

# Risk Incidents and Complaints Management



Conducting Investigations.  
Why is this important?





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# Important Information

## About the Conducting Investigations Guide

The Conducting Investigations Guide has been adapted from the NDS Zero Tolerance resource “Conducting Investigations: A Guide for Victorian Disability Service Providers”, and the WA Safer Services Project funded by Lotterieswest.

### Caution and Disclaimer

Conducting an investigation is a serious and complex process that can have significant consequences for all parties if not done properly. An investigation should only be undertaken by a provider if there are staff members within the service who have appropriate training and experience to do so, are in a suitable role that will not have an affect on procedural fairness (e.g., existing line supervision of one of the people involved), have sufficient time and resources needed to conduct a thorough investigation, or funding to contract a suitable investigator external to the service. When in doubt, the expertise of professionals, the police, and other relevant resources should be looked for.

This guide supplies information about the investigations process once an incident of abuse has been alleged, observed or reported. It is assumed that services will have met their responsibilities to ensure the immediate safety of all parties involved in the incident, reported the matters appropriately and in full to police and NDIS Commission as required, and have taken active steps to ensure that participants and staff members are safe – including promptly removing staff being investigated from the workplace.

Please note that this guide does not provide legal advice, and does not replace any existing policy, procedure, or legislation relevant to your service’s provision of services. It is intended to promote good practice approaches, including templates for services to adapt for use as part of their responding to allegations of abuse.

## Conducting Investigations. Why is this important?

This guide has been developed to support disability services to undertake investigations. This guide is intended for use by senior staff within the service who have formal responsibility for conducting investigations as part of their role, and who are appropriately trained and experienced to do so.

It includes a draft Incident Investigation Report to guide what information should be recorded for more serious incidents in order to prevent recurrence and possible harm to NDIS participants and others.

This form needs to be used if you feel there is any chance of litigation or if it is a notifiable incident.

This [Worksafe Queensland resource](#) is also a useful guide to conducting investigations. Whilst it is focused on worker injury, it also provides a great structure for trying to get to ‘root causes’.



## Summary of Organisational Obligations

The safety and wellbeing of people with disability and staff is paramount, and services must prioritise this as part of their duty of care throughout the investigations process. The Conducting Investigations Guide is one part of responding to instances of abuse, neglect or exploitation that have been disclosed, observed or reported. Services must ensure that:

- All parties are safe
- Medical treatment or emergency services have been provided if required
- Services reporting policies and procedures have been followed
- If a criminal offence is suspected, alleged, or known to have occurred the police must be notified
- Staff or volunteers who are being investigated have been removed from the workplace, as appropriate
- If the accused person is someone not from or known to the service, safeguarding actions are taken to minimise or prevent contact
- A duty of care is maintained including the requirement to support people with disability and staff members
- Safety and wellbeing of all people involved is prioritised
- As a reportable incident, the NDIS Commission notified within the required timeframes.

## Guiding Principles for Investigations

Bad behaviour is certainly a not common features of disability services. But history tells us that it's far from unknown. The NDIS Commission expects every service provider to be willing and able to investigate potential misconduct (though if a criminal offence is suspected or known to have occurred, they must call the police).

Conducting an investigation is a serious and complex process that can have significant repercussions for all parties if not done properly. That's why we, NDS, have the following resources which have been designed to help you investigate allegations of abuse, neglect or misconduct. Please note that they are not a source of legal advice, and do not replace any existing policy, procedure, or legislation relevant to your service's provision of services.

When in doubt, the expertise of professionals, the police and other relevant resources should be looked for.

### Person-Centred Practice

All investigations should support the full and safe inclusion of the person(s) with disability involved in the alleged incident. Consideration should be given to the potential impact of the allegations and the investigation process on all people involved.



## Procedural Fairness

Procedural fairness refers to a process that is without bias or undue prejudice. It ensures all steps have been taken so that there is a fair hearing, and the decision maker should be free from bias. For processes to be accepted as appropriate and fair, it is imperative that they are applied consistently and with integrity and treat all people involved in investigations with respect. This includes recognising and managing actual, potential or perceived conflicts of interest.

