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UNDERTAKING A PRELIMINARY ASSESSMENT

It is likely that you will need to undertake a preliminary assessment before deciding whether to investigate or to resolve the alleged misconduct by some other means.

It is very important that the preliminary assessment does not turn into an investigation. It is equally as important that the assessment process is completed quickly. Ideally, this will be within a few days of the matter being raised.

What does a preliminary assessment involve?

The purpose of a preliminary assessment is to quickly collect information so that someone in a position of authority can decide:

- whether there is a reasonable suspicion of misconduct and
- the most appropriate way to deal with the matter.

No conclusions should be reached at the preliminary assessment stage.

Taking a balanced approach

The Commission has a model for conducting a preliminary assessment, which includes a formal process. However, the preliminary assessment process does not need to be formal. A preliminary assessment does not require a terms of reference, or for the allegations to be defined.

In its simplest form, the process would involve one person performing a desktop assessment of the situation and deciding the best way to proceed.

The decision may also be made through 'case conferencing' (see below). A less formal preliminary assessment may be undertaken if, for example:

- the alleged misconduct was not serious, is unlikely to need an investigation, and would not warrant sanction
- you already have enough information to make a decision and/or
- there is clear evidence of the alleged misconduct, it is likely to require an investigation, and it would warrant sanction.

In some organisations the preliminary assessment stage is mandated. For instance, under the [Local Government Act 1993 \(Tas\)](#), the chairperson of the Code of Conduct Panel is to do an initial assessment of a code of conduct complaint to determine how it will be handled.

Where more information is needed before a decision can be made, a more rigorous, formal preliminary assessment may be undertaken. This process may include inquiries such as:

- accessing records such as rosters and timesheets e.g. to verify if someone was at work on a particular date, or who approved a contract
- accessing other records such as CCTV footage, emails, personnel records, and phone logs
- obtaining the position description of persons who may have committed misconduct
- reviewing audit logs e.g. logs of who accessed records on an internal database

- obtaining policies e.g. to verify what policy was applicable at a particular date
- determining whether the source has referred the matter to any other external complaint body and
- further questioning of a source – consider compiling a list of initial questions and contacting the source. This may include asking them how they came by the information, and if they have any other relevant information or contacts. [\[FS4\]](#) [\[FS19\]](#)

Avoid interviewing anyone other than the source at this stage, and keep inquiries confidential if possible.

Regardless of the process used, the decision made at the end of the preliminary assessment process should be documented. [\[FS8\]](#)

Roles

These general principles should be followed in a preliminary assessment:

- the person making the decision at the end of the preliminary assessment may be (but does not have to be) the same person as the ‘decision maker’ in an investigation [\[FS10\]](#)
- if the preliminary assessment does require inquiries to be made, it is better that these not be performed by the decision maker [\[FS10\]](#) and
- if possible, the preliminary assessment inquiries should not be undertaken by the person who subsequently investigates the matter. [\[FS13\]](#)

Getting too many people involved in the preliminary assessment may contaminate a future investigation with apprehended bias. This is especially the case if your organisation is small. To avoid this, make sure that you:

- strictly apply the ‘need to know’ principle [\[FS4\]](#)
- only involve people who really need to be involved at this stage
- keep the assessment as succinct as possible – only gather information that you really need to make the decision.

Timeframes and case conferencing

Timeframes should be short. Preliminary assessments should be completed within three working days.

It may help to hold a ‘case conference’ to speed up the process. This involves a meeting of knowledgeable employees – for instance the managers of human resources and legal – to discuss the matter and whether it should be investigated. This can be done before, during or after the preliminary assessment. The aim of a case conference is to determine the best path forward.

Anonymous complaints

You should not be biased against complaints from an anonymous source. There may be valid reasons the source wants to remain anonymous – often it is because they fear reprisals.

You should assess anonymous complaints to determine if there is enough information to proceed. [\[FS2\]](#)

If the complaint was referred by the Integrity Commission, it is possible that the Commission knows the source’s identity. If you need to, you can contact the Commission to seek permission to access the source’s identity. The Commission will seek the agreement of the source before providing their identity to any organisation.

Matters with an ulterior motive

Sometimes matters are raised by persons with an ulterior motive. Where this is the case, it does not mean that misconduct has not occurred. The motive of the source is not relevant to your assessment of whether there are reasonable grounds to suspect misconduct.

Ulterior motives may, however, affect the judgment of the source. You should carefully assess these matters to separate fact from opinion.

Regardless of their motives, sources may be upset or angry. You will need to extract reliable information from them without allowing their emotional state to overwhelm the situation. [\[FS19\]](#)

Sometimes complaints lack substance, or on very rare occasions may be malicious or vexatious. A vexatious complaint is one that is knowingly false. A complaint made in good faith – regardless of its substance – is not vexatious.

There is extensive guidance available online about managing unreasonable complainant conduct, including a lengthy [manual](#) published by the New South Wales Ombudsman.

The connection between the conduct and employment

Depending on your organisation, it may be a requirement that the conduct reach a certain threshold of connection with employment. Some public officers (such as police officers) are subject to their Code of Conduct at all times – whether on or off duty. Others, such as State Service employees, are only able to commit misconduct if it has some kind of relationship to their employment.

The necessary connection with employment can be difficult to determine and you may need to seek advice. Each case will be heavily reliant on the facts. For instance, if an employee has been convicted for drink driving, this may only have a sufficient connection to their employment if they are required to drive vehicles in their work role.

This is a particularly difficult and developing area in relation to social media posts connected to the workplace. In general, courts and tribunals seem to be leaning toward favouring a looser connection to the workplace in terms of social media. However, if this is an issue you should seek advice before making a decision.

Using the code of conduct to determine whether the conduct is connected to employment

Your code of conduct may indicate the scope of each provision. Common relevant phrases used in codes of conduct include: ‘at all times’, ‘in the course of’, and ‘in connection with’. For instance, these provisions are taken from the Tasmanian State Service Code of Conduct:

*An employee must **at all times** behave in a way that does not adversely affect the integrity and good reputation of the State Service.*

*An employee must disclose, and take reasonable steps to avoid, any conflict of interest **in connection with** the employee’s State Service employment.*

*An employee must behave honestly and with integrity **in the course of** State Service employment.*

‘At all times’ may apply to situations in which the conduct, on the face of it, does not necessarily relate to the workplace. If there is, however, a genuine connection between the behaviour and the workplace then it may still amount to misconduct.

‘In connection with’ usually applies to behaviour that is somehow related to the workplace. ‘In the course of’ is usually where the behaviour is directly related to employment.

Example

Consider a teacher in the State Service who behaves inappropriately with students from a non-State Service school. This conduct would not be ‘in the course of’ employment, as it does not directly relate to the workplace.

At a stretch it could possibly be characterised as conduct ‘in connection with’ employment, depending on the facts of the situation.

However, depending on the facts, it may not be compliant with the State Service requirement that employees must ‘at all times’ behave in a way that does not adversely affect the integrity and good reputation of the State Service.