

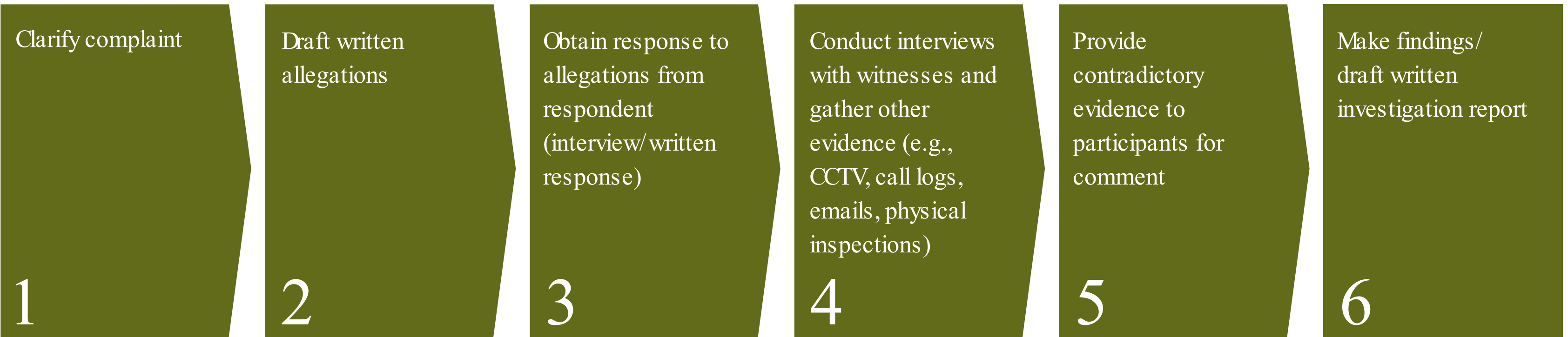
Conducting Workplace Investigations in the age of AI

Clubs NSW WR & HR Conference | 10 August 2026



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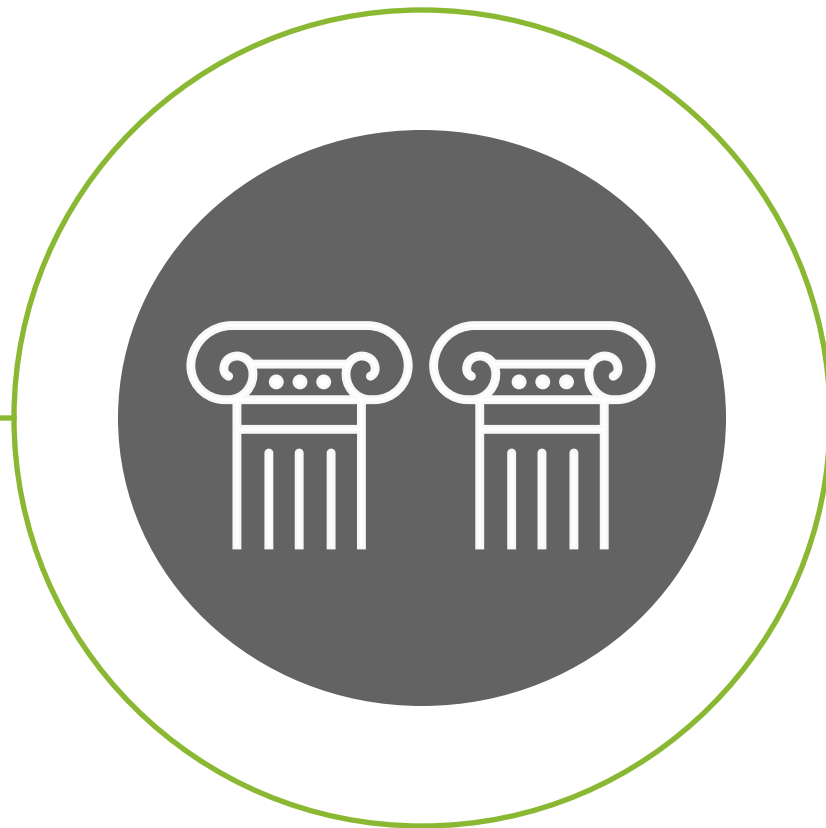
The Workplace Investigation Process



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Procedural Fairness

Procedural Fairness is made up of:



No Bias Rule

The Investigator should not have made up their mind in relation to the facts and should not have a conflict of interest or be seen to have a conflict.

