

What is an investigation?

A fact-finding process – a search for, gathering and examination of information in order to establish facts.

It is one step in a decision making process which starts with an issue and ends with a decision.

Its purpose is to establish and document relevant facts, reach appropriate conclusions based on the available evidence, and determine a suitable response.

The nature and scope of an investigation will depend on the circumstances of each case and any relevant statutory requirements that may apply.

More detailed information on investigation of complaints is available in the Ombudsman WA Guidelines *Conducting administrative investigations*.

Acknowledgement: We thank the Office of the NSW Ombudsman for allowing us to use their excellent publication "Public Sector Agencies Fact Sheets A-Z" in the development of this Information Sheet, and for their continuing advice and assistance.

What are the essential steps in an investigation?

STEP 1 ASSESS THE COMPLAINT

Determine what action is required, which may include options other than a formal investigation.

STEP 2 SELECT THE APPROPRIATE INVESTIGATIVE APPROACH

This can depend on factors such as statutory requirements which may apply; the nature of the issue; the likely outcome of the investigation.

STEP 3 PLAN THE INVESTIGATION

Define the subject matter and develop an investigation plan.

STEP 4 ENSURE PROPER POWERS AND AUTHORITY

Assess whether the investigation has the necessary powers to obtain evidence from relevant witnesses and to access relevant records
Ensure the investigator has the authority to conduct the investigation.

STEP 5 OBTAIN EVIDENCE

Carry out the investigation by gathering sufficient reliable information to enable the issue to be properly addressed by proving or disproving matters relevant to the issue being investigated.

STEP 6 REPORTING

Prepare your document setting out the complaint, how the investigation was conducted, relevant facts, conclusions, findings and recommendations.

TIPS

You will need to consider a range of factors, such as:

- whether the complaint involves a communication problem that can be resolved through explanation or discussion
- whether a more appropriate means of dealing with the issue is available
- whether the complaint can or must be referred or notified to a relevant government agency
- how much time has elapsed since the alleged events occurred
- the significance of the issue for the complainant and/or the organisation.

Ask yourself whether the investigation is either evidence-focused or outcome-focused. Evidence-focused inquiries seek to pursue all lines of inquiry in a way that will meet all legal and procedural requirements. Outcome-focused inquiries are primarily directed at quickly identifying and remedying problems, and so seek to obtain sufficient information for a fair and informed judgement about the issues in question.

Identify what questions need to be answered, what information is required to answer those questions, and the best way to obtain that information.

Distinguish between the right to ask and the power to demand.

If the investigation is major or sensitive, ensure you have approved terms of reference and adequate resources.

Where possible separate the investigation and decision making functions.

Procedural and evidentiary requirements

Impartiality

Investigators must be impartial, adopting an inquisitorial approach, attempting to ascertain the truth and uncover all relevant facts.

Procedural fairness

This is very important in an investigation that could result in an outcome that affects the rights, interests or reputation of an individual.

Confidentiality

This can be very important in an investigation such as an evidence-focused investigation into the alleged conduct of an individual.

Communication

As a general rule, keep both the complainants and person or bodies the subject of an investigation informed about the progress of the investigation.

Standard of proof

In administrative investigations, allegations must be proved according to the balance of probabilities, that is, it must be more probable than not that the allegations are made out.

Rules of evidence

The rules of evidence will not apply to the majority of administrative or disciplinary investigations.

Nevertheless it is useful for an investigator to understand the basic rules of evidence.