBAC Act the relevant principal officer of a public sector body has an
obligation to notify IBAC of any matter they suspect on reasonable grounds involves corrupt conduct. This obligation cannot be delegated. The relevant principal officer must notify IBAC of all instances of suspected corrupt conduct occurring in their own organisation, and suspected corrupt conduct occurring in other organisations where it is connected with the relevant principal officer’s duties, functions and exercise of powers. There is no legislative obligation for relevant principal officers to search out corrupt conduct, only to report it when suspected.

1.4.2 Investigating a referred matter

IBAC can refer a matter to your organisation for investigation any time if it considers that:

a) the subject of the complaint or notification is relevant to the performance of the duties and functions of that organisation

b) it would be more appropriate for the complaint or notification to be investigated by that organisation rather than by IBAC.

When IBAC refers a matter to your organisation for investigation, it may review the final copy of your investigation outcome report and files to ensure it was fair and thorough. IBAC may request this at any time.

IBAC reviews consider how individual matters have been handled and aim to promote systemic changes in an agency’s practices.

1.4.3 Victorian Ombudsman

The Victorian Ombudsman is an independent officer of the Victorian Parliament who investigates complaints about state government departments, most statutory authorities and local government.

The Ombudsman can also start her own investigations into government bodies in the public interest, even without a complaint.

Anyone can complain to the Ombudsman about actions, decisions or conduct of staff of Victorian government authorities. These authorities include government departments and statutory bodies.

1.4.4 Victoria Police

Victoria Police is responsible for investigating criminal offences. If you think that a criminal offence has been committed, you should report it to the police.

This could include allegations of:

- theft
- assault
- obtaining financial advantage by deception
- obtaining property by deception
- secret commission.

1.5 Potential protected disclosures

Victoria’s Protected Disclosure Act 2012 protects people who make disclosures from detrimental action for making the complaint.

Most public sector agencies will have a Protected Disclosure Coordinator who is nominated to:

- receive potential protected disclosures
- ensure the welfare of disclosers
- work to make sure staff are aware of the protected disclosure legislation.

A disclosure may be a report about:

- the improper conduct of public bodies or public officers
- detrimental action that a public officer or public body takes against a person in reprisal for them (or another person) having made a protected disclosure or cooperated with the investigation of a protected disclosure.

Protected disclosure matters can only be investigated by IBAC, the Chief Commissioner of Police, the Victorian Ombudsman or the Victorian Inspectorate.

If you believe the conduct contained in the complaint could be a protected disclosure, you must refer the complainant to your PD Coordinator without delay. If your agency doesn’t have a PD Coordinator, please refer the complainant directly to IBAC.

For more information, go to www.ibac.vic.gov.au
2.1 Preliminary enquiries

After interviewing the source, you may need to conduct preliminary enquiries to help you determine whether to conduct an investigation. Preliminary enquiries are those you can make without alerting anyone that an investigation is taking place.

For example:

- what were the appropriate procedures at the time? Are they still current?
- who was involved? Do they still work for the organisation?
- has this matter (or similar allegations) been investigated in the past?
- are financial or other relevant records available?

Try not to interview any other people at this initial stage.

2.2 Assessing the information

Based on the information you have collected, you must now decide whether to proceed to a full investigation. Although this is usually a decision for the principal officer of your organisation, they may seek your advice or recommendation.

Choosing to proceed with a full internal investigation is a significant decision. Such an investigation is likely to be sensitive and may be resource-intensive. If handled poorly, an investigation can have serious ramifications for individuals and for the organisation.

For example:

- innocent people can be wrongly tainted
- people who have acted improperly can be emboldened by having survived scrutiny
- the reputation of the organisation can be undermined
- the workplace can be divided; and staff morale can be damaged.

Conversely, there can be serious ramifications if an investigation does not proceed. For example,

- innocent people may not have the chance to be cleared of alleged misconduct
- the misconduct may continue to occur
- standards of behaviour within the workplace may be undermined.
2.3 \ Considering other options

Sometimes an internal investigation is not the appropriate process.

Do the allegations arise from a dispute?

A matter involving allegations between disputing parties may be better managed using dispute or grievance procedures, including conciliation.

Does the matter relate to the performance of the organisation’s functions?

What people do in their own time, away from their work and their workplace, is usually a matter for them. However, it may be appropriate to ask about out-of-work conduct in some cases. This conduct may have implications for the workplace (for example, excessive alcohol consumption leading to low productivity at work) or the type of workplace may mean the person’s general character is central to the performance of the organisation’s functions (for example, police who enforce a law are compromised in their work if they are seen to be breaking this law in their private lives).

How old is the matter?

If an extensive period of time has elapsed, it may be inappropriate to investigate. This is particularly true for minor matters, eg an allegation that someone failed to return $50 to the petty cash tin 20 years ago. If a considerable period of time has elapsed, you may not be able to conduct a fair investigation. Witnesses may no longer be available to speak with, documents may have been lost or destroyed and people’s memories may have faded.

However, there are some matters that will always warrant investigation no matter how old they are. For example, allegations involving a substantial sum of money or the actions of a senior member of the organisation.

Do the allegations involve improper conduct that is likely to be repeated by the alleged offender or others?

There may be an organisational need to take decisive action to prevent further wrongdoing.

2.4 \ Deciding not to conduct an investigation

After initially assessing the matter, you may decide not to conduct the investigation. It is important that this is documented, including the process that was applied to reach that determination, any advice from you to the principal officer who made a final determination, and the reasons for choosing not to proceed.

The decision not to conduct an investigation should be confidentially communicated to the source of the information. If other parties need to be advised, be careful not to disclose any confidential information, such as the identity of the source.
Confidentiality

Most of the information you collect during an investigation will be confidential. You have been entrusted to keep information to yourself and only use it for your investigation.

Maintaining confidentiality of the source

It is worthwhile explaining to the source at the initial interview that it is in their best interests to keep the allegations and interview confidential.

If the source tells anyone else the details of your interview or makes allegations in public, it is done at their own risk. Advise the source to get legal advice about possible defamation, breach of confidence and breach of privacy concerns, if they tell you they intend to make allegations elsewhere.

Protecting your source during the investigation

The identity of the person or people who provide information should be kept confidential.

Do not release any information that might reveal, or tend to reveal, the identity of the source. A person’s identity might be revealed in more ways than just releasing a name, address or contact number. For instance, identifiers can include physical descriptions, locations or personal knowledge that is unique to that person.

Releasing identifying information can have detrimental effects on the source, and may reduce the trust that people have in you and your investigation. Discuss with the source any fears they may have if their identity was revealed. Even if the source has consented to their identity being revealed, only disclose their identity when it is necessary to do so.

Ask direct questions

When questioning people, avoid questions or statements that unnecessarily reveal the identity of the source, such as: ‘X says that she saw you at...’ ‘X tells me that you spoke to...’ ‘X alleges that you are...’

Instead, ask direct questions, such as: ‘Where were you...?’ and ‘Who did you speak to...?’
Confidentiality of the subject and witnesses

Wherever possible, the subject matter of the investigation as well as the identity of the subject of the investigation and that of any other people involved should be kept confidential.

If anyone requests information from you about an investigation, ask yourself, ‘Does the person need to know the information?’

If the answer to this question is ‘no’, you may wish to deal with questions about the investigation by neither confirming nor denying that an investigation is planned or taking place.

Your investigation is not complete until a report is prepared. The report is the appropriate place to discuss the details of your investigation and the conduct of particular individuals.

Do not promise anonymity

You may not be able to keep the identity of a person or people who provide information completely secret. The person should be made aware of this fact.

Take into account the person’s concerns and make efforts to conceal their identity, if this is appropriate, but explain their details may need to be revealed in order to properly conduct the investigation. You may also be required to send information to another body, such as IBAC, a court or tribunal.

Workplace gossip

Unfortunately, gossip can occur in any organisation. Try not to discuss your investigation with anyone.

