

# Risk Incidents and Complaints Management



## Conducting Investigations Policy Checklist

### Instructions:



This checklist contains recommended elements of a policy to guide the conduct of investigations. This policy checklist is general in nature and is intended to be used as a guide.

#### **Other resources**

[Educational materials - Disability Services Commissioner \(odsc.vic.gov.au\)](http://odsc.vic.gov.au)

✓ Tick when your policy includes the following elements.



# Conducting Investigations Policy Checklist

## Definitions

You identify an Investigation as a process involving identification, gathering and analysis of evidence and information about an incident or complaint in order to establish the facts about what occurred and inform the next steps in identifying appropriate action.

You identify the key principles of procedural fairness to include:

- All people involved in the investigation will be informed about what has happened or alleged to have happened.
- They will have the opportunity to explain their view of the incident.
- Corrective action will be based on relevant facts and circumstances.
- The investigator and decision maker will be impartial and even-handed. (The NDIS Commission have Guidelines on Procedural Fairness (see Investigations resources).

If you are investigating the actions of a particular individual, they are identified as the respondent.

## Purpose of an investigation

You make a statement about the importance of investigations and talk about open disclosure.

Your purpose of an Investigation is prevention. You conduct an investigation in order to establish the cause of an event, its effect on the impacted person, any operational issues that may have contributed to the incident occurring and identifies appropriate action.

## When to conduct an investigation

You determine to commence an investigation:

- When the cause of the incident is unknown or could have been a combination of factors or a number of factors.
- The nature and impact of the incident was significant and requires investigation to support the safety and wellbeing of participants.
- The incident may involve an allegation against a worker, and an investigation is required to determine what actions are required to manage the potential risks associated with the subject of the allegation.
- If a matter has been reported to the police, you seek police advice prior to beginning or continuing an internal investigation, to ensure that this does not compromise a potential police investigation.

You determine that a preliminary assessment of an incident is a separate step from investigation and must focus on the person with disability and any implicated staff member.



You undertake a preliminary assessment during and immediately following the incident reporting process. You gain as specific and accurate an account of the allegation/event as possible, identify potential witnesses and, where appropriate, arrange for (if required) the relevant staff member to be stood down or moved pending the investigation.

You determine who you need to notify about the incident including the Board of your organisation, regulators, stakeholders or law enforcement.

You conduct a risk assessment and take any immediate actions that should be taken to protect people or property.

You ensure you do not do anything at this point to jeopardise the investigation or deny the principles of natural justice for all parties. This includes ensuring not to interview staff without police advice to proceed (if police are involved), or interview staff without progressing to the investigation stage. You protect staff coming forward as witnesses from any form of reprisal or harassment, and service providers need to continually reinforce the responsibility of staff to report incidents.

### **Supporting and assisting participants to be involved in an investigation**

You specify and document how you will support and assist a person with disability, affected by an incident, to ensure the persons safety and wellbeing.

You offer to arrange independent support for the person during the investigation if requested or allow them to have a support person of their choice.

You facilitate the person affected by an incident to be involved in the management and resolution of the incident, throughout the investigation period such as how and when they are informed of the investigation and how their views and concerns will be considered in the management and resolution of the incident.

You include a documented communication strategy in your investigation plan and update it through the life of the investigation.

### **Nominating an Investigator**

You determine whether or not to engage an external investigator based on the seriousness of the matter and availability of internal staff and their ability to conduct the investigation following the principles listed below.

While all allegations of staff to client assault and situations of unexplained injuries are serious, those that involve potentially criminal conduct, particularly complex circumstances or a senior staff person, you refer to an external investigator, preferably a person with expertise in disability.



When conducting an internal Investigation, you ensure a suitably skilled staff member who is independent of the circumstances surrounding the allegations and who can demonstrate that their involvement will not bias the investigation is designated to conduct the investigation. 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. In appointing any investigator, you 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 with transparency and rigour
- Capacity to maintain independence from the events and potential consequences
- Demonstrated communication skills and a range of interview techniques.
- Ability to remain impartial and objective in the particular issue being investigated and act without conflict of interest.

You ensure your internal investigator has appropriate decision-making authority and overall authority for coordinating and directing the investigation.

You ensure you engage an external investigator if there is no-one suitable to conduct the investigation internally.

