

# Integrity Spotlight

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## Advisory Conducting Internal Investigations

It is important that internal investigations are thorough, fair, and address all allegations of impropriety.

It is often necessary for an agency to commence an internal investigation to inquire into:

- the conduct of a public officer, or
- a practice, policy or procedure of the agency.

It is important that internal investigations are thorough, fair, and address all allegations of impropriety.

Although the process for conducting an internal investigation may differ slightly between agencies, they are all underpinned by common principles and share the same objective: **to determine the truth.**

### Key principles

#### Independence

While an investigator may be employed by the agency conducting an investigation, they **must be, and be seen to be independent.** An investigator must not have any stake in the outcome of an investigation or any personal relationship with the parties involved.

The independence of the investigator and the decision maker should be evident from the evidence obtained and their interactions with all parties, including persons of interest and other witnesses. This can be demonstrated by the language used, questions asked and information conveyed.

## Confidentiality

Investigations are often sensitive. The improper disclosure of information relating to an investigation has the potential to cause a person **undue reputational harm**, or to **compromise evidence**.

Information about an investigation should only be disclosed on a **'need to know'** basis.

Similarly, the identity of the person or people who raised allegations or who have provided information to the investigation should remain confidential.<sup>1</sup>

The investigator should ensure that witnesses and other parties to the investigation are aware of their confidentiality obligations.

## Standard of proof

Any findings resulting from an internal investigation must be made by the decision maker on the **'balance of probabilities'**. That means that an allegation should not be found to be proved unless the decision maker finds it more likely than not to have occurred.

In deciding a matter the decision maker must consider all the evidence and its weight, and consider competing facts or inferences. Consideration must be given to how each piece of evidence fits with others. An adverse finding should not be made against a person in the absence of relevant and reliable evidence to support that finding. The standard of proof is to be applied not to each fact but to each separate allegation.

## Procedural fairness

Investigations must comply with the principles of procedural fairness, which is sometimes called natural justice.

Procedural fairness requires that:

- a decision maker is impartial, and free from bias (**the rule against bias**);
- a person whose rights or interests may be affected by a proposed decision receives a fair hearing, including the opportunity to respond to any allegations and material that could influence the decision (**the hearing rule**); and
- findings are based on relevant and logical evidence (**the no evidence rule**).

If procedural fairness is not given, decisions can be open to criticism and may result in unfair and unlawful outcomes.

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<sup>1</sup> Agencies should also be aware of their obligations under the *Public Interest Disclosure Act 2018*.

## Key stages

### Information gathering

The investigator plays a key role in obtaining information relevant to the allegations under investigation.

That information can take a number of forms (such as business records and electronic communications) and may be obtained from a number of sources.

The information gathering stage can include conducting interviews and preparing statements.

### Preparation of investigation report

Once all relevant information has been obtained and considered, the investigator is responsible for providing a documented overview and analysis for the decision maker's consideration.

The investigation report should present a clear and balanced description of the information and should contain all of the information the decision maker requires to make findings.

The report should detail any information which is contrary to the narrative being presented and ensure it is duly considered.

The investigator must not make findings. That is a matter for the decision maker.

### Findings

The investigation report should be considered by the decision maker, usually the employing authority such as the agency's Chief Executive or their delegate.

The decision maker must consider whether the investigation has found sufficient evidence to support a particular finding.

The decision maker must put allegations to the person of interest, and carefully consider any response, before any adverse finding is made.

## Sanctions

Where an adverse finding is made against a person following an internal investigation, the decision maker may decide to impose a disciplinary sanction, such as issuing a written warning or taking steps to terminate the person's employment.

Again, the decision maker must advise the person of the intended sanction and provide them with the opportunity to respond.

## Tips for conducting an internal investigation

### Invest in planning

Proper planning is critical to a thorough and efficient investigation. Spend time developing a clear investigation plan which addresses the following:

- What is the allegation?
- What information needs to be gathered and how will it be obtained?
- What powers are available to the investigator and how will they be used?
- How long is the investigation likely to take and what resources will be required?
- What challenges may arise and how will they be addressed?

Regularly review the investigation plan and make amendments as required. Regular progress reports can be useful to ensure the investigation is on track and provides the opportunity to raise and resolve any challenges which may emerge.

## Avoid making assumptions

Investigators and decision makers must be open minded, impartial, and led by the evidence. Avoid making assumptions or accepting information at face value. Carefully test the evidence and, where possible, ensure it is independently verified.

Investigators and decision makers should be alive to any biases which might impact their views.

## Be mindful of welfare concerns

An investigation can be a stressful experience for all parties involved. If not properly managed, the process can have an impact on a person's health and wellbeing.

Be aware of the welfare concerns which could arise, and have proper support strategies in place to address those concerns.

Ensure there is regular communication with those involved in the investigation, and that those parties know what to expect at each stage of the process. Those involved in an investigation should be afforded the opportunity to have a support person or a legal representative at interview.

Those involved in or impacted by an investigation should also be provided details of relevant support services, such as the agency's Employee Assistance Program.

## Debrief

After an investigation, take the opportunity to reflect on what went well and what could be done differently in the future.


Consider whether the investigation has revealed any other issues which need to be addressed, or any weaknesses in the agency's practices, policies and procedures.

A robust and transparent investigation is key to ensuring a fair and defensible outcome. A thorough and fair process provides reassurance for staff, protects the agency's interests and ultimately instils public confidence.

## Further information

[ICAC events and training](#)

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