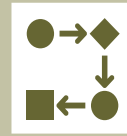
Fair Hearing Rule

The Investigator must follow reasonable enquiries.

The Respondent must understand that a decision will be made about their interests and be given an opportunity to respond to the evidence against them.

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Golden Rules of Procedural Fairness



Have a procedurally fair / trauma informed process.



Provide adequately particularised allegations and advise about the possible outcomes to the respondent before asking them to respond.



Ensure you remain an impartial and independent investigator.



Maintain confidentiality where practicable.



Offer a support person to all participants and support the parties throughout the process. Consider wellbeing & psychosocial safety for all participants.



Act diligently and promptly.



Make your findings independently and based on the evidence you have collected, on the balance of probabilities.

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What is Clarifying a Complaint (Triage)



Triaging is the process of clarifying the complaint and assessing how best to manage it.

An assessment is needed.

- Get curious!
- What's clear / what's not clear.
- Does something need to be verified.
- What further information do you need?
- What parts of the organisation's policies are relevant to the alleged conduct?
- Is it the best process?

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The Investigator



There are some restrictions on who can / should investigate:

- Should not be a witness
- Consider actual, perceived or potential conflict of interest
- Someone with appropriate expertise and experience

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| Communication is Key

- Transparency is key in a procedurally fair investigation
- What to tell the Complainant
- What to tell the Respondent
- What to tell the Witnesses
- Confidentiality
- What about at the end of the process?



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| Interviewing the complainant

- Avoid repeated questioning that forces them to relive traumatic details.
- Focus on what information is required, not every detail of the incident is relevant.
- Support their feelings without leading or influencing their narrative.
- Don't challenge what they say, make them feel doubted, or question their story in a way that feels like their recollection is being interrogated.

You will need to ask questions to test their account but explain why.



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Interviewing the respondent

- Interview is structured around the allegations (given to the respondent in advance).
- Provide free and genuine opportunity for respondent to respond to each allegation in their own words.
- Consider written responses generated by AI – not necessarily lacking credibility.
- Not an interrogation!



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Questioning techniques (beyond AI)



Interviews should involve a mix of:

- Open questions (breadth and depth)
- Closed questions (confirmation, gathering and confirming specific detail and confirming your understanding)

Open questions:

Tell me, Explain for me,
Describe for me (TED)

Closed questions:

Who, What, Where, When,
Why & How (5W+H)

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Components of well-drafted allegations

Complaints as initially received tend to lack detail, contain emotive statements and not be concise.

For a respondent to have a genuine opportunity to respond, the complaint needs to be turned into allegations which are:



Clear



Specific



Objective



Contains
information able
to be responded
to by
the respondent



Outlines
behaviour that is
“wrongdoing”

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| Components of well-drafted allegations

Examples of Procedurally Fair and Unfair Allegations



It is alleged that you harassed Jasmine which caused her to become upset and take sick leave