Procedural fairness requires a decision maker to:

- inform people of the allegations against them
- give them a right to be heard
- not have a personal interest in the outcome
- act only on the basis of well-reasoned probative evidence
- make good decisions in good faith and without bias
- consider any person whose interests will be affected by the decision.

## Confidentiality

Confidentiality and privacy of all people involved in the investigation is paramount and must be maintained throughout the investigation. For example:

- Limiting the investigation to only people who need to be involved
- All participants in the investigation are advised and reminded that they must maintain confidentiality
- Organisational policies and procedures are in place to encourage people to make disclosures, and to protect them from any recrimination as a result (e.g., clear whistle-blower statement and policy).

## Communication

The investigation plan should articulate clearly who will be responsible for communication with the various parties. See Investigation Plan Template (Appendix B). It is important to communicate with people throughout the investigation process, despite the fact that some information may need to remain confidential. A lack of communication and information can cause stress, anxiety and distress to all people involved in the process.

## Timeliness

Investigations can cause stress, anxiety and worry for all people involved in the process. It is critically important that any investigation is allocated and completed in a timely manner.



## Allegation Offence suspected

Allegations may be made by a range of different people and occur as a result of something the person has directly witnessed, found evidence of, or had reported to them. Resources, such as the Zero Tolerance Resources, can help services build a culture where people are supported to speak up about their concerns.

When an allegation or a serious concern is noted, people need to create a written record of this as soon as possible, written objectively, with a date and signature, and raise this with their line manager or appropriate person within the service.

Sometimes the allegation may be raised by a person with disability who has alternative and/or complex communication needs, and is not able to provide their own written, signed and dated statement. This becomes the responsibility of the person hearing their complaint or concern.

Clearly and accurately record all the details of the allegation.

### **Allegations requiring investigation may include:**

Types of **abuse** may include:

- Physical abuse - such as punching, hitting, slapping, burning etc.
- Sexual abuse - forcing someone to take part in sexual activity against their will
- Psychological or emotional abuse - threatening, harassing or intimidating a person
- Financial abuse - the wrongful use of another person's assets or denying a person the use of their own assets
- Use of constraints or restrictive practices outside of clinical recommendations and parameters in relevant plans
- Legal or civil abuse
- Systemic abuse.

Types of **neglect** may include:

- Physical neglect - failure to provide adequate food, shelter, clothing and protection. Supervision medical or dental care that places people at undue risk through unsafe environments or practices
- Passive neglect - withholding or failure to provide the necessities of life
- Wilful deprivation - wilfully denying a person help and thereby exposing that person to the risk of physical, mental or emotional harm
- Emotional neglect - restricting the social, intellectual and emotional growth or well-being of a person.



Types of **evidence** may include:

- Interview evidence from people involved
- Documents (emails, file notes, charts, digital information)
- Personal or formal notes that may show behavioural changes during period of alleged incident(s)
- Photographs (e.g., bruising, scratches) and video, including security footage
- Clothing, bedding, carpet (be mindful of potential for contamination, do not wash)
- Sketches or descriptions of the alleged incident/s
- Physical evidence, if available
- Medical and other reports
- Correspondence between worker and employer
- Policies, procedures and guidelines relevant to worker duties and expectations.



# What do I do?



## Ensure people's safety

Safety is paramount. The moment potential misconduct has been observed or alleged; service providers must act rapidly to ensure that:

- medical treatment or emergency services have been provided (if required)
- the alleged victim's legal or family guardian have been notified.

If accused person is not an employee or volunteer with the service, reasonable safeguards must be taken to prevent interactions with the alleged victim during the investigation.

In the event the accused person is a staff member, they must be immediately removed from contact with the alleged victim. If the allegations suggest a potentially wider safety concern, that staff member must be removed from the workplace, subject to organisational policy and workplace agreements. This may include being:

- stood down with pay
- provided an option to take leave (with or – by agreement – without pay)
- temporarily redeployed to a role that doesn't involve contact with people with disability being supported by the provider.

