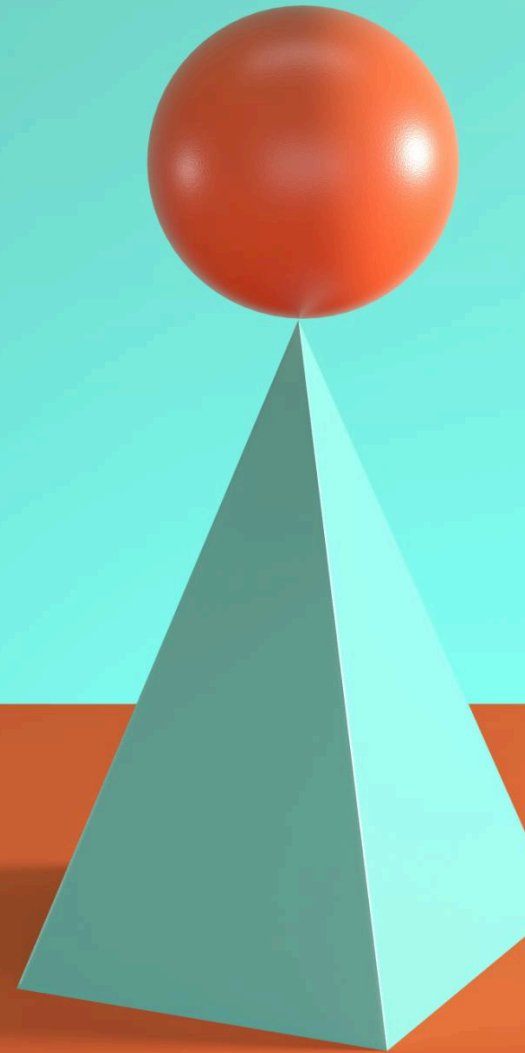


How to Respond to misconduct

Managing misconduct can be one of the most challenging aspects of HR's role.

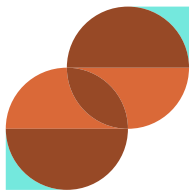
Practising proactive management and ensuring robust procedures is crucial to ensure safe workplaces, especially with strengthened positive duty obligations placed on employers to eliminate sexual misconduct at work, and their broader obligations to create safe work environments.



KEY PRINCIPLES OF HANDLING COMPLAINTS

At a foundational level, organisations must have a workplace policy in place that sets out its grievance handling procedure.

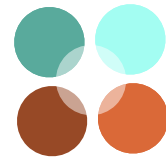
To meet work and safety obligations, this policy should be:



Consultative



Confidential



Accessible to all employees



Based upon procedural fairness



Efficient and timely



Effective and compliant

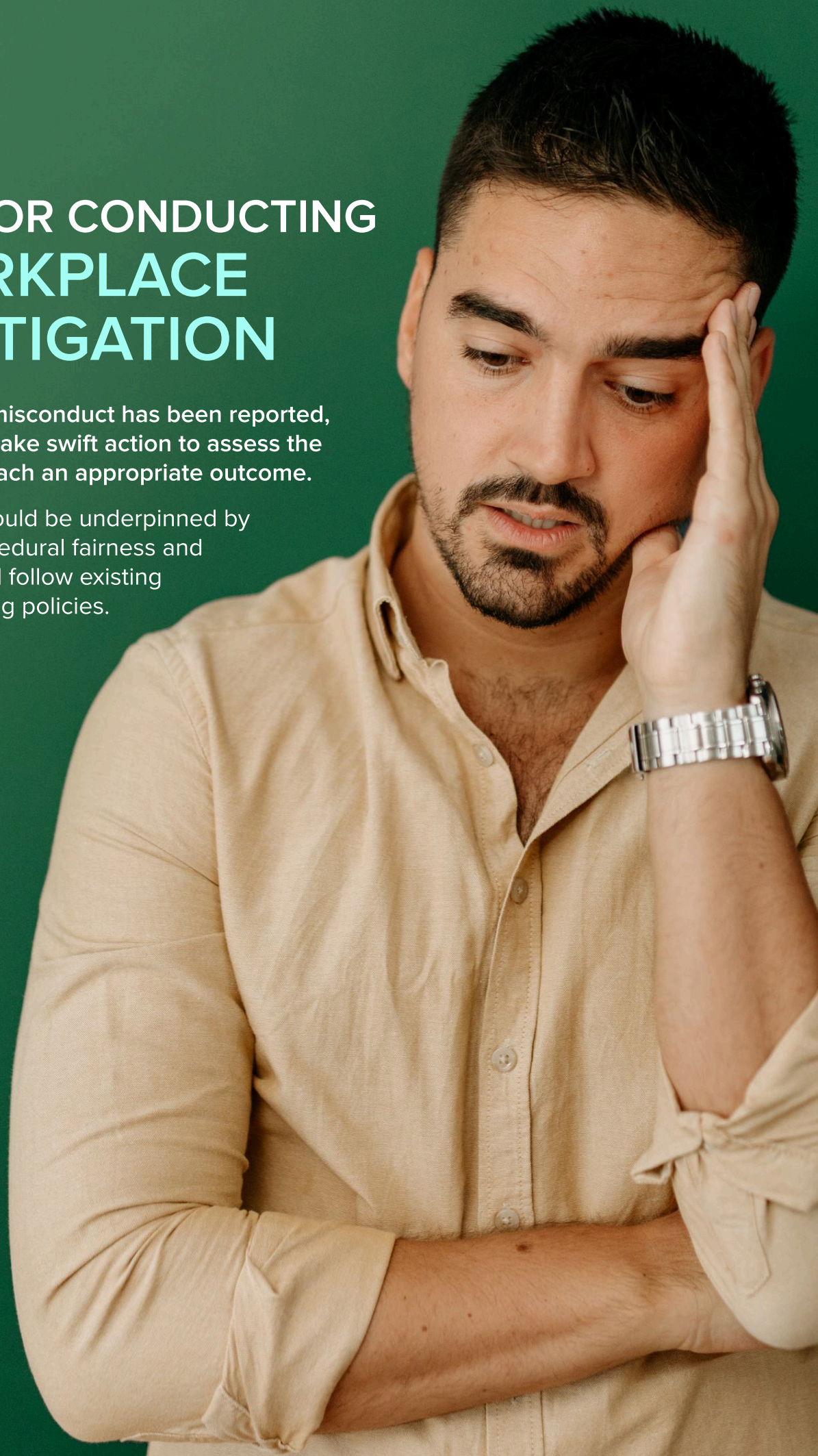
THE WORKPLACE POLICY SHOULD COVER:

- The process for making a complaint or raising a concern to ensure safety and opportunities for complaints to be heard
- What immediate action will be taken after a complaint is raised
- The confidentiality mechanisms during the investigations process
- The supports available to the employee to ensure their safety and wellbeing
- The options available to resolve the complaint
- An outline of possible outcomes if misconduct is discovered.

STEPS FOR CONDUCTING A WORKPLACE INVESTIGATION

Once a claim of misconduct has been reported, employers must take swift action to assess the complaint and reach an appropriate outcome.

Investigations should be underpinned by principles of procedural fairness and transparency, and follow existing complaint handling policies.



1

ASSESS WHETHER ANY WORKPLACE ADJUSTMENTS ARE REQUIRED

While the investigation is being conducted, workplace adjustments may be required to ensure the safety of everyone involved, depending on the nature of allegations.

These may include:



Facilitating remote/flexible work arrangements for those involved in the misconduct or, for serious instances, placing employees on paid leave while the investigation takes place.



Supporting managers to set learning and development goals and KPIs for themselves and their teams.

2

DETERMINE THE APPROPRIATE INVESTIGATOR OF THE MISCONDUCT CLAIM



Ensuring the investigator is an impartial party trained in workplace investigations.

They may be internally or externally engaged, depending on the nature of the claims.

3

CLEARLY COMMUNICATE NEXT STEPS



Notifying, as applicable to the relevant parties, that a complaint has been made and communicate who is undertaking the investigation, what information will be need to be disclosed, as well as the estimated timeframes.

Ensure that confidentiality is maintained during this process.



4

GATHER EVIDENCE IN-LINE WITH YOUR ORGANISATIONAL POLICY



Conduct fair and impartial interviews with the complainant, relevant witnesses and respondent. See [HRM's article](#) on conducting investigations involving mental health challenges.

5

MAINTAIN CONSISTENT AND COMPREHENSIVE RECORD-KEEPING



Take notes during or following meetings with the involved parties, and clearly document the process you've undertaken.

These can be called upon in the case of any future unfair dismissal or adverse action claims.

6

PREPARE AN INVESTIGATION REPORT

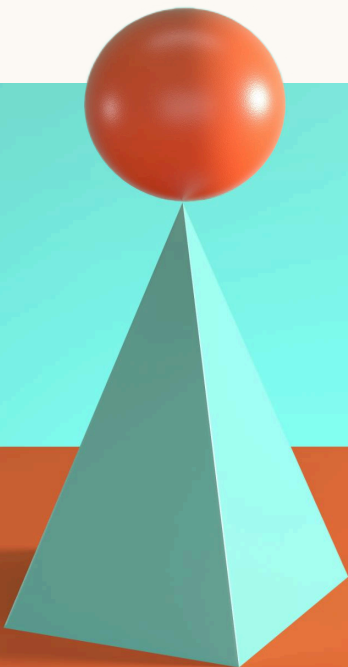


The investigator will need to develop a report that includes their findings, and if required, recommendations.

AHRI members can log into AHRI:ASSIST, via their membership portal, to access an investigation report template.



Where the investigation has been undertaken by an external party, this report should only be provided to the ultimate decision-maker(s).



7

EVALUATE THE FINDINGS



Following the investigation report, the findings and any proposed decisions should be communicated to all involved parties.

It's crucial that the respondent is given the opportunity to respond before a final decision is made, to provide any additional information that may not have been disclosed earlier.

Depending on the nature of the claim, you may also wish to assess the likelihood of future risk and present this information to your board and leadership team to prevent future instance of misconduct.



8

DETERMINE THE OUTCOME



Ideally, an independent and unbiased decision-maker should make the final call for any outcomes. This will ensure clarity and fairness around any final decisions, and minimises the risk of future dismissal claims.

AHRI members can access an investigation outcome matrix via [AHRI:ASSIST](#)

HRM

SOURCES

SafeWork NSW

HRM Online. (2024). HR's guide to complaint handling and workplace investigations.