# Conducting Investigations: A guide for Victorian disability service providers

## Responding to disclosed, reported or observed abuse of people with disability by members of staff



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## Acknowledgements

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* Northern Territory Health and Community Services Complaints Commission
* New South Wales Ombudsman
* Queensland Public Advocate
* Royal Commission into Institutional Responses to Child Sexual Abuse
* South Australian Office of the Health and Community Services Complaints Commissioner
* WA Health and Disability Services Complaints Officer

## Caution and Disclaimer

Undertaking an investigation is a complex process that can have significant consequences if mishandled. Service providers should never attempt to undertake investigations without ensuring the availability of appropriately trained and experienced staff or funding to access external expertise. Staff training on these elements with skilled and experienced professionals is strongly recommended. When in doubt, service providers should consult directly with the police, DHHS and other experts as noted in this guide.

The information provided in this guide is intended for general use only. It does not take into consideration the particular circumstances and needs of your organisation. This guide is not legal advice and does not replace existing Victorian policy, legislation or procedure. It promotes best practice approaches associated with conducting an investigation and outlines steps for service providers in responding to allegations of abuse. It is not a definitive guide to the law and best practice, does not constitute formal advice, and does not take into consideration the particular circumstances and needs of your organisation.

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## Part 1: Background

### About this Guide

This guide has been developed to assist Victorian disability service providers when conducting investigations into alleged abuse, neglect, and violence toward people with disability. Although people with disability can experience abuse from different sources, the primary focus of this guide is incidents of abuse, neglect, exploitation and violence by service provider staff.

Employers have a responsibility to investigate for themselves and take account of the workplace context, even if there has been an external investigation by police. This is important as a matter of natural justice, as well as to comply with the requirements of the Fair Work Act(2009).

The National Disability Insurance Scheme (NDIS) is supported by a new, national NDIS Quality and Safeguarding Framework. This commenced in New South Wales and South Australia on 1 July 2018 and will take effect in Victoria on 1 July 2019. During transition to the new Framework, states and territories will continue to play the lead role regarding the safety of people with disability through the existing service quality measures, systems and statutory bodies in place.

This guide is intended for use during the transition period in Victoria. However, the core principles and approaches, as well as several of the legislative requirements, will continue to be applicable under the NDIS Quality and Safeguarding Framework and ongoing Victorian requirements.

### Zero Tolerance initiative

This guide is part of NDS’s Zero Tolerance initiative, which supports disability service providers to develop and improve their approaches to safeguarding the rights of the people with disability that they support. Information in this guide is best considered within context of the full Zero Tolerance framework, which outlines a comprehensive human rights-based approach to preventing and responding to abuse.

Having a clear commitment to investigating abuse and neglect in your organisation sends a strong message that allegations and disclosures will be taken seriously. This is empowering for people with disability and staff who will feel more confident to speak up, knowing that prompt action will be taken.

NDS has developed a series of short films for frontline workers and managers on [**Responding to abuse**](https://www.nds.org.au/zero-tolerance-framework/responding-to-abuse). These easy-to-use films and accompanying guide can be used to ensure all staff understand their immediate responsibilities to the people they support following incidents of abuse, neglect or violence. Use these films with this guide to ensure you are well prepared across your organisation if or when abuse occurs.

For more information and to access the full range of [**Zero Tolerance resources**](https://www.nds.org.au/resources/zero-tolerance).

### Reporting Requirements

Victorian disability service providers are subject to a number of reporting requirements relating to investigations. Providers are urged to stay abreast of each of these sets of requirements, and incorporate them into practice.

#### Victorian Reportable Conduct Scheme

Victoria has a Reportable Conduct Scheme to oversee how organisations identify and respond to allegations of child abuse and neglect. This is administered by the Commission for Children and Young People, and arose from the recommendations of the Betrayal of Trust inquiry. The Scheme seeks to improve organisations’ responses to allegations of child abuse and neglect by their workers and volunteers.

The Scheme applies to all organisations that provide disability services, including, but not limited to, registered disability service providers. If part of your organisation is within the Scheme, all of your organisation is within the Scheme, and you must notify the Commission and investigate reportable allegations across your whole organisation.

The Reportable Conduct Scheme imposes obligations on heads of organisations that are within the Scheme. This includes requirements to:

* have in place systems to prevent child abuse and, if child abuse is alleged, to ensure allegations can be brought to the attention of appropriate persons for investigation and response; and
* ensure that the Commission for Children and Young People is notified within **three business days** and updated on the organisation’s investigation and response to an allegation.

A finding that a person has engaged in reportable conduct can trigger an assessment of whether that person is suitable to continue to work or volunteer with children. In turn, this may lead the Working with Children Check Unit to revoke a person’s Working with Children Check card.

* The Commission for Children and Young People has recently released a [Guide on Investigating a Reportable Conduct Allegation](https://ccyp.vic.gov.au/assets/resources/Reportable-Conduct-Guidance/CCYP-Investigation-guide.pdf).It is recommended that the CCYP Guide be followed in conjunction with this guidance.

##### Client Incident Management System (CIMS)

* The [Client Incident Management System (CIMS)](https://providers.dhhs.vic.gov.au/cims) applies to all organisations funded by the Victorian Department of Health and Human Services (DHHS) and Victorian-registered NDIS providers of disability and psychosocial supports.

##### Victorian Disability Worker Exclusion Scheme

All Victorian disability service providers, including NDIS providers registered under the Disability Act 2006, are subject to the Disability Worker Exclusion Scheme (DWES), administered by DHHS.

Service providers are required to notify the DWES Unit when they become aware that a former, current or prospective disability worker has engaged in conduct that might fall within the DWES criteria in a range of circumstances. The DWES criteria relate to offences that involve bodily harm, involve violence or threats of violence, are of a sexual nature, involve dishonesty or involve neglect of a person in their care. The criteria and related requirements are detailed on the [DHHS website](https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme).