## Make sure all parties are fully supported

This may involve:

- offering the accused person/s access to an employee assistance program
- connecting the alleged victim with relevant professional services (e.g., a sexual assault resource centre or support service).

## Decide whether to begin an investigation

The primary aim of an investigation is to establish whether the allegation against the accused person can be substantiated and the nature of the impact on the alleged victim.

Seek police advice before beginning or continuing an internal investigation, to ensure that this does not compromise a potential police investigation. An inappropriate or inappropriately conducted investigation can have a serious impact on all people involved in the process and come with legal consequences.





## Appoint an investigator

An investigation should only be undertaken by a provider if there are staff members within the service who have appropriate training and experience to do so, are in a suitable role that will not have an affect on procedural fairness (e.g., existing line supervision of one of the people involved), and have sufficient time and resources required to conduct a thorough investigation.

When funding is available, it may often be more appropriate to contract a suitable investigator external to the service.

If no suitable option for conducting an investigation is available or there are doubts, consult with the NDIS Commission for guidance before continuing.

## Notify all parties that an investigation is taking place

Notify the accused person that an investigation is taking place, and that they have a right to hear the allegations in full and fully respond to them.

## Gather evidence

Once your investigation is underway, start to gather or preserve any material that may contributes to an understanding of the incident and used to corroborate or disprove allegations. Examples of such material might include:

- documents (emails, file notes, charts, digital information)
- personal or formal notes that may show behavioural changes during period of alleged incident(s)
- photographs (e.g., bruising, scratches) and video, including security footage
- sketches or descriptions of the alleged incident/s
- physical evidence, if available, this could include clothing, bedding or carpet, be mindful of potential for contamination and definitely do not wash these items
- medical and other reports
- correspondence between worker and employer
- policies, procedures and guidelines relevant to worker duties and expectations.

## Conduct interviews

All potential victims, witnesses, and accused people need to be interviewed in order to confirm facts and explore lines of enquiry.

Before beginning your interviews, remind all parties that privacy and confidentiality are critical – there should be no communication with anyone about the interview as it can influence other people’s recollection or perception of events. Try to interview the accused person after other key interviews have taken place, so you have as much information as possible to develop interview questions.



Prior to conducting each interview, try to reach an agreement on a method for recording it (e.g., a recording device, or a third-party taking notes). If at any stage, more evidence is encountered that relates to potentially criminal activity, it should immediately be brought to the attention of police.

## Weigh the evidence and make a written finding

The person who made the allegation and the accused person/s should both be notified in writing of the outcome of the investigation and any actions which have resulted from it.

This report should include:

- conclusions that are based on the evidence presented
- an outline of a clear, consistent narrative of events that support the conclusion
- information that does not have overreliance on a single witness or piece of evidence
- the perspective of the alleged victim and the accused
- a full demonstration that all avenues of enquiry within the scope of the investigation were followed.

## Act on that finding

When determining the outcome for the accused, providers should take into consideration:

- the staff member's prior conduct
- the nature of the incident
- the strength of evidence and evidence relied on by the decision maker
- any mitigating circumstances
- any submissions made by the staff member.

Providers need to act in accordance with legislation and industrial requirements. Where allegations of misconduct have been substantiated, punitive options include dismissal, a formal misconduct warning, or suspension.

## Learn from the experience

Whether or not an allegation is substantiated, an investigation can often point to potential gaps in your organisational policies, procedures, workplace guidelines, practice and culture.

Some key questions to consider after the investigation wraps up include:

- what factors contributed to this incident being able to occur?
- were there any early signs or signals that could have been detected, but were missed?
- is there anything that could be done differently to prevent such an incident occurring again?
- did staff adhere to policy and practice guidelines, and if not, why not?
- are current policies and procedures in place sufficient, and well understood?
- what additional training, practices or resources would help people with disability, families and guardians, staff, and other relevant parties?



## What do I say?

### To the accused person?

Even in the event that no active steps are required in order to remove the accused person from the alleged victim, the accused person must still be formally let they know are being investigated, and that they have the right to hear the complaint in full and make an equally full and well-thought-out response.

