

DOMESTIC INQUIRIES IN MALAYSIA: PROCEDURAL FAIRNESS, CHALLENGES, AND BEST PRACTICES FOR WORKPLACE DISCIPLINE

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Abstract: *This paper examines the domestic inquiry (DI) process as a critical procedural mechanism for enforcing workplace discipline and upholding principles of natural justice within Malaysia's employment context. Anchored in Section 14 of the Employment Act 1955, DI serves as a legal safeguard to ensure fairness and equity in addressing employee misconduct and disciplinary actions. The paper outlines the key steps of a well-conducted domestic inquiry—from the issuance of show cause letters to the hearing, deliberation, and appeal—emphasizing procedural fairness, impartiality, and documentation as fundamental pillars. It also explores the main triggers of DIs, such as violations of company policies, breach of contract terms, negligence, and workplace fraud. Comparative references to best practices from the United Kingdom and Australia highlight Malaysia's procedural gaps and the need for legal clarity. Despite legal frameworks being in place, challenges persist due to inconsistencies in implementation, lack of training, poor record-keeping, and the absence of standardized inquiry protocols. The study recommends structured reforms, including enhanced training for HR personnel, improved documentation systems, clearer policies, and regular reviews of DI procedures to ensure legal compliance and organizational integrity. Ultimately, a robust and transparent domestic inquiry system is essential not only for minimizing legal risks and wrongful dismissal claims but also for reinforcing organizational trust, governance, and employee morale.*

Keywords: *Domestic Inquiry, Procedural Fairness, Employment Law*

Introduction

Domestic inquiries provide a very important use in Malaysia in the enforcement of equity and the rule of law particularly employment discipline and misconduct. According to Section, 14 of the Employment Ordinance 1955, an employer is required to make a due inquiry before making major disciplinary decisions such as dismissal by the employer (3E Accounting Malaysia, 2020). This is a statutory requirement as they allow employees in defense, balancing fair process, accountability, and fair treatment at the workplace. As has been articulated by Hashimoto & Zulkipli (2023) and Ashley Ian Danker (2023) and as we apply the principles of natural justice, DIs is one way of investigating charges against employees for misconduct especially in preventing wrongful dismissal and promoting balanced industrial relation between the employer and the employee.

Despite the importance, DI processes are still best by challenges in Malaysia. The Employment Act only outlines basic procedural requirements; an employer gets to decide how the questions need to be framed in light of the circumstances. It results in a variety of practices and discrepancies in the interpretation of essential elements that exist in its important stages, including the definition of misconduct severity and neutrality of the inquiry committee (Ong 2016). Thus, employers are advised the following best practices in relation to the complaints, setting up impartial committees, allowing employees to defend themselves, and proper consideration of such evidence (Guide to Domestic Inquiries (DI) in Malaysia 2024, 2023). Well-conducted inquiries also safeguard employer interests mitigate legal and/or financial risks and maintain the credibility of the disciplinary system.

Most countries across the world, including the United Kingdom and Australia, demand that work investigations be conducted fairly and procedurally. For example, in the UK there are ACAS codes that have general requirements as well as specifics as to how internal investigations should be conducted in a manner that will avoid employment-related disagreements (ACAS, 2011). This is less so in the Malaysian DI framework which is considerably more fluid and although makes potential contextual sense it results in policy and procedural uncertainty and raises the likelihood of industrial disputes not being followed by improvements in best practice. Among the major adversities of the absence of legal provisions in Malaysia are; Subjective Decisions, Poor Records & Defective Procedures that have thereby tainted the credibility of investigations that are part and parcel of employers' ordeal. Some examples of defective investigations are described below in which many organizations ended up paying a significant dear price such as the loss of the organization and staff reputation, reinstatement of employees as well as high awards of compensation for perceived unfairness. Employment Relations also require documentary support to prevent the employers from slipping into such vices, and therefore this implies that DI should adhere strictly to the principle of natural justice- giving the other party a chance to defend him/herself. (Ashley Ian Danker, 2023).