Ask people to keep it confidential

When you question or talk to people during your investigation, ask them to keep the fact that you have spoken to them and the details of the conversation confidential.

It is as simple as saying, ‘Please don’t discuss that we have spoken and what we have spoken about with anyone. I am required to keep the investigation as confidential as possible’.


\3 \ Planning the investigation

\3.1 \ Establishing your responsibilities

The principal officer is responsible for any investigation of matters that might affect the running of the organisation.

You should ensure that you obtain written delegation or authority from the principal officer to conduct the investigation. You should also be delegated any necessary powers for you to adequately investigate the matter.

‼️ Do not exceed your delegated responsibility

Be clear about your responsibilities and make sure you only carry out the tasks that have been approved by the principal officer.

⚠️ Managing conflict of interest

All investigations should be conducted in an impartial and objective manner. Nobody with an actual or perceived conflict of interest should be appointed as the investigator. Conflicts of interest are inevitable but can be managed. It is recommended a register is in place so that the investigator’s supervisor can record that a conflict was brought to their attention and how it was managed.

Although you may be tasked with carrying out an investigation, there are people within your organisation that can help you or offer advice. These people may work in:

- audit and risk management
- human resources
- legal services
- finance
- information technology.

You may also need to seek external assistance from experts such as document examiners, auditors, or forensic accountants.
3.2 Defining scope and purpose

You may be asked to specify the terms of reference and objectives of the investigation (also referred to as the 'scope and purpose'), for endorsement by the principal officer.

The scope details the boundaries of the investigation. For example:

Investigate the circumstances surrounding ... [the performance of a specific function]... for the period 1 January 2015 to date.

The purpose of the investigation details what the investigation is trying to achieve or the rationale of the investigation. It may be described in terms such as:

- To determine whether a disciplinary offence has been committed by a member of staff.
- To determine whether the contract with X should be terminated.
- To assess the sufficiency of existing procedures in department Y.

Together, the scope and purpose define the nature of the investigation that is to take place. You will have a clear understanding of the investigation you are being asked to conduct and clear authority to conduct it. While the principal officer has assurance the sensitive process of an internal investigation is appropriately confined and controlled.

When drafting the scope and purpose, there are two competing considerations that should be balanced:

- They must be sufficiently focused to adequately confine and control the investigation.
- They must be sufficiently flexible so that they can accommodate any changes during the course of an investigation without the need to go back to the principal officer for adjustment.
One of the first steps in planning an investigation is to ask yourself: ’What are the potential sources of information that will assist me to enquire into the matter as defined by my scope and purpose?’

It is useful to break down the sources into:

- documents or things that should exist or that might be obtained (further explained on pages 24 and 25)
- people who might have witnessed events, created documents or handled things.

At this stage, your focus should not be to try to prove or disprove something but to think broadly about all possible sources of information about a matter. The sources may come from within your organisation or externally.

### Brainstorm

One of the best ways to think about avenues of investigation is to brainstorm, either by yourself or with someone else who has a role in managing or supervising the investigation. Brainstorming means trying to come up with as many possible explanations or scenarios as possible. The value of brainstorming is:

- you are encouraged to think very broadly
- imagination and creativity is encouraged
- you do not judge or criticise the answers that come to mind.

An investigation plan will be the foundation of your investigation. It will define what you do, why you do it and when you do it. Its primary purpose is to keep your investigation focused. Before you do any task, see where it fits within the plan and when you have finished a task, mark it off.

An investigation plan can allow the principal officer to review and endorse your approach to the investigation.

The format of an investigation plan is up to you. However, some matters that can be usefully addressed in an investigation plan are set out in Table 1.
# Investigation Overview

A brief narrative about how the investigation came into existence. You should state:

- how the information came to the organisation’s attention
- the specific allegations being investigated
- the general ambit of the investigation
- the general details given by the source
- the results of any other initial enquiries
- why the investigation is being conducted.

## Scope and Purpose

As defined by you (see page 16) and approved by the principal officer or responsible person.

## Resources

Provide an outline of the resources needed to conduct a successful investigation, including:

- people required
- expert opinion required (e.g., medical, legal, accounting etc)
- technical facilities (e.g., computers, laptops, audio/video recording equipment)
- mode of transport (e.g., a car).

## Timeframe

Try to give an estimated timeframe for the investigation. The organisation, however, will be keen for the investigation to proceed expeditiously, for the benefit of all involved. It will also want to know when the resources, currently being used in the investigation, are likely to be available for re-allocation. Consequently, a considered timeframe estimation is sure to be appreciated.

## Affected Persons

Keep a list of people (page 43) that might be adversely affected by the investigation or its outcome. Think broadly about employees, members of the public, supervisors, commercial contractors and the like, who can all fall into this category. It is important to ensure that these persons are afforded natural justice at appropriate stages of your investigation. Accordingly, it is necessary to keep track of who these people are. Incorporating this list into your investigation plan is a convenient way to begin this process. You will need to update this list as your investigation proceeds.

## Responsibilities

Keep a list of everyone who will be assisting with the investigation, including an outline of their roles and responsibilities.

## Risk Management

This section may be more appropriately addressed once the rest of the plan (including the ‘information gathering tasks’ section) has been completed. It is recommended you follow the risk management guidelines contained in the Australian Government’s Risk Management – Principles and Guidelines (AS/NZS ISO31000:2009) involving:

- establishing the investigation context
- identifying risks
- analysing risks
- evaluating risks
- treating risks.

These risk management guidelines can be accessed at www.saiglobal.com.au. You should conduct further risk assessments, systematically, at regular intervals and at any critical stages during the investigation.

## Information Gathering Tasks

See page 19.


3.5 Identifying where you can find information

Information-gathering tasks to include in your investigation plan can be identified through a three-step process.

1 Identify possible outcomes

It is useful to consider the final report that you will be preparing at the end of the investigation. What will be the core matters that you are likely to be addressing in this report? These can generally be gleaned from the terms of reference and investigation objectives that are specified in your letter or document of delegation.

In most internal investigations the possible core outcomes will be one or more of the following.

Possible criminal offences or other bases for referral

- Has the investigation included information that should be referred to IBAC, Victoria Police or another agency?
- Which offence, or other issue, will form the basis of such a referral, and what is the information in relation to that matter that needs to be passed on?

As you prepare your report, you will need to determine whether the material is likely to be of interest to a law enforcement or regulatory agency. If yes, your report should recommend that relevant information be referred to the agency.

Disciplinary matters that need to be addressed by your organisation

- What alleged conduct may form the basis of any misconduct finding?
- At the conclusion of the investigation, it will be necessary to consider whether the evidence discloses, on the balance of probabilities, that a disciplinary offence has occurred.
- In relation to each allegation, or issue arising, of possible misconduct, it will be necessary to make a recommendation on whether disciplinary action should be taken.

Administrative issues

The conduct of an individual may not amount to a disciplinary offence. It may, however, disclose a weakness that warrants some administrative response, such as provision of specific training or personal and professional development.

There may also be systems issues that need to be addressed, such as ways to improve an organisation’s policies and practices to help prevent misconduct in the future.

The information emerging in the course of the investigation will need to be considered in this context and recommendations made, if appropriate.
2 Identify core factual issues

Once you have identified the possible outcomes that you are likely to be reporting on, you are in a position to draw out the core factual issues that will need to be resolved by the investigation and covered in your report.

The core factual issues relating to criminal conduct will normally be found in the legislation creating the offence. These are called the elements of the offence. The core factual issues relating to disciplinary offences can normally be drawn from the organisation’s code of conduct.

It is likely that some different core outcomes will share particular core factual issues.

3 Identify investigation activities

Having identified the core factual issues, you can identify the investigation activities you need to engage in to gather information on each core factual issue.

Information generally falls into one of two categories:

- documents and things
- personal accounts.