They should also know that they may bring a support person (which can include a union representative or a lawyer) to any and all interviews conducted as part of the investigation.

### To the people I interview

Tips for conducting successful interviews include:

- framing allegations carefully so that they do not suggest a pre-determination of the issues.
- explaining why the alleged conduct would breach a particular code of conduct or policy
- providing a private environment and breaks as needed
- clearly explaining why the discussion is happening and provide the opportunity to ask any clarifying questions
- breaking down complicated concepts to ensure the person has a full understanding of what you are asking them
- avoiding confrontation or taking sides
- questioning inconsistencies in the person's responses.

### Communicate your finding

Families, guardians and witnesses should also be informed that the investigation was conducted, concluded, what the outcome was, and what actions the service will be taking as a result.

In certain circumstance, it may also be appropriate to notify:

- relevant staff members
- CEO and board of management
- other involved service providers
- funding bodies
- complaints/statutory bodies.



## What do I record?

### The details of the allegation

When an allegation or a serious concern is raised, it is best to get it in writing as soon as possible, with a date and signature and as much detail as possible.

### The details of the investigation

Clearly and accurately record all the details of the investigation. Such details may include:

- interview transcripts
- documents (emails, file notes, charts, digital information)
- personal or formal notes that may show behavioural changes during period of alleged incident(s)
- photographs (e.g., bruising, scratches) and video, including security footage
- clothing, bedding, carpet (be mindful of potential for contamination, do not wash)
- medical and other reports
- correspondence between worker and employer
- policies, procedures and guidelines relevant to worker duties and expectations.

### The result of the investigation

See 'What do I do'.



# What do I report?

## Police

For more information on what may be considered a criminal act and how to report it, please contact your local police department.

It is also best to check that any steps you intend to take in the course of your investigation would not impede a future police inquiry.

## NDIS Commission

Any of the following incidents must be reported to the NDIS Commission, if they occurred or are alleged to have occurred in connection with supports or services you're providing:

- the death of a person with disability
- serious injury of a person with disability
- abuse or neglect of a person with disability
- unlawful sexual or physical contact with, or assault of, a person with disability
- sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity
- the use of a restrictive practice in relation to a person with disability, other than where the use is in accordance with an authorisation (however described) of a State or Territory in relation to the person.

A failure to comply with the requirement to notify, investigate and manage reportable incidents is a breach of a registered NDIS provider's conditions of registration and may lead to compliance and enforcement action.

## Other state reporting requirements

You need to ensure you keep abreast of current state-based notification requirements when it comes to potential misconduct and incorporate these requirements into your practice.



# Appendix A: Investigations Checklist

## Initial Actions

Respond to the initial information, ensuring the immediate safety and wellbeing of the people you support and staff is maintained, as part of your duty of care. Ensure that required reporting mechanisms (e.g., NDIS Reportable Incident) has been completed in a timely manner).

### 1. Allegation Information

Information about where the incident took place. This may include a sketch or photograph of the location, and a description of where people, furniture and key items were at the time of the alleged incident. Date and time

More information for the initial actions stage includes:

Details and background of the location, particularly if it is a setting provided or managed by the service

Details and background of the alleged victim/s

Details and background of the accused person/s, including:

- How long the person has been employed/volunteered, and position held
- Usual work hours, locations, roles, and people they have supported.

### 2. Notification

#### Police

Assess allegation for whether it may be a criminal offence

If yes, notify police and preserve evidence. Also follow police advice on further investigations.

#### NDIS Commission

Reportable Incident (to NDIS Commission). Report to designated Authorised Reportable Incidents Notifier/Approver (internal manager) for reporting via the NDIS Commission portal.

#### Other required notifications

State based notification requirements are met.

### 3. Accused Person removed from Situation

Accused person has been removed from contact with the alleged victim

If accused person is not an employee or volunteer with the service, reasonable safeguards are taken to prevent interactions with the alleged victim during the investigation

Alleged victim and legal or family guardian (if relevant) notified of the action.



