**Checklist CL 013** | 6 March 2023

# Investigation Checklist

## Designated Official and Manager’s Guide to Handling Matters within Registered Organisations

| **1. Information to gather from the person reporting the matter** | **Comment (if any)** |
| --- | --- |
|[ ]  Are there any fears for any person’s wellbeing or safety? * Has a risk assessment been completed?
 |  |
|[ ]  Does the person who has reported the matter require any wellbeing assistance? For example:* Does the person require contact details for any employee assistance program?
* Are they aware that they may have a support person present in any meetings?
 |  |
|[ ]  Does the person who has reported the matter wish to remain anonymous?* If so, do you know why?
* Have you explained any significant limitations that might impact on an investigation of this matter?
 |  |
|[ ]  Are you clear on the allegation/s?* For example, do you have the particulars of the complaint (who, what, where and why)?
* Do you require more information?
 |  |
|[ ]  Have you registered the complaint on the organisation’s Protected Disclosure Register? |  |
|[ ]  Have you provided the discloser with a copy of the organisation’s Whistleblower Policy and informed them of any protection they may have? |  |

| **2. Preliminary considerations** | **Comment (if any)** |
| --- | --- |
|[ ]  Are you a Senior Nominated Official or have you been authorised to handle investigations by your organisation? |  |
|[ ]  Do you have any potential conflicts of interest in relation to this matter? |  |
|[ ]  Are you personally satisfied that you will be able to bring an independent and unbiased mind to this inquiry and that a reasonable bystander would agree? |  |
|[ ]  Have you read and identified which of your organisation’s internal rules, policies and/or guidance materials are applicable to this disclosure? |  |
|[ ]  Have you conducted a preliminary assessment of the protected disclosure? For example:* Is the complainant someone who can raise a complaint of disclosable conduct?
* Does the complaint meet the definition of disclosable conduct?
* Does the complaint include the necessary particulars and/or evidence to support the complaint?
* Is the alleged conduct in contravention of the *Fair Work (Registered Organisations) Act 2009*, the *Fair Work Act 2009*, *Competition and Consumer Act 2010* or an offence against a law of the Commonwealth?
* Is the alleged conduct in breach of the organisation’s internal policies, procedures or Rules?
* Should the matter be referred to an external agency?
 |  |
|[ ]  Have you decided how the matter is to be managed? For example:* Recorded but no further action
* Internal investigation
* External investigation
* Referred to external agency
 |  |

| **3. Investigation Plan** | **Comment (if any)** |
| --- | --- |
|[ ]  Is the scope of the inquiry/investigation clearly defined and signed off by the Senior Nominated Official or an accountable person in the organisation? |  |
|[ ]  Are the allegation/s clearly defined and understood?* Have you confirmed your understanding of the complaint with the discloser?
 |  |
|[ ]  Are there any time pressures or urgency that need to be addressed? For example:* Need to obtain evidence before it is lost;
* Absence of witnesses;
* Need to address any work health and safety concerns.
 |  |
|[ ]  Have you agreed on a secure place where records, documents, notes and other evidence will be kept? |  |
|[ ]  Have roles and responsibilities been clearly defined and are they in line with your organisation’s rules?* Nominated Senior Official
* Investigation officer
* Whistleblower Protection Officer (If a protected disclosure).
 |  |
|[ ]  If the complaint is to be investigated by an external investigator, have you provided the investigator with the particulars of the complaint and copies of any relevant documentation such as the organisation’s rules, policies and/or procedures? |  |
|[ ]  Have you developed an investigation plan and received any approvals necessary to commence this investigation? |  |
|[ ]  Have all relevant stakeholders been identified and a communication plan agreed to keep stakeholders informed? |  |
|[ ]  Have all relevant stakeholders, such as the respondent and any witnesses, been notified of:* The commencement of an investigation;
* That they may bring a support person to any interview or meeting; and
* The need to maintain confidentiality.
 |  |