DWES collects and uses information about people who are found to be unsuitable to work with people with disability. People who are found to be unsuitable are placed on the Disability Worker Exclusion List and prevented from obtaining further employment in disability services with the department or a disability service provided or registered by the department (including providers providing services under the NDIS and registered under the Disability Act). The DHHS DWES Unit relies on the quality of information provided to them by the service providers to make a decision to place someone on the Disability Worker Exclusion List.

DWES will be superseded by the NDIS Quality and Safeguarding Framework, once implemented in Victoria from 1 July 2019.

##### Disability Services Commissioner investigations

The Victorian Disability Services Commissioner (DSC) is an independent statutory body established to receive complaints about disability services. From July 2019, this will be replaced by the national NDIS Quality and Safeguards Commission.

All service providers in Victoria have a legislative obligation to advise people with disability and their families that they support about their right to make a complaint to the DSC.

Following receipt of a complaint, the DSC may decide to lead their own independent investigation. The service provider that is the subject of the complaint and others may be compelled to attend, give evidence and produce documents under Section 122 of the Disability Act 2006.

Where the DSC has decided to investigate, the service provider should consult with the DSC prior to conducting any internal investigation to ensure that the DSC’s independent investigation is not compromised.

The DSC’s investigation will lead to a decision by the Commissioner as to whether the complaint is ‘justified’ or not. The purpose of DSC advice in cases where complaint issues have been ‘justified’ is to ensure that the best outcomes are achieved for people with disability and that service providers are accountable in completing actions to remedy the complaint. There are [penalties](http://www.odsc.vic.gov.au/making-a-complaint/frequently-asked-questions-faqs/#investigations) for service providers who fail to comply with DSC actions to remedy.

### Other Victorian legislation and reporting responsibilities

Victorian service providers also have responsibility to report abuse and neglect of people with disability, including children and young people, under other legislation, including:

#### Crimes Act 1958 (Vic)

**Failure to Disclose** - Any adult who forms a reasonable belief that a sexual offence has been committed by an adult against a child under 16 must report that information to Victoria Police.

**Failure to Protect** - If you are a staff member in a position of authority and you become aware that an adult associated with your organisation (such as a worker or volunteer) poses a risk of sexual abuse to a child who is under the care, authority or supervision of the organisation, you must take all reasonable steps to remove or reduce the risk.

##### Children, Youth and Families Act 2005 (Vic)

Doctors, nurses, midwives, teachers (including early childhood teachers), principals, and police are all ‘mandatory reporters’. They must report to Child Protection if they form a reasonable belief that a child is in need of protection from physical injury or sexual abuse.

##### Family Law Act 1975 (Commonwealth)

Family consultants, family counsellors, family dispute resolution practitioners or arbitrators, independent children's lawyers and certain other people whose work is related to the Family Court of Australia are also mandatory reporters. They must report to Child Protection if they suspect on reasonable grounds that a child has been abused or is at risk of being abused.

##### Other reporting requirements

Organisations operated, funded and/or regulated by Government may have separate obligations to comply with departmental standards, program requirements and policies on preventing, reporting and responding to child sexual abuse.

##### Reporting crimes to Victoria Police

Any suspected criminal behaviour should be reported to police. If a reportable allegation involves suspected criminal behaviour, Victoria Police, the Disability Services Commission, and - if a child is involved - the Commission for Children and Young People, must be notified. A police investigation into any matter takes priority over a reportable conduct investigation, and may require an organisation’s investigation to be put on hold until the police investigation is complete.

##### Assumptions

This guide is just one component in the response to any incidents of abuse that have been disclosed, observed or reported. It assumes that organisations have:

* met their primary responsibilities to ensure the safety of all parties, including providing any required medical or emergency services;
* reported the matter appropriately, including to the police where a criminal offence is detected;
* where there are criminal allegations, consulted with police and relevant oversight bodies before commencing an investigation to ensure that evidence is not compromised; and
* met their reporting obligations under Victorian policy and legislation (see Appendix 3).

In the case of alleged abuse by a staff member, organisations should also take prompt action to remove from the workplace staff that are being investigated. Options for consideration pending the outcome of the investigation include:

* standing down the employee with pay;
* providing options to take leave (with or - by agreement - without pay); and
* temporary agreed redeployment to a role that doesn’t involve contact with service users.

Organisations have a duty of care to their service users **and** their staff. Prioritise the safety and wellbeing of all people involved to inform the best option.

This guide focuses on the investigation process. For guidance on the most appropriate immediate response to an incident, Victorian providers should refer to the DHHS Client Incident Management System and procedures. The Victorian Office of the Public Advocate’s [Interagency Guideline for Addressing Violence, Neglect and Abuse (IGUANA)](http://www.publicadvocate.vic.gov.au/our-services/publications-forms/5-interagency-guideline-for-addressing-violence-neglect-and-abuse-iguana?path=) is another useful guide for providers.

#### Supporting the person throughout the investigation process.

Throughout any investigation process, organisations should provide continued support to the person(s) at the centre of the incident, including:

* reassurance that they have done the right thing to disclose and/or report abuse;
* trauma and counselling supports where required;
* changes to regular support as appropriate;
* clear, ongoing communication about the investigation process; and
* information on available supports including advocacy.

### Terms used in this guide

| **Term** | **Meaning** |
| --- | --- |
| Abuse | All forms of abuse, neglect, violence or exploitation experienced by a person with disability: e.g., physical, sexual, financial, emotional and neglect |
| Accused | The person being investigated following disclosed, reported or observed abuse |
| Allegation | Any disclosed, reported or observed act of abuse or claim that an act of abuse has taken place |
| CIMS | The Victorian Department of Health and Human Services Client Incident Management System |
| DWES | A scheme run by the Department of Health and Human Services (DHHS). It currently provides a mechanism to collect, store and use information about persons who are deemed unsuitable to work with customers in disability services. |
| NDS | [National Disability Services](https://www.nds.org.au/), the national peak body for non-government disability service providers |
| Incident | An occasion where an act of abuse, neglect, violence or exploitation of people with disability has been alleged and is being investigated |
| Investigation | A process involving identification, gathering and analysis of evidence and information about an incident in order to establish the facts and inform the next steps |
| Procedural Fairness (also known as natural justice) | Principles that guide the fair treatment of the staff member(s) under investigation |
| Reportable Conduct | Relates to the five types of ‘reportable conduct’ listed in the Child Wellbeing and Safety Act 2005:   * sexual offences (against, with or in the presence of, a child) * [sexual misconduct](https://ccyp.vic.gov.au/assets/resources/RCSInfoSheetUpdates/FINALPDFv2Information-Sheet-9-Sexual-Misconduct.pdf) (against, with or in the presence of, a child) * [physical violence](https://ccyp.vic.gov.au/assets/resources/RCSInfoSheetUpdates/FINALPDF-Information-Sheet-10-Physical-Violence.pdf) (against, with or in the presence of, a child) * behaviour that causes significant emotional or psychological harm * significant neglect |
| Service Provider | Any organisation funded to provide supports to people with disability |
| Victim | The person who has disclosed an act of abuse or is the focus of any observed or reported abuse |