Tip: Organisations may consider keeping a list of potential investigators, sharing resources and information with one another

## Liaise with police

The moment you become aware that an investigation is required, you stop and preserve evidence. Be clear that sometimes this means not touching it. Seek police guidance if you are unsure about an aspect of collecting and handling evidence. This may include ensuring:

- Areas where the incident occurred (e.g., a bedroom) is not used until police have an opportunity to gather evidence.
- Items that may be evidence are not washed, for example clothing, carpet.
- Documents and records that form evidence are collected promptly and stored securely.
- You ensure that where the matter has been referred to police for possible criminal charges, you check with police before starting an investigation.
  - o If police advise that your investigation may proceed without risk of prejudicing a police investigation, the manager should document this advice and proceed with the investigation.
  - o If your investigation could prejudice the police investigation, you delay the investigation charges, you check with police before starting an investigation.
  - o If the police request a delay in your investigation, their reasons for this request are documented.
  - o If police ask you to refrain from mentioning police involvement to any staff member alleged to have assaulted a participant, you comply with this request.



If your investigation is delayed at the request of police, the investigation manager liaises regularly with police to ensure that this decision is regularly reviewed. All relevant parties, including the person with disability, their family and advocate, and any alleged perpetrator, should be updated on progress.

## Role of the Investigator

You define the role of the investigator is to gather facts, make findings and from these, develop recommendations.

You ensure the appointed person to manage the investigation engages in the following roles and responsibilities:

- Develops an investigation plan to actively plan and manage the Investigation (See Sample Investigation Plan Template and Investigation Procedure Checklist).
- Conducts the investigation process.
- Gathers all relevant facts to ensure an in-depth understanding of the incident.
- Makes records of all discussions, significant decisions, phone calls and interviews.
- Ensures the security and confidentiality of investigation files and materials.
- Provides information about the progress of the Investigation to parties of the incident.
- Seeks internal or external experts to advice on matters relating to the investigation as required.
- Reports on the findings resulting from the Investigation and makes recommendations for action.
- Manages/identifies any actual or perceived conflict of interest in relation to the incident investigation.

## Guiding Principles for Investigations

You ensure the following principles underpin all actions and decisions made throughout the investigation process.

### Person-Centred Practice

All investigations support the full and safe inclusion of any participant 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 process 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/Privacy

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 are required to 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 whistleblower statement and policy).

#### Communication

The investigation plan should articulate clearly who will be responsible for communication with the various parties. (See Investigation Plan Template). 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.

### Investigation Process (See 'Conducting Investigation Procedure' checklist)

You have a process to coordinate an investigation that involves:

- Developing an investigation plan to keep the investigation on track
- Identifying and collecting all relevant information
- Analysis and review of the investigation process to ensure the investigation remains on track
- Collating findings about the causes of a particular issue or incident, its effect and any operational issues that may have contributed to the incident occurring in order to prevent or minimise future incidents
- Making recommendations for organisational improvements in order to prevent/minimize future incidents.



## Responding to the investigation Findings

You ensure the following principles underpin all actions and decisions made throughout the investigation process.

You consider whether the findings are well founded, there is a clear and strong case based on reasonable probability that events are likely to have happened, all possible evidence has been sought and considered and not relying on a single piece of evidence to the exclusion of others.

You use the Investigation report findings and recommendations to inform your response to the incident and address any underlying patterns or causes of the incident so that systematic improvements can be implemented.

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

- What factors contributed to this incident?
- Were there any early signs or signals that could have been detected, but were missing?
- Is there anything that could have been done differently to prevent the incident from occurring?
- Did staff involved, adhere to policy and procedure, and if not why?
- Are current policies and procedures in place sufficient and well understood?
- What additional training, practices or resources would assist people with a disability, families and guardians, staff and other relevant parties?

You take a person centred approach, which considers actions to acknowledge and remedy the situation from the perspective of the person with disability.

You inform relevant participant's families, guardians and witnesses that the investigation was concluded, what the outcome was, and what decisions and what actions the service will be taking as a result to ensure their wellbeing and safety to prevent future occurrences.

You delegate required actions following the endorsement of the report and monitor implementation of these to ensure they are embedded.

You ensure the incident management and outcome is recorded in your continuous quality improvement and incident register.

You ensure the board is informed about the investigation findings, recommendations and actions in response to the investigation.