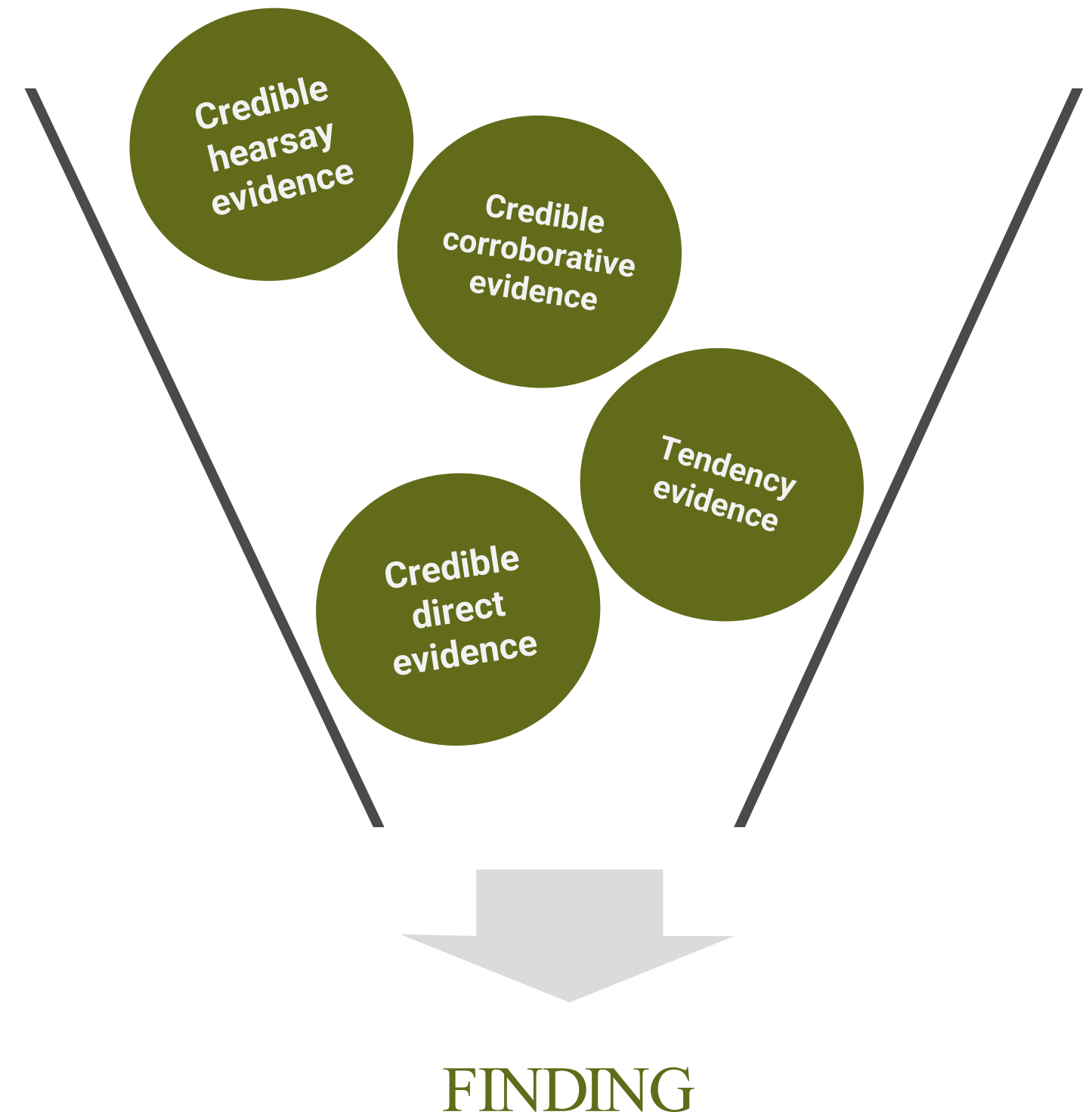


On or around 8 July 2026, it is alleged that you behaved inappropriately when speaking to Jasmine Smith during a team meeting. Specifically, it is alleged that you raised your voice and criticised her presentation by stating words to the effect 'this is all wrong, did you even check your information'.

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Assessing the evidence

- Once all the evidence is obtained, the next step is to assess the evidence to make a finding on the **balance of probabilities** for each allegation – **is it more likely than not that the alleged conduct occurred?**
- Practically, this means having an actual persuasion that the relevant evidence supports the allegation.