## Part 2: Conducting Investigations

### Elements of an Investigation

An **investigation is a fact-finding process.** It involves identification, gathering and analysis of evidence and information in order to establish the facts and inform the next steps. This guide describes four elements of an investigation that may be required following an observed, reported or disclosed incident of abuse: **criminal, disciplinary, person-focused** and **organisational.**

#### a) Criminal

A criminal investigation seeks to establish whether a criminal act has taken place; the person(s) responsible; and whether there is sufficient evidence to prove guilt beyond a reasonable doubt in a court of law. Service providers must always notify the police when they have reason to believe a crime has been committed. Criminal investigations should only be conducted by the police, who will guide you in relation to your requirements. However, the same evidence may be used across multiple elements of an investigation.

#### b) Disciplinary

Refers to a service provider’s human resources response to an incident. A disciplinary investigation seeks to establish the response needed by an organisation in relation to alleged staff misconduct. An organisation’s code of conduct, policies and procedures play an important role in disciplinary investigation.

Disciplinary investigations do not require the same level of proof as criminal investigations. Action may be taken if it can be reasonably concluded that, on the balance of probabilities, there was a high likelihood of some level of misconduct. This may include formal warnings, suspension or dismissal of staff.

#### c) Person-focused

All investigations should allow for the safe participation and full contribution of the potential victim involved in the incident. However, a specific ‘person-focused’ element is also required. Led by the service provider with the full participation of the victim (and others involved), it seeks to understand their experience of the incident, and any issues related to a person’s support that may be connected to the incident. It should lead to clear actions and next steps being developed with the victim.

#### d) Organisational:

This should answer the question ‘What was it in our organisation that enabled this to occur?’ including policies and practices that may have contributed to the incident’s occurrence in the first place, the nature of the response, and making changes where needed.

Depending on the incident, all four elements may be required. Each is important, however this guide focuses predominantly on the disciplinary element.

### The Importance of Confidentiality

Confidentiality and privacy are critical. Every effort should be made to maintain confidentiality and privacy for those concerned at all times throughout any investigation. Examples include:

* limiting the investigation to those who need to be involved in order to maintain confidentiality and procedural fairness;
* advising all participants in the investigation of the requirement that they maintain confidentiality;
* having policies and procedures in place to encourage and protect anyone making disclosures from recrimination; and
* having clearly outlined policies and procedures to encourage and protect staff reporting abuse and neglect (e.g., a clear whistle-blower statement and policy).

### Criminal Investigations: Working with the police

In the case of criminal (or suspected criminal) incidents, the police should be notified immediately. DHHS provides clear guidance around when police must be involved in [Responding to Allegations of Physical or Sexual Assault, (2014)](https://fac.dhhs.vic.gov.au/funded-agency-channel/sites/dhhsfac/files/2017-09/Responding%20to%20allegations%20of%20physical%20or%20sexual%20assault.doc) Service providers should then be guided by police advice regarding next steps. Police may:

* ask you to delay any internal investigation processes pending outcomes of their criminal investigation processes;
* provide advice about how to avoid interference with any possible police investigation;
* ask you not to mention police involvement to staff or talk about the incident with other service users, families or staff pending outcomes;
* determine an offence has not been committed and take no further action; or
* advise that you may undertake parallel internal investigations and offer advice and support.

All police advice should be followed, documented and (where appropriate) communicated to relevant parties. Advice to delay investigations or wider communications should be revisited through ongoing discussion with police.

Police investigate matters to a higher standard of proof than required by DWES. Disability service providers should not rely on a police investigation to replace an incident investigation as required by DWES or the Reportable Conduct Scheme. It may however be appropriate in some circumstances to delay an investigation under the Scheme whilst a police investigation is active.

#### When the police do not proceed to formal investigation or no conviction occurs

If the police do not detect that an offence has occurred and do not proceed with a formal investigation, seek their advice (in writing, if possible) to inform your decision about how to proceed with your investigation.

Even if police do conduct a formal investigation, there can be many reasons why a formal prosecution or criminal conviction may not occur, including:

* lack of evidence of an offence being committed;
* withdrawal of a complaint, or request of no further action;
* legal barrier to charges being laid; or
* accused being found not guilty.

Unless police have provided written advice that the worker has been exonerated, a disciplinary investigation should still be conducted. Non-criminal misconduct is still cause for investigation and follow-up within an organisation.

The police may provide access to evidence collected in the criminal investigation that can assist. Equally, any new evidence that emerges during the service provider’s investigation should be shared with police immediately.

#### DWES requirements following resignation of staff member

A disability service provider is required to investigate all allegations of conduct by a disability worker that falls within the DWES criteria, and to notify the DWES Unit of the outcome of such an investigation - including where the worker resigns before an investigation can be concluded.

#### Reportable Conduct Scheme requirements following resignation of staff member

If the employee resigns, the disability service provider is still responsible for notifying the Commission for Children and Young People of the reportable allegation and conducting an investigation. Similarly, if there is a reportable allegation about a disability service employee that relates to their conduct outside of the workplace, the disability service provider must report this allegation and investigate.

Investigations undertaken in these circumstances may have some challenges. However, the disability service provider must still do its best to conduct an investigation. The Commission can provide advice and guidance.