To summarise, DIs denote relevancy in guaranteeing the provision of employment opportunities for the marginalized sections of the society and preservation of industrial order and stability in Malaysia. When done in an organized manner, DIs help reduce wrongful dismissal lawsuits and bring order within workplaces. The Employment Act in this regard has some of the least procedural direction but employers in Malaysia have been able to meet these

challenges quite well with a good measure of due process and best practices at the workplace at a considerably high level of accountability.

Steps Involved in Conducting a Domestic Inquiry

If done domestically, the process will provide order and meaningful transparency to the cases of employee misconduct. In this regard, procedural fairness may be used in such a way as to safeguard the company and the employee in question, with the use of the set process. The following is a refined and preferable means of conducting domestic inquiry while stressing its role in enhancing procedural fairness and efficiency in specific workplace settings.

Step 1: Initiation of Inquiry- An employee misconducts either through a complaint, neglect, or an internal audit, triggering the domestic inquiry process. The employee is served a formal notice post-investigation containing allegations after having collated enough preliminary evidence. This process establishes transparency and lets the employee prepare themselves for a full-fledged accusation. Before progressing to the subsequent steps, an employer must ensure the invalidated accusations are unambiguous and reasonable (Grant et al., 2019; Lee et al., 2024a).

Step 2: Formation of Inquiry Panel- An external and objective inquiry panel is established in order to monitor the investigation and guarantee unbiased decision making. Typically, the panel is made up of members from the HR department, upper management, or outside attorneys who have no direct involvement of the case being investigated. This step is fundamental in preserving neutrality and mitigating bias (Mabusela et al., 2024; Richards, 2024). The panel members should possess adequate skills and knowledge regarding the company's policies and disciplinary procedures so as to deal with the inquiry in a professional manner (Kim, 2021).

Step 3: Notice of Inquiry- When the panel is set, the employee under investigation is served with a formal Notice of Inquiry. This notice contains relevant information, including the particulars of the offense, the time and place of the inquiry, and the rights of the employee within the inquiry framework (Pimentel et al., 2020). The Notice balances the need to defend adequately against the case set out by the organization by allowing sufficient time and opportunity for evidential proof, stipulation of a representative or witness while without undue restriction on company guidelines (Branscum et al., 2023). This notice, when properly communicated, goals procedural fairness and due process (Javed et al., 2023).

Step 4: Pre-Inquiry Meeting- Prior to commencing the formal investigation, a pre-inquiry meeting is held for the purpose of outlining the processes and verifying that both parties, management, and the accused, are sufficiently prepared. In this meeting, the employee is prompted regarding his/her rights and the anticipated conduct of the inquiry (Lee et al., 2024b). Both the employee as well as the employer have the chance to provide initial evidence and a list of potential witnesses. This stage is aimed at resolving any procedural issues so that the proceedings can be conducted in an orderly manner devoid of undue holdups (Hanif, 2024).

Step 5: Inquiry Proceedings- The examination culminates in a formal proceedings, which is the most critical aspect of the Domestic Inquiry. In this phase, the panel considers all documentary evidence and witness testimony adduced by both parties. The employee under disciplinary action is allowed to tell their side of the story, answer the claims made against them, and defend

themselves (Grant et al., 2019). The panel balances the control of the meeting with the need to ensure natural justice is offered to all the participants (Turlykhankyzy et al., 2024). A well-structured proceedings provides all the necessary components and combinations of order that guarantee constructive output from the case evaluation(Ugoani & Ibeenwo, 2024).

Step 6: Cross-Examination- One important section of the investigation is the cross-examination stage. Here both sides, management and the accused employee, have an opportunity to interrogate the witnesses provided by the other side and dispute the evidences given (Mabusela et al., 2024). The employee or anyone acting on his behalf has the right to dissect the claim and answer to it. This allows the inquiry panel to judge the reliability of the evidence and witnesses while searching for contradictions (Richards, 2024). The fairness of the procedure is further enhanced by the fact that all testimonies have to be evaluated before any decision can be reached (Srivastava et al., 2022).

Step 7: Rights of the Accused-An accused employee in an inquiry has some basic rights that guarantee fairness in the process. These include the attendance in the proceedings, questioning of the witnesses, cross-examining of evidence and defending oneself (Tamunomiebi PhD & Emeh, 2023). Depending on the company policy, sometimes they may be allowed to attended by a co-worker or union official. These critical rights enable the employee an opportunity to defend himself thereby ensuring fairness and lack of bias in disciplinary cases (Mabusela et al., 2024).

