

Standards for the conduct of inquiries and investigations for ACT Agencies

Acknowledgement

These Standards are based upon two documents. The first is *Fact-finder: A 20-step guide to conducting an inquiry in your organisation* published by the NSW Independent Commission Against Corruption in May 2002. The second is the *Australian Government Investigation Standards Package* recently issued by the Australian Government.

The ACT Chief Minister's Department would like to thank the Independent Commission Against Corruption and the Commissioner of the Australian Federal Police for permission to adapt these documents for use by ACT agencies.

These Standards will be reviewed after one year of operation. If you have any comments on how they may be improved, would you please submit them to the Executive Director, Industrial Relations and Public Sector Management Group by 1 July 2005.

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1. About the Standards

The Auditor-General, in his Report *Management of Fraud and Corruption Prevention in the Public Sector* (Report No 4, 2003), noted that the examination of a number of investigations had revealed that they had failed to meet best practice standards. The Auditor-General suggested that authoritative and detailed standards, procedures and guidelines for the conduct of investigations should be developed and widely promulgated. In its response to that Report, the Government agreed with this recommendation.

These Standards fulfil this undertaking and are in four sections:

SECTION 1 – About the Standards

SECTION 2 – Guidelines to assist officers in situations where a fact-finding inquiry is required

SECTION 3 – Requirements upon ACT agencies when managing complex investigations

SECTION 4 – Standards for the conduct of complex investigations.

1. Determining the level of investigations necessary

Investigation of allegations is streamed into three categories:

- 1 Those routine and relatively minor matters that are handled under disciplinary or equivalent procedures;
- 2 Those more substantive matters where there is a likelihood of prosecution or review by a judicial authority; and
- 3 Serious or complex offences against the ACT that need to be referred to the Australian Federal Police (AFP) to investigate.

Appendix B to the *ACT Integrity Policy* sets out the criteria for assessing the level of investigation required for allegations of fraud and corruption. For convenience, this table is reproduced and attached to these Standards.

2. Fact-finding inquiries

Section 2 is intended for use for ACT agencies to assist officers in situations where a fact-finding inquiry is required. The sorts of situations where it will be of assistance are:

- allegations of a breach of the obligations placed upon employees by Section 9 of the *Public Sector Management Act 1994*;
- allegations of fraud or corruption;
- allegations of waste or mismanagement;
- disclosures made under *Public Interest Disclosure (PID) Act 1994*; or
- grievances raised by staff members.

3. Managing complex investigations

The intended audience for Section 3 of these Standards are the Senior Officers Responsible for Business Integrity Risk (SERBIRs). It is suggested that SERBIRs familiarise themselves with the elements of the Standards that deal with the planning and structure of investigations.

4. Undertaking complex investigations

Where an allegation relates to serious fraud or corruption, under the *ACT Integrity Policy*, the investigation must be undertaken by either an officer of the Australian Federal Police (AFP) or an investigator qualified to the level of Certificate IV in Government (Fraud Control Investigation).

The intended audience for Section 4 of these Standards is:

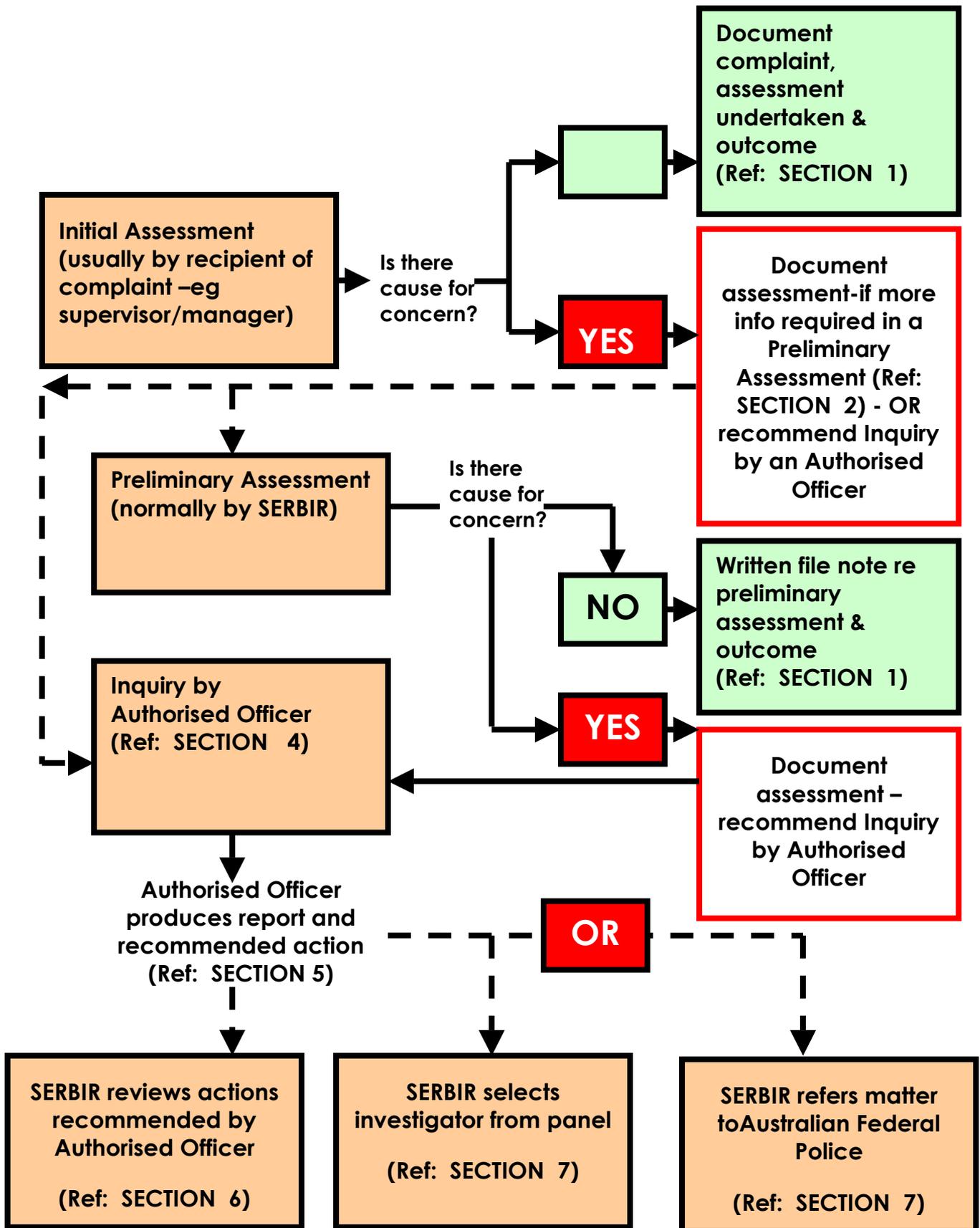
- Employees of ACT agencies who are qualified investigators
- Investigators engaged by ACT agencies to undertake investigations

Agencies may use an external service provider to undertake investigations subject to the requirements in the *ACT Integrity Policy* (Section 7.4). That Section provides for the selection of investigators from a panel. These Standards must form the basis of investigation tasks undertaken by investigators chosen from the panel.