It is often useful to consider each category separately in relation to a core factual issue:

- What documents or things could I obtain in relation to this issue? How would I obtain these?
- What witnesses do I need to interview in relation to this issue?

Different people have different preferences for how they set out this information in the investigation plan. Some people will prepare tables detailing possible core outcomes, core factual issues, and activities relevant to core factual issues. Others may prefer to proceed in a simple, narrative format. Be guided by general practice in your organisation and your own preference.

Consider the context

During a fact-finding investigation, it is often useful to look at what happened just prior to the conduct in question and just after the conduct took place. For example, you might look at business transactions that occurred around a particular transaction of interest and look for similarities or differences.

As a rule, it is appropriate to delay interviewing affected persons until the end of the investigation, when you are in a position to put the case against them in its most comprehensive form.

Based on the avenues of investigation you have come up with, you should prepare a list of specific tasks to be performed, and try to arrange them in order of completion (as provided in Table 2).
### Table 2: Sample activities table for an investigation plan

<table>
<thead>
<tr>
<th>Core factual issue</th>
<th>Specific action required</th>
<th>Responsible person</th>
<th>Estimated completion date</th>
<th>Current status</th>
<th>Resources needed</th>
</tr>
</thead>
<tbody>
<tr>
<td>Examine how the process was carried out (break down the procedure into parts or details and look at each part individually)</td>
<td>a. Obtain documents used or created</td>
<td>Staff member X</td>
<td>1/2/16</td>
<td>Completed</td>
<td>Office space, Audio recording device, Photocopier, Plastic bags, Secure network folder on PC or laptop, Transcriber, Notebook, Software (be as specific as possible)</td>
</tr>
<tr>
<td></td>
<td>b. Obtain things used or created</td>
<td>Staff member X</td>
<td>17/2/16</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>c. Obtain information from people involved in the process</td>
<td>Staff member X &amp; Y</td>
<td>29/2/16</td>
<td>Interview arranged (date)</td>
<td></td>
</tr>
</tbody>
</table>
Record-keeping

It is important at start of an investigation that effective systems of record-keeping and ongoing reporting are put in place.

In setting up these systems, consideration should be given to:

- ensuring the integrity of the investigation through secure and confidential storage of sensitive materials generated in the course of your investigation
- the ability to access information, correspondence and other materials generated through the life of the investigation, in an expeditious manner, as you require this material
- the ability to outline and explain all aspects of your investigation to supervisors, reviewing agencies, courts and others who may have proper cause to review your investigation or parts of your investigation. This review may take place considerable time after a relevant investigation event or even after the completion of the investigation. It is preferable if your record-keeping system allows a person who is reviewing your investigation to easily see what information was generated and why particular decisions were made.

Setting up a central file

Organising material in a central file will allow you to see patterns, relationships and details between the many different types of information.

Create a file where you can retain important details of your investigation, as well as documents generated or collected through the life of the investigation. Organise the file so information can be found quickly. Appendix A contains a list of suggested divisions for an investigation file, which you may find useful.

Make a copy

Materials can come in both hard-copy and in electronic form. Make sure you have at least one of each – electronic and hard-copy. Electronic files can have searching and report-generating mechanisms that can be of great assistance. Hard-copy files can be easier to access and to compare or refer to different documents, and are not as susceptible to systems failures.

Original documents and things should be retained in secure and stable circumstances. This will normally be separate to your central working file. Most organisations have a registry or other arrangements for long-term secure storage of sensitive materials. It is generally preferable for original documents and things to be passed into storage in such arrangements. Copies or photographs of these documents or things should be kept on the central working file, along with details of where the original materials can be located.
Confidentiality of information

As you gather more information throughout the investigation, you are able to assess the reliability of fresh information by assessing how it contrasts with information you have already obtained.

This benefit can be undone if information is not kept confidential. A witness who has access to other information that has been released may unintentionally adapt (or intentionally and falsely adapt) their own account so that it is consistent with this other information. Even a witness who is attempting to give honest information may be affected by access to other information. Their account may be ‘contaminated’ by this access.

Case study

Two members of the public approached Antonio, a public official, to complain about the conduct of his colleague, Ben. Antonio wrote down the details of the complaint in a memo and gave it to Georgina, the CEO of the organisation. Georgina called Ben into her office to speak to him about the matter and handed the memo over. It contained Antonio’s name. As a consequence, Antonio was victimised in the organisation and eventually left. There was no malice on the part of Georgina, but there was no reason for the identity of Antonio to be revealed.

Secure your documents

During your investigation, avoid:

- putting information on an unsecured computer
- leaving documents on a photocopier or printer
- leaving incoming or outgoing faxes on a fax machine
- interviewing people in places where they can be seen or heard
- giving confidential information to others to copy, type, address or send
- not redacting names, addresses or phone numbers on some documents
- leaving messages on desks or phone services
- sending sensitive material by mail.
Collecting and handling documents

When considering your avenues of investigation you should ask yourself, ‘What documents might, or should, exist in relation to a particular matter?’ Documents can come from a number of sources. Look for documents that provide information about:

- what the correct procedures were in relation to the subject matter of your investigation
- what was communicated or discussed between the people involved in the investigation
- what records about the process were created by people.

What is a document?

In the legal sense, a document is any record of information, and includes:

- a document in writing
- a book, map, plan, graph, drawing or photograph
- a label, marking or other writing which identifies or describes anything of which it forms part, or to which it is attached by any means whatsoever
- a disc, tape, sound track or other device in which sounds or other data (not being visual images) are embodied, so as to be capable (with or without the aid of some other equipment) of being reproduced from
- any film (including microfilm), negative, tape or other device in which one or more visual images are embodied, so as to be capable (with or without the aid of some other equipment) of being reproduced from
- anything whatsoever on which is marked any words, figures, letters or symbols which are capable of carrying a definite meaning to persons conversant with them.

Some common documents that might be relevant to your fact-finding investigation are policies and procedures, standard forms, internal minutes, faxes, letters, emails, minutes of meetings, spreadsheets, invoices, assets registers, contracts, cheques, maps, computer programs, tape recordings, photographs and video surveillance tapes. Many documents may not be paper-based. You may need to search a computer in order to find relevant documents.

Trace the history of the document:

- Where did the document come from?
- How did it get there?
- Who has seen it?
- Who created it?
- What was the purpose of the document?

Find the meaning of the document:

- Where was the document found?
- Where was it before?
- What have people done to the document?
- Why was it created?
- Who was it created for?
- What was the intended reader of the document likely to understand by it?
- What does it mean to you?
Record-keeping

Intercepting emails
There are privacy issues concerning unread emails. It can be unlawful to intercept emails if they are not received by the intended recipient. You should seek legal advice on this matter, if required.

Make copies of every document
Each document that you obtain should be copied or backed up. You will usually need more than one copy. Secure all the originals after copying. Have at least one copy that you can work with, tag, highlight or write on, and one clean copy from which to make other copies.

Collecting and handling things
When considering your avenues of investigation you should ask yourself, ‘What things might have been used or created in relation to the subject matter of the investigation?’

What is a thing?
A thing is defined as ‘a material object without life or consciousness; an inanimate object’.

When assessing the reliability of a thing (and, therefore, its value as evidence), it is important to assess its history. The more questions that you can answer in the following tip, the more reliable the thing is likely to be.

Trace the history of the thing
• Where did it come from?
• Where was it found?
• How did it get there?
• Where was it before?
• Who has seen it?
• What have people done with it?
Computers

Computers play such a critical role in most businesses that it is difficult to engage in any business activity, proper or improper, without some computer involvement. Accordingly, they are usually a primary source of relevant documentary material.

It is important to get expert help if you want to search a computer for documents. Specialist technical experts can make exact copies of computer hard drives to enable you to analyse information on the computer without the original computer. Failing to use experts can have adverse consequences on the value of any evidence that may be stored on a computer.

When dealing with computers, remember that information may be stored:

• on a network (speak to your IT unit about how to access or obtain information from a network)
• on the computer’s local drive/s.

