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## CHOOSING AN INVESTIGATOR

The decision maker is normally the person who chooses the investigator. In some organisations, the investigator will be chosen by someone other than the decision maker. For instance, it may be someone in the human resources or legal unit.

Whoever makes the decision will have to decide whether to appoint an internal or external investigator.

### General qualifications and skills required

There are several key things to look for in an investigator. You should make sure they have the skills and knowledge to complete the investigation. Your organisation and the person appointing the investigator will be held responsible if the investigator is not up to the task.

You will need to assess the complexity and seriousness of the investigation. For instance, a person who has never conducted an investigation should not investigate a matter that could result in dismissal.

In some investigations, the investigator will need specialist skills or knowledge. It may be necessary, for instance, for them to understand the respondent's role. Or it may be necessary for them to have specialist technical knowledge – for instance, about procurement. Alternatively, the investigator may work closely with others that have particular experience or expertise. [\[FS18\]](#)

Relevant formal qualifications include a:

- Certificate IV in Government (Investigation)
- Certificate IV in Government (Statutory Compliance) and
- Diploma of Government (Investigation).

#### **All investigators should have professional awareness, training or experience in:**

- procedural fairness
- administrative law principles
- administrative decision making
- the basic rules of evidence
- conflicts of interest
- unconscious bias
- interviewing
- collecting, preservation, and analysis of evidence
- confidentiality
- evidence-based report writing and
- relevant employment laws and policy.

#### **They should also:**

- be a good communicator
- possess good analytical skills
- be skilled at handling multiple stakeholders
- have attention to detail
- have good time management and
- ideally, have some training in dealing with vulnerable people.

### Deciding whether to hire an external investigator

Many organisations in Tasmania 'outsource' their investigations to external companies or individuals. Some organisations do this as a matter of course, others on a case-by-case basis.

Outsourcing can be a good choice in some circumstances. But you should make sure that the investigator has adequate qualifications and experience. Your organisation should get value for money. It is not necessarily the case that an external investigator will do a better job than an internal investigator. If you outsource an investigation, you should still have someone internal who is capable of overseeing the investigator.

You will need to comply with relevant contract and procurement-related policies when hiring an external investigator.

Factors to consider in deciding whether to outsource an investigation are listed in the table below.

<b>Who is under investigation:</b>	<p>If the respondent is very senior, it may be necessary to outsource. This is because of the potential for both actual and apprehended bias.</p> <p>If a number of employees are involved, it may be preferable to outsource the investigation to avoid any perceived or actual conflicts or bias.</p>
<b>The size of your organisation:</b>	<p>If your organisation is small, you may not have anyone qualified to undertake the investigation, or it may not be possible for anyone to undertake an unbiased investigation.</p>
<b>The nature of the investigation:</b>	<p>An internal investigator may be better placed to understand the technicalities of the alleged misconduct.</p> <p>Or, if your organisation is small, you may not have an independent internal employee with the required expertise and/or time.</p>

<b>Time:</b>	<p>Will it be quicker to outsource the investigation, or to do it internally?</p> <p>Keep in mind that someone in your organisation will still need to oversee the external investigator.</p>
<b>Money:</b>	<p>Is it going to be more expensive to outsource the investigation, or do it internally? Often external investigators are the more expensive option.</p> <p>Do you have a suitably qualified staff member who can be spared from other duties to do the investigation, or will this result in an unsustainable drain on your organisation?</p>
<b>Your organisation:</b>	<p>The investigator should have a good understanding of the legislative environment and governance framework of your organisation. It may not be possible to find an external investigator with this knowledge.</p>

## Internal investigators

You should ensure that an internal investigator has time to dedicate to the investigation.

Investigations take time and energy. Do not expect the investigator to fit the investigation in around their already busy role. Consider giving them a set number of days per week to dedicate to the investigation. Make sure you consider any large blocks of planned leave. Bear in mind that the investigation should be completed as quickly as possible.

Ideally, the investigator will not be the person who undertook the preliminary assessment. This is to help avoid apprehended bias. [\[FS3\]](#)

The investigator should not have previously been involved in managing or disciplining the respondent in relation to the conduct. Particularly where the allegations amount to serious misconduct, the investigator should not have been involved in managing or disciplining the respondent in relation to any conduct in the past. This is to avoid apprehended bias.

### Conflicts of interest

Do not choose an investigator who was directly involved in the matter, or who is close to the respondent. [\[FS25\]](#)

For minor matters, it may be appropriate for the respondent's immediate supervisor to investigate. The more serious the matter, the more the investigator needs to be completely independent. Consider whether a member of the public would think the investigator had a conflict.

Even if the matter is minor, you should make sure that the investigator was not involved in the alleged misconduct. For example, if the allegation is about inappropriate use of emails, make sure that the investigator was not a recipient of one of the inappropriate emails.

Where relevant to your organisation, the investigator should be more senior than the most senior person under investigation.

If that is not possible, and there is a risk of apprehended bias, you should allocate a more senior person to assist the investigator. This person should sit in on the interviews with the more senior employees.

## External investigators

### Qualifications

Look closely at their qualifications and make sure they have all the necessary general skills listed above.

At a minimum, an external investigator should have an inquiry agents licence issued under the [Security and Investigations Act 2002 \(Tas\)](#). For more information, see the Department of Justice website [Security Agent Licences](#). In some public sector organisations, it is mandatory for external investigators to possess this licence.

Rather than looking to a private company, consider seconding or hiring an employee from another organisation.

### Experience

An external investigator should be able to tell you about their experience in employment-related investigations. Experience in Tasmania and in other organisations similar to your own will be particularly relevant.

You could quiz them about difficulties they have faced during investigations, how they dealt with them, and what the outcomes were. See if any of their investigations have been the subject of an appeal to an industrial commission. Find out what the outcomes of those decisions were, and review any comments about the investigation.

Make sure the investigator is capable of writing a clear, concise and evidence-based investigation report. You may wish to contact other organisations and see if they can vouch for the work of a particular company or person. Referee checks are crucial.

## Record keeping and external investigators

You must comply with any record keeping requirements for outsourced matters established under the [Archives Act 1983 \(Tas\)](#). At the time of writing, these were in [State Records Guideline No 10: Outsourcing of Government Business - Recordkeeping Issues](#). You will need to consider these requirements very early in the process as part of the contract negotiation. [\[FS14\]](#)

Under the guideline, it is a requirement to keep records of the outsourcing process.

Additionally, at the end of the investigation, you should make sure that the investigator:

- returns any sensitive or private records and
- gives you all evidence, any investigation planning documents, running sheets, and interview notes and transcripts.

Be careful about confidentiality before the contract is signed.

You should ensure that the records retained by your organisation clearly explain how the matter progressed and why each important decision was made. If the investigation report does not do this, you will need to keep primary documents such as transcripts and running sheets as well.

It is important that these records are retained in case the outcomes of the matter are challenged. It is also important for the purposes of internal and external accountability, and for the maintenance of corporate knowledge. The records should be stored with appropriate confidentiality restrictions. [\[FS7\]](#)

It is a good idea to specify in the investigator's contract that all relevant records are to be returned and that copies must be destroyed. You may allow the investigator to keep non-sensitive or de-identified material for their records.