- Senior Officers Responsible for Business Integrity Risk (SERBIRs)

These Standards will assist SERBIRs in meeting their responsibilities under the Policy by setting a detailed benchmark against which they can determine whether investigations have been conducted effectively. Where an investigation is of a level of seriousness that it needs to be undertaken by a qualified investigator, Section 3 of this document is also likely to apply in managing the investigation.

5. Investigation Process – Flowchart



2. Fact-finding inquiries

6. *Some issues to consider before commencing a fact-finding inquiry*

The core of the fact-finding process is the collection and analysis of information to determine the truth or falsity of an allegation.

2.1.1. *Scope and purpose*

A scope and purpose (sometimes called a Terms of Reference) is a brief statement setting out the bounds of the inquiry and its purpose.

The scope should be a brief description of the conduct being inquired into. It should not just reiterate the allegations made by the source. You should try to frame the scope in neutral terms that do not suggest that you have prejudged the issues, or assumed a person has engaged in wrongdoing. A scope also helps start your inquiry in a focused and impartial way.

A useful question to ask when drafting a scope for an inquiry is: Why are we doing this inquiry? This will normally involve identifying a function or role of the organisation that might be affected.

Inquiries are expensive and time consuming. It is worth considering whether there are some alternative ways of dealing with the situation the organisation faces. For example, if the heart of the issue is a conflict between two or more parties, mediation to settle the conflict may be a better option than an inquiry.

It is important for you to consider what the possible outcomes are likely to be, as this will affect the way in which the inquiry should proceed. Some of the potential outcomes of a fact-finding inquiry could be:

- a preliminary analysis to determine whether an investigation leading to prosecution should be undertaken;
- administrative action – such as disciplinary action;
- recovery of monies;
- mediation between aggrieved parties
- a wider workplace or organisational intervention; or
- changes to administrative procedures.

Realistically, it needs to be recognised that during the course of the fact-finding inquiry, it is likely that information will emerge that has not been predicted. While this makes planning the best way forward difficult, it does not relieve you from the obligation of always keeping in sight the objectives of the inquiry. Set a time frame for the scope of your inquiry that will let you gather the relevant information. You might specify a particular day or you might go back 6 months, or two years depending on the conduct in question.

Try to frame your scope and purpose as broadly as possible while still keeping it focused. This may avoid the need to amend your scope and purpose document if more information comes to light.

Keep referring to your scope and purpose to make sure it is still relevant to your inquiry. If new information comes to light that does not fit within your scope and purpose, ask yourself: Should this be the subject of a different inquiry?

2.1.2. Plan of the inquiry

An inquiry plan will be the foundation of your inquiry. It will define what you do, why you do it and when you do it. Its primary purpose is to keep your inquiry focused. For best results the plan should work from the general to the specific and be updated regularly. Before you do any task see where it fits within the plan, and when you do a task mark it off on the plan. The look and style of the plan is up to you.

An example of the contents of a basic inquiry plan is:

- Inquiry overview

A brief narrative about how the inquiry came into existence. You should state how the information came to the organisation's attention, the general ambit of the inquiry and the general details given by the source of the initial information and the reasons why an inquiry is being conducted. If you have conducted some initial inquiries detail them here.
- Scope & purpose

As defined by you and approved by the head of the organisation.
- Confidentiality issues/other risks
- Resources

Try to give an estimate of the resources needed to conduct a successful inquiry.
- Time frame

Try to give a rough estimate of the time frame for the investigation. It can never be set in concrete, but a timely conclusion to your inquiry is necessary making sure that the process is fair.
- Affected persons (discussed in Section 4.5 below)

Keep a list of people whose conduct might be inquired into – employees, members of the public, supervisors, contractors and the like. Update it as your inquiry proceeds.
- Evidence gathering tasks

Based on the avenues of inquiry you have come up with, you should prepare a list of specific tasks to be performed, and try to arrange them in order of completion.

With regard to the latter two issues, it is necessary to think ahead to possible procedural fairness issues as described in Section 2.4. Where there is an obvious need to take these issues into account, this may affect the way in which affected persons are dealt with and the nature of the evidence gathering tasks. For example, if procedural fairness issues require that all interviews be recorded and transcribed, this will need to be built in to the plan at the outset.

7. Administrative inquiry or criminal investigation?

- One important issue to consider is whether or not the inquiry into the allegation is likely to result in a criminal prosecution. Frequently, the person making the allegation will have unrealistic expectations that a prosecution and conviction are going to follow from the making of the allegation. However, such an outcome may be very difficult to achieve.
- Not all matters that are potentially criminal offences will be prosecuted. Only the ACT Director of Public Prosecutions (DPP) has the authority to proceed to prosecution and this decision is made in accordance with the *Director of Public Prosecutions Act 1990* and the prosecution policy promulgated by the DPP.
- If there is the likelihood of a prosecution, then the *ACT Integrity Policy* requires that the AFP or a qualified investigator undertake the investigation. However, before the DPP can make a decision, or the Australian Federal Police (AFP) is going to accept a referral of an investigation, some preliminary inquiries will need to be done. This guideline should be followed when undertaking that preliminary work.
- Fact-finding for an administrative decision differs in one important way from an investigation that may eventually lead to a criminal prosecution. With the former, natural justice considerations require that you put any allegation to the suspect as early as possible. This sort of notification should not be done if there is the likelihood of a prosecution because the suspect could destroy evidence, concoct alibis or attempt to improperly influence witnesses – all of which would severely compromise the likelihood of a successful prosecution.

If there is any doubt as how to proceed, you should contact the DPP, the AFP or the Government Solicitor's Office (GSO). Contact details are provided in an attachment to this document.

8. Powers

As a fact-finder you are acting under the authority of the head of your organisation. You should make sure that you get a written delegation or authority from the head of the organisation to conduct your inquiry. The head of the organisation should also delegate to you any powers that are available for you to adequately inquire into the matter.

In practice, this means that you do not have any authority to demand information that is outside the powers of the head of the organisation. Before commencing the inquiry, it is essential to be quite clear on what powers you have – and more particularly, what powers you do not have.

2.1.3. Power of persuasion

Beyond the authority stemming from the employer/employee relationship, ACT organisations have limited powers to gather information. This does not mean that you cannot conduct a successful fact-finding inquiry. The best way of successfully gathering information is to firstly try to get the cooperation of people. People are more likely to provide useful information if you:

- advise them of the general purpose and importance of the request;
- don't demand or threaten;
- make them feel they are making a substantial contribution to the organisation;
- and

- let them know you have the support of the head of the organisation.

You may find that people are more willing to cooperate with your inquiry if you have a written document from the head of the organisation requesting that employees cooperate fully during your inquiry

2.1.4. Searches

You should generally be able to search any locations or property belonging to the organisation. This includes offices, vehicles, computers, desks and bins. However, it is strongly recommended that you get approval in writing from the head of the organisation. Such a search is only appropriate if you feel that information may be destroyed or lost if a request for it is made.

The timing of the search and who is present is a matter for you. Consider the following:

- aim to cause as little disruption as possible;
- don't conduct a search in a way that will enable a person to destroy or hide documents;
- try to have another person present, who can observe the way you carry out the search;
- check your employment agreements or awards for any details on searches;
- try to video the search (without sound) and document what you find and where; and
- if personal items are likely to be found e.g. in lockers, have the person present.