Step 8: Deliberation and Conclusion-Once the proceedings has ended, the inquiry panel goes into closed session for the purpose of deliberating the evidence and testimony that was adduced during the proceedings. The panel goes through the circumstances which surround the case, assesses whether the claims made are credible, and makes a decision if the concerned person has acted in a manner which constitutes a guilty of misconduct. This phase calls for being impartial and a consideration of all factors surrounding the case (Kim, 2021). The panel should make sure that their decision is not based on presumptions or biases (Abdullahi Aliyu Maiwada & Barth Oshionebo, 2024). When a decision is made, the panel write a report that details the findings and the conclusions that the panel has reached.

Step 9: Findings and Recommendations- The report with the outcome of the investigation and its suggestions is filed with the management. It includes the specifics of the case, the verdict on the employee's guilt or innocence, and, if warranted, any suggested disciplinary measures. Depending on the degree of misconduct, suggested actions may range from formal reprimand, suspension, demotion, or even dismissal. After that, the management would analyze the report and take action which is in compliance with the guidelines and policies set out by the company and labour law (Branscum et al., 2023; Rozić & Ljubić, 2023).

Step 10: Right to Appeal-An employee who thinks the investigation was done unprofessionally or that the outcome was unreasonable has the right to appeal. The appeal process permits a superior, in this case senior management or an outside adjudicator, to review the case. In an appeal, the evidence and procedural fairness of the inquiry are reviewed to see if mistakes or prejudices in the decision making process were present in the initial decision made (Javed et al., 2023). The decision made in the appeal could change, cancel, or confirm the original ruling.

This last portion of the process ensures that justice is administered since there is room for reconsideration if need be (Pebriani et al., 2023).

A well-structured domestic inquiry process is fundamental in ensuring procedural fairness, transparency, and efficiency in addressing employee misconduct. By systematically following key stages including initiation, panel formation, notice issuance, pre-inquiry meetings, formal proceedings, cross-examinations, deliberations, and appeal mechanisms, organizations can uphold the principles of natural justice while safeguarding the rights of all parties involved. The structured approach ensures that disciplinary decisions are based on credible evidence, free from bias, and aligned with both organizational policies and legal frameworks. Additionally, the incorporation of findings and recommendations, alongside a robust appeal mechanism, reinforces accountability and provides a safeguard against potential errors in judgment. This comprehensive process not only facilitates the resolution of workplace disputes in a structured and ethical manner but also strengthens organizational governance by fostering trust, integrity, and compliance with established professional standards.

Ensuring Procedural Fairness in Domestic Inquiries: Key Stages and Legal Safeguards

In their national settings, the domestic inquiry is a very crucial procedure for considering the main factors for invoking equity or lack of it in all the charges of violation of the employment laws by the workers. Every one of them from the ‘show cause’ letter to the hearing-is relevant to guaranteeing the follow of proper procedures as well as fair” rights equivalence between the employer and the employee. This and so many more steps all so structured informs the accused and allows him/her just the opportunity to answer satisfactorily and to make sure that any side decision is anchored on documented evidence. When conducted effectively, the inquiry procedure ensures discipline, prevents erosion of standards in the workplace, and provides justice, especially on issues to do with disciplining employees.

1) Issuance of a Show Cause Letter

This is because the show cause letter is at the center of the domestic inquiry process since it brings to light the alleged misconduct of the employee to the rest. Again, it should be concise, and clear and should indicate the type of violations asserted, as well as policy manual violated. Consequently, the letter elaborates the allegations in order to do away with confusion, so that the employee is in a position to understand properly the gravity of the situation and the consequences of any of the aforesaid antics. Of course, this is a very effective protection of the employee’s procedural justice because it is an opportunity to respond to the accusations and state a personal position (Law, 2022).