### Disciplinary Investigations

#### Understanding the Issues

Think about:

* The type of conduct alleged
* The seriousness of the alleged conduct
* The context in which the alleged conduct occurred
* A history of previous reportable allegations against the employee
* The potential for continuing risk to children
* Is the allegation possibly criminal in nature and required to be reported to Police?

#### Planning an Investigation

To determine the most appropriate investigative approach for your organisation and the circumstances of the allegation, you may want to consider:

* The powers necessary to investigate the allegation
* The resources and skills required
* The authorisation necessary to undertake the investigation
* Who will undertake the investigation and conflicts of interest
* Record-keeping

#### Coordinating an Investigation

* Develop an investigation plan; setting out the tasks that you will undertake, and the order in which they will be undertaken.
* Be clear about the powers that you will exercise and your reasons for exercising them.
* Identify areas requiring legal advice or expert advice (such as consultation with a medical practitioner).
* Will you use an investigation log or running sheet in which activities undertaken are entered and dated?

### Preparing for a Disciplinary Investigation

Taking into consideration advice from the police and other relevant bodies, you will need to plan your investigative approach. In the case of abuse of a service user by a staff member, your primary aims are to establish:

* the impact on the person with disability; and
* whether the allegation against the staff member can be substantiated

Both elements should be treated with equal importance.

Where multiple people with disability are involved, multiple investigations should be undertaken to consider the specific circumstances and experiences of each person.

#### a) Nominate a single point of contact

* Identify a suitably-skilled and experienced senior member of the organisation to coordinate the investigation process on behalf of your service. This does not necessarily mean they will conduct an investigation (see below) but that a **single coordination point** (or **contact person**) is established.
* This person should not have direct connections to staff being investigated. Any potential conflicts of interest should be declared prior to accepting the role.
* They should analyse all existing evidence, materials and reports from the assessment process so they can make informed decisions about the best approach.

#### b) Nominating an investigator

* There is no single response to the question of whether or not to engage an external investigator. If no legislated requirements exist, the circumstances of the case will dictate the most appropriate action. If the matter is being investigated by the DSC, consultation with the DSC is advised.
* In appointing any investigator, consider their:
  + Expertise in working with people with disability – especially in interview situations
  + Investigative skill levels proportionate to the seriousness of the allegations
  + Capacity to manage the complexity of the case
  + Capacity to maintain independence from the events and potential consequences
  + Demonstrated communication skills and a range of interview techniques
* Independence is a significant factor in a successful process. This extends to any outside perceptions of independence. The investigator should also be independent of decision-making about disciplinary action, such as suspension or dismissal. Any conflict of interest is to be declared and managed if appropriate.
* Where there is potential for investigations to be compromised or lack transparency or rigour, the engagement of an external investigator is strongly advised.

#### c) Where two agencies are involved

* Where your organisation does not have the lead workplace relationship with the staff member(s) being investigated (e.g., a worker provided by a third party employment agency), it will be necessary for the providers and DHHS to work together to ensure an investigation is completed.
* Cooperation will be required to identify agreed responsibilities for each provider, with respect for the confidentiality of those involved. Typically, the provider responsible for reporting the incident to DHHS will also be responsible for related obligations including investigation, review and data analysis.
* For clarification or support, contact DHHS.

### The Investigation Plan

An investigation plan should be agreed between your contact person and the investigator. The plan should cover:

#### a) Scope of the investigation

Investigation plans should set out clear terms and scope for the investigation, including:

* Clearly defined allegations
* Authority of the investigators to access information and interview stakeholders
* Setting out clear principles of procedural fairness and right to reply, integrity, confidentiality, and declarations of conflict of interest
* Setting the boundaries of the investigation in a way that doesn’t limit justice (for example, not focusing too narrowly on a specific issue at the expense of broader concerns; and making sure analysis detailed enough to identify specific issues and facts)

The findings of investigations by police and other external bodies (such as the DSC or child protection) might provide valuable input for your investigation plan. Their findings might also influence the direction of a disciplinary investigation during the process. If this occurs, service providers should defer to this advice and adjust processes accordingly. All changes should be clearly documented and communicated to relevant parties.

A brief overview of the scope and nature of the investigation should be communicated to people affected and their families using their preferred communication styles.

In regard to Reportable Conduct Scheme requirements, the investigator must be able to reach a view about the organisation’s policies for responding to reportable allegations, as well as the alleged reportable conduct itself. This will ensure that any policy or systemic failure that might have caused children to be unsafe is identified and recommendations are made to resolve these problems.

#### b) Who should be involved in the investigation

Investigations should be limited to those who need to be involved in order to maintain confidentiality and procedural fairness. Investigation plans should outline any **identified** and **potential** witnesses, including:

* The alleged victim
* The staff member(s) being investigated
* Any other witnesses, including
* Other service users present during the incident
* Other staff members present during the incident
* Other potential perpetrators
* People with additional evidence but who were not necessarily eyewitnesses:
* Other service users or staff members not present, who have additional evidence
* Members of the public and/or other witnesses who can contribute evidence
* Other supporters such as:
* The person’s family and other supporters including advocates (if appropriate)
* Staff union representatives and the employee’s support person

The investigation plan should outline any supports required to ensure full participation by all stakeholders, including communication supports, how they will be sourced, and what assistance is required to use them. Ongoing trauma, medical and counselling supports may also be required for victims and witnesses.

Investigations under the Reportable Conduct Scheme that involve family violence need to be safely managed so risks to family members are not heightened. Contacting police can assist with ensuring the incident has been reported, as well as gathering any information about police investigation findings, establishing how to manage risk and ensuring the family is linked to specialist support services. Further advice is provided in the Commission for Children and Young People investigation [guide](https://ccyp.vic.gov.au/assets/resources/Reportable-Conduct-Guidance/CCYP-Investigation-guide.pdf).

#### c) Proposed investigative actions and timeframes

The plan should outline a broad methodology for the investigation, including key actions, persons responsible and timeframes for completion. These should be communicated to key parties - notably, the person who experienced the incident, as well as supporters and staff members being investigated.