Do not search any of the following, as you have no power to do so:

- a person's personal possessions such as handbags, wallets, or pockets,
- a person's clothing or body, or
- a private vehicle or an employee's home.

2.1.5. Getting answers to questions

You have the power to request that any employee answer a reasonable question or provide a document that relates to, or involves the work of the organisation. Contractors can also be asked about the performance of the contract.

If employees wilfully refuse to answer or hand over documents, it may be a disciplinary matter. However a refusal to answer or provide documents doesn't help you gather evidence. The secret to getting people to answer questions is to be reasonable and respectful. If a person fails to answer a reasonable question take that into account when assessing their credibility.

2.1.6. Taps and bugs

It is **illegal** to intercept phone calls or to record and listen to private conversations of any people, including employees. Do not tape conversations unless you are a party to the conversation and all the people present consent to the taping, or it is done to protect the organisation's lawful interests.

With the exception of investigations undertaken for Comcare, it is inappropriate in a fact-finding inquiry to covertly videotape the conduct of employees in the workplace. It is not appropriate to covertly videotape members of the community. The ACT is bound by the *Commonwealth Privacy Act 1988* and the Privacy Commissioner has issued Guidelines on this subject. A reference to these guidelines is provided in the Attachment.

9. Procedural Fairness

2.1.7. The law on procedural fairness or natural justice

The law of procedural fairness, also called natural justice, applies to any decision that can affect the rights, interests or expectations of an individual in a direct or immediate way. It applies to your inquiry. The law requires a decision maker to listen to, and take into account, an individual's point of view on any matter that adversely affects them.

The law has now developed to a point where it may be accepted that there is a common law duty to act fairly, in the sense of according procedural fairness, in the making of administrative decisions which affect rights, interests and legitimate expectations, subject only to the clear manifestation of contrary statutory intention

Kioa v West (1985) 159 CLR 550

A fact-finding inquiry can certainly affect an individual, especially in relation to their reputation and employment situation. For your inquiry to comply with the law you will need to actively seek out a person's version of events and give them a chance to comment on any facts that might be detrimental or adverse to them.

A person's belief that they are being treated fairly has a substantial effect on their behaviours and attitudes. A person is more likely to accept decisions if the procedures used to come to those decisions are fair.

Logic dictates that before you can find a fact from evidence you need to be able to:

- consider all the possible explanations for the evidence,
- try to get information from the best sources possible,
- consider evidence that might be both favourable and unfavourable to a person.

The evidence gathered from a person affected by your inquiry may lead to a more accurate finding of fact.

Procedural fairness is not merely a right that a person has if they become involved in an inquiry, but a duty that the inquirer has to those involved in the inquiry. Persons involved in the inquiry, or who may have something to contribute, should, as a matter of course, be given 'a voice' during the inquiry. This is dealt with more fully in 2.4.3 below.

2.1.8. Procedural fairness and the PID Act

In Section 2.4 above, it was noted that if there is a likelihood of a criminal investigation, it is not necessary to confront a person with an allegation made about them. Another situation where other considerations override some of the requirements of procedural fairness is where the inquiry has been triggered by a disclosure under the PID Act. That

Act makes it an offence for a person to engage in unlawful reprisal action against someone who has made a disclosure (Section 25). As well, the Act places legal obligations upon agencies to prevent unlawful reprisals (Section 22).

In making an inquiry based upon a PID Act disclosure, you should be extremely careful not to provoke reprisal action by transmitting an allegation to the subject of the allegation. In these circumstances, you should try to limit the number of people who know about the allegation to a minimum. The issues of confidentiality are dealt with more fully in 2.6 below.

2.1.9. The practicalities of providing procedural fairness

Giving a person ‘a voice’ during your inquiry requires you to:

- Give the person advance notice of any required interview or submission

Make the person aware of what is happening, how and when to respond, to what they need to respond and the scope and purpose of your inquiry. Give a reasonable amount of notice.

- Check your legislation and awards to see if time frames are specified
- Disclose the issues that adversely affect the person

Make the person aware of the relevant issues, facts, or comments that might affect them. If you are drawing adverse conclusions from material, let the person see it. You have to actually tell the person the issues, or likely adverse comments which concern them. Just sending documents or evidence is not enough, as this would unfairly require the person to work out the issues for themselves.

- Enable the person to make full submissions

Give the person the opportunity to speak or write about the issues in their own words. You should take what they have to say into account when finding the facts. You should give the person adequate time to prepare their response based on their ability to do so, and the seriousness and complexity of the matter.

- Allow the person representation, if you think it necessary

Always try to get the information directly from the source. However, sometimes that person may not be in a position to adequately respond. This may be due to difficulties with language or a certain disability. The decision to allow representation is a decision for you, based on the need for you to be able to gather good information. There should be no need in a fact-finding inquiry for a person to be represented by a lawyer unless complex legal issues are involved.

- Give reasons for your findings of fact

Your reasons for your findings of fact will be contained in your report. There is no need for you to explain to any person involved in your inquiry the reasons for why you are asking questions or seeking documents. Your final report should explain how you came to your conclusions based on the evidence.

- A support person

Unless there are good reasons, do not deny the person the option of having a support person present during any interviews you conduct in your inquiry. A support person should not take an active role and should be there to observe.

They can advise the person during the interview but, remember, you want answers from the source not a third party. Tell the support person that they are required to keep the fact of the interview and what was discussed confidential. Be very careful of having other work colleagues present who might breach confidentiality.

- Interpreters

If a person cannot adequately express himself or herself in spoken or written English, you should arrange for an interpreter. The interpreter should be qualified and independent. Do not ask a relative or friend of the person to interpret. Get the person to speak or write in their own language and sign or adopt what has been recorded and have the interpreter translate what was said, written or signed into English.

2.1.10. *Considering 'affected persons'*

In a fact-finding inquiry you should avoid labels such as suspect, defendant, wrongdoer, accused, target and the like. Instead, use the term "affected person". The term comes from one of the requirements of procedural fairness. This requirement says that any person likely to be adversely affected by a comment or a decision should be given the opportunity to comment and respond to the adverse comment or decision.

An 'affected person' is anybody about whom you might make an adverse comment or decision. It might be an employee performing a function, a supervisor, a contractor, a source of information, or a member of the public.

It is a good idea to keep a list of affected persons, starting at the beginning of your inquiry and updating it as you go along. Whenever an issue comes up that may be adverse to one of the persons on your list, it is a good idea to record that the affected person was given the opportunity to comment and to record what the person said in response.

The law does not prohibit you from making a positive or favourable comment about a person, without first running it by them. However, it might be fair to let the person know. The benefits could be enormous.

10. Avoiding bias

Bias can be made up of a number of different things:

- being partial, or favouring one person over another;
- being closed-minded and not listening to or taking into account what someone has to say; or
- having a conflict of interests between finding the facts and gaining some personal advantage or avoiding a personal disadvantage.

2.1.11. *The law on bias*

Being unbiased is the second aspect of procedural fairness. You should not be biased in your fact-finding process.

However, the law goes beyond looking for actual bias. You may have heard the phrase: Justice should not only be done, but should manifestly and undoubtedly be seen to be

done. This means the law will look at the person doing the inquiry and ask: Is there anything about the person, or the conduct of the person that might give rise (in the mind of a fair minded member of the public) to a reasonable suspicion that the person may come to a conclusion in the inquiry based on some form of self interest?