#### 4. Support Offered

Notify legal or family Guardians of the people involved.

Ensure the accused person/s is notified that an investigation is taking place, of their rights to hear the complaint in full, right to a response, and has the opportunity to bring a support person (which can include a union representative) to interviews held as part of the investigation

Offer the accused person/s access to the Employee Assistance Program, if they are eligible to use this

Offer the alleged victim with support to access relevant professional services if needed (e.g., Sexual Assault Resource Centre or Support Service)

Offer the alleged victim assistance to arrange for a support person at any interviews required as part of the investigation. This may include a trusted friend, family member, or an advocate.

## Investigations Planning

#### 5. Identify Contact Person

Contact Person identified and appointed

Contact person is made aware of their role and responsibilities

Relevant parties are made aware of the Contact Person's role and details.

#### 6. Identify Investigator

Investigator/s identified and appointed

Investigator is made aware of their role and responsibilities.

#### 7. Develop Investigation Plan

Investigator and Contact Person develop the Investigation Plan

CEO or senior manager within the service are made aware of the general details of the investigation e.g., scope of the investigation, expected timeframe and resources required.

## Investigations Process

#### 8. Gathering Evidence

Evidence can include anything that contributes to an understanding of the alleged incident/s and may be used to corroborate or disprove allegations. Seek police guidance if you are unsure about an aspect of collecting and handling evidence. If at any stage of your investigation, additional evidence is encountered that relates to potentially criminal activity, it should immediately be brought to the attention of police.



Examples of evidence to consider collecting includes:

Interview evidence from people involved

Documents (emails, file notes, charts, digital information)

Personal or formal notes that may show behavioural changes during period of alleged incident/s

Photographs (e.g., bruising, scratches) and video, including security footage

Sketches or descriptions of the alleged incident/s

Physical evidence, if available, this could include clothing, bedding or carpet, be mindful of potential for contamination and definitely do not wash these items

Medical and other reports

Correspondence between worker and employer

Policies, procedures and guidelines relevant to worker duties and expectations.

## 9. Interview Checklist

### Pre-Interview

Purpose for each interview clearly established

Considered potential challenges for interview, and ways to mitigate

Preferred interviewee communication style, and any supports required

Opportunity for a support person to be present has been offered

Ensure support persons know what their role will involve during the interview

Method of recording for interview (e.g., third party taking notes, typing, request for permission to record audio)

Investigation process explained to all parties.

### Post Interview

Record of interview documented and signed by relevant parties

People being interviewed are informed of who will next contact them, and within what timeframe, if this is required.

## 10. Collate Information in the Investigation Report

Collate all evidence and information gathered in the Investigation Report

Analyse all available information and reach an Investigation Finding

Contact Person and Investigator to finalise and sign Investigation Report.





## 11. Investigation Findings

Finalised Investigation Report provided to CEO or senior manager within service for sign off

Review Investigation Findings and determine individual outcomes for parties involved

Investigation Findings, outcomes and actions are communicated to relevant parties in writing including:

- Alleged victim/s
- Accused person/s
- Legal or family Guardians
- Key Witnesses
- Person who raised allegation
- NDIS Commission.

## Respond to Investigation Findings

Meeting held with relevant parties to delegate responsibility for any required actions

Actions, responsibilities, and timeframes are recorded (e.g., Service's Continuous Improvement Plan)

- Participant indicates satisfaction with the outcome of the incident Y/N Comments
- Participant indicates satisfaction with the process of the incident handling Y/N Comments
- What strategies for improvement or remedial action for the service, to avoid a reoccurrence have been identified, for the Immediate and long term?
- Person responsible for and Date these are implemented
- Recorded on register/or elsewhere?
- Review relevant Policy and procedures for opportunities for improvement and implement
- Corrective actions What you intend to do to address the contributing factors, who when completion date.



