Workplace Investigations
(Refresher and Tips)

On behalf of LGNSW

4 September 2019
What will we cover

• Reminder of the investigation process
• Tips on:
  ▪ Do we need to investigate? Is there an alternative?
  ▪ Considerations for reporting
  ▪ Support persons, and their role
• Questions
Reminder of the investigation process

An investigation process is like a chain:

• Only as strong as each step (or link); and
• Requires all steps to be followed (but not always in order).
• Is not a police investigation.
Outline of the investigation process

The process steps:

• Receipt/review of complaint (anonymous / direct / indirect);
• Communicate the process to the participants;
• Interview complainant;
• Develop an understanding of the allegations (Is an investigation needed / appropriate);
• Provide allegations to respondent and provide reasonable time to consider;
• Identify and interview witnesses;
• Consider and provide contradictory evidence to relevant participants for response;
• Review the evidence;
• Analyse the evidence and make findings, compile the report; and
• Consider what post investigation action is needed (training/coaching/mediation).
Hypothetical situations

Consider this scenario:

Council employee (Jane – wishes to remain anonymous) complains that her supervisor (Mary) has bullied her.

- Tone in emails
- Overly direct when speaking to her
- Asks Jane to account for her absences during the working day

Mary is only new to the department and her position of authority, Jane has had issues with performance in the past.

Jane also alleges that she suspects Mary is misusing her corporate credit card and has purchased:

- Alcohol
- Meals and activities on a recent holiday
Hypothetical situations: Investigate or not?

Given the situation, consider:

- Can we investigate? If so, what?
- Do we need to investigate?
- What are the alternatives?

If we investigate:
- We need more information
- Discussion about remaining anonymous
- Is it likely to be a breach of a policy?
- Consider the likely outcome if proven?
- Is it the most effective way of addressing?

What are the alternatives:
- Mediation / conflict coaching
- Leadership/Communication Coaching
- Resilience training
- Workplace Review (multiple issues?)
Hypothetical situations: Why consider Alternatives?

Why can we use alternative methods of resolution:

• Complaints have to be addressed, but not always investigated
• A response is still needed when it is unlikely that disciplinary action is/would be taken
• Complaint is vague, minor in nature
• Considers the long term working relationship (investigations are adversarial)
• Alternative methods are quicker
A strong report contains:

• An outline of the scope including a summary of the allegations.
• A summary of the findings (proven, not proven or partly proven).
• A list of who was interviewed (and who was not, and why).
• How interviews were conducted and whether participants were provided a transcript / notes of interview and the opportunity to review them.
• An assessment of the credibility of each participant.
• A description of any issues that arose during the interview (delays, capacity issues).
Considerations for Reporting

A strong report contains (cont.):

• Summary of the relevant evidence (interviews, documents etc).
• Analysis of the evidence:
  ▪ Description of how the evidence relates;
  ▪ Whose evidence you preferred and why; and
  ▪ Consideration of how credibility assisted in assessing the evidence.
• A finding on the balance of probabilities (proven / not proven / partly proven).
• A list of relevant attachments.
Considerations for Reporting

Who sees the report and what do they see?

Decision maker:  
Complainant:  
Respondent:  

Note: This may or may not require a full report to be provided with private content redacted and where circumstances require it (see Local Government Industry Guidelines on Workplace Investigations for more info).
Considerations for Reporting

What to include in Executive Summary Contents (if required)

- Details of each allegation
- Details of each finding

What not to include in Executive Summary Contents

- Details of witnesses
- Analysis of evidence
- Copies of transcripts or evidence

...Why?
Support Persons and their Role

Who they are:
- Can be a union representative, legal representative, friend/relative (any issues) or other employee (any issues)

What is their role:
- To provide moral support to the investigation participant only.
Support Persons and their Role

What isn’t their role:

▪ To advocate or speak on behalf of the participant
▪ Answer questions on behalf of the participant
▪ Investigate the matter in parallel to the investigator
▪ Interfere with or obstruct the investigation process.

(see Local Government Industry Guidelines on Workplace Investigations for more info)

TIP: Explore this earlier in the interview or whenever a support person is going to be involved in the process. But also extend professional courtesies to support persons and allow them to assist where relevant (overlooked questions etc)
By the way…

LGNSW offer professional development workshops on conducting workplace investigations. Visit: https://lgnsw.org.au/learning for more information or email learning@lgnsw.org.au

- Investigations
- Reviews
- Training

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