It is important for you to recognise if there is the potential for bias, and if so, to remove yourself from the inquiry as early as possible. Don't wait for the courts to decide for you. Let the head of the organisation know about potential bias on your part. If the reasons are documented make sure you and others keep them secure.

Because you are solely responsible for gathering and assessing the information during your inquiry, it is fundamental that you are unbiased and seen to be so. There can be no confidence in your findings of fact if there is a hint of bias. Facts should be found on the basis of evidence and logic, not because they suit your purpose.

2.1.12. *The practicalities of avoiding bias*

Be mindful of the potential for conflict between your fact-finding role and matters personal to you.

Ask yourself:

- Do I have, or will I have a personal relationship with any of the people involved in the inquiry?
- Mere knowledge of a person, or the fact that you have worked with them is not enough to make out bias on your part. You should look to see whether your personal relationship with the person is based on a close friendship and favouritism, or based on animosity.
- Was I a participant in any of the issues involved in the inquiry? If you witnessed something, or managed or supervised area, you should not be inquiring into those issues.
- Do I have a financial interest in any matter involved in the inquiry? If you or a family member are likely to gain or lose money from a decision or finding of your inquiry you should not be a part of it.
- Am I prejudiced in any way towards a person involved in the inquiry, or does my behaviour or comments suggest I may have prejudged issues or people?

The best way to avoid allegations that you are biased because of prejudice or pre-judgment is to remain silent. If you don't say anything during your inquiry about those involved (except of course when you interview or write a report) then people won't be able to make allegations that you said something that indicates bias on your part.

11. Maintaining confidentiality

Almost inevitably, fact-finding inquiries are about sensitive issues. It cannot be emphasised too much how important it is to protect the confidentiality of persons and material.

Section 9 of the *Public Sector Management Act 1994* includes a general obligation prohibiting the disclosure of information without proper authority.

If the inquiry relates to a disclosure under the PID Act, you should make yourself familiar with Section 33 of the Act that makes the unlawful release of certain

information an offence. In particular, disclosing information that could enable an informant to be identified, or that could lead to detriment to any person is prohibited.

Every effort should be made to protect the confidentiality of the sources of information for the inquiry, including witnesses. This means refraining from speaking about the inquiry to any person not directly related to the inquiry.

You should be cautious about making promises of confidentiality (or anonymity) that you may not be able to keep. There are a number of reasons as to why you may not be able to keep assurances of confidentiality:

- If the allegation relates to a serious matter, you may be required to reveal information to the police or a court and it is advisable to make the person providing the information aware of this;
- In some circumstances, the identity of persons providing information could become obvious by the nature of the information that is disclosed – for example, if only one or two persons are aware of a particular piece of information; and
- You may be legally required to provide reasons for a decision that you make that involve the revelation of sensitive information.

In all these circumstances it is important not to mislead potential providers of information by making promises of anonymity or confidentiality that you are not authorised to make.

A key element of maintaining confidentiality is ensuring that all documents, recordings and exhibits relating to the inquiry are kept in a physically secure environment.

12. Defamation

Persons undertaking fact-finding inquiries, as well as persons providing information occasionally express concerns about defamation. It is likely that the defence of qualified privilege applies in these circumstances.

Qualified privilege applies where the person making the statement has some duty – legal, moral or social – to make a statement and the person receiving the statement is under a corresponding duty to receive it or has some legitimate interest in receiving it. These are the circumstances where information is provided to a fact-finding inquiry and a report is written and transmitted to a proper authority. If the person making the publication, however, does so maliciously, then this will defeat the qualified privilege defence. If you have any concerns about the issue of defamation, it is suggested that you raise the matter with the GSO.

Section 35 of the PID Act specifically provides comprehensive protection from legal action for persons making disclosures under that Act.

13. Collecting information

2.1.13. Documents

When considering your avenues of inquiry you should have asked yourself: What documents might exist, or should exist in relation to a particular matter?

Documents can come from a number of sources. Look for documents that provide information about:

- what the correct procedures were in relation to the subject matter of your inquiry,
- what was communicated or discussed between the people involved in the inquiry,
- what records were created by people about the process.

Some common documents that might be relevant to your fact-finding inquiry are policies and procedures, standard forms, internal minutes, faxes, letters, emails, minutes of meetings, spreadsheets, invoices, assets registers, contracts, cheques, maps, computer programmes, tape recordings, photographs, video surveillance tapes.

A lot of documents may not be paper based. You may need to search a computer in order to find relevant documents.

Each document that you obtain should be copied. You will usually need more than one copy and you should secure all the originals after copying. Have at least one copy that you can work with, flag, highlight or write on, and one clean copy from which to make other copies.

2.1.14. Is it an authentic document?

When analysing documents you need to be able to say that it is an authentic or reliable document and that you feel confident enough to rely on it to find the facts. The more you know about a document, the more valuable a document is likely to be for your inquiry. The sorts of things you would need to know (and record) about a document are:

- where did the document come from?
- where was the document found?
- how did it get there?
- who created it and why?

2.1.15. Document analysis

Ultimately it is up to you to determine whether a document is authentic or reliable. Sometimes however you may need expert help. Document examiners can provide useful information in relation to documents. Using scientific techniques document analysts may be able to identify:

- who signed a document (handwriting analysis),
- when a document was created (paper and ink analysis),
- what alterations may have been made to a document,
- when and where the document was printed.

The AFP is able to provide a document examination service.

2.1.16. Give a receipt

It is a good idea to issue receipts for property collected or received. Keep receipt copies with the original documents as this will help avoid any allegations that you:

- took items against the person's will,
- manufactured the items (i.e., a document) or

- secretly or covertly took the item and therefore were not up front in your dealings with a witness.

Be suspicious if you come across a function in your organisation that has no associated documentation. Try to piece together what documents should exist and check computer logs, and perhaps even get documents from people to which they were sent.

2.1.17. *Taking statements*

You should try to reduce what a person has seen or done to writing. In other words, create a written version of what they say and work with the person to do so. You might get them to give you a written version of specific events or details and then use this to form the basis of a statement. Send the draft back to the person and get them to add or amend the statement, ultimately arriving at a statement that the person is prepared to sign.

When taking a statement from a person remember to:

- identify the person, their position and their age,
- frame the statement in first person. I saw...I heard...I did etc,
- use the person's own words or phrases,
- keep it in chronological order,
- record conversations in first person: I said "(exact words)...." she said "(exact words)...",
- refer to documents or things used by the person and annex them to the statement. In their statement say: "I produce that document/thing being a...(describe the document or thing).",
- have the person sign and date the statement and initial any handwritten changes on the document,
- rule through any blank spaces at the end of the statement to avoid additions being made later.

2.1.18. *The form of the statement*

A statement is a written record of a person's recollection of events. The form it takes might vary according to its likely use. Be mindful of the fact that a person may have to provide different forms of his/her statement, at different times. The more accurate that you are in getting the full details documented up front, the more consistent these different statements are likely to be.