Very little information is lost from hard drives, even when you think documents were deleted. Experts may be able to tell you when a document was created, who modified it, when it was printed, and what printer was used. You may be able to find evidence about all documents that were created on the computer since the time it was set up.

Remember that emails can be a valuable source of information. Often there will be no paper copy, so getting the details safely off the computer is essential. Look also for other things on which data might be stored, such as read-and-write CDs, DVDs and USBs.

Storing things and documents

It is important that things and documents you collect in the course of your investigation are properly stored to avoid loss, damage or contamination, and to preserve their integrity as evidence.

Things and documents can be stored in clear plastic sleeves or resealable bags but should be stored in paper bags if the item is likely to susceptible to condensation or become mouldy. Security-sealed bags can be used for highly-sensitive or valuable things, such as money or drugs.

Suspected illegal drugs

In the case of suspected illegal drugs, police should be notified as continued possession of the drugs may constitute a criminal offence. In any case, analysis of the substance may be necessary to establish whether it is an illegal drug.

Take care with hard drive contents

If it is likely that a computer contains documents that will be used as evidence, you should not open these documents without first having a mirror image copy of the hard drive made. Interrogate this copy of the hard drive rather than the original, because even opening and saving original documents alters their value as evidence. This should be done by an expert.
Label and secure things and documents

Place a secure label on the bag and write an identifying description or code on the label. The label should identify where the document or thing came from, who received it and when. It is also useful to record on the label the details of any access to the document or thing, together with the viewer’s signature or initials. This ensures the document or thing will always be recognised as the piece of evidence collected by you or handed to you, and will avoid any allegations that it has been altered or tampered with.

Once items have been suitably bagged and labelled, they need to be secured. The custodian should retain personal and exclusive custody until such time as the items are tendered as an exhibit in a court or other hearing (if this becomes necessary) or are returned to their owner/s. Where a document or thing may be required as evidence, a court will need to be convinced that it is in the same condition as when it was received. If the chain of custody and the integrity of the exhibit cannot be shown, it may not be accepted as evidence.

Record all access to, and transfer of, possession

The authenticity of the document or thing depends on the circumstances of its creation, the circumstances of its acquisition during the investigation, and the fact that it has been retained in circumstances where there is no reasonable possibility that the document or thing has been interfered with or changed since its acquisition.

To preserve the integrity of an exhibit during the time that you retain it for investigation purposes, a record must be made of any access to the thing or document, or any transfer of possession. This record must include:

- the description of the item (including any reference number)
- the name of the person accessing or receiving possession of the item
- the name of the person from whom the item was received or who granted access (this should be the custodian)
- the purpose for which the item was accessed or transferred
- the time and date of the access or transfer.

This record should be signed by both parties. A similar record needs to be made of each subsequent access or transfer until the item is tendered as evidence or returned to the owner.

Issue receipts for documents

This will assist the source person or agency to maintain their records, and allow others to follow the documents trail. Keep copies of these receipts with the original documents, as this will help avoid any allegations that you:

- took documents against a person’s will
- manufactured a document, or
- secretly or covertly took the document and, therefore, were not upfront in your dealings with a witness.

Consider photographing objects

Handling objects can be cumbersome. Take a photograph of the object, preferably where you found it. The photographs can be shown to the people involved, and may avoid the need to unnecessarily handle an object. It also enables you to include representations of the objects in your file and ultimately in your report.
Tracking your investigation

Information register

Keep a record of all information or items received from others, including those you requested.

Table 3: A sample information register

<table>
<thead>
<tr>
<th>Document or thing provided</th>
<th>Date/time</th>
<th>Provided by name/signature</th>
<th>Received by name/signature</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Chronologies

A chronology is a basic analytical tool that organises material according to date. Chronologies are extremely useful for analysing the time flow of a process, and can identify gaps or delays in the process where something may have occurred that needs to be looked at. They also help you when you need to prepare statements in chronological order.

Flow charts

A flow chart is a useful tool for analysing the way that a process has been, or should be, carried out. Flow charts can identify the order that a process is meant to follow and who is responsible at any particular point. They can also help to identify what documents might be created at a particular point, and what approvals might be required.

People charts

A people chart is a useful tool that, like a flow chart, visualises the relationship between people in a matter.

Running sheets

In order to demonstrate what you have done and when you have done it, it is useful to use running sheets to detail the actions you have completed. A running sheet is an ongoing chronology of what you have done in an investigation. This would include phone calls, letters, conversations and interviews. A running sheet should detail the time and date of an event, a description of the event, and who was involved. Sign or initial the entries that you create.

Contemporaneous notes

Contemporaneous notes are notes taken by you during or immediately after an event. They have the benefit of making your recollection of an event more reliable. The more detailed the notes are, the more valuable they will be to the outcomes of the investigation. It may be useful to carry a notebook with you to record details of conversations. These notes should always be signed and dated by the creator (that is, you). Authenticate the note by having a reliable person witness the notes by adding their signature and the date.
Drawings and diagrams

Drawings and diagrams allow you to visually organise information. You might get a witness to draw a diagram of where they were or what the layout of a room was like. Witnesses should be asked to sign and date any such diagrams. These can help you see spatial relationships between objects or people.

Graphs

Graphs are a useful way to present numerical information, such as money received or items sold, and can make trends or unusual occurrences stand out.

Scanned documents

Scanning documents is a useful way of capturing all details of an original document on a computer system. With appropriate software, you may be able to search and retrieve information from scanned documents. Scanning documents also enables you to store them inexpensively and in one central location.

Photographic and video records

Taking a video or a photograph of a room, a person or an object allows you to capture information. Photographs and videos are much easier to handle than the original object. They can be copied and pasted into your report and copies can be easily shown to witnesses.
The secret to gathering information is to try, in the first instance, to get everyone’s cooperation. People are more likely to provide useful information if you:

- advise them of the general purpose and importance of the request
- do not demand or threaten
- explain how they are making a contribution to the organisation
- let them know you have the support of the principal officer of the organisation in writing.

What are your formal investigation powers? Check with your legal unit for an accurate description of any powers you may have to gather information. Powers to conduct an investigation are usually found in:

- your organisation’s legislation and regulations
- employment agreements or awards
- contracts
- codes of conduct
- employment law and the common law
- workplace surveillance legislation.

### 4.1 Conducting interviews

When you are recording a witness’ account by way of interview, this is usually so you can safeguard the integrity of their account. In these circumstances, it is wise to reduce the pre-interview conversation as much as possible, so that all relevant discussion can take place on the record. Once the interview has started, it can be useful to back-capture the pre-interview conversation that has taken place. For example:

**Q.** Do you agree that you have attended here today of your own free will for the purpose of participating in an interview?

**A.** Yes.

**Q.** Do you agree that when I invited you to attend for interview, I told you that I was conducting an investigation into an alleged altercation that took place during a work meeting on Tuesday 6 December 2015?

**A.** Yes.

**Q.** Do you agree that, since your attendance at these premises, apart from me introducing myself and providing you with an outline of the process that is to take place, there has been no further discussion between us on the matter?

**A.** Yes.
Prior to the interview, make sure that you are thoroughly prepared. This is essential to ensure the interview is comprehensive, so that all matters that should be commented on by this witness are addressed. It is also important for ensuring that the interview is as focused and concise as it can possibly be. Although you have adopted this approach to safeguard the integrity of the witness’ account, there is still a need to strive for a document that lends itself to efficient and effective use during the course of the investigation.

At the start of the interview, record the following:

- time, date and location of the interview
- brief details of the matter being looked into
- details of everyone present (including you and any support person)
- a short explanation of how the interview will proceed
- details of the person’s name, date of birth, address and occupation
- the person’s consent to recording of the interview.

During the course of the interview, remember that your aim is to obtain the witness’ own account of relevant events, uncontaminated by other issues and influences (including yourself).