Better and clearer is the fair measure of effectiveness. A general letter that cannot be distinguishable or an overly technical letter falsifies the whole inquest by affording the possibility of misconceptions or disputes over protocol. So here it has to declare the time for response by the employee, stressing the importance of the issue. This step helps the employer to demonstrate that they do act fairly since the procedure is clear to everyone, and the accused has some shot at vindication. In the real world however, the type of problems that one can encounter falls in the domain of suspicion or vagueness such as including heinous allegations in the letter or- omitting to include adequate information in the body of the letter therefore

leading to controversies. The need for this is self-evident and crucial to writing and enforcing the proper policies of the organization as well (Law, 2022).

2) Suspension of the Employee

As a measure, the suspension shall also ensure that there is a safe working atmosphere in the organization and also the purity of the investigations. Its use is undoubtedly typical in situations where further participation of the accused employee in the establishment would hinder investigations or exacerbate the allegations. Nevertheless, it is an act that has to be exercised with a lot of care and only in very special circumstances or whenever the nature of the offense warrants such mitigation. The employer has the legal obligation to reasonably state the grounds of suspension concerning the conditions of every specific case and conform to legal requirements to the suspension period's limitation and partial wages during that time (Al-Raggad, 2023). Although not a form of punishment, suspension often has profound consequences for both the employee and the firm. If suspension is not done properly or is used inappropriately or in an unfair manner then the public may see the inquiry as being prejudiced. To this, employers should ensure that they provide a written idea that should warrant the suspension and explain it to the employee. Such rules and regulations make it easy for an organization to avoid adverse claims on procedural fairness as well as other disputes and litigation as an implication of the process. It then does so in a way that this balance conditions suspension so that it can serve the role it has in support of an inquiry rather than as a predetermined verdict of guilt (Ball et al., p. 2024).

3) Preparing for the Domestic Inquiry Hearing

To establish a fair and structured domestic inquiry, it is essential to set the right preconditions to enable the inquiry officer to conduct the hearing in a comprehensive and unbiased manner. Careful considerations must be made in appointing an inquiry officer who is both independent and knowledgeable, ensuring that the process remains impartial and aligned with procedural fairness. Any potential bias or conflict of interest at this stage could compromise the credibility of the proceedings, making it imperative for employers to meticulously gather and organize all relevant evidence, including witness testimonies and supporting documents, while also ensuring proper arrangements for their presentation during the hearing. Additionally, a well-drafted show cause memo is necessary to clearly outline the specific allegations against the employee, forming the foundation of the case and facilitating a transparent and systematic approach to the hearing (Bhavan, 2024). Beyond specifying the charges, date, time, and venue, this notice plays a critical role in allowing the accused ample time to prepare, ensuring they have access to documents and witnesses essential for their defense (Grant et al., 2024). By adhering to a framework that upholds procedural fairness, both parties are placed in a position where they can effectively present their arguments, minimizing the likelihood of misinterpretation, omission, or procedural flaws that could weaken the integrity of the inquiry. Any lapses in the process must be carefully examined, as they can significantly impact the employer's ability to reach a fair and legally sound decision (Richards, 2024).

4) Carrying Out the Domestic Inquiry Hearing

The conduct of inquiry hearings within disciplinary proceedings, particularly in international contexts, requires a structured and impartial approach to uphold procedural fairness. Both the employer and the employee must be granted a fair opportunity to present their respective cases during employment litigation. At this stage, adherence to the fundamental principles of natural

justice—such as the right to be heard and the right to a fair and unbiased hearing, is paramount. This phase provides both parties with the ability to submit relevant evidence, call witnesses, and cross-examine testimonies presented by the opposing side. The inquiry panel, tasked with ensuring impartiality, must assess all evidence objectively while maintaining a transparent and procedurally sound process (Lawton, 2023). A well-documented summary of the hearing, including the evidence, arguments, and final decisions, plays a crucial role in ensuring accountability and serves as a reference for future proceedings. Properly structured findings enable management to make well-informed decisions regarding any disciplinary actions, ensuring that outcomes are justifiable and based on a comprehensive review of the case. However, sustaining neutrality throughout the process can be particularly challenging, especially in cases involving conflicting testimonies or high-stakes disputes (Mabusela et al., 2024). To uphold the integrity of the inquiry process, employers must commit to rigorous procedural safeguards, ensuring transparency in all aspects of the proceedings. This requires a thorough evaluation of all evidence without bias, fostering an environment where decisions align with the principles of fairness, due process, and ethical governance (Richards, 2024).