2.1.19. *Is the witness credible?*

When analysing the reliability of the evidence of witnesses you need to be able to say that the evidence of the person is accurate and that you think it is truthful. This is sometimes referred to as the credibility of the person's evidence. In assessing the truthfulness and accuracy of the witness, some of the questions you may wish to address are:

- Are there any motives for distorting the truth?
- Are there any inconsistencies in the version or with other known facts?

- How good was the witness's perception?
- What is the probability of the version being true?
- What was the person's demeanour when they described the events?
- How much detail could the witness provide?
- Was there any delay in responding to questions?

2.1.20. Interviewing over the phone

It is a good idea to interview a witness face-to-face because your assessment of their credibility will probably be more accurate. However, if a matter is urgent or if a witness is a long distance away you might want to interview them over the phone. If a witness needs to be shown confidential documents you may have no option but to arrange a face-to-face interview. Consider the option of video conferencing.

2.1.21. Follow-up interviews

You should tell the person you are interviewing that you may require them to participate in a further interview or provide further information at a later date. You should also provide the person with an opportunity of telling you additional information if they think of any.

14. Interviewing "affected persons"

The purpose of an interview with any person in your list of "affected persons" is to give them an opportunity to comment on, and respond to the information you have gathered during your inquiry. You need to let them know if any adverse comment is likely to be made against them and listen to what they have to say about it.

2.1.22. Is it appropriate?

Check the following before you conduct any interview with an "affected person"

- Are you the appropriate person to conduct an interview? Sometimes your legislation may specify who should conduct disciplinary interviews.
- Do you feel confident enough to conduct an interview or can you get an experienced interviewer from within or outside your organisation?
- If a crime or corrupt conduct might be involved check with the AFP that your interview will not jeopardise another investigation.
- Have you collected all the available evidence before your interview?
- Have you planned for the interview by creating a list of important issues to cover? This will include any documents or things that need to be shown to the person. Any adverse comments that might be made against the person will need to be discussed with them.

2.1.23. Tape or type

There is no hard and fast rule about taping or typing an interview with an affected person. You may even want to videotape the interview. The important thing is to get an accurate record of what the person has to say. Taping the interview is an inexpensive

way of protecting the interests of all people involved in the interview. If you tape the interview you will, however, have to get it transcribed.

If you do a typed record of interview you should get the person to state that it is a correct record of interview and to sign each page and initial any errors. For abundant caution, get the person being interviewed to read aloud each page of the interview.

2.1.24. *The structure of the interview*

Regardless of the form of any interview it is useful to adopt the following structure.

- Introduction
- Get on record the following:
 - time, date and location of the interview
 - details of everyone present (including you and any support person)
 - short explanation of how the interview will be conducted
 - details of the person's name, date of birth address and occupation
 - consent to the taping of the interview

- Detail what the person's rights or obligations are

- For example:

“As an employee, you are required to answer all reasonable questions relating to the way you have carried out your work within the organisation. A willful refusal to do so may result in disciplinary action under the *Public Sector Management Act 1994*. You do not have to answer any questions that might incriminate you. Do you understand that?”

If you have any concerns about the appropriate form of words, it is suggested that you check with the GSO.

- ‘Do you agree’ questions

At this stage you should ask the “affected person” about past actions or conversations that you may have had with them.

- ‘What happened’ questions

At this stage you should ask open-ended questions about the person's knowledge of events. Give the person ample opportunity to state what happened and why in their own words.

- Get specific

When the person has had their say, go back and get more detail or clarification of certain points that are of importance to you.

- Closing the interview

Tell the person that that is all you intend asking at this stage. Ask if there is any further information that they wish to add. Ask them if they would like to provide a handwritten or typed statement about their recollection of events.

2.1.25. *Adoption of the interview*

At this stage you should ask the person about the following:

- Do they have any complaints about the way the interview was conducted?
- Have the answers to questions been given freely and without a threat promise or inducement being made by anybody?

Give the person a copy of the record of interview, unless there are good reasons to not to.

2.1.26. *Open-ended questions vs. leading questions*

It is important during an interview to get the person's version of events in as much detail as possible. This is usually achieved by asking open-ended questions, or questions that do more than just elicit a "yes" or "no" response. Open-ended questions ask generally: who, what, when, where, why and how.

Avoid using leading questions. It is not your role to cross-examine or trick the person into answering a question in a particular way. You are an impartial inquirer. However, leading questions are perfectly fine for minor issues such as: "Are you the manager of this area? Is your name...?"

2.1.27. *Support yourself*

A person being interviewed is entitled to a support person during the interview. You should also arrange to have a support person for yourself to be present during the interview. Someone who is familiar with the inquiry can assist you with the room, take notes, operate the tape or video or prompt you if you have missed any important points. This person can also provide details of what happened during the interview if needed later.

2.1.28. *Remember to be fair*

The whole point of an interview with an "affected person" is to be fair to them. Explain things carefully, do not try to trick them, and give them ample opportunity to respond to questions. If they raise relevant issues during your interview of which you were unaware, it is your duty to go away and inquire into them.

2.1.29. *Issues not in dispute*

A record of interview serves the useful purpose of identifying which issues may not be disputed by the "affected person". If an issue is not disputed, then you will save valuable time by not having to prove it.

2.1.30. *Try to avoid*

- You should try to get the information directly from the source. Evidence may become unreliable and difficult to use when people start telling you what others say they have perceived or done. Not all indirect evidence is unreliable and it may be the only evidence you can find. When assessing indirect evidence ask yourself: What is the likelihood of the evidence being distorted?

- It is your task to find out what happened. People’s opinions about a person, or what happened or should have happened are irrelevant to your inquiry. It is your task to find out what happened and why. Rather than give opinions get the person to describe in detail what they perceived.
- Evidence of witnesses can become corrupted both deliberately and inadvertently if other witnesses know what others have said or done. It can cause some people to change their version of events or alter their perceptions about an event. Interview people separately and ask them to keep it confidential.

15. Organising material

The secret to achieving a successful fact-finding inquiry is to organise the material that you have collected in ways that give you the chance to see patterns, relationships, and details between the many different types of evidence. Careful planning and organisation can help. Organising the file so that information is tabbed or indexed allows you to get to information quickly. Planning your inquiry enables you to pinpoint what you need to find and where you might be able to find it.

2.1.31. An evidence register

Keep a documentary record of all information received from others. Use a notebook or a computer to record details of:

Document or thing provided	Date/time	Provided by: name/signature	Received by: name/signature
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2.1.32. Chronologies

A chronology is a basic analytical tool that organises material according to date. Chronologies are extremely useful for analysing the time flow of a process, and can identify gaps, or delays in the process where something may have occurred that needs to be looked at. They also help you when you need to prepare statements in chronological order.

2.1.33. Running sheets or file notes

In order to demonstrate what you have done and when you have done it, it is useful to use running sheets to detail the actions you have taken during your inquiry. A running sheet is essentially an ongoing chronology of what you have done in an inquiry. This would include phone calls, letters, conversations and interviews. A running sheet should detail the time and date of an event, what the event was, and who did it. Sign or initial the entries that you create.

2.1.34. Contemporaneous notes

Contemporaneous notes are notes taken by you during an event, or immediately after the event. They are extremely useful when talking to people as the notes record your perception of an event at the time that it happened. They have the benefit of making your recollection of an event more reliable. The more detailed they are the more valuable they will be. It is useful for you to carry a notebook with you where you can record details of conversations.