For this reason, it is necessary to ask non-leading questions (for example, ‘What happened?’). Leading questions can inappropriately influence the integrity of a witness’ response (for example, ‘Weren’t you standing on the corner about two metres from the fight?’).

Leading questions may appropriately be used to efficiently record information on matters that are not in issue (for example, ‘Do you agree that the time is now approximately 10.25 am?’).

At the end of the interview, you should ask the witness the following questions to ensure they accept the manner in which the interview was conducted:

- Is there anything further you wish to say about the matter?
- Do you have any complaints about the way the interview has been conducted?
- Have your answers been given freely and without threat, promise or inducement being made by anybody?

You should give the witness a copy of the record of interview, unless there are good reasons for not doing so. If there is a real prospect that the witness will make the record available to other people, who are yet to provide an account, this may be a good reason for refraining from providing the witness with a copy of the record of interview.
4.2 Interviewing witnesses

Routinely, a primary source of information and evidence relevant to a fact-finding investigation is the recollection of individuals.

When interviewing witnesses, all attempts should be made to put the interviewee at ease so as much information as possible can be gleaned.

Use open-ended questions

- Who was there?
- What happened?
- Where did it occur?
- Why was that?
- When did it happen?

There are many ways the accounts of different witnesses may be relevant to your investigation. As well as being able to provide information, they may have relevant expertise or may be able to authenticate a relevant document or thing.

Use the TED method when interviewing witnesses

- T – Tell me about what happened.
- E – Explain to me how it worked.
- D – Describe to me the circumstances.

Everyone responds differently

Avoid making assessments of a witness’ demeanour. Everybody responds differently to being interviewed. Many innocent people can react strangely to being interviewed simply because of the pressure of being interviewed.
There are a number of considerations that impact on the process of obtaining a witness’ account:

1. When recording a witness’ account, it is critical that you capture as closely as possible the person’s own account, uncontaminated by your process or other influences by:
   - avoiding leading questions as you elicit information
   - recording the account given as accurately as possible, in the words used by the witness.

2. How you record a person’s account will depend on the circumstances of the person and the evidence they can provide. The prime considerations are:
   - ensuring the integrity of the recorded account
   - ensuring the efficient management of the account.

These two considerations often conflict with each other. A statement from a witness can be concise and easy to manage, but can be more open to manipulation or allegations the witness’ account has been manipulated. Electronically recorded interviews provide greater assurance as to the integrity of the account, but can be unwieldy to manage over the length of an extended investigation.

In some circumstances, there is little prospect of manipulation or allegation of manipulation; for example, an account about ownership of property in a theft situation, an account about the authenticity of a business document or an account from a clearly impartial witness of the observations they made of relevant incidents. In these circumstances, it is generally appropriate to record the witness’ account in statement form, which will be easier to manage during the life of your investigation.

On other occasions, there is greater scope for manipulation or allegation of manipulation; for example, an account of a person, who is the subject of the investigation, made against their interests, or an account of an alleged accomplice made against the interests of the principal party. In these circumstances, it would be more appropriate to electronically record the person giving their account to assure the integrity of the account.
3. It is important the recorded account deals comprehensively with all matters relevant to the investigation. This requires substantial preparation. The investigator needs to have reviewed all the existing evidence and have anticipated all issues the witness could appropriately comment on.

It is often useful to prepare a list of issues that need to be canvassed. This list can be reviewed before, during and at the end of the process to ensure that all relevant matters are appropriately canvassed.

You need to be aware of matters that could arise during the process of recording a witness’ account that could warrant further exploration beyond that initially planned. While pre-interview preparation is essential, try not to confine the process of obtaining the witness’ account.

4. Generally, the most appropriate means of recording the witness’ account is to start at an appropriate and designated beginning point and move chronologically through matters of relevance the witness can comment on, through to an end point.

5. Be mindful of the fallibility of human observation and memory. Even a truthful witness can provide an inaccurate account. You should be alert to areas of possible fallibility and draw out contextual material that will allow for a more accurate assessment of the reliability of the account. When a witness gives evidence of relevant observations they made, evidence of the circumstances in which they were made might need to be obtained. How far away were the relevant incidents? If the observation was made at night, what was the lighting like? Over what period of time was the observation made? Was it fleeting or over an extended period of time? Did the witness have prior knowledge of the people?
6. Be mindful that some witnesses will give an intentionally false account. Other witnesses will give accurate evidence about some things and false evidence about other things. Consider the following when dealing with a witness who you believe may not be telling the truth:

- You should obtain accounts from all relevant witnesses, including those you consider to be untruthful. You need to demonstrate your investigation is comprehensive. In addition, even if your determination is unlikely to be affected by the account of a witness you believe is untruthful, this does not mean that others, who may review your determination, will have a similar view of the value of the witness’ account. It is important that such people have access to the accounts provided by all relevant witnesses.

- A good way of determining whether a witness is telling the truth is to assess how their account contrasts with other available evidence. An account that is in stark contrast with other reliable evidence needs to be examined closely as possibly being untruthful. During the examination, it is important you lead the witness through relevant areas so that this contrast analysis can take place. When there is conflicting evidence, look closely at the contrast and avoid any preconceptions so as to glean what the implications of this conflict could be.

- Drawing out the false aspects of a person’s account in a recorded form can be beneficial. This approach can draw the witness into a completely untenable situation, where the false nature of their account is obvious. Confronting the witness with the untenable nature of their account may encourage them to review their approach and provide truthful evidence.

- It is important to maintain the confidentiality of your evidence. You should only forgo this confidentiality for a proper investigation purpose, and only to the extent that is necessary for this purpose. If you disclose alternative evidence to highlight to a witness that an account that they have given is untenable, it is advisable only to disclose as much as is needed to highlight these circumstances. It is common for witnesses in these circumstances to say they are now going to tell the truth, only to proceed with more false statements. They may do this by attempting to second-guess the evidence you may possess and adjust their lies to accommodate this. In these circumstances it can be helpful to have further evidence against which the witness’ new version can be compared. This will help in assessing whether the witness is now being truthful.
4.3 Interviewing affected persons

There are a number of additional considerations when interviewing an affected person.

Try to interview a witness only once. More than one interview creates inconvenience for the witness and can present administrative difficulties for you and your associates during the life of the investigation. Participating in an interview when you stand to be adversely affected by the outcome can be particularly harrowing. Often the person's employment hangs in the balance or worse. Ensure that such a person is only put through this ordeal once.

Let them know in advance

Give an affected person sufficient notice before the interview. This ensures they have time to prepare and can adequately respond to questions.

Give the affected person some notice of the nature of the allegation that is being investigated and, in particular, how the result could adversely affect them. Tell them they can have an independent observer at the interview. This person should not be relevant to the investigation in any way. Remind the observer their purpose in attending is to observe the process, provide support and act as an advocate for the affected person.

If required, make special arrangements to provide assistance (such as qualified interpreters) for people with communication difficulties (such as language or an intellectual impairment).

As mentioned earlier, you should refrain from unnecessarily imparting confidential information during an interview. You have an obligation to allow an affected person to respond to every matter that may have adverse implications for them, which may mean putting matters to them that you would otherwise keep confidential.

If you fail to put a possibly adverse matter to an affected person, you may have to hold another interview. Sometimes, a slight oversight of this nature can be overcome more conveniently through correspondence (through which the person can have the opportunity to put forward their position).

An affected person is generally given a broader opportunity to make comment. They should be given an opportunity to comment on the matter towards the end of the interview, after all matters that have possible adverse implications for them have been put to them.


\section*{4.4 Taking statements}

When you take a statement, work with the person to develop it. You might get the person to give you a written version of specific events or details and then use this to form the basis of a statement. On other occasions, you will have to sit with the witness and, from the outset, convert their oral account into a written form. On completion of a draft statement, leave it with them for a period of time so that they can consider additions or amendments. Ultimately and collectively, you should arrive at a statement that addresses the issues you want addressed, but reflects the recollections of the witness.