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Forms of evidence

Credible direct evidence

- Direct witness evidence
- Documents and emails
- CCTV of alleged incident

Credible corroborative evidence

- Firsthand evidence supporting evidence given by one of the parties
- Has weight when connected with direct evidence

Credible hearsay evidence

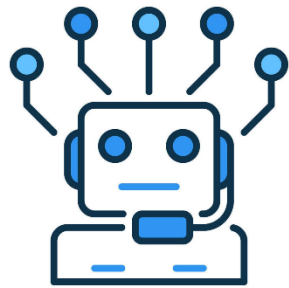
- Second hand or reported information
- Can bear some weight
- Workplace investigations not bound by rules of evidence

Tendency evidence

- Evidence that the respondent has behaved in same or similar way previously
- Can be highly prejudicial with questionable weight – use with caution
- If intending to use, should put to respondent for comment
- Multiple complainants raising similar allegations against respondent

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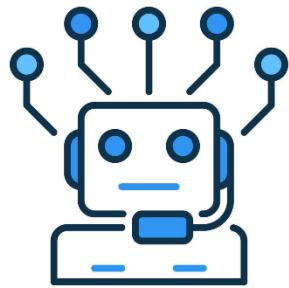
Artificial Intelligence



- AI is changing how complaints are made and how investigations are conducted.
- AI creates significant opportunities but also new evidentiary and ethical risks.
- Workplace Investigators must remain curious, cautious and human.
- The question being asked – what can we still trust?

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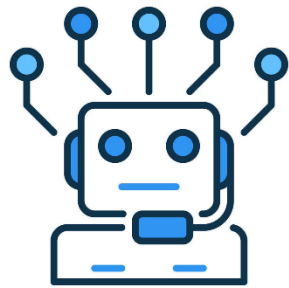
Artificial Intelligence—What has changed?



- Anyone can now produce convincing texts, images, audio, video and electronic communications.
- AI tools are helping prepare complaints, interview responses.
- Investigators can use AI to assist the process but...
- Authenticity is becoming harder to identify.
- Traditional assumptions about documentary evidence can not be made.

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Artificial Intelligence—How AI Might Enter an Investigation



- Drafting complaints or responses to allegations.
- Generating or altering emails, messages and screenshots.
- Producing summaries of evidence, chronologies.
- Analysing evidence or suggesting findings.
- Drafting reports.

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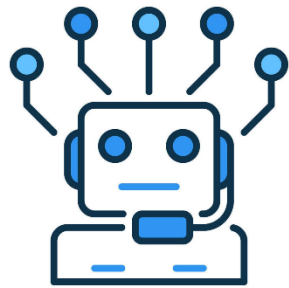
Artificial Intelligence—Demonstration



- Which one appears genuine?
- What features influenced your decision?
- Could you rely on appearance alone here?
- What would you need from here?

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Artificial Intelligence—AI Assisted Complaints



- AI can help complainants explain difficult experiences more clearly.
- It makes complaint processes more accessible for people with literacy, language and disability barriers.
- A complaint assisted by AI does not make it dishonest.
- The language may not reflect natural vocabulary.
- AI though may introduce assumptions, exaggerations.
- The Investigator must distinguish between the person's actual evidence and the words generated by AI.

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Assessing credibility of verbal evidence

Did the account seem spontaneous or rehearsed?

Was the person confident in their recollection?

Did it make logical sense/ internally coherent?

Was the evidence exaggerated?

Was it plausible?

Were there any significant inconsistencies in the person's evidence over time?

Is there a reasonable explanation for any gaps and/or inconsistencies?

Is there any evidence of collusion?

Is there any evidence or obvious motive for the person to provide false information?

Participant responses to contradictory evidence.

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Common Pitfalls

Where do things go wrong?

Investigating
when ADR would
have been better

Poorly drafted or
vague
allegations

Failing to be
transparent
about the
process

Not providing
sufficient access
to and time to
respond to
evidence

Failing to identify
all reasonable
lines of enquiry

Not assessing
credibility
of evidence

Not clear
how evidence
led to findings

Not explaining
why an item or
evidence was
given weight —
no reasoning

Including
irrelevant
information

Investigator was
a witness

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What next?

The Investigation is just part of the process. What happens next is just as important.

Steps to close out the investigation:

- ✓ Communicate the outcome
- ✓ Deal with any disciplinary action
- ✓ Consider any other matters that arise during the investigation
- ✓ If the Respondent is retained, consider remedial coaching
- ✓ Consider mediation to resolve any lingering discontent
- ✓ Monitor

| Conducting Workplace Investigations (and AI) | Before moving on...

Questions & Answers



Thank you for your participation

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