16. Not completing, or terminating, an inquiry

For a number of reasons, you may decide not to proceed with an inquiry. Those reasons could be:

- you determine that the allegation is frivolous or vexatious; or
- the matter raised occurred a long time in the past.

To get to the point where you can make such a decision will require an initial assessment. When conducting this initial assessment, it is advisable to keep the number of persons who know about the matter to a minimum.

After your initial assessment of the matter you may decide not to conduct an inquiry. You should document your reasons for not conducting an inquiry and get them approved by the head of the organisation.

2.1.35. Frivolous or vexatious matters

Frivolous or vexatious matters do not need to be investigated. A frivolous matter is a matter that is trivial, or extremely far-fetched or not worth serious attention.

Vexatious matters do not have to be investigated. A vexatious matter is a matter that is reported solely to cause inconvenience to a person or the organisation and is devoid of merit. Working out whether a matter is vexatious is not an easy task. You may have to inquire before you can work out whether there is no merit in the matter. If there is some merit in the matter then it is not vexatious. The fact that the source of the information is aggrieved, angry or upset does not inevitably make the matter vexatious.

If the inquiry that you are making is as a result of a disclosure made under the *Public Interest Disclosure Act 1994*, you should note that Section 17 of the Act allows an agency to decline to act on a disclosure if it is considered to be frivolous or vexatious.

2.1.36. Age of matter

The age of a matter may have a significant impact on whether you can conduct an inquiry. Witnesses may no longer be available to be spoken to; documents may have been destroyed; people's memories may have faded.

2.1.37. Notification of a decision to discontinue an inquiry

The decision to not carry out an inquiry should be confidentially communicated to the source of the information. Whether you need to give reasons for the decision depends on what is said in your organisation's legislation and policies, and thinking about what is fair in the circumstances. If you have any concerns, it is advisable to contact the GSO and seek advice about this. You might also need to tell the people involved in the matter, for example supervisors, people named in allegations. Be mindful that you don't breach confidentiality by revealing sensitive information such as the name of the source.

If the inquiry that you are making is as a result of a disclosure made under the *Public Interest Disclosure Act 1994*, you should note that Section 23 of the Act requires that where an agency declines to act on a disclosure the complainant can request reasons for that decision.

17. Bringing an inquiry to finality

How you analyse and organise the information collected during your inquiry is up to you. Your ultimate goal is to come up with an accurate factual description of what happened in relation to the performance of the function defined in your scope and purpose.

2.1.38. Assessing the facts

Your findings of fact must be based on the evidence or information that you have collected during your inquiry. Remember that evidence is:

- documents collected,
- things collected,
- what people told you they perceived.

You must work from the information you have collected to arrive at the facts, and not the other way around. In other words, do not try to justify a fact by only collecting evidence that supports it.

Before you make a statement in your report that something occurred you must have information that is:

- Relevant

Relevant information is information that would make a fact more or less probable than it would be without the information. If the information doesn't help you distinguish whether a fact occurred then it is irrelevant. Ask yourself: Does this evidence help me work out whether something did or did not happen?

- Reliable

Reliable information is information that you consider to be accurate, and you are confident enough to use to make a finding of fact. Using reliable information means working out whether:

- documents are authentic or genuine and you know what they mean,
- things have been used and you know what was done to them and where they have been,
- people are credible and trustworthy and they are accurate in what they perceived.

If you don't feel confident enough to make a finding of fact based on the information collected you must either:

- not make a finding, or
- collect more information that increases your confidence.

2.1.39. To what standard?

You must collect enough information to show that the facts that you have found are the most probable facts given the information collected. When deciding whether you have enough evidence to make a finding of fact, keep in mind:

- the seriousness of any adverse finding you might make about what a person has done, and
- the possible consequences to the person because of your finding.

Ask yourself: Given the consequences of my finding of fact, how much does the information collected support the finding?

2.1.40. Standard of proof

In criminal investigations, the standard of proof is beyond reasonable doubt. However, for the sorts of matters that are going to be examined using this guideline, allegations need to be proved on the balance of probabilities. This standard of proof requires that it must be more probable than not that the allegations are made out. There is authority for the proposition that the strength of evidence necessary to establish an allegation on the balance of probabilities may vary according to the seriousness of the allegations.

Dixon J of the High Court said:

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the circumstances flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the Tribunal. In such matters ‘reasonable satisfaction’ should not be produced by inexact proofs, indefinite testimony or indirect inference.

Briginshaw v Briginshaw (1938) 60 CLR 361

2.1.41. Rules of Evidence

In your inquiry you are not bound to apply the complex rules about the admissibility of evidence that apply in a court of law. The assessment of the information you collect should be based on the criteria that the information is both relevant and reliable.

2.1.42. Tell the story

The best way to present your findings of fact is to tell the story, as you believe it happened. Do not judge or make criticisms of behaviour. You may use narrative form or dot points. Provide details of:

- who the people are, and what their role in the story is,
- a chronological description of what happened, and
- if certain facts are disputed by people, provide an analysis of why you came to your conclusion.

Your analysis should refer to what the person had to say about the fact.

18. Writing the report

The final step in a fact-finding inquiry is to prepare a document detailing how the inquiry was carried out and what your findings of fact are. You may also need to consider, or make recommendations, about what should happen as a consequence of

your inquiry. Remember that your report will show the reader the amount of care and rational thought that has been put into your inquiry.

2.1.43. *What to include?*

The format of a fact-finding report is up to you. Your organisation may have pro-forma documents for reporting purposes. As a general guide your report should be able to answer the following questions.

- What briefly is this report about?

A covering memo or an executive summary that briefly describes how the inquiry came about, how long it took, who was involved, how you went about doing your inquiry and what it found and what it recommends.

- Are there any confidentiality issues?

Alert the reader up front if the report contains confidential information, or information from a confidential source or sensitive information. If a protected disclosure is involved, mention it.

- What was the focus of the inquiry?

Describe the scope and purpose of the inquiry, and any changes to the scope and purpose. In other words, detail what functions were inquired into and why the inquiry was relevant to your organisation.

- What documents did the inquiry examine?

Provide a list of documents collected identifying who provided them.

- What things were examined during the inquiry?

Provide a list of things collected, identifying who provided them or where they were found.

- What witnesses did the inquiry interview?

Provide a list of people interviewed.

- Who are the “affected persons” in the inquiry?

Provide a list of people about whom you have made an adverse comment and the date when they were interviewed about the adverse comment. Put any records of interview or submissions from “affected persons” here. Remember that “affected persons” might be employees, supervisors, contractors, and members of the public. You should be fair to all.

- What facts did the inquiry find?

Detail your findings of fact either in narrative form or in dot point form. Include any charts or diagrams or photos that might help explain the facts. Don’t just mention statements and things but explain how they are relevant. Your findings of fact should tell the reader:

- when the conduct occurred (time/date/place),
- who did what and how they did it, and
- if possible, why they did it.

If certain facts are disputed by “affected persons”, provide an analysis of how you came to your conclusion based on what you found and the person’s version of events. State why you consider information is reliable or unreliable.

- What further action is recommended?