| **4. Gathering the evidence and evaluating the facts** | **Comment (if any)** |
| --- | --- |
|[ ]  Have you only taken into account evidence that is relevant, credible and probative in relation to each material finding of fact? |  |
|[ ]  Have you ensured that appropriate witnesses have been questioned and any conflicting witness statements or conflicting evidence verified or otherwise checked? |  |
|[ ]  Have you offered the respondent the opportunity to comment on any contradictory evidence obtained in the investigation? |  |
|[ ]  Have you ensured that any explanations, or evidence, provided by the person suspected of misconduct or by witnesses have been appropriately tested and given proper weight? |  |
|[ ]  Are you satisfied there is no relevant evidence that has not been taken into account and there is enough reliable evidence to be able to draw a reasonable conclusion on the balance of probabilities? |  |
|[ ]  Before making your final determination, have you ensured that the person suspected of misconduct has been provided with a reasonable opportunity to make a statement in relation to the matter and that other internal rules relating to procedural fairness have been followed? |  |
|[ ]  In particular, has the person suspected of misconduct been given adequate notice of all material of which you are aware and which is credible, relevant and significant to the proposed breach decision?* This includes adhering to any internal rules and providing any such material which could assist the person in answering the case against them, even though you may not propose to rely on the material in making particular findings or decisions adverse to the person?
 |  |

| **5. Reviewing the evidence and writing the investigation report** | **Comment (if any)** |
| --- | --- |
|[ ]  Does the investigation report:* Outline the nature of the suspected misconduct.
* Identify relevant legislation, policy material, rules, guidelines or other organisational practices you have relied upon.
* Set out the steps taken to collect evidence and information.
* Outline the evidence and present it in a balanced way that is, including evidence both for and against the person, including the accused person’s response to the allegations and the person’s response to any new or conflicting evidence that was uncovered in the course of the investigation.
* Outline the conclusions or findings on material questions of fact made on the available evidence including any inconsistencies in the evidence or issues that remain unclear. These conclusions need to flow logically from the evidence that has been collected and considered.
* Include in attachment to the report, any evidence which the investigator seeks to rely upon.
 |  |

| **6. Preparing a decision record** | **Comment (if any)** |
| --- | --- |
|[ ]  Have you provided the full investigation report of your findings to the decision maker including:* A summary of the evidence you took into account in making your decision and any evidence or established facts that were not taken into account and reasons why you did not consider that evidence relevant.
* Your findings of fact on the balance of probabilities about what happened, that is the act or acts suspected of being misconduct.
* Your decision as to whether those acts amount to misconduct, and, if so, which elements of policy, regulation or legislation have been breached and why.
* Copies of the relevant evidence which the investigator seeks to rely upon.
 |  |

| **7. Preliminary considerations for decision-maker** | **Comment (if any)** |
| --- | --- |
|[ ]  Do you have the power to make the disciplinary action/decision? |  |
|[ ]  Have you declared any potential conflicts of interest that might arise from or in making a disciplinary action/decision? |  |
|[ ]  Are you satisfied that you will be able to bring an independent and unbiased mind to this inquiry and that a reasonable bystander would agree? |  |
|[ ]  If you have any concerns that the determination was not made in accordance with legal requirements, such as your organisation’s rules or procedures, have you raised this with the relevant person within your organisation? |  |
|[ ]  Have you requested legal advice or assistance before making your decision? * If not, why not?
 |  |
|[ ]  Having considered the investigation report and any relevant evidence in it, are you satisfied that the respondent has breached the internal rule, policy, regulation or legislation? |  |

| **8. Provision to the member/elected officer/employee who has breached, before making a decision** | **Comment (if any)** |
| --- | --- |
|[ ]  Has the member/elected officer/employee who has breached the internal rule, policy, regulation or legislation been provided with a reasonable opportunity to make any final submissions in relation to the investigation and its findings before a decision is issued? |  |
|[ ]  Has the member/elected officer/employee who has breached the internal rule, policy, regulation or legislation been provided with a reasonable opportunity to make a statement in relation to the sanction(s) under consideration and the factors relating to it? |  |

