

INVESTIGATIONS PROCEDURE



CONTENTS

1	PURPOSE	1
2	SCOPE	1
3	MAKING COMPLAINTS	2
4	INVESTIGATION PROCEDURE	2
4.1	Undertake a Preliminary Assessment	2
4.2	Determine Whether the Investigation Will Be Done Internally or Referred to an External Investigator	2
4.3	Develop an Investigation Plan	3
4.4	Gathering Information	3
4.5	Prepare an Investigation Report	5
4.6	After the Investigation	6
5	CONFIDENTIALITY	6
6	DEFINITIONS	7
7	RELATED LEGISLATION AND DOCUMENTS	7
5.1	Legislation	7
5.2	Policies and Procedures	7
5.3	Other Information	7
8	FEEDBACK	7
9	APPROVAL AND REVIEW DETAILS	8
10	APPENDIX	Error! Bookmark not defined.

1 PURPOSE

The purpose of this procedure is to provide for a consistent approach to internal conduct investigations conducted by Willoughby City. This procedure underpins consistent implementation of Council's Fraud and Corruption Prevention Policy and Public Interest Disclosures Policy however the procedure should be followed for all internal investigations where a legislated process is not applicable.

2 SCOPE

This procedure applies to all Councillors, staff members, contractors and to any person or organisation that acts for or represents Council. This procedure does not relate to investigations pertaining to the conduct of the General Manager.

3 MAKING COMPLAINTS

All complaints should be made in accordance with Council's *Code of Conduct* or *Public Interest Disclosures Policy*.

4 INVESTIGATION PROCEDURE

Any investigation undertaken in accordance with these procedures is also to be guided by the NSW Ombudsman publication "*Investigating complaints - A manual for investigators*". The Manual features detailed instruction on how to implement the steps identified in this procedure.

4.1 Undertake a Preliminary Assessment

It is recognised that not every complaint or allegation requires investigation and that some workplace investigations are subject to particular legislative requirements. The Governance Risk and Corporate Planning Manager or Legal Counsel, at the direction of the General Manager, will gather information to assist the General Manager in making an informed decision. In deciding whether to investigate conduct, factors taken into account include:

- The seriousness of the possible unsatisfactory conduct;
- How recent the possible unsatisfactory conduct occurred; and
- Potential implications in not undertaking an investigation;

Following the preliminary assessment, the following decisions are available:

- resolve the conduct by use of alternative means and/or appropriate strategies (e.g. informal discussion, counselling, mediation and/or training);
- commence an investigation;
- suspend a staff member (with or without pay) during an investigation, in accordance with subclause 36B(i) of the Award;
- refer the conduct to another investigative agency (e.g. OLG, ICAC);
- take no action.

Factors considered when deciding whether to suspend a staff member during an investigation include:

- the seriousness of the conduct;
- whether the suspected conduct, if substantiated, is likely to constitute a serious breach of the code of conduct, policies, contract of employment and/or other legal obligations;
- potential impacts on the staff member (e.g. financial, reputation);
- potential impacts on Council (e.g. financial, security of property, reputation, WHS, and the potential for evidence to be disturbed).

4.2 Determine Whether the Investigation Will Be Done Internally or Referred to an External Investigator

Where a decision is taken to undertake an investigation into conduct, the General Manager is to determine whether the investigation will be done internally or referred to an external investigator. Factors to be considered in making this decision include:

- required time and resources to properly conduct and efficiently conclude the investigation;
- availability of staff with the necessary skills and/or experience to properly conduct the investigation;
- whether the person(s) conducting the investigation has a conflict of interest in the matter being investigated.

If the matter is to be investigated by an internal staff member the General Manager is to be satisfied that they have the relevant qualifications and/or experience to adequately investigate the matter in accordance with these procedures.

4.3 Develop an Investigation Plan

The investigation should take no longer than is reasonably necessary to conduct a proper investigation. The time taken to conclude an investigation will depend on the nature of the investigation and the issues to be investigated.

The plan for the investigation will include:

- the appropriate authorisation to conduct the investigation; and
- the scope and timing of the investigation (including an estimated timeframe).

The investigation plan should be completed before conducting any inquiries. This is because the planning process will clarify the approach to be taken. The plan will become the road map of the investigation. It allows the investigator to stay focused on the job and alerts them to any potential problems prior to encountering them.

