

Definitions

Affected parties: People who are or may be affected by the matter in some way. May also be known as 'stakeholders'. [FS4]

Allegation: A specific claim of misconduct. One complaint or matter may contain multiple allegations.

Balance of probabilities: The civil standard of proof, to be applied to the evidence collected in disciplinary investigations to reach factual findings. [FS22]

Bias rule: A procedural fairness rule, the basic principle of which is that an administrative decision making process should be free from actual or apprehended bias. [FS15]

Bullying: Repeated and unreasonable behaviour directed towards a worker or a group of workers that creates a risk to health and safety.

Case conferencing: A meeting of relevant senior employees that discusses the matter and determines the best path forward. [FS3]

Complainant: A person who has made a complaint or raised a suspicion about misconduct. Also known as a 'source'. Where the word complainant is used in these fact sheets, it indicates that the person is complaining about the alleged conduct, not just reporting it.

Complaint: A statement alleging misconduct. A complaint may contain multiple allegations.

Conflict of interest: A conflict between the performance of a public duty and a private or personal interest. A 'personal interest' includes the private, professional or business interests of a person, or of the individuals or groups with whom they have a close association, such as relatives, friends or even enemies.

Personal interests may be pecuniary or non-pecuniary. A conflict of interest may be:

- actual: a conflict between a person's official duties and responsibilities in serving the public interest, and their personal interest
- perceived: occurs when a reasonable person, knowing the facts, would consider that a conflict of interest may exist, whether or not this is the case, or
- potential: occurs where a person has a personal interest that could conflict with their official duties in the future. [FS10] [FS25]

Councillor: As defined in section 3 of the *Local Government Act 1993 (Tas)*, councillor means 'a person elected to a council and includes the Lord Mayor, Deputy Lord Mayor, mayor, deputy mayor and alderman'.

Decision maker: A person authorised or delegated with the power to make decisions about misconduct matters, including whether to commence an investigation, whether misconduct has occurred, and outcomes for the respondent. [FS10]

Discrimination: As defined in section 3 of the *Anti-Discrimination Act 1998 (Tas)*.

Employee: Persons employed in any capacity in a public sector organisation.

Evidence rule: A procedural fairness rule, the basic principle of which is that there should be evidence to support the decision in an administrative decision making process. [FS15]

Grievance: A complaint made to, and about, the workplace. Work-related grievances may include, but are not limited to:

- interpersonal conflict in the workplace
- assigned duties or working conditions
- the way work is allocated or managed
- access to training or career development
- management actions or decisions, or
- the interpretation and/or application of people management policies.

A grievance may involve alleged misconduct. [FS2]

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Harassment: A type of conduct that is usually associated with bullying or inappropriate sexual advances. It is usually repeated conduct of an unwelcome or inappropriate nature. Sexual harassment is defined in section 3 of the *Anti-Discrimination Act 1998 (Tas)*.

Hearing rule: A procedural fairness rule, the basic principle of which is that all parties have the right to a reasonable opportunity to be heard in an administrative decision making process. [FS15] [FS16]

Interviewee: A person being interviewed.

Investigator: A person appointed to collect evidence in a disciplinary investigation. They are normally expected to write an investigation report and make findings of fact. [FS13] [FS14]

Management action: Action taken in relation to a respondent that is not punitive, and is also not aimed at developing them professionally. Examples of management actions may include restricting an employee's computer usage rights, and putting in place measures to support an employee with health issues. [FS23]

Misconduct: As defined in section 4 of the *Integrity Commission Act 2009 (Tas)*. [FS2]

Organisation: A public authority, as defined in section 5 of the *Integrity Commission Act 2009 (Tas)*.

PID Act: *Public Interest Disclosures Act 2002 (Tas)*. [FS2]

Principal officer: As defined in section 4 of the *Integrity Commission Act 2009 (Tas)*.

Procedural fairness: A requirement of administrative decision making, it means that procedures must be fair. It is not concerned with whether outcomes are fair. Procedural fairness, also known as natural justice, is made up of a series of rules and principles. [FS15] [FS16]

Professional development measures: Measures taken in relation to the conduct of an employee that are designed to develop them professionally. It may include things such as mentoring, a performance improvement plan, and training. [FS23]

Protected disclosure: As defined in section 14 of the *Public Interest Disclosures Act 2002 (Tas)*. [FS2]

Public authority: As defined in section 5 of the *Integrity Commission Act 2009 (Tas)*.