When taking a statement from a person remember to:

- identify the person, their position, and age
- frame the statement in the first person; for example, ‘I saw...’ and ‘I heard...’
- use the person’s own words or phrases
- ensure that it addresses issues in a chronological order
- record conversations in direct speech: ‘I said, “[exact words]”, and then she said “[exact words]”’
- refer to documents or things used by the person and attach copies of them to the statement. In the person’s statement say, ‘I produce that document/thing being a [describe the document or thing]’
- have the person sign and date the statement, and initial any handwritten changes on the document
- rule-through any blank spaces at the end of the statement to avoid the possibility of additions being made later.

The form of the statement can vary according to the circumstances in which it is taken. Your organisation may have a template for statements taken for disciplinary or administrative purposes. If so, it is appropriate to use this, unless there is good reason to adopt a different format.

\begin{itemize}
  \item Use the appropriate format
\end{itemize}

If the statement may ultimately be used in civil legal proceedings, it may be appropriate to obtain the statement in an affidavit form that can be sworn before a justice of the peace or a solicitor, and ultimately used in those civil proceedings.


4.5 Information requests and searches

You have the power to request that any employee answer a reasonable question or provide a document that relates to or involves the work of the organisation.

If employees refuse to answer questions or hand over documents, this may be a disciplinary matter. A refusal to answer or provide documents, however, does not help you gather information. Encourage people to answer your questions by being reasonable and respectful. If a person fails to answer a reasonable question, take that into account when assessing their credibility.

4.5.1 Searches

You should generally be able to search any locations or property belonging to the organisation. This includes offices, vehicles, computers, desks and bins. You will need to get approval in writing from the principal officer. A search is only appropriate if you feel that information may be destroyed or lost if a request to produce the information is made.

Seize and secure as soon as possible

Whenever possible, documents and emails should be seized and secured as early as possible into the investigation. Confidentiality is hard to achieve and as soon as people realise they are being investigated, they will destroy any incriminating records.

Show a written request from the principal officer

When gathering documents, it is useful to show a written request from the principal officer of the organisation asking for the full cooperation of its employees.
4.6 Surveillance

4.6.1 Recording conversations

The *Telecommunications (Interception and Access) Act 1979 (Cth)* makes it illegal for you to intercept phone calls or emails prior to them being opened by the receiver or to record and listen to anyone’s private conversations, including employees. Do not record people’s conversations unless you are a party to the conversation and all the people present consent to the recording or it is done to protect the organisation’s lawful interests (in which case you should seek legal advice).

Do not accept recordings of conversations from people. Advise them that it might be illegal for you to do so. Get them to tell you why it was recorded, the circumstances of how it was recorded, and the details of the conversation. If they tell you it relates to a crime, suggest they take it to the police or their own lawyer to obtain legal advice.

4.6.2 Video surveillance

Overt videotaping of the organisation’s premises is allowed as long as express or implied consent to such taping is received from the person(s) whose actions may be recorded.

4.6.3 Email and internet surveillance

Overt monitoring of email or internet usage can take place in certain circumstances. If an agency intends to conduct electronic surveillance of its employees, it is mandatory for employers to publish and implement a policy which makes it clear that, as a condition of providing internet access to employees, the employer is conferred the right to conduct reasonable computer surveillance. You should obtain legal advice before considering this action.

4.7 Authenticating documents

When analysing documents, you need to be able to say that it is an authentic or reliable document, and that you are confident enough to rely on it to find the facts.

You can ‘take official notice’ of common documents that are unlikely to be in dispute or are well known. This means that you do not have to prove the reliability of each and every document. Some common examples are organisational charts, relevant legislation or the location of departments.

People may create false or misleading documents to support a version of events.

Simple checks, such as the following, may reveal or suggest fakes:

- photocopied or electronically printed letterheads
- false or incorrect phone, facsimile or ABN numbers on company letterheads, invoices or receipts
- companies are involved in totally unrelated business to the subject of a tender
- documents have figures or amounts covered with correction fluid
- falsified approvals.
Piece it together

Some people may destroy or delete documents to prevent the truth from being uncovered. Be suspicious if you come across a function in your organisation that has no associated documentation. Try to piece together what documents should exist and check computer logs, and perhaps even get documents from people to whom they were sent.

4.8 Using experts

Ultimately, it is up to you to determine whether a document is authentic or reliable. Sometimes, however, you may need expert help.

Document examiners can provide useful information on documents. Using scientific techniques, document examiners may be able to identify:

- who signed a document (handwriting analysis)
- when a document was created (paper and ink analysis)
- what alterations may have been made to a document
- when and where the document was printed.

When taking or obtaining a statement or a report from an expert, get them to:

- detail their area of expertise
- detail what qualifications and experience they have in this area of expertise
- detail what information was provided to them on which to base their opinion
- state what their expert opinion is on the matter and what work or analysis they undertook in arriving at the expert opinion.

Common areas where experts might be required to provide advice include:

- physical or mental illnesses
- accounting or financial matters
- computer or machine functioning
- scientific analysis of documents or things.
4.9 Ongoing reporting to supervisors

Internal investigations can be highly sensitive. Whoever is overseeing your investigation in an executive capacity is likely to want to closely monitor such a sensitive process. It can also be in your interest to have the close involvement of those to whom you are responsible.

There are benefits in having your organisation’s executive work closely with you during the process. These include:

- It is the executive that asked you to conduct the investigation. Their ongoing involvement can provide you with the reassurance that you are meeting the executive’s and the organisation’s investigation needs. Wherever possible, the person overseeing your investigation should not be the same person who will, ultimately, make the final decision concerning potential disciplinary action against individuals.

- Responsibility for sensitive or controversial decisions can be shared or, in appropriate circumstances, taken over by the executive. However, it should be noted that unnecessary referral of responsibility can be highly inconvenient for the executive, time consuming and organisationally dysfunctional.

- Often the executive has skills and experience that can add value to your investigation.

It is recommended that you put a system in place for regular reporting. Ad hoc reporting arrangements can easily dissipate into non-reporting.

It is also advisable that face-to-face briefings are preceded by written reports. These can convey information in a succinct fashion, give the executive an opportunity to consider implications or developments prior to a meeting, and free up time during the meeting to discuss the more crucial aspects of the investigation. These also allow the executive to retain a convenient record of developments.

The type of information that might be provided in a written report to the executive includes:

- a brief summary of the circumstances of the investigation. A summary can assist them to recall what the investigation is about and the important developments (information about which had been provided to them previously)
- an outline of developments since the last report
- an outline of actions that are planned for the next reporting period
- details of any significant decision of which the executive needs to be aware.

Keep documents secure

Remind the person receiving the reports to keep them secure and not leave them lying around.
Natural justice and procedural fairness

Good process, when well implemented and seen to be well implemented, provides reassurance to all staff.

Staff will recognise if an allegation is made against them in the future, steps will be taken to ensure the matter is properly investigated and that the impact on them, including having the opportunity to have appropriate input, will be considered and thoughtfully managed.

People who have engaged in inappropriate conduct often seek to off-load responsibility. Poor process can allow them to denounce the investigation and the organisation. Sometimes this can be done quite legitimately if the investigation process has been poor. Good process, when well executed, tends to make people more accepting of an investigation outcome and more willing to take on responsibility for the ramifications of their own actions.

A good investigation process requires commitment to being objective and comprehensive. An investigator needs to:

- obtain all relevant information and from the best sources
- consider all possible explanations for the information
- consider the information that may be favourable and unfavourable to each person against whom allegations have been made.

Public sector agencies are generally required by legislation to afford procedural fairness to persons who are the subject of disciplinary proceedings. If notification of the subject of an investigation, or a person who may be adversely affected, is likely to inhibit the investigator’s capacity to obtain important information, notification should be delayed.