# Appendix B: Investigation Plan

Contact Person: Position:

Investigator: Position:

## Scope of Investigation

Use this section to record:

- Clearly defined allegation
- Authority of investigator/s to access information (including privacy requirements) and interview relevant parties
- Setting boundaries of the investigation – ensure that this is not limiting e.g., has a narrow scope, focuses on a specific issue at the expense of broader concerns, is too high level to identify specific issues and facts
- Setting out clear principles of procedural fairness and right to reply, integrity, confidentiality, and declarations of conflict of interest.

## Persons Involved

Use this section to list people who are identified at this stage as being involved in the alleged incident, including:

- The alleged victim/s
- Staff member/volunteer or other parties being investigated
- Witnesses or potential witnesses (e.g., other people you support who may have witnessed the alleged incident, other members of staff present)
- Other potential alleged perpetrators
- People with additional information but who may not be eye-witnesses
- Other supporters (e.g., person’s advocate, union representative).

Document what information the accused person was provided with, and how you took care to protect the confidentiality of the person/s who raised the allegation as much as possible. Key points may include:

- reason/s why the accused person is being investigated
- each allegation
- immediate and predicted future steps that parties were advised would occur
- how procedural fairness will be adhered to, including
- people having an opportunity to present their version of events as part of the investigation
- ability to have a support person of their choosing to attend interviews as part of the



investigation.

Include information about any supports that will be required to ensure full participation of all of the people involved. For example, communication supports, how they will be sourced what assistance will be required.

## Proposed Actions

Set out a broad description of the methodology for the investigation. Actions can be captured on the table below, if required.

It is important to set realistic timeframes to allow sufficient time to thoroughly investigate within a suitable timeframe.

### Action

Person Responsible:

Expected Timeframe:

Date Completed:

& by Whom:

### Action

Person Responsible:

Expected Timeframe:

Date Completed:

& by Whom:

### Action

Person Responsible:

Expected Timeframe:

Date Completed:

& by Whom:



**Action**

Person Responsible:

Expected Timeframe:

Date Completed:

& by Whom:

**Potential Evidence**

Use this section to identify what evidence may be important to the investigation. For example, work rosters, progress/case notes, medical records, photographs etc. Ensure that all relevant logs, records, and other evidence are collected and stored securely.

**Investigation Barriers**

Use this section to identify and record any potential barriers to the investigation, and measures that can be put in place to mitigate the barriers. Some examples of barriers could be:

- 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 investigation.

**Communications**

Providers have a duty of care both to the people they are supporting, their families and staff. Everyone must be kept well informed and supported throughout the investigation process.

When there is a Criminal Investigation taking place with the police, there may be external requirements that determine where, when, and how information can be communication with others.

The Contact Person will be responsible for communication with a range of people directly involved, as well as indirect stakeholders, subject to confidentiality requirements. Some people this may involve include:

- Family members and/or legal Guardians
- Relevant staff members
- CEO and board of management
- Other involved service providers
- Funding bodies
- Complaints/statutory bodies.



It is important that in addition to offering an appropriate level of information, steps taken to ensure people's safety and wellbeing are highlighted and the details for the contact person provided.

If there is media interest or social media activity about the alleged incident or investigation, you should follow your service's policy and procedures. If you do not have media or social media policy, any issues regarding public statements should be referred to the Chief Executive Officer.



# Appendix C: Investigation Report Template

Investigator: Position:

Contact Person: Position:

## Issue

Use this section to provide a detailed description of the allegations. Attach the statement that included the allegation and a record of all actions taken as part of the initial response.

## Scope of Investigation

Clearly explain the scope of the investigation – what were the key issues that were investigated, who was investigated and what were the limits to the investigation.

## Investigation Methodology

In this section include information about who conducted the Investigation. Include their title, role and qualifications. Explain the process used to undertake the investigation.

### Action

Person Responsible: Expected Timeframe:

Date Completed: & by Whom:

### Action

Person Responsible: Expected Timeframe:

Date Completed: & by Whom:



**Action**

Person Responsible:

Expected Timeframe:

Date Completed:

& by Whom:

**Action**

Person Responsible:

Expected Timeframe:

Date Completed:

& by Whom:

Attach the table of actions from the Investigation Plan if this was used during the investigation.