Public interest disclosure: As determined under the *Public Interest Disclosures Act 2002 (Tas)*. [FS2]

Public officer: As defined in section 4 of the *Integrity Commission Act 2009 (Tas)*.

Public sector organisation: A public authority, as defined in section 5 of the *Integrity Commission Act 2009 (Tas)*.

Respondent: A person against whom one or more allegations have been made. A respondent may also be referred to as a 'subject officer'.

Serious misconduct: As defined in section 4 of the *Integrity Commission Act 2009 (Tas)*. [FS2]

Source: A person who has made a complaint or raised a suspicion about misconduct. Also referred to as the complainant, although not all sources want to 'complain' about the alleged conduct.

Standard of proof: The standard of proof is the objective test applied to evidence to make a finding. If the evidence shows that an allegation is accurate to the relevant standard of proof, then you should find that allegation substantiated. [FS20]

Victimisation: In accordance with section 18(2) of the *Anti-Discrimination Act 1998 (Tas)*, victimisation 'takes place if a person subjects, or threatens to subject, another person or an associate of that other person to any detriment'.

Victimisation or reprisal action may also occur under other legislation, such as the *Public Interest Disclosures Act 2002 (Tas)*. The act of victimising another may amount to misconduct. [FS4]

Witness: A person who saw or can give evidence about an aspect of the alleged misconduct. A complainant or a source may be a witness.

Useful references and sources for more detailed information

Administrative decision making, complaint handling, procedural fairness

- Administrative Review Council best practice guides, <www.ag.gov.au/legal-system/administrative-law/administrative-review-council-publications>
- Australian Standard AS 10002:2022 Guidelines for complaint management in organizations
- New South Wales Ombudsman fact sheets, <www.ombo.nsw.gov.au/Find-a-publication/publications/fact-sheets>
- New South Wales Ombudsman guidelines, <www.ombo.nsw.gov.au/Find-a-publication/publications/guidelines>
- Ombudsman Western Australia guidelines and information sheets, <www.ombudsman.wa.gov.au/Publications/Guidelines.htm>

Investigation guides

- Australian Government Australian Public Service Commission, *Handling Misconduct: A Human Resources Manager's Guide* (February 2022) <www.apsc.gov.au/circulars-guidance-and-advice/handling-misconduct-human-resource-managers-guide> checklists; how to select and work with external investigators; outcomes
- Crime and Corruption Commission Queensland, *Corruption in Focus: A Guide to Dealing with Corrupt Conduct in the Queensland Public Sector* (June 2023) <www.ccc.qld.gov.au/publications/corruption-focus> managing the impact of an investigation; templates; troubleshooting; interviews

- Jodie Fox et al, *Workplace Investigations* (Worklogic, 3rd ed, 2020) <www.worklogic.com.au/resource/workplace-investigations-book/> (subscription only) interviews; engaging investigators
- Government of Western Australia Public Sector Commission, *Disciplinary Investigations under Part 5 of the PSM Act: A Guide for Agencies* (June 2020) <www.wa.gov.au/government/publications/disciplinary-investigations-under-part-5-of-the-psm-act-guide-agencies> templates; interviews; troubleshooting
- Independent Commission Against Corruption South Australia, *Internal Investigations Guide* (September 2022) <www.icac.sa.gov.au/education/education-resources/guide-internal-investigations> planning; procedural fairness; reporting; record keeping; interviews; templates
- Gareth Jones and Laura Pettigrew, *How to Investigate: Fundamentals of Effective Fact-finding* (Carswell, 2nd ed, 2021) <legal.thomsonreuters.com.au/how-to-investigate-fundamentals-of-effective-fact-finding-2nd-edition/productdetail/129995> (subscription only) interviews; assessing evidence; investigating in a virtual world
- New South Wales Department of Education, *Guidelines for the Management of Conduct and Performance* (May 2020) <education.nsw.gov.au/content/dam/main-education/policy-library/public/implementation-documents/pd20060335.pdf>
- New South Wales Ombudsman, *Investigating Complaints: A Manual for Investigators* (June 2004) <catalogue.nla.gov.au/Record/3423769> troubleshooting; preliminary assessment; interviews; checklist
- Paul Vermeesch, 'Misconduct in the Australian Public Service' (Legal Briefing No 118, Australian Government Solicitor, 15 December 2021) <www.ags.gov.au/publications/legal-briefing/br118> legal issues; suspensions