The conduct of interviews and fair treatment

- Give the officer at least 24 hours’ notice of the interview.
- Give the officer prior notice of the allegations that will be discussed during the interview.
- Give the officer the opportunity to have an observer at the interview.
- Provide interpreters, as required.

The confidentiality of all the information you’ve gathered is probably the best way to ascertain the truth. However, a person who is the subject of an investigation, or who may be adversely affected, must be afforded a fair opportunity to respond to all allegations. This means they must be provided with details of the allegation before an interview, to allow them to properly prepare for the interview. These competing considerations may require delicate balancing on your part.

Where there is a conflict between maximising the effectiveness of the investigation to get to the truth and ensuring appropriate fairness is afforded to the relevant officer, you must always give priority to ensuring that the officer is treated fairly.

Notify complainants of any delays

Any delay should be no longer than is necessary for the proper investigation of the complaint. A written record should be made that the investigation has been delayed and the reasons for this.
Treatment of affected persons

There are three core principles associated with the fair treatment of affected persons:

- Steps should be taken to minimise the harm incurred by any person, including affected persons, during the course of an investigation.

- A person who stands to be adversely affected by the outcome of an investigation should be given an appropriate opportunity to present information and arguments in support of their position.

- An investigation must be, and be seen to be, conducted impartially.

Table 4: List of affected persons

<table>
<thead>
<tr>
<th>Affected person</th>
<th>Possible adverse comment</th>
<th>What did the person say in response?</th>
</tr>
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</tbody>
</table>

Keep a list of affected persons

It is a good idea to keep a list of affected persons, starting it at the beginning of your investigation and updating it as you go. Continually ask: ‘Who am I likely to make an adverse comment about during my investigation?’ The list may change during the course of your investigation.

For each affected person, ask yourself the following before you write your investigation report:

- Were the affected people given the opportunity to respond to all possible adverse comments?
- What did the person say about the possible adverse comment?

An example of a list of affected persons is at Table 4.
Adverse effects

When conducting an investigation, there are many possible adverse effects on both people within the organisation and externally. An adverse finding or comment can:

- affect a person’s reputation in the workplace and elsewhere
- embarrass the person
- open them up to the risk of a sanction, such as dismissal or a fine
- make them subject to harassment in the workplace
- cause the loss of contracts or work
- result in the refusal of an application or licence
- result in less favourable conditions of employment and allocation of work.

Dealing with dissatisfaction

It is not unusual for complaints to be made regarding how investigations into misconduct are conducted. The high stakes and associated stress for the participants heightens this possibility. It is known that some parties make tactical complaints in an attempt to discredit the investigation process. Taking a proactive and professional approach to dealing with dissatisfaction demonstrates that you are committed to conducting a fair and impartial investigation.

There are numerous reasons why someone might complain, for example:

- a source thinks you did not take their allegations seriously
- a witness thinks you used an intimidating manner during an interview
- the subject believes you have infringed their privacy
- the subject believes they have been targeted unfairly, or unlawfully.

Understand your organisation's policies and procedures for dealing with dissatisfaction, as you will be better prepared if you have reviewed these materials before a complaint is made. Some examples of the documents you may need to review include:

- employee grievance procedures
- privacy policy and complaints procedures
- employment agreements
- complaint handling policy.

Invite feedback

Be proactive and invite feedback from people you deal with regarding whether they are satisfied the steps taken in your investigation are fair. It is better to identify and deal with dissatisfaction early than allow it to undermine confidence in the objectivity and professionalism of your investigation.

If a complaint cannot be resolved through your organisation’s processes, demonstrate your commitment to accountability and transparency by explaining how the matter can be escalated, for example by making a complaint to the Ombudsman, Privacy and Data Protection Commissioner or Victorian Equal Opportunity and Human Rights Commission depending on the circumstances.

The Ombudsman publishes a guide to good complaint handling for public sector agencies which is available at www.ombudsman.vic.gov.au and training in complaint handling is also available.
5 \ Analysis and reporting

At the end of the fact-finding phase of an investigation, you often find yourself with a vast amount of information and evidence that you have to combine, organise and apply to reach your core determinations.

This section of the guide provides advice on using this information and evidence to make relevant and meaningful findings and recommendations.

5.1 What are the determinations that need to be made?

When preparing an investigation plan, it is important to consider the final report you will be writing, and to identify the core issues or outcomes you are likely to be addressing in this report.

Just as these core issues guide the planning for an investigation, they also guide the analysis that takes place at the end of the investigation.

You will recall that in most internal investigations the core issues will be:

- whether the evidence should be referred to a law enforcement agency for its consideration
- whether disciplinary action should be taken against an employee or employees
- whether administrative action should be taken with respect to an employee, employees or the organisation.

Out of the core issues will emerge the core findings of fact that need to be made to resolve these core issues. These will be matters such as:

- Did the employee manipulate the tender process?
- Did the employee receive a corrupt reward?
- Did the employee have a conflict of interest?

Your analysis of the available evidence should start with a re-evaluation and re-assertion of the core factual issues for consideration. The evidence analysis process then involves assessing the evidence relating to each of these factual issues with a view to making findings of fact in relation to these.

5.2 Resolving core factual issues

Your findings of fact must be based on the evidence you have collected during your investigation. Remember, this evidence will generally fall into two broad categories:

- documents and things collected
- witness accounts.

You must work from the evidence you have collected to arrive at a factual determination. Do not seek to justify a predetermined view by drawing out evidence that might sustain this. Each piece of evidence needs to be considered in terms of its:

Relevance: how does this piece of evidence, if accepted, impact on the core factual issues for determination, and

Reliability: reliable information is what you consider to be accurate, and you are confident enough to use to make a finding of fact. Assessing the reliability of evidence means working out whether:

- documents are authentic or genuine, and you know what they mean
- things have been used, and you know what was done to them and where they have been, and
- people are credible and trustworthy, and they are accurate in stating what they perceived.

Having considered each piece of evidence individually, it is necessary to consider all the evidence relating to a particular factual issue in order to resolve that factual issue.
5.3 Relevant standards of evidence

In relation to each factual issue, you have to decide whether that issue is made out or not. There are different levels, or standards, to which you can be satisfied:

- you can be satisfied beyond absolute doubt
- you can be satisfied beyond reasonable doubt
- you can be satisfied on the balance of probabilities
- you can reasonably believe the factual issue is true.

It is important that you apply the appropriate standard for the decision-making circumstances that you are operating within.

Criminal offences

Never make a finding in a report that a person has committed or is guilty of any criminal offence. It may be appropriate, however, to make a finding that there is sufficient evidence to warrant referring the matter to Victoria Police, IBAC or another appropriate agency.

Whether disciplinary offences are made out is routinely determined on the balance of probabilities. Whether administrative action should be taken is also usually based on facts determined on the balance of probabilities. There is a need to be mindful of the principle discussed in *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 67 ALJR 170. The essence of this principle is that the more serious the ramifications of an adverse finding, the more substantial the evidence needed to make such a finding.

5.4 Writing the investigation report

At the end of your investigation, you will prepare a report for the person or body that commissioned the investigation. Your organisation should consider whether the report (or any part of it) is to be made public and how that will be managed. This is particularly relevant where there has been media interest in the investigation.

The precise format of your report is a matter for you in the context of your particular investigation. If your organisation has a template for such reports, you should be guided by this template.

Below is a sample format for a final report on an investigation. A template is also provided in Appendix B.

An executive summary

This provides an overview of the whole report. It should provide short details of:

- how the investigation came about
- the nature of the investigation process that took place
- the nature of the evidence that emerged from this investigation
- the determinations or recommendations that you made based on this evidence.