A single complaint may contain a number of separate allegations. Each allegation needs to be individually dealt with. The investigation plan should deal with each allegation under the following headings:

Allegation/conduct to be investigated	Issues for investigation	Benchmarks / Criteria	Proofs / Facts in issue	Tasks and Timeframes

Investigations typically involve enquiring, collecting information and ascertaining facts. In general, an evidence-focused investigation is primarily directed at gathering and carefully documenting evidence that may later be considered in formal proceedings against one or more individuals or agencies.

On the other hand, an outcome-focused investigation may include evidence-focused techniques, but is primarily directed at quickly identifying and remedying problems uncovered by the complaint, including addressing the concerns of complainants.

4.4 Gathering Information

The task of an investigator is to prove or disprove any matter(s) of fact raised by a complaint. The means available to an investigator to accomplish this is known as evidence. The main categories of evidence available to an investigator are oral evidence, documentary evidence, expert evidence and site inspections. Although only one witness may be required to prove any fact or set of facts, additional evidence in the form of corroboration (i.e. the strengthening of evidence in a material particular) is desirable.

The investigator will obtain all necessary information and documentation from Council systems, however they will often need to conduct interviews with both the complainant and those relevant to the matter. The following methodology should be applied when conducting interviews:

Conducting Interviews

The Investigation Plan shall identify who should be interviewed and the order in which witnesses are to be interviewed. Witnesses should be interviewed during a face-to-face

meeting. Where it is not reasonably practicable to interview witnesses during a face-to-face meeting it may be necessary for the investigator to explore other options, such as conducting an interview by telephone, videoconference (e.g. Skype) and/or by obtaining a written statement from the witness.

Informing staff they are required for interview

Council can require its staff members to cooperate with workplace investigations into possible unsatisfactory work performance or conduct by another staff member, which may include requiring staff members to attend interviews with the investigator(s). When informing a staff member that they are required to attend an interview:

- Advise the staff member that Council has commenced a workplace investigation and provide a summary of the issue(s) under investigation.
- Advise the staff member of the person(s) conducting the investigation.
- Advise the staff member of any applicable requirements in relation to confidentiality; and
- Provide reasonable notice of the requirement to attend an interview (date, time and location). Staff members may request the presence of a union representative and/or a support person during the interview.

In addition to the above, where the staff member to be interviewed is alleged to have engaged in unsatisfactory conduct:

- inform the staff member of the substance of the alleged unsatisfactory conduct in sufficient detail so as to enable the staff member to properly understand the allegation(s); and
- remind the staff member that Council has an Employee Assistance Program (EAP) and how it may be accessed.

The Interview Process

At the commencement of each interview the investigator should:

- Provide an introduction
- Explain the purpose of the interview
- Explain the role of the union representative or support person
- Explain the investigation process (in general terms).
- Advise the person if the interview is being recorded

When interviewing a staff member who is alleged to have engaged in unsatisfactory conduct, before concluding the investigation (how and when this is done is up to the investigator, depending on the circumstances):

- Inform the staff member of the main points of the allegation(s) in sufficient detail so as to enable the staff member to properly understand the allegation(s).
- Provide the staff member with a reasonable opportunity to respond to the allegation(s).
- Subject to applicable legal requirements, show the staff member relevant evidence, if any, which contradicts the staff member's version of the facts (e.g. documents, emails and/or video footage).

Support Person During Interviews

Subclause 36A(iv) of the Award provides that a staff member shall:

“Be entitled to request the presence of a union representative and/or the involvement of their union at any stage.”

During fact finding interviews, union representatives and support persons should not:

- Advocate on behalf of the interviewee;
- Answer questions on behalf of the interviewee;
- Investigate;
- Interfere with or obstruct the investigation process.

Where a person assisting a staff member is a union representative, they may have skills and/or experience that can assist in ensuring an effective investigation. In such instances, the industrial parties to the Award recommend that investigators extend professional courtesies to the union representative, which may include, for example, allowing the union representative to suggest that particular questions be asked which may have been overlooked, provided that they do not interfere with or obstruct the investigation process.

Review

After the initial round of information gathering, consider whether it is necessary, in order to ascertain a fact in issue, to re-interview a witness, interview further witnesses or gather additional information from other sources.

If the anticipated length of the investigation needs to be extended the Council should notify the staff member and explain the reason(s) for the extension, and where the staff member has requested the involvement of a union representative, such notice should also be provided to the union representative. Where an extension to the original timeline is decided upon the investigator will give consideration to the need to provide a status/progress report to the General Manager.