It is also important that all actions that are taken during the domestic inquiry process are done on a liberal and equitable basis. The show cause letter that is given to the employee also works to give details of the offense and have him defend himself. The suspension where necessary would help avoid any influence on this process besides influencing a compromise within its quality. The hearing itself is a provoked confrontation, in a way, where both or one of the parties is ready and supplied with sufficient equipment to make the argument. The actual hearing should be bias-free and the employee exposed to a full chance to defend himself or herself. In general, these steps are quite fair, clear, and legal, ensuring that the protection of both the employee and the employer is carried out in the best manner.

Key Misconduct Issues Leading to Domestic Inquiries

Violation of Company Policies and Procedures

Domestic inquiries often arise from breaches of organizational policies and procedures. These policies establish acceptable behaviors and actions within the workplace, ensuring a consistent standard of conduct. Violations, such as non-compliance with safety regulations, breaches of conduct, or failure to fulfill assigned tasks, can compromise the safety and welfare of employees and the organization. For example, non-adherence to safety protocols by an employee may endanger themselves and others, thereby exposing the organization to legal liabilities. Domestic inquiries serve as impartial investigations into such violations, offering employees a fair chance to present their defense while reinforcing organizational standards (Hashimoto & Zulkipli, 2023). Conducting thorough domestic inquiries promotes compliance and discipline, ensuring that similar incidents are prevented in the future. As noted by One Asia Lawyers, proper investigation of policy breaches enhances workplace productivity and safety, while regular policy reviews and employee orientations mitigate inadvertent violations (Hashimoto & Zulkipli, 2023).

Breach of Employment Contract Terms

A breach of employment contract terms, such as unauthorized actions or disclosure of confidential information, can trigger domestic inquiries. Such breaches undermine trust and can cause significant financial or reputational damage. For instance, an employee sharing

proprietary information with a competitor can erode a company's competitive edge. Domestic inquiries assess the circumstances of the breach, determining whether it was due to negligence or intentional misconduct (Ashley Ian Danker, 2023). Systematic and fair inquiries uphold organizational integrity by holding employees accountable for adhering to contractual obligations. Low & Partners emphasize that clear procedures for handling violations demonstrate an organization's commitment to upholding its code of conduct and minimizing risks (Ashley Ian Danker, 2023). Regularly clarifying employment terms and conditions during onboarding and through continuous follow-ups can reduce the likelihood of such breaches.

Poor Performance and Negligence

Domestic inquiries are also initiated due to continuous poor performance or negligence, which can jeopardize workplace safety and productivity. Poor performance refers to the consistent failure to meet expected standards, while negligence involves the lack of reasonable care in performing job duties. For example, mishandling sensitive business information due to negligence can lead to operational risks. Administrative inquiries aim to identify the root causes of underperformance or negligence, whether due to incompetence, personal issues, or disregard for responsibilities (Abu Bakar, 2022). Leaderonomics highlights the importance of research-based inquiries to evaluate performance gaps, employee commitment, and the need for disciplinary measures when necessary. Fair and impartial inquiries promote accountability, enhancing performance standards and fostering a culture of excellence within the organization. Regular appraisals and refresher training can help mitigate performance issues and ensure employees meet organizational expectations (Abu Bakar, 2022).

Theft and Fraud

Theft and fraud are serious workplace offenses that necessitate domestic inquiries. Theft involves the unauthorized appropriation of company property, while fraud entails deliberate deception for personal gain, such as falsifying financial records or embezzling funds. These actions damage trust and can result in substantial financial and legal consequences. For instance, embezzlement within a financial institution can lead to significant losses and reputational harm. Domestic inquiries provide a structured process for investigating such offenses, ensuring a fair hearing for the accused employee (Patrick Leader-Elliott, 2023). Proper documentation of evidence during inquiries protects employers from wrongful dismissal claims and upholds organizational justice. Regular ethics training and stringent policies on asset management can prevent theft and fraud, fostering a culture of integrity and responsibility (Patrick Leader-Elliott, 2023). Domestic inquiries serve as essential mechanisms to maintain legal compliance, operational integrity, and organizational reputation.

