**Template Letter TF 009** **|** 14 March 2023

# Notice of Investigation Commencing Template Letter

This **Notice of Investigation** is in template form only. A registered organisation or branch that wishes to use this template needs to carefully consider the contents of the template notice and amend the notice as required to fit in with the procedures, resources and structure of the organisation or branch. In considering the notice, each organisation and branch is reminded to consider:

* whether it will be able to effectively comply with the provisions of the notice; and
* how the organisation or branch will educate its officers, employees and members involved in investigation about the notice and requirements therein.

The purpose of this notice is to inform an officer, employee or member that an investigation into allegations of misconduct (in whatever form) is commencing against them. This is because procedural fairness dictates that when someone is accused of some form of misconduct, they have the right to know about the accusation and what is happening as a result of the accusations. This right is limited in certain circumstances as described below.

In deciding whether this template should be used, and when to use it, you should first consider your internal policies and procedures regarding investigations. These internal policies and procedures may set out certain processes that must be followed when an investigation into allegations of misconduct are conducted. In such a case, this template should be amended to reflect and adhere to those respective processes.

It is also important to remember that in some instances, it would not be appropriate to immediately inform someone that an investigation is being conducted into them. This is because by notifying them of the investigation, it might enable them to destroy critical evidence and/or influence possible witnesses (e.g. intimidating a potential witness or creating corroborating versions of events with co-accused).

When to give notice of the investigation may differ depending on the particular circumstances. Some considerations which can influence when you inform a person about an investigation include:

* Is there a law, policy, rule or procedure that requires that I give notice of the investigation within a certain timeframe?
* If I inform the person about the investigation, will it hinder my ability to collect evidence?
* If I inform the person about the investigation, is it possible they could destroy evidence?
* If I inform the person about the investigation, is it possible they could influence a witness?

Each organisation and branch should firstly consult their own rules and are also encouraged to consult the Fair Work Commission (the Commission) website ([www.fwc.gov.au](http://www.fwc.gov.au)) for additional resources and guides as required or to seek external assistance (such as from peak bodies including the ACTU and ACCI) in undertaking investigations and training for the organisation, its branches, officers, employees and members on the importance and purpose of having clear processes and procedures about conducting investigations.

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This fact sheet is not intended to be comprehensive. It is designed to assist organisations in commencing an investigation into allegations of misconduct and gaining an understanding of the Fair Work Commission and its work. The Fair Work Commission does not provide legal advice.

| **Version** | **Date published** | **Changes** |
| --- | --- | --- |
| 1 | March 2019 |  |
| 1.2 | March 2023 | Text and formatting changes |

Click or tap to enter a date.

Insert name of person being investigated.

Insert method by which the notice will be delivered (e.g. hand or email).

cc: Insert name of designated official or other person who should be aware of the notice

Insert delivery method.

Dear Firstname Lastname,

## Notice of Investigation

All officers, employees and members of Insert Registered Organisation or branch name (the Organisation) are required to uphold the *Fair Work (Registered Organisations) Act 2009* and the values and principles of the organisation including its insert name of code or Act alleged to have been breached e.g. RO Act or Code of Conduct.

Suspected breach of the insert name of code or Act alleged to have been breached e.g. RO Act or Code of Conduct.

I am writing to you to advise that it is alleged that you have breached the insert rule, policy, name of code or legislative requirement alleged to have been breached e.g. RO Act or Code of Conduct. This alleged breach is in connection to allegations concerning insert high-level overview of allegations (e.g. several incidents of using funds without authorisation.

If proven, the above conduct could be in breach of the following elements of the insert rule, policy, name of code or Act alleged to have been breached e.g. RO Act or Code of Conduct:

Insert elements that are alleged to be breached.

Taking action in cases of suspected misconduct is primarily aimed at protecting the integrity of the organisation, to ensure that a satisfactory standard of service is maintained, and that the reputation of the organisation is not affected adversely in the eyes of our members and the public.

## Procedures for determining breach

I am the decision maker relating to any findings of breach in the matter of suspected misconduct and have appointed insert name/s of investigators and details of which organisation they are from to undertake an investigation into the allegations and to provide me with a report resulting from that inquiry. The investigation will include an opportunity for you to provide either a written statement about the alleged breaches of the insert rule, policy, name of code or Act alleged to have been breached e.g. RO Act or Code of Conduct or the option to make an oral statement in connection with this matter.

On receipt of the Investigator's report, I will determine whether you have breached the insert rule, name of code or Act alleged to have been breached e.g. RO Act or Code of Conduct.

## Possible sanctions

If you are found to have breached the insert rule, policy, name of code or Act alleged to have been breached e.g. RO Act or Code of Conduct, one or more of the following sanctions may be imposed:

* termination of office / employment / membership; or
* reduction in office / position / classification;
* re-assignment of duties;
* reduction in salary;
* deductions from salary, by way of fine;
* a final written warning;
* a written warning; and/or
* performance improvement plan.

If it is found that you did breach the insert rule, policy, name of code or Act alleged to have been breached e.g. RO Act or Code of Conduct, I will, in accordance with the procedures, determine if a sanction should be imposed.

## Change to employment status during this investigation

Should you move to another organisation, resign (whether from your office, employment or membership) and later apply for or secure employment or membership with another organisation or business, before this matter is resolved, information about these allegations may be disclosed to your new organisation or employer.

Should you resign before this matter is resolved and later re-seek employment or membership with this organisation, the records collected may be used as part of the pre-employment checking process to determine your suitability for employment or membership. If you are successful in securing employment or membership, information about these allegations may be used to determine whether action, including the continuing or finalisation of an investigation, should recommence. If the resignation occurred after a breach was determined, but prior to the imposition of a sanction, a determination may be made whether a sanction should be imposed.

## Other issues

You will note that this advice has been copied to insert name of person cc. Insert name will continue to be notified of action through the course of the investigation and following its conclusion.

The investigation that will occur is confidential and you should not discuss it with anyone other than your support person, representative and/or myself.

**Access to employee assistance <delete if no EAP exists>**

I appreciate that the information contained in this letter and the enclosed material may be difficult for you. If you are in need of independent support and want to talk to a private and confidential counsellor, I encourage you to make use of the Organisation’s Employee Assistance Program, by contacting insert EAP details. *[Alternatively, provide the detail of the organisation’s relevant support processes that are or will be made available to the person in respect of this investigation].*

Yours sincerely,

Insert name of Decision-maker.

Insert position of Decision-maker.