You might be tasked in a fact-finding inquiry to make recommendations about what should happen after the inquiry. For example:

- Whether disciplinary action is recommended because of identified breaches. If you make an adverse recommendation you should let the person know and let them comment.
- Whether a referral to the AFP is recommended or commencement of an investigation by qualified investigators. Such a matter might involve corrupt conduct, a crime, or a recoverable loss.
- How systems, procedures or policies can be changed to avoid the same thing happening again or to make things more accountable or transparent.

- What lessons might be learnt from the inquiry?

Detail here any problems that you had in carrying out your inquiry. For example:

- inability to gather evidence because of lack of powers,
- missing records,
- lack of cooperation by people and why,
- lack of resources or expertise in certain areas,
- inability to advance the investigation because of a need not to breach confidentiality, or other legal action.

- Appendices

Place any copies of statements, interviews, documents and things in an indexed appendix.

3. Requirements upon ACT agencies when managing complex inquiries or investigations

ACT agencies that undertake fact-finding inquiries or investigations have obligations to ensure that the process is managed in a way that maximises the likelihood of the best outcome for the ACT, protects the rights of suspects and the community, fulfils all accountability requirements and that ensures the most efficient use of resources.

Many of these issues should be settled with the officer conducting the inquiry or the investigator prior to the commencement of the investigation – particularly if the investigator is engaged from the private sector.

19. File management

It is essential that agencies properly document and record all decisions relevant to an inquiry or investigation. The following are the requirements relating to the recording of information created as a result of inquiries or investigations:

- Separate files should be raised for each inquiry or investigation;
- Files should have the same classification as the highest classification of documents on the file;
- Transfer of files should be documented on the cover;
- All folios on the file should be numbered;
- Drafts of a document should not be retained on the file unless the drafts have some significance (eg. to show the history of the development of a particular document, different versions of an evidence matrix, etc.);
- The medium used for the transmission of information and/or documents should be consistent with its security classification;
- Electronically stored information is subject to similar security guidelines as paper based files; and
- Where databases are used to record investigations, appropriate copies should be retained.
- Only personnel with the appropriate level of security clearance should have access to the agency file; and
- Human Resources units should be made aware of the need to maintain confidentiality of information. Disclosure of information contained within the file should only be made in accordance with agency guidelines, legislation and with regard to privacy principles.

ACT agencies are required to have approved records management programs under Section 16 of the *Territory Records Act 2002*. Each agency should ensure that its records management program is in accordance with appropriate file management practices for information relating to investigations, as set out above.

20. Activity Recording

The agency should adopt the following procedures for staff to record their activities during the course of an inquiry or investigation. This includes:

1. Maintaining accurate and up-to-date records on the relevant file;

2. Consistent recording of activities by staff involved in each inquiry or investigation;
3. Attaching all relevant correspondence to the inquiry or investigation file;
4. Recording all relevant verbal contact on the file;
5. Recording all information, advice or assistance supplied to other agencies, including the names of staff supplying and receiving, and a description or copy, where practicable, of the information, advice or assistance supplied;
6. Recording of electronic mail or facsimile messages, including details of the sender and intended recipient and documents forwarded;
7. Recording on the file other activities such as:
 - Contemporaneous notes;
 - Case notes;
 - Running sheets;
 - Situation reports;
 - Briefing papers;
 - Tactical plans;
 - Investigation plans;
 - Minutes;
 - Field book entries;
 - Photographic or electronic records;
 - Witness statements;
 - Records of interview; and
 - Property receipts.

21. Investigation Management

In the event that a fraud or corruption investigation is large and/or complex, the agency should adopt the following procedures to assist in the management of the investigation. These procedures involve the creation and maintenance of an investigation management system.

The management system may utilise evidence matrices, resource spreadsheets, tactical plans, investigational plans, databases, spreadsheets and charting. The management system should include procedures that ensure the following:

1. The investigation management procedure should allow for the development of an investigation plan, systematic recording of decisions and a regular review process;
2. The investigation management procedure should allow for the completion of the recorded aim in an efficient and effective manner having regard to responsibilities, resource demands and costs;
3. The investigation management procedure should be able to identify an appropriate level of financial and human resources to undertake the investigation,

giving consideration to the nature, priority, complexity and political aspects of the allegation;

4. The procedure should involve a regular review process throughout an investigation, enabling investigators to remain focused on the aims of the investigation or to shift the aim of the investigation as dictated by circumstances; and
5. An investigation management procedure should also enable the following:
 - Identifying allegations and potential offences;
 - Identifying facts in issue;
 - Identifying avenues of inquiry;
 - Identifying tasks to be undertaken;
 - Determining strategic and operational methods that will be used to achieve the aim of the investigation;
 - Prioritise identified tasks;
 - Determining the methodology for collecting evidence;
 - Setting the structure of the investigation team;
 - Allocating specific tasks;
 - Determining timings for tasks to be commenced and completed;
 - Reviewing the management and status of the investigation to ensure the investigation is still focused.

22. Evidence Matrix

It is recommended that in managing a complex inquiry or investigation, an evidence matrix be used. The function of an evidence matrix is to facilitate orderly planning of an inquiry or investigation and to provide a means of clearly identifying the objectives of an investigation, the elements/proofs of the offence/s, and the avenues of inquiry.

23. Resource Spreadsheet

Similarly, it is recommended that in managing a complex inquiry or investigation, a resource spreadsheet be developed. The purpose of a resource spreadsheet is to assist in the management of resources on a given task, and to quickly assess the resource needs of an inquiry or investigation.

24. Recording Critical Decisions

When an agency is involved in any inquiry or investigation, it is most desirable to have to have written procedures in relation to the making and documentation of critical decisions.

Critical decisions are those decisions made during the course of an inquiry or investigation that lead to a significant change direction or approach. These can include the decision to employ or not to employ particular methodology, to terminate a line of enquiry, or to commence a new line of enquiry not identified in the original inquiry or investigation plan.

All critical decisions made during the inquiry or investigation should be documented on the investigational file. This documentation should include:

- The decision itself;
- The reason for the decision.
- The material reviewed;
- An amended investigational plan, evidence matrix or resource spreadsheet, if appropriate;
- The officer making the decision; and
- The date of the decision.

4. Additional standards for the conduct of complex investigations

When an investigation is complex and, using the criteria set down in Attachment A, an agency determines that it needs an investigator qualified to conduct a complex investigation, the matter can be handled in two ways.

First, it can be referred to the Australian Federal Police in line with Section 7 of the *Integrity Policy*. If the AFP investigates the matter, these standards do not apply.

Second, the agency can make a decision to engage a qualified investigator to handle the matter. Within this Section, such a person is referred to as ‘the investigator’.

25. Requirements of Part 2

The investigator will fulfil all the requirements set down in Part 2 of this document. In addition, the investigator is required to undertake the tasks described below.

