

# The use of investigative planning in complex investigations

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## What is an investigation?

Fact finding process to answer identified questions  
Answers will determine further action e.g.

- prosecution
- disciplinary action
- recommendation for remedial action or administrative improvement

## Good investigative practice – Ombudsman

- Fair and impartial fact-finding
- Systematic and comprehensive process
- Sufficient reliable information on which to base opinions and recommendations
- Accurately reporting the outcomes

## The investigative plan

- Key to every good investigation
- Prepare BEFORE commencing investigation
- Road map – whom, what and how
- Facilitates effective supervision
- Part of good record keeping
- Promotes accountability and transparency

## Comment on investigative planning

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*A good investigation starts with careful planning and preparation, a clear understanding of the parameters of the investigation, and with proper authority. Care and attention spent in getting it right at the outset will avoid considerable difficulties later on."*

*[NSW Ombudsman – Investigating complaints – a manual for investigators, Sydney 2004]*

## Developing an investigative plan

### Step 1: the allegations

Identify the conduct/event being investigated.  
For example:

*"Prisoner A claims he has been unfairly refused entry to a program for behaviour modification, which is a prerequisite for progression to a lower security classification."*

## **Step 2: issues for investigation**

Issue 1: Is the prisoner's allegation true?

Issue 2: If the prisoner raised the complaint with the DCS, did the department respond appropriately?

Issue 3: Does the department have a fair process for admitting prisoners to programs?

## **Step 3: benchmarking**

This step relates to identifying the criteria against which issues are to be assessed:

- Relevant corrections legislation
- Department's policies and practice
- Fair and reasonable decision-making

In other cases, you will need to consider an agency's Code of Conduct and best practice

## **Step 4: identify facts in issue**

What facts need to be established to determine if the allegation is true or false?

- Was prisoner eligible to enter program?
- Did he follow the proper procedure for admission?
- What were reasons for not admitting him?

## **Step 5: possible avenues of inquiry**

- What sources may be available to provide relevant evidence e.g. potential witnesses, records, site inspection?
- What are the advantages and disadvantages of different methods of gathering evidence?

## **Step 6: other tips**

- Investigations rarely proceed as planned
- Be prepared to revise the plan – always follow the facts rather than trying to make the facts fit into the plan
- Obtain appropriate authorisation for amendments to the plan
- Keep referring back to the plan

## **Case – example 1: Daintree River Ferry Investigation**

### **Allegations of Council's CEO**

- GM Engineering Services designed tender documentation to favour company of step-daughter and her husband
- Assessment of tender carried out in a way that favoured their tender
- Husband carried out work on Mayor's partner's farm and some gratuity given

## **Mayor's allegations**

- Collaboration between some councillors and previous ferry operator during tender process
- CEO responsible for delays in tender process and signing of contract

## **Own initiative investigation**

- Was it reasonable for Council to have purchased old ferry from previous operator who was unsuccessful tenderer for new contract?

## **Investigative plan**

### **Issue: What role did GM play in tender process**

Questions raised:

- Was tender documentation appropriate?
- Were instructions he gave to Council's solicitors consistent with directions of Council?
- Did he follow advice of solicitors?
- Did terms of tender preclude competitors?
- Did GM notify supervisor of relationship with tenderer?
- Was the notification recorded?

### **Issue: Did Mayor receive any benefit from successful tenderer?**

Questions raised:

- Did tenderer do work on mayor's partner's property during tender process?
- Why did Mayor engage him?
- Did Mayor receive any discount or favourable terms?
- Did Mayor inform Council work was being done?

### **Issue: Purchase of existing ferry**

Questions raised:

- Whose idea was it?
- Who had carriage of negotiations?
- What alternatives were evaluated and by whom?
- Did individual councillors speak to the ferry owner about Council purchasing ferry and, if so, why?
- What material was provided to Council as basis for its decision?
- Was contract for purchase of ferry consistent with Council's decision?

## **Relevant legislation and policy**

### **LG Act – Chapter 6 – Contracts and tendering**

- Local Government Finance Standards
- State Purchasing Policy
- Council's Purchasing Policy
- Work Instructions – Procedures for Purchasing

## **LG Act – Chapter 16 – Registers of interests**

- Public Sector Ethics Act
- Code of Conduct – Officers of the Council

## **Investigative strategy**

- Informal investigation but have available notice of intention to use compulsory powers just in case
- Examine documentation provided by CEO via CMC
- Visit Council and collect and examine relevant material, e.g. minutes, tender documentation and documents re purchase of old ferry
- Interview Mayor, councillors, CEO, GM Engineering, other officers etc
- Exchange information with CMC officers

## **Outcomes**

None of allegations was substantiated:

- GM had declared his interest & withdrawn
- Successful tenderer had done excavation work on Mayor's partner's property but been paid normal amount
- Council had purchased old ferry because it was reasonably thought to be best option
- CEO had not unreasonably delayed process
- GM's disclosure not recorded – breach of Code
- No Code training and insufficient awareness
- Individual councillors spoke to previous operator during tender process but did so because not given enough information
- Previous operator may have breached conditions of tender by contacting councillors

## **Case – example 2: review of regulatory agency**

Several allegations over recent years of:

- Lack of prosecution action
- Lack of co-ordination with other agencies with overlapping roles

Even if allegations proved, agency would not have commenced prosecutions as matters were out of time.

Therefore, our focus was on improving the agency's regulatory practice.

## **Issues for investigation**

- Are regulatory procedures appropriate, including procedure for approving prosecution action?
- Are investigations and other compliance activity properly supervised and audited?
- Are the most effective compliance options (including prosecution action) selected?
- Is record keeping adequate, including electronic CMS?
- Is adequate training provided to officers?
- Do systems exist to avoid duplication of regulatory activity with agencies with overlapping roles?

## **Relevant legislation and policy**

- Various Acts and Regulations enforced by agency
- Agency's policies and procedures

## **Investigative strategy**

- Informal investigation
- Research various regulatory models
- Prepare audit checklists based on agency's policies and procedures and good regulatory practice
- Audit sample of 200 cases using checklists
- Conduct workshops with a range of officers to discuss their use of compliance options
- Interview senior officers to clarify practices and procedures

## **Opinions and recommendations**

- Procedures generally sound but considerable scope for improvement
- 150 recommendations about:
  - responding to after-hours emergencies
  - prioritisation of cases
  - keeping complainants informed
  - supervision of cases
  - record keeping
  - clearer guidance on use of enforcement options
  - procedures for authorising prosecutions
  - training
  - co-ordinating response with other regulators

## **Conclusion**

- Two very different cases – one reactive and one proactive
- Investigative plans ensured we knew where we were heading and met our objectives
- Final stage is to monitor implementation of recommendations