4.5 Prepare an Investigation Report

Once the investigator(s) has concluded the investigation they should prepare an investigation report to be considered by the General Manager. In workplace investigations concerning alleged unsatisfactory conduct the appropriate standard of proof is “the balance of probabilities”. This means it must be more probable than not that the allegation(s) are likely to be true. The following material should be included in the investigation report:

- Executive summary or covering memorandum.
- The terms of reference of the investigation.
- The name of the investigator and details about authorisation of the investigation.
- Sources of information and methodology used.
- Relevant legislation and/or policies.
- A statement of all relevant facts and evidence.
- The conclusions or findings reached and the basis for them (all separate allegations contained in a complaint must be addressed and a finding made). If the matters under investigation all relate to one issue, then it may be best to present each line of argument then make one conclusion and recommendations with respect to the single issue. However, if the allegations relate to more than one distinct issue, then each issue should be addressed separately within the report.
- Recommendations to overcome any actual or potential shortcomings or problems identified e.g. an investigation report may recommend the institution of disciplinary proceedings, changes to policies or procedures, other remedial action, or referral of the matter for consideration by a more qualified or suitable authority.
- Any other general issues raised by the investigation should also be addressed in the investigation report (this may include recommendations for systems improvements, the introduction or alteration of policies or procedures).
- Statements and other items of evidence may be attached to the report. A good investigation report will use headings to help the reader identify the evidence relating to each issue. The evidence should be appended, tabbed and referenced in the report.

4.6 After the Investigation

The decision on what, if any, disciplinary action should be taken against a staff member is a matter for the General Manager, as it often involves consideration of information that is not available to external investigators, such as a staff member's previous work performance, length of service, and whether the staff member has received prior warnings or commendations.

Whilst an investigation report produced following a properly conducted investigation may contain useful information to assist the General Manager to make an informed decision on whether possible unsatisfactory work performance has occurred, other information may need to be considered before a final decision is made on what, if any, disciplinary action should be taken. For example, are there any mitigating circumstances?

Before deciding whether a staff member's work performance or conduct is unsatisfactory the General Manager shall ensure:

- the staff member is provided with the relevant findings of the investigation and any other relevant information (evidence and/or relevant extracts from the report) upon which the Council may seek to rely to demonstrate that the staff member's work performance or conduct is unsatisfactory;
- the staff member is provided with a reasonable opportunity to respond;
- consideration of any response by the staff member, including mitigating factors, is taken into account.

Sanctions arising from Investigations will be in accordance with *Code of Conduct*, *Disciplinary Policy* and the *Misconduct/Summary Dismissal Policy*.

5 CONFIDENTIALITY

Material and information ascertained during an investigation remains confidential and unauthorised disclosure of confidential information could potentially be considered a breach of the *Code of Conduct* and/or the *Public Interest Disclosures Policy*. However, specific details of investigations into matters pertaining to fraud and corruption are to be recorded in the publicly available fraud and corruption register.

Confidentiality serves a number of important functions. Preserving the confidentiality of the identity of the person making the complaint and the person the subject of the complaint minimises the risk of harm to these parties.

Another important function of confidentiality is to ensure the integrity of the investigation. If a potential witness feels that they are unable to trust the discretion of the investigator, they will be more reluctant to come forward with relevant information. Where material uncovered in an investigation is kept confidential there is less risk of contamination of evidence. Accordingly, any witnesses interviewed in the course of an investigation should be advised not to discuss the matter with other witnesses or other third parties.

Before interviewing any witness, investigators need to ask whether they have discussed the matter with anyone else. In the absence of any statutory protections or defences at common law, investigators should be aware that a failure to maintain confidentiality – by publishing details of the complaint or any material uncovered in the course of an investigation – may expose them to proceedings in defamation.

6 DEFINITIONS

Definitions for this procedure are as per the Fraud and Corruption Prevention Policy and Plan.

7 RELATED LEGISLATION AND DOCUMENTS

5.1 Legislation

Independent Commission Against Corruption Act 1988
Local Government Act 1993
Local Government (General) Regulation 2005
Public Interest Disclosures Act 1994
Crimes Act 1900

5.2 Policies and Procedures

Code of Conduct
Procedures for the Administration of the Code of Conduct
Public Interest Disclosures Policy
Fraud and Corruption Prevention Policy
Fraud and Corruption Prevention Plan

5.3 Other Information

NSW Ombudsman publication "Investigating complaints - A manual for investigators".

8 FEEDBACK

Officers may provide feedback about this document by emailing Council's Governance, Risk & Corporate Manager.

9 APPROVAL AND REVIEW DETAILS

Approval and Review	Details
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