All investigations should be completed as swiftly as possible, subject to the complexity of the matter and requirements of police and relevant external bodies. Any changes to approach or timeframes should be clearly communicated, including those resulting from the police and others.

#### d) Identified and potential evidence and where it is located

Ensure that all records, logs and evidence are stored securely. In the case of a criminal investigation, critical evidence will likely be in the possession of the police. This may require negotiation with the police to identify what evidence, if any, can be shared with the investigator and when. The investigator should follow advice from the police on what actions can be taken or communicated in the interim.

#### e) Identified investigative impediments

The investigator and contact person should conduct a risk analysis to identify any possible barriers that might impact independence, rigour or transparency of the investigative approach, and put measures in place to mitigate them. Examples of barriers include:

* Over-reliance on evidence from one source
* Lack of availability of key witnesses
* Access to cultural or language supports
* Ensuring timeliness between the incident and the investigation

#### f) Communication

Service providers have a duty of care to their service users **and** their staff. If an investigation is to go ahead, you must take steps to ensure the people involved are adequately informed and supported throughout the investigation process.

In the case of criminal investigations, police and others will set requirements about what, how and when information may be communicated with others. If you are unsure about any aspects of sharing information to stakeholders, seek advice from police.

The investigation plan should articulate who is responsible for communication with all parties. In the first instance, this should focus on the person at the centre of the incident and the staff member(s) being investigated. Communication with indirect stakeholders, subject to confidentiality constraints, may include:

* Other relevant staff
* The CEO and board of management
* Other relevant service providers
* Funding bodies
* Complaints / statutory bodies
* The media

Organisations should seek to offer an appropriate level of information to other service users and their families regarding the incident, outlining steps to ensure safety within the organisation and providing details for a contact person for any queries.

### Procedural Fairness

Service providers should ensure the investigation process is undertaken according to principles of **procedural fairness**, that is,without bias or undue prejudice. For this reason, many service providers elect to use external investigators in the investigation process.

Procedural fairness is critical for justice for victims and ensuring natural justice for staff suspected of wrongdoing. Insufficient attention to fairness can result in legal challenges that could undermine the outcome of even the most thorough investigation.

If police and other bodies are not conducting independent investigations, organisations may provide advice to the staff member being investigated, including:

* The reasons why they are being investigated
* Each individual allegation
* The immediate and future steps that will be undertaken
* How procedural fairness will be adhered to, including:
  + Opportunity to give their version of events
  + Having access to industrial supports (e.g., union representatives) and advice
  + Opportunity to respond to allegations and evidence presented

Investigations should be conducted in a timely fashion (with respect to the specific circumstances) to minimise disruption and support timely resolution and a fair outcome.

### Obtaining Evidence

Investigators must gather sufficient reliable information to allow the issues to be properly understood and addressed. Evidence can include anything relevant that allows for full understanding of an incident, and may be used to corroborate or disprove allegations. This can include:

* Oral evidence from victims and witnesses
* Documentary evidence (records of events etc.)
* Personal notes that may indicate behavioural changes during period of alleged incident/s
* Site inspections (to familiarise with locations)
* Photographs
* Sketch or description of the location of the incident, including where people and furniture were situated
* CCTV (where available)
* Phone records
* Examination of any physical evidence
* Medical reports
* Review of any existing audio or visual recordings
* Expert evidence (technical advice)
* Correspondence between the worker and employer
* Policies, procedures or guidelines that govern or dictate duties

Seek police guidance if you are unsure about any aspect of collecting and handling evidence to minimise the potential for interference or impacting on evidence.

Particular care must be taken when it is proposed that an investigation involve children or the person is the subject of the investigation.

#### Preparing for an interview

Interviews offer investigators a formal opportunity to hear a range of testimonies and eyewitness accounts, confirm facts and explore lines of enquiry. All victims and witnesses should be interviewed.

Investigators should carefully plan each interview they undertake, being clear about:

* The purpose of each interview
* Potential challenges in conducting the interview
* Preferred interviewee communication style and any relevant communication supports
* Additional support requirements (e.g., a guardian, advocate or support person who is not involved in the investigation)
* The type of information you expect, including lawful defences the interviewee may raise
* Method of recording the interview
* Support needs of any persons being interviewed
* TEDS is a useful guide when asking questions during an interview:
* T - “Tell me about that…”
* E - “Explain that to me…”
* D - “Describe that…”
* S – “Show me…”

#### General tips for successful interviews

* A relaxed environment and approach will suit most situations.
* Interviewers should not be confrontational or take sides.
* There may be occasions – such as where a person appears wilfully obstructive or inconsistent - that require more formal approaches.
* Listen carefully and be flexible: Be prepared to hear and follow up on information that you were not anticipating.
* Question inconsistencies (if accounts of the same events differ between witnesses).
* Use TEDS (see above) to avoid ‘leading’ questions that might influence responses (e.g., ‘You were very angry with John that day, weren’t you?’).
* Consider making recordings where possible, as they are the most accurate record of the interview. You may supply a copy of the interview to interviewees after the interview or within a reasonable timeframe.
* Give people the opportunity to listen back to their statements to confirm / make changes.
* Privacy and confidentiality are critical. There should be no discussion of interviews with colleagues or others to reduce the potential for influence or distortion of facts.

#### Interviewing people with disability

Investigators should make every effort to meet the needs of people with disability to feel comfortable and able to discuss events freely. This includes:

* Using a neutral and comfortable setting
* Building a rapport
* Allowing for the presence of a chosen support person who is not involved in the incident or investigation
* Using the person’s preferred communication style and ensure availability of any communication aids and trained staff to support them
* Being clear about why the discussion is taking place
* Offering opportunities for a break at any point; repeating periodically if required
* Asking clear, short questions with no technical words
* Asking open-ended questions (e.g., ‘Tell me what happened.’)
* Breaking down complicated concepts into easier chunks
* Confirming your understanding of answers where possible
* Allowing enough time for the person to answer
* Managing the input of a support person to ensure they are independent of the process and not communicating on the person’s behalf

#### Conducting interviews with the staff member(s) under investigation

* Choose a neutral and comfortable setting, and take breaks as needed.
* Ensure that all evidence has been gathered.
* In most cases, it is useful to ensure that all other interviews have been conducted.
* Start with an open mind.
* Provide the person with a clear explanation of the allegations against them.
* Allow for the presence of a chosen support person (e.g., union representative, peer, family member etc.).
* Ensure that any support person is not a potential witness.
* In the case of union representatives, it might be wise to have one individual representative for each staff member.

