

Information sheet 4

Investigation overview

This information sheet gives a general overview of a reportable allegation investigation. The Commission for Children and Young People will also publish *Investigation Standards* to help guide the approach of organisations.

If you are unsure of your responsibilities under a reportable allegation investigation, the Commission recommends you obtain independent legal advice or consult with your organisation's human resources area before proceeding.

If an allegation is criminal in nature, you MUST get clearance from Victoria Police before beginning your investigation.

What is a reportable allegation investigation?

An investigation into a reportable allegation is a workplace investigation aimed at gathering and examining information to establish facts and make findings in relation to allegations of child abuse against an employee. The investigation may also make recommendations about what disciplinary or other action should be taken (if any).

An effective investigation requires a systematic approach to assessing and managing an allegation, followed by a sound decision-making framework that enables procedural fairness for all parties in the investigation process.

What rules govern an investigation process?

Your organisation should have its own policies and procedures in place to guide your investigation including a Code of Conduct, processes for managing and investigating complaints, misconduct, discipline, grievances, dispute resolution and employee welfare and supports.

Proof

A reportable conduct investigation should apply the 'balance of probabilities' as the standard of proof. This means that an investigation should consider whether it is more likely than not that reportable conduct has occurred. This may involve comparing conflicting versions of events given by different witnesses in order to decide which version is the more probable. However, investigations do not need to undertake a mathematical or mechanical assessment of probabilities. Rather, a person conducting an investigation and making findings should actually be persuaded, based on the available information, that reportable conduct has occurred before making such a finding.

During a reportable conduct investigation, the subject of an allegation may choose, but is not required, to give information or documents that support their version of events. However, the subject of an investigation is not obliged to prove or disprove any fact or issue that is being investigated.

Procedural fairness

It is important that the procedures that you use when conducting an investigation are fair and reasonable. This will usually include ensuring that, before any findings are made or disciplinary action is taken, the subject of an allegation:

- is notified of any adverse information that is credible, relevant and significant
- has a reasonable opportunity to respond to that information.

Procedural fairness does not require that employees or others must be notified of allegations when the Commission is first notified or that are plainly false. Consideration should also be given to when the subject of the allegation should be first told about an allegation, in order to ensure the investigation is not compromised but remains procedurally fair.

The Commission will seek any response or submissions made by the employee in response to allegations or actions, preferably in writing.

Key steps in an investigation

<p>Understanding the issues</p>	<p>Think about:</p> <ul style="list-style-type: none"> • 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.
<p>Planning an investigation</p>	<p>To determine the most appropriate investigative approach for your organisation and the circumstances of the allegation, you may want to consider:</p> <ul style="list-style-type: none"> • the powers necessary to investigate the allegation • the resources and skills that are required • the authorisation necessary to undertake the investigation • who will undertake the investigation and conflicts of interest • record keeping.
<p>Coordinating an investigation</p>	<ul style="list-style-type: none"> • 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 a medical practitioner) • Will you use an investigation log or running sheet in which activities undertaken are entered and dated.

Information gathering

Throughout your investigation, other allegations or concerns may be identified. If this occurs, this additional information should be considered in the context of your investigation and may add or change the allegations put to the employee.

Information relevant to your investigation can be gained from a number of key sources:

Physical evidence

Documents such as policies, procedures, incident reports, records of employment, rosters, emails can provide vital evidence. Objects, such as mobile phones and computers, inspection of premises, or photographic records can also provide physical evidence.

Direct evidence

Speaking with people including witnesses, organisational management, other staff members and the person the allegation has been made against enables you to gather their direct observations, experience and recollections of events or actions. Particular care must be taken when it is proposed that an investigation involve children or the person who is the subject of the allegation.

Specialist knowledge

Information from people with specialist knowledge, such as a medical practitioner may be relevant to an investigation.

Reporting

The investigation report should document the terms of reference of the investigation, together with how the investigation was undertaken, what evidence and information was obtained, what conclusions were made and, if applicable, any recommendations for consideration.

The report should be provided to the head of the organisation or their delegate to inform a decision as to the appropriate disciplinary or other action to be taken.

Welfare and support

A reportable conduct investigation can be stressful and demanding on all people involved. Vital to the intent of keeping children safe is the need to ensure appropriate support to an alleged victim. Steps must be taken to mitigate risks that the alleged victim is not re-traumatised by the investigation process.

Your organisation should have appropriate welfare and support systems to support staff and volunteers.

Where to get help

Organisations covered by the Reportable Conduct Scheme should contact the Commission for clarification and guidance, and to talk through any issues of concern.

- Telephone: 8601 5281
- Email: childsafestandards@ccyp.vic.gov.au

Further information is also available on the Commission for Children and Young People's website at ccyp.vic.gov.au



You are required to advise the Commission of the findings and outcomes of the investigation as soon as practicable.