It is common practice to prepare this part of the report last, after all other parts of the report have been completed.
An introduction to the investigation

This is likely to include:

- an outline of the circumstances that gave rise to the decision to hold an investigation
- an outline of the circumstances in which the investigation was delegated to you, the investigation scope and purpose and the objectives that were detailed in that delegation
- an outline of the investigation process that took place including:
  > the duration of the investigation
  > the resources applied for investigation purposes
  > the investigation processes applied including:
    - documents and things accessed
    - witnesses spoken to
    - problems or investigation impediments encountered

An outline of the evidence that emerged during the investigation

The evidence emerging from the investigation should be outlined in chronological order. It will not be possible to incorporate all the evidence directly into the report. Accordingly, the evidence, as disclosed in the report, will be in summary form. It is important to include a reference to all relevant evidence, not just the evidence that will support your final determination.

As the evidence outlined in the report will be a summary, sometimes it is appropriate to attach copies of relevant documents and witness accounts to the report. In these circumstances, it is also common to cross-reference your evidence summary to specific documents. For example:

  Mr Smith indicated that he had personally prepared his company’s tender (see Smith record of interview A. 22).

Whether this is done will depend on the nature of the delegation made to you. If you are asked to investigate and make determinations yourself, the report constitutes your explanation for the determinations you made. In these circumstances, it is usually not necessary to attach copies of documents and witness accounts. If your determination is the subject of some kind of an appeal by an affected party, it would be appropriate to forward your report, together with the actual documents generated in the investigation, to the person who will be responsible for considering this appeal.

It is more common that you will be asked to investigate and make recommendations. In these circumstances, the actual determinations will be made at a more senior level in the organisation. The person who will make the relevant determinations should have access to your report as well as direct access to all relevant evidence.
An outline of your analysis of the evidence

The main chapters of this guide canvassed how to analyse your evidence to reach relevant conclusions. You need to report on this analysis process in your final report. In doing so, you may:

- identify the evidence relevant to each core, factual issue
- analyse this evidence to make a determination on each core factual issue.

An outline of your findings of fact

Here you will list the findings (conclusions) that you have drawn from a reasonable analysis of the evidence gathered. Each finding should be a separate, short statement. For example:

**FINDING 1:** That [name of affected person] between [date] and [date] [identify inappropriate activity, for example, ‘breached code of conduct procedure no. 4 concerning the receipt of gifts and benefits’] by [describe how the breach occurred, for example, ‘accepting free plane tickets while negotiating travel contracts’].

An outline of findings and recommendations

The delegation that gave rise to your investigation will either require you to make findings, or make recommendations to others, who in turn are to make determinations. The guidance provided below relates to the latter, and more common, scenario.

Recommendations are based on the evidence generated by the investigation and your analysis of this evidence. They are usually located with the analysis, which culminates in the recommendation. In a conventional internal investigation, there are generally three types of recommendations:

1. A recommendation as to whether the evidence warrants referral to another agency, usually a law enforcement agency. Possible recommendations include:

   - I recommend the evidence generated by this investigation be referred to Victoria Police for its consideration as to whether criminal proceedings should be commenced against John Smith for an offence of solicitation of a secret commission by an agent.
   - I am not of the view that there is sufficient evidence to warrant referral of this matter to Victoria Police for its consideration as to whether John Smith has committed any criminal offence and I make no such recommendation.
2. A recommendation as to whether a person or group of people should be dealt with in accordance with the agency’s disciplinary procedures for the commission of a disciplinary offence. Possible recommendations include:

- I recommend disciplinary action be taken in relation to John Smith, pursuant to policy, for his failure to take reasonable action with respect to a conflict of interest, in that he remained on a tender panel with the knowledge that his own firm had submitted a tender, and he made no declaration to the panel or his supervisor of his conflict of interest.

- I am not of the view that there is sufficient evidence to warrant taking disciplinary action against John Smith for any failure on his part with respect to any conflict of interest, and I make no such recommendation.

3. A recommendation as to whether administrative action should be taken. This can relate to the employment of a particular person or a group of people. Alternatively, this can relate to an organisational matter. Possible recommendations include:

- I recommend John Smith be placed on restricted duties until such time as there is further medical evidence available that satisfies the director that Mr Smith is medically fit to return to full duties.

- I recommend this organisation refrain from engaging in any works that may cause equipment to come within 10 metres of high voltage electrical wires until such time as a full review of safety procedures, in relation to working close to high voltage electrical wires, has been completed.

5.5 Potential outcomes

At all times, it is important to be mindful of the investigation outcomes you are working towards. Keep in mind that these outcomes are likely to be determined by the nature of your organisation.

When conducting a fact-finding investigation, you may suspect that individuals have engaged in criminal conduct. Your organisation is not a criminal investigation organisation and is not equipped to conduct criminal investigations. If these concerns arise, it will be necessary to notify Victoria Police and potentially provide material to that agency at an appropriate stage.

Remember when conducting your investigation you will be closely examining particular parts of your organisation’s operations. The scope of your investigation may include analysing and making recommendations to help improve the organisation’s policies, procedures and systems to prevent similar issues in the future. If so, this is a positive outcome of a thorough investigation.
Appendix A: Creating an investigation working file

You might consider the following divisions within your central working file.

Confidentiality issues
Keep any information about confidentiality issues at the front of the file, so that they are obvious when the file is opened.

If information has been disclosed to another agency, include a reference in the file about:
- the fact that the referral has been made
- the basis of the referral
- the arrangements that have been put in place with the other agency on that agency’s use and retention of the material.

Information from, and about, the source
Although the source is just a witness like any other witness of relevance to the investigation, this person generally warrants special attention; you need to manage this person with great care.

It may be useful to have a separate section in the investigation file that retains:
- copies of any information disclosed by the source
- details of all dealings with the source and all disclosures made to this person in the course of these dealings.

Referrals
Keep any file note or correspondence, or other document or information, dealing with any referrals of the matter to other agencies and responses from these agencies.

Delegation to the investigator: scope and purpose
Keep a signed copy of the authorisation or delegation for you to conduct an investigation on behalf of the principal officer, and a copy of the scope and purpose issued for the investigation.

This may also be a convenient place to retain any further delegations or authorities passed on to you by the principal officer or others in authority. This may include a letter asking staff members to cooperate with you for the purposes of the investigation or an authority to search organisational premises.

Delegation of investigation tasks
It is common for people conducting investigations to involve other people. It is essential that everyone is clear about who is responsible for specific investigation tasks.

In a separate section of the central working file, it can be very useful to retain copies of all documents relating to tasks allocated, ongoing discussions about these tasks and confirming of the completion of these tasks.

List of affected persons
It is essential that you keep track of those who may be adversely affected by the investigation and its outcomes, and whether these persons have been afforded procedural fairness.

It is common to incorporate a list of affected persons into the investigation plan. The names on this list are likely to change regularly and substantially over the life of the investigation. Therefore, it is preferable to retain a separate record in a separate section of the central working file that is dedicated to tracking affected persons and their treatment. Keep all notes and comments about the identity and the treatment afforded to these people can be kept in this section.

Efficient management of affected person records in this section can substantially guard against unfair treatment of relevant persons and protect against embarrassment for those responsible for conducting the investigation.
The investigation plan

The investigation plan is a pivotal document that warrants its own section in the central working file. This allows for easy access and to any documentation that impacts on the status of the plan, including adjustments or revisions.

Reports

You will need to routinely prepare reports for your supervisors. It is generally appropriate and convenient to retain copies of these reports in a separate section in the working file. This will allow you to keep track of the information and who it has provided to.

Other suggested sections for an investigation file:

- file notes
- internal correspondence
- external correspondence
- witness statements
- witness interviews
- exhibits.
Appendix B:
Sample investigation report template

The below template provides generic headings that are suitable for most types of investigations. There may be more appropriate headings for specialised investigation reports.

The purpose of these headings is to provide a clear structure to the report and assist agencies in focusing on:

- the issues examined
- the recommendations for action, and
- the outcome.

1. Executive summary (usually only used for more detailed reports)

2. Introduction

3. An outline of the evidence that emerged during the investigation

4. An outline of your analysis of the evidence

5. An outline of your findings of fact

6. An outline of findings and recommendations

7. Appendices
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