### The Investigation Report

The investigator should provide a detailed report that allows your organisation to make decisions about required outcomes. The report should include:

* The **issue** being investigated in full (including the allegation)
* The **scope** of the investigation
* Investigation **methodology**,including process, all inquiries made, who was interviewed and what other evidence has been taken into account
* All identified and **confirmed facts** about events
* **Analysis** of the evidence in support of each separate allegation
* **Recorded statements** quoted as close to verbatim as possible to avoid misrepresentation
* **Conflicting, contradictory or exculpatory evidence** (evidence that exonerates the accused) and analysis of this material
* A **summary** of any analysis and conclusions. If there is limited supporting evidence and/or there is a question of conflicting statements and the investigator relies on one in preference of another, a reason must be provided.
* **Recommendations** for your organisation, the victim and the alleged perpetrator(s)
* A **statement** that allegations have been substantiated / not substantiated (based on available evidence)
* Copies of **evidence** for review

The finished report should be provided to the **point of contact** who will review the report and evidence to ensure:

* Conclusions are appropriate based on evidence presented;
* There is a clear, consistent narrative of events to inform the conclusion;
* There is not overreliance on a single witness or piece of evidence;
* The report satisfactorily addresses both the experiences of the victim and the staff member(s) being investigated;
* The investigation is thorough and all avenues of enquiry have been followed.

If the report meets these criteria, it should then be provided to the CEO for action. If the report does not address these criteria, discuss it with the investigator and consider any additional actions required.

#### Reportable Conduct Scheme: Investigation Findings

For those investigations under the Reportable Conduct Scheme, the investigator makes specific findings as to whether the allegations are substantiated or not on ‘the balance of probabilities’. The available findings are substantiated; unsubstantiated - insufficient evidence; unsubstantiated – lack of weight of evidence; unfounded; and conduct outside the scheme. For more information about each of the findings, refer to the Commission’s [Information Sheet 8 – ‘Investigation findings’](https://ccyp.vic.gov.au/child-safety/resources/reportable-conduct-scheme-information-sheets)

### Responding to Investigation Findings

For criminal acts, the response of the police and the courts will guide actions. Where a staff member is found guilty or convicted of the criminal act in a court of law, this may be a valid reason for summary dismissal provided the employer has followed its own natural justice process with the employee. Service providers should ensure that relevant legislation, policies and industrial requirements are met.

Where a court of law does not find sufficient evidence for a guilty verdict or criminal conviction, or where the alleged incident is not a criminal matter, service providers may use the findings of their own investigation to inform their actions.

Unlike in the case of a criminal investigation, disciplinary investigations do not require that the incident be proven ‘beyond reasonable doubt’, but only that the incident has been proven ‘on the balance of probabilities’ (i.e., that it is more probable than not that an incident took place).

### Outcome for the Staff Member under Investigation

Where an investigation concludes that there is enough evidence for a disclosure or allegation to be **substantiated**, service providers should act according to legislation and industrial requirements and consider options including dismissal, a formal misconduct warning or suspension.

A finding that a person has engaged in reportable conduct can trigger an assessment of whether that person is suitable to continue to work or volunteer with children. When the Commission for Children and Young People is advised of reportable conduct, this may, in turn, lead the Working with Children Check Unit to revoke a person’s Working with Children Check card.

If the finding is **not substantiated – insufficient evidence***,* action may still be recommended. This may include engaging in coaching and other management strategies where it has been concluded there is a skills deficit even though no deliberate misconduct has been substantiated.

A primary consideration for organisations should be the experience of people with disability. Careful and considered thought must be given to whether it is appropriate for the staff member to have **any** further contact with the person involved based on likelihood of adding to trauma for the person concerned.

For a finding of **not substantiated - no evidence** (or evidence to the contrary), providers should work closely with the staff involved and any industrial representatives to develop a return to work plan. Careful consideration must still be given to whether it is appropriate for the staff member to have any further contact with the person involved based on likelihood of adding to trauma for the person concerned.

Where misconduct is **substantiated**: prior to determining the outcome for the worker, the employer should also take into consideration:

* the worker’s prior conduct;
* the nature of the allegations;
* the strength of evidence and evidence relied on by decision-maker;
* any mitigating circumstances; and
* any submissions made by the worker.

Regardless of the findings, the accused worker should be provided with a written outcome that articulates how the organisation came to its decision regarding employment based on the evidence provided.

#### DWES requirements after completion of the investigation

Ensure all necessary evidence has been collected to provide to the DWES Unit, including:

* The Investigation report
* Supporting documents (any relevant investigative material that is not in the investigation report and that would assist the DWES Unit to assess the matter: e.g., copies of interviews)
* The disciplinary outcome or disciplinary hearing if a formal procedure followed

Once an investigation is concluded and a matter is found to be unsubstantiated or a disciplinary outcome is applied (or if it is established that the investigation cannot be completed), the service provider should update the DWES Notification via the DWES Portal to reflect this. In this instance, all investigative material should be provided to the DWES Unit.

In accordance with the DWES Instruction, once the DWES Unit Director considers that the name of a person may be placed on the List of Excluded Workers, the worker in question will be notified that they may not work as a Disability Worker or undertake Excluded Work, unless and until they are notified that their name is not on the List.

In some circumstances, the DWES Unit may request a provider to conduct further investigations or to provide more information. Providers must comply with all such requests.

#### CIMS Requirements after Completion of the Investigation

Service providers must record the investigation and manage the response and subsequent actions to all client incidents through their own incident management processes. As part of this process, client incidents must be electronically reported to the divisional office (via the department’s CIMS IT webform or the service provider’s IT system); either within 24 hours or on a monthly basis, depending on the classification of the incident as major or non-major (see the Department’s [Client Incident Management Guide](http://providers.dhhs.vic.gov.au/client-incident-management-guide-cims-word) for more information).