Conclusion & Recommendation

Employment law literacy – According to the Malaysian Employment Act 1955, section 75 an adequately conducted Domestic Inquiry in a workplace misdeed must provide for a fair decision process and workplace's transparency. A show cause letter; the impartiality in a case hearing, and the recording of all facts and issues in a certain case; the employer can look at the case and say they have not prejudiced themselves as they followed natural justice in line with the provisions of the law. They are applied in regard to employees' rights but protect the employers from further reclamations of wrong dismissal and lawsuits. All these repercussions are described effectively by cases like the Malaysia Airports Sdn Bhd v. The cases used by Suhaimi bin Mohammad Haniff demonstrated that apart from vindicating dismissals

procedural rationality can also safeguard reputations and liabilities from unfair punitive actions.

However, a good and accurate DI does more than is needed to respond to the legal needs of the company and is accepted in the organizational structure as reliable. Disciplinary processes, thus, afford a perception of value regarding the employee and the level of engagement that has seen others motivate workers to display high effort levels. On the other hand, poor inquiries lead to a lack of trust, low morale, and poor employee turnover. From the generalizable DI practices utilized in the countries where DI integrates into the organizational systems such as the UK and Australian contexts, Malaysian employers can benefit by increasing the organizational integrity through the appeal to proceduralism and fairness.

The gains introduced by DI processes can only be sustained where the employers, the HR practitioners, and the policymakers are keen to continue with the training that covers procedural compliance, the development of an accountability culture, and the revisiting of policies based on reference to standards of best practice regimes in the workplace. These measures make it possible for discipline in the workplace to carry out a number of roles that go beyond the fulfillment of the legal requirements of the firm. It is defined as being one of the strategic elements of multinational successful human resource management for the employees and their organizations. In turn, it enhances the accuracy and credibility of presenting DI's outcomes, which will help support a justice-in-the-workplace context with respect for others.

Organizations could prescribe the propensity for some level of performance to specific kinds of action. This would ensure that there is always an explanation of steps, at whatever level of the stages of the DI process. Such procedures must be clear and detailed about how show cause letters will be given how investigations will be conducted and how hearings will be recorded (Zaitsu & Jin 2018). A business enterprise should also establish forms and formats in order to achieve procedural compliance and coverage in the execution of the right processes; which greatly reduces any procedural gaps likely to jeopardize the soundness of the investigation received. Of the course, awareness programs would need to be conducted for the future inquiry panel members and future training programs for the HR personnel. Courses that will be offered to such candidates will include legal requirements, evidence, and interviews apart from documentation as highlighted by Dickhaut et al., in their research of the year 2023. Since it is normal practice to brief the working panel on changes in employment law and DI procedure, refresher courses will also be conducted on an ongoing basis. There is also the need for the organization to have a list of pre-trained persons to act as neutral panel members so that they can be called anytime (Dragičević, 2021).

Both organizations should embrace good documentation systems and record-keeping that is secure. This would comprise computerized databases in the preservation of records of investigations, evidence, and communication relating to DI cases. Documentation should in any case be time stamped, or at the very least dated and secured, for future reference or in the event of legal contingencies. The guidelines concerning the management of sensitive information in inquiry are among the most effective means of protecting information in the process (Atlassian, 2023). There are better external legal counsels or HR consultants to enforce procedural equality and revelation if there are complicated cases or situations where the accused persons are of a higher standard. This would assist in keeping the DI processes more

impartial and provide additional authority with issues of sensitive handling as Waris & Din suggested in 2023. In order to indicate zones that needed enhancement with recommended current legal standings and best practices, the DI processes should be reviewed regularly. Organizations should also highlight procedural deadlines regarding the various phases of inquiry to stop occasions where there are delays while making certain the investigations are conducted correctly (*Procedural Fairness - (Organizational Behavior) - Vocab, Definition, Explanations* | Fiveable, 2024).

Therefore, employers should be more preventive when spelling out the policy of the company and or expectations of each person within the organization by revising the employee handbook, and organizing pertinent information-sharing sessions on the company's policies and the consequences of violating them. In addition, there may be internal control for the Organization's checking and reviewing of the work of completed DI, with the subsequent organization of improvements based on the experience gained from completed cases (Internal Controls — Audit Services, n.d.).

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