26. Witness statements

Investigators acting on behalf of an ACT agency should adopt the following procedures regarding the process for the taking of witness statements, content of witness statements, and the use of expert witnesses. Procedures for the taking of witness statements:

- The interview of a witness should be conducted at the first practicable opportunity to ensure the best recall of events and to avoid contamination of the witness’s memory through discussion with other people, or from media reports, rumours etc. The statement should be taken and signed at the time of the interview;
- Technical terms, slang and jargon used by the witness should be written as said, but also clearly explained in the statement to ensure there is a common understanding of the meaning;
- When taking statements from persons under 18 years of age, the parent/ guardian or a responsible adult must be present during the interview. The parent/guardian should co-sign the statement;
- Witnesses who have a limited understanding of English should be offered the services of an accredited interpreter;
- Statements should include all relevant admissible and exculpatory evidence. The investigator taking the statement should comprehend the rules concerning hearsay and the provisions of any relevant *Evidence Act* or other laws relevant to the ACT jurisdiction; and
- Where a witness wishes to change part of his/her statement after signing it, or wishes to add further information, a supplementary statement should be prepared. Original statements should not be changed or destroyed. All statements obtained will form part of the brief.

Witness statements should be taken in a form that is acceptable to courts in the ACT jurisdiction.

4.1.1. Expert witnesses

Investigators should have expert assistance when they do not have the necessary technical expertise in a given field. The selection of an expert should be made, on the recommendation of the investigator, by the SERBIR following consideration of the person's standing, qualifications, capabilities and relevant experience to establish the necessary credibility before the court.

Where an expert witness is to provide evidence, it is necessary to establish the person's expertise to the satisfaction of the court. The expert witness's statement should provide a full list of their formal qualifications and a summary of their relevant experience.

4.1.2. Use of interpreters

Where an investigator believes that a person is unable, because of inadequate knowledge of the English language or a physical disability, to communicate orally with reasonable fluency, an interpreter should be appointed. The use of accredited interpreters is best practice. The investigator must ensure:

- The interpreter is independent of the matter under investigation;
- The interpreter is aware of his/her obligation to translate the exact words used by the investigator and the suspect or witness. The interpreter must not impede or distort the communication; and
- Where possible, all conversations involving the use of an interpreter are tape-recorded so they may be independently interpreted, if required.

27. Formal interview of suspects

Investigators need to be fully aware of the requirements of the *ACT Evidence Act 1971* and all relevant rules with regard to:

- Recording of interviews;
- Formal cautions;
- Interview time restrictions;
- Statutory rights of suspects;
- Rules regarding voluntariness, fairness and reasonableness; and
- Recording of interviews and transcripts of recordings.

28. Handling of physical evidence and exhibits

When an investigator decides that material held by the agency is relevant to the investigation this material should be treated as evidence until no longer required for the investigation and/or prosecution.

Physical evidence includes documentary and electronic evidence. Physical evidence can be obtained in a number of different ways:

- Voluntarily provided by witnesses or suspects;
- Evidence already held by the agency; or
- By the use of agency coercive powers.

All physical evidence should be subject to the same procedures for handling, storage and disposal, regardless of the manner in which it was obtained.

The investigator should be conversant with the *ACT Evidence Act 1971* any legislation relevant to the particular agency. Investigators also need to be familiar with the requirements for seizing of electronic evidence as applicable to their jurisdiction.

4.1.3. Exhibit Register

When the investigator has taken possession of the evidence, the following procedures must occur at the earliest opportunity;

- 1 The exhibit should be recorded in an Exhibit Register and allocated an exhibit number. The information in the Exhibit Register should include the full details as recorded on the property seizure record;
- 2 Any subsequent movements of the exhibit should be recorded in the Exhibit Register. This must include the date, the name and signature of the person taking the exhibit, the reason and the destination;
- 3 Wherever possible, a perishable exhibit should be photographed and returned to the owner as soon as practicable, unless legal requirements prevent this from occurring. It may be necessary to take a representative sample for testing and for later use in evidence;
- 4 A designated Exhibit Registrar should maintain the Exhibit Register. The nominated person should monitor and maintain the Exhibit Register and the exhibit room or storage area. This person needs to have an appropriate security clearance; and
- 5 Original exhibits should not be attached to witness statements or provided to DPP. Once obtained, it is the responsibility of the agency to maintain these exhibits until required at court, returned to the owner, or lawfully destroyed.

4.1.4. Use of technical equipment

All investigators should possess and apply appropriate knowledge and skills to operate agency technical equipment in accordance with law, for example, the use of tape recorders for the recording of cautioned interviews as required by the *ACT Evidence Act 1971*.

29. Preparation of prosecution briefs

A brief is a set of papers containing:

- An allegation and reference to the relevant legislation;
- A narrative of the facts of the case; and
- The evidence obtained that proves the elements of the possible offence.

Briefs must be in an orderly and manageable format so that the prosecutor can easily and effectively:

- Understand the allegations;
- Assess the evidence against the allegations;

- Decide what charges are available against whom and whether charges should be laid;
- Identify what further evidence the investigator should attempt to obtain;
- Provide appropriate disclosure of the prosecution case to the defence; and
- Prosecute the case in court.

Poorly put together briefs are much more difficult to understand and assess than well-organised and thought out briefs. Briefs containing large numbers of documents can become unwieldy, resulting in difficulties such as locating specific information and understanding the significance of documentary evidence. The defendant's lawyers will also find it difficult to understand such a brief. In that situation, they may approach the court to order service of a proper brief.

It is the job of the investigator, not the DPP, to organise the brief. It is the responsibility of the investigator to liaise with the DPP on the form of the brief that is required.

5. Attachment: Case handling criteria

Suggested streaming of cases for investigation

Characteristic of case	Refer to the Australian Federal Police	Use formally qualified investigators	Handle in-house
Complexity	Requires detailed analysis of large amounts of evidence, both paper and computer based Use of sophisticated technology	Requires detailed analysis of evidence, both paper and computer based	Analysis of relevant evidence straightforward
Potential damage	High monetary loss Significant damage to the reputation of the ACT PS Harm to the economy, assets or environment of the ACT Impact upon broader national law enforcement issues (eg, organised crime, money laundering)	Medium monetary loss Significant damage to the reputation of the organisation	Minor monetary loss Minor damage to the reputation of the organisation
Nature of offence	Elements of criminal conspiracy Serious breach of trust by an ACT employee	Likely to involve action before a court or tribunal	Likely to be limited to administrative action within the agency
Status of evidence	Preliminary analysis indicates strong possibility of proof beyond reasonable doubt Falls within ACT DPP Prosecution policy	Preliminary analysis indicates possibility of proof to the level of proof beyond reasonable doubt or balance of probabilities	Preliminary analysis indicates strong possibility of proof to the level of balance of probabilities
Scope	Involves known or suspected criminal activities in a number of ACT agencies and/or jurisdictions Collusion between a number of parties	More than one party suspected of being involved in the case.	Isolated incident
Availability of evidence	Evidence is required that can only be obtained by exercise of a search warrant or surveillance	Evidence is required that can be obtained within the agency	Evidence is required that can be obtained within the agency

6. Contacts

ACT Government Solicitor

Telephone: 02 26070666

E-mail: actgso@act.gov.au

ACT Office of the Director of Public Prosecutions

The *Prosecution Policy* mentioned in section 2.5 can be located at:
<http://www.dpp.act.gov.au/policy.htm>

ACT Ombudsman

Telephone: (02) 6276 0111

Facsimile: (02) 6249 7829

Email: ombudsman@ombudsman.gov.au

Australian Federal Police

Team leader, Fraud Investigation

Territory Investigations Group

Telephone: 62567777