#### Reportable Conduct Scheme Requirements after Completion of the Investigation

At the conclusion of an investigation into a reportable allegation, a final investigation report must be prepared. This should set out the findings, reasons for the findings and recommendations made at the conclusion of the investigation. A copy of the final investigation report should be provided to the Commission for Children and Young People as soon as practicable. The Commission will also seek information about any disciplinary or other action proposed and reasons for taking or not taking action.

The Commission may request further documents from the head of the disability service provider.

### Outcomes for Victims: Person-focused review

Irrespective of other outcomes, a person-centred response is still required to communicate the outcome of the investigation to the victim and their family with clear information about any future actions.

A specific person-focused review should take place; that seeks to understand the person’s experience and implement any recommendations specific to the victim. The review should seek to understand the incident from the perspective and experience of the person with disability as well as any related issues (prior or subsequent) related to a person’s support that may have contributed to the incident occurring.

Person-focused reviews should be led by the service provider with the full participation of the person(s) and any others in their support network. It should lead to clear actions and next steps being developed with the person concerned and their families/carers. The review should prioritise the person’s future safety and the need for any ongoing specialist supports, healing strategies and trauma-sensitive care.

Service providers are recommended to follow an AAAA approach, which seeks to provide**Acknowledgement, Actions, Answers and Apology** in the person’s preferred communication style and ensure that the person is satisfied with the response. Issues of redress should be discussed with the victim and their representatives as appropriate.[[1]](#footnote-1)

### Outcomes for Service Providers: Organisational Review

If an allegation of abuse has been substantiated, the Investigation Report should also form the basis of an internal organisational investigation. This should consider the events covered by the investigation in the broader context of your policies, guidelines, practice and culture.

Key questions for the service provider include:

* What was it in our organisation that allowed this incident to occur?
* Were there any earlier signs or signals missed by the service provider?
* Was there anything that could have been done to prevent the incident?
* Did staff adhere to policy and practice guidelines and, if not, why not?
* Are current policies and practice guides sufficient?
* What additional training, practice or resources would assist in future?
* Does the organisation need to do anything else to manage risks?

While many of these elements may be captured within the investigation report, it is important to consider the wider implications of the incident and any other contributing factors. The purpose of the organisational investigation is to identify any organisational weaknesses, gaps and implement any lessons and improvements to minimise the likelihood of a repeat incident and identify opportunities to strengthen services.

### Further Considerations

The nature and circumstances of all investigations will differ. Other factors that may require your consideration include:

* The cultural organisational impact of an investigation of abuse of a person with disability by a staff member - even if the allegations are not substantiated. Service users and staff may be angered, upset or confused about what has happened. Use this opportunity to reinforce positive complaints cultures, remind staff of their obligations with regards to reporting abuse and revisit training on human rights and abuse prevention, such as those available through NDS’ Zero Tolerance initiative.
* Ensure communication of the investigations’ findings and recommendations is swift, clear and linked to a commitment to human rights and the Zero Tolerance approach to abuse, neglect and violence toward people with disability.
* Examine whether there are any additional supervision, training, specialist support or other resources required for staff involved and beyond.
* Ensure your board of management is informed of outcomes and recommendations and has an opportunity to consider its own actions.

## Appendix 1: Victorian Legislation and Policy Obligations

Victoria has a range of legislative and policy requirements in place to maximise the safety of its citizens. This includes requirements for disability service providers on actions after incidents of abuse. Requirements vary according to the nature and circumstances of the incident. **Service providers must be aware of, and act according to, Victorian legislation and policy** prior to commencement of any investigation. This includes all requirements of the police, child protection authorities, government funding mechanisms and statutory oversight bodies:

### Client Incident Management System (CIMS)

Department-funded organisations and Victorian-registered NDIS providers of disability and psychosocial supports are required to report incidents under CIMS. The focus of CIMS is on the safety and wellbeing of clients. NDIS providers are advised that, as Victoria’s quality and safeguarding arrangements remain during transition to full scheme NDIS roll out in 2019, they will be required to comply with CIMS until the establishment of the national Quality and Safeguards Commission in Victoria from 1 July 2019. See [Reporting Incidents](https://providers.dhhs.vic.gov.au/reporting-incidents)

### Disability Worker Exclusion Scheme (DWES)

This DHHS initiative is designed to protect the safety and wellbeing of Victorians receiving disability services. It requires disability service providers to conduct an additional pre-employment check with DHHS prior to making an offer of employment. People found to be unsuitable to work with people with disability are placed on the Disability Worker Exclusion List and are prevented from obtaining future employment in disability services. See [Disability Worker Exclusion Scheme](https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme)

### Reporting to Disability Services Commissioner (DSC)

The DSC provides independent review and monitoring of Category One incident reports relating to personal client assault, injury and poor quality of care reported by disability service providers. DHHS refers all relevant Category One incident reports to DSC for review. The DSC may request further information regarding the incident report, including details of internal investigations conducted. If there are areas that warrant follow up and attention, the DSC may also compel attendance, evidence and documents, or provide a Notice of Advice to DHHS or the service provider. The DSC also provides advice to DHHS on the extent to which service provider responses address the well-being, safety and rights of people with disability involved in these incidents. See [Disability Services Commissioner](http://www.odsc.vic.gov.au/)

### Reportable Conduct

All organisations “that provide disability services, including but not limited to, registered disability service providers” are required to adhere to the Victorian Reportable Conduct Scheme. This seeks to improve organisations’ responses to allegations of child abuse and neglect by their workers and volunteers.

Organisations are required to notify the Commission for Children and Young People (CCYP) of a reportable allegation made against one of their workers or volunteers, whether or not the conduct or misconduct is alleged to have occurred within the course of the person's employment.

Specifically, organisations are required to:

* notify the CCYP within three business days of becoming aware of a reportable allegation;
* investigate an allegation – subject to police clearance on criminal matters or matters involving family violence;
* advise the CCYP who is undertaking the investigation;
* manage the risks to children;
* Within **30 calendar days,** provide the CCYP with detailed information about the reportable allegation and any action the organisation has taken; and
* notify the CCYP of the investigation findings and any disciplinary action the head of entity has taken (or the reasons no action was taken).