| **9. Matters for consideration in determining the disciplinary action** | **Comment (if any)** |
| --- | --- |
|[ ]  Have you considered the nature and seriousness of the breach? |  |
|[ ]  Have you considered the likely impact on the organisation, its members and the reputation of the organisation and its members if the misconduct were a matter of public knowledge? |  |
|[ ]  Have you considered whether the misconduct was uncharacteristic of the member/elected officer/employee or whether there have been other similar findings of a breach of an internal rule, policy, regulation or legislation? |  |
|[ ]  Have you considered what other action has been taken to try to improve the behaviour of the member/elected officer/employee? For example, training or performance management or if the individual was the subject of a performance improvement plan within the last two years. |  |
|[ ]  Have you taken into account any remorse or willingness to take responsibility for the breach, or understanding of the seriousness of the breach, by the member/elected officer/employee? If so, why and what impact does this have? |  |
|[ ]  Have you taken into account other action that may have already been taken such as suspension from duty with or without remuneration? |  |
|[ ]  Are there any mitigating or extenuating factors? |  |

| **10. Preparing a decision record** | **Comment (if any)** |
| --- | --- |
|[ ]  If you have decided to impose disciplinary action, have you made a written record of your decision? |  |
|[ ]  Does your decision set out clearly your reasoning for your decision so that the member/elected officer/employee can understand why you have imposed the relevant disciplinary action(s) and so that your decision may be properly understood in any subsequent review? |  |

| **11. Next steps** | **Comment (if any)** |
| --- | --- |
|[ ]  Where it has been determined that the suspected person has breached internal rules, policy, regulation or legislation, the next stage is to refer the case to the decision-maker to determine if disciplinary action is to be imposed and/or if other administrative action is to be taken. It may be the responsibility of designated officials/line managers or the relevant committee or Human Resources (if a HR department exists) to determine whether administrative action is to be taken. * It is appropriate for the member/elected officer found to have breached the rule, policy, regulation or legislation to be informed of the name of the person who has been given the authority to determine any disciplinary actions(s) and what the next steps will involve.
 |  |
|[ ]  Where it has been determined that the suspected person has **not** breached internal rules, policy, regulation or legislation, have you provided them with an outcome letter closing the investigation? |  |
|[ ]  Where the misconduct came to light through an allegation made by, for example, another member/elected officer, that member/elected officer can be informed of the outcome of the investigation taking into account the requirements of any internal rules or policies, the *Privacy Act 1988* and other relevant legislation. |  |

| **12. Advising the member/elected officer/employee of your decision** | **Comment (if any)** |
| --- | --- |
|[ ]  Have you taken reasonable steps to inform the member/elected officer/employee: * Of your decision on the disciplinary action(s) to be imposed, if any, consistent with relevant requirements in your organisation’s procedures, and
* When the disciplinary action(s) will take effect; or
* That no findings were found against them and no such disciplinary action will be taken;
* Will the outcome of the decision be recorded on the elected official/employee’s personnel file or member’s member file? How will this be recorded, if not available?
* Has the complainant been notified of the outcome, so far as is appropriate, that appropriate action has been taken in response to their complaint?
* Does the organisation need to notify, where appropriate, any relevant authorities?
* Has the matter been closed on the protected disclosure register?
 |  |

| **13. Advising stakeholders of the outcome** | **Comment (if any)** |
| --- | --- |
|[ ]  Have you provided a finalised report to stakeholders? * Containing the finalisation of the matter and any issues of note that are relevant to the matter?
 |  |

| **Version** | **Date published** | **Changes** |
| --- | --- | --- |
| 2 | March 2023 | Changes made in accordance with Fair Work Legislation Amendment (Secure Jobs, Better Pay) Act 2022 |

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This investigation checklist is not intended to be comprehensive. It is designed to assist organisations in undertaking these types of investigations. The Fair Work Commission does not provide legal advice.