For more information, visit [Reportable Conduct Scheme](https://ccyp.vic.gov.au/reportable-conduct-scheme/)

### Child Protection

Professionals involved with vulnerable children, young people (0-17 years) and their families - including families with an unborn child - may from time to time consider that they should report or refer a concern to either Child Protection or the new Child FIRST intake service that being developed in Victoria.

A new offence for failure to disclose child sexual abuse came into effect in October 2014. The offence requires that any adult who holds a reasonable belief that a sexual offence has been committed in Victoria by an adult against a child (aged under 16) disclose that information to police. The offence applies to all adults in Victoria, not just professionals who work with children, unless they have a reasonable excuse. For more information, visit [Report Child Protection](https://providers.dhhs.vic.gov.au/making-report-child-protection)

Interagency Guideline for Addressing violence, Neglect and Abuse (IGUANA)

In 2012-2013, the Office of the Public Advocate led work with a range of Victorian service providers including government, the police, NDS and disability service providers to develop the Interagency Guideline for Addressing Violence, Neglect and Abuse (IGUANA). This useful resource sets out key actions for service providers responding to incidents of abuse. The guideline can be found [here](http://www.publicadvocate.vic.gov.au/our-services/publications-forms/5-interagency-guideline-for-addressing-violence-neglect-and-abuse-iguana?path)

### Victoria Police Guidelines

Criminal Abuse of Children and Vulnerable People in Organisations: Reporting to Victoria Police.These guidelines have been produced for managers in organisations that support children or vulnerable people.

They provide advice about when and how to report allegations or incidents of criminal abuse within their organisation to Victorian Police. See Reporting Criminal Abuse of Children and Vulnerable People in Organisations to Police.

## Appendix 2: Useful Resources

### Victoria

**Department of Health and Human Services**

* DHHS [Client Incident Management System (CIMS)](https://providers.dhhs.vic.gov.au/reporting-incidents)
* DHHS [Disability Worker Exclusion Scheme (DWES)](https://providers.dhhs.vic.gov.au/disability-worker-exclusion-scheme)
* DHHS [Responding to allegations of abuse involving people with disabilities guidelines](https://providers.dhhs.vic.gov.au/responding-allegations-abuse-involving-people-disabilities)
* [DHHS Failure to disclose offence fact sheet](https://providers.dhhs.vic.gov.au/failure-disclose-offence-fact-sheet-word)

**Office of the Public Advocate**

* [Interagency Guideline for Addressing Violence, Neglect and Abuse (IGUANA)](https://www.publicadvocate.vic.gov.au/our-services/publications-forms/5-interagency-guideline-for-addressing-violence-neglect-and-abuse-iguana?path=)
* [Independent Third Person Program](http://www.publicadvocate.vic.gov.au/our-services/volunteer-programs)

**Disability Services Commissioner**

* [Resources for service providers to help promote and build a strong and positive complaints culture](http://www.odsc.vic.gov.au/resources/educational-materials/)
* [Investigations: Guidance for Good Practice - Resource Paper for Disability Services Providers](http://www.odsc.vic.gov.au/resources/educational-materials/)

**The Commission for Children and Young People**

* See [CCYP Website](http://www.ccyp.vic.gov.au)
* [Guidance for Organisations investigating a Reportable Conduct Allegation](https://ccyp.vic.gov.au/assets/resources/Reportable-Conduct-Guidance/CCYP-Investigation-guide.pdf)

**South East Centre Against Sexual Assault**

* [Feelings After Sexual Assault](https://www.secasa.com.au/assets/Documents/feelings-after-sexual-assault.pdf) fact sheet

#### Others

* [VALID ‘Staying Safe’ workshops and resources](https://www.valid.org.au/staying-safe-workshop)
* [SCOPE Speak up and Be Safe resources for working with people with complex communication support needs](http://www.speakupandbesafe.com.au/)
* [Association for Children with a Disability PEP talks](http://pep-talk.org.au/)
* [WDV: Violence against Women with Disabilities](http://www.wdv.org.au/documents/Fact%20Sheet%203%20-%20Violence%20against%20women%20with%20disabilities_final%20(May%202016).pdf)

**Victoria Police**

* [Reporting Criminal Abuse of Children and Vulnerable People in Organisations to Police](http://www.police.vic.gov.au/content.asp?a=internetBridgingPage&Media_ID=116042)

### Others

**NSW Ombudsman**

* [Resource guide for disability services - Initial and early response to abuse or neglect in disability services](https://www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/disability-reportable-incidents/initial-and-early-response-to-abuse-or-neglect-of-disability-services)
* [Investigation of Complaints](http://www.ombo.nsw.gov.au/__data/assets/pdf_file/0007/3697/FS_PSA_09_Investigation_of_complaints.pdf) fact sheet
* [Planning and Conducting an Investigation](https://www.ombo.nsw.gov.au/news-and-publications/publications/fact-sheets/child-protection/planning-and-conducting-an-investigation-cp04) (Child Protection)

**Queensland Department of Communities, Child Safety and Disability Services**

* [Responding to Abuse, Neglect and Exploitation fact sheet](http://www.communities.qld.gov.au/resources/disability/information/publications/abuse-policy/documents/responding-to-abuse-neglect-and-exploitation-fact-sheet-2.pdf)

[Intellectual Disability Rights Service](http://www.idrs.org.au/support/support.php)

**Ombudsman Western Australian**

* [Guidelines on Conducting Investigations](http://www.ombudsman.wa.gov.au/Publications/Documents/guidelines/Binder-Conducting-Investigations.pdf)

[Fair Work Act (2009)](https://www.fairwork.gov.au/about-us/legislation)

[**NDS Zero Tolerance website**](https://www.nds.org.au/zero-tolerance)

[](https://www.nds.org.au/zero-tolerance)

End of document

1. Disability Services Commissioner (2012), Occasional Paper No. 1: Learning from complaints, 29. [↑](#footnote-ref-1)