

DRAFT INVESTIGATION GUIDELINES

These Guidelines have been prepared in part with reference to the “Investigating Complaints” manual published by the NSW Ombudsman in June 2004. The manual can be accessed at: http://www.ombo.nsw.gov.au/_data/assets/pdf_file/0010/4213/Investigating-Complaints.pdf

PREAMBLE

The role of the investigator is to ascertain all relevant facts pertaining to a complaint and at the conclusion of the fact finding exercise, to report his or her findings. Unless invested with a role additional to that of investigation, an investigator carries out the task not to make a determination but to ensure that those who do make determinations can do so confident that in doing so they have been provided with all facts that could be ascertained by every reasonable line of inquiry that have been elicited and that all reasonable lines of inquiry whether productive of fact or not have been exhausted.

A thorough investigation will involve analysing what an ultimate decision maker would need to know, ensuring that any relevant person, record, document or other source of evidence for or against an allegation is pursued and made the subject of report in a factual form that assists the final decision makers.

ETHICS OF INVESTIGATION

All investigations must be conducted in an impartial and objective manner. The investigator must not have, and must not be perceived to have, any conflict of interests in relation to the complaint or the people, the conduct or the policies and procedures the subject of investigation.

Investigators must always conduct themselves with probity. They must never resort to trickery, deception or unlawful means to obtain evidence.

Investigators must abide by any confidentiality requirements applying to the investigation.

Procedural fairness requires an investigator to:

- inform people against whose interests a decision may be made of the substance of any allegations against them
- provide people with a reasonable opportunity to put their case, whether in writing, at a hearing or otherwise
- pursue all reasonable inquiries or investigations
- act fairly and without bias, and;
- conduct the investigation without undue delay.

In disciplinary and administrative investigations, allegations must be proved according to particular standards of proof that must be addressed by final decision makers. Those standards of proof will vary according to the nature of the matters being alleged and the matters being decided. In order for a decision maker to assess the standard of proof applicable in a decision following an investigation it will be necessary for the decision maker to know the context and circumstances of the matters discovered by that investigation. Context and circumstances surrounding factual matters is therefore of importance.

GENERAL GUIDELINES

Who Should be Interviewed?

- During the course of an investigation, all relevant witnesses should be interviewed.
- The identity of any person who might reasonably be a witness should be discovered and those persons should be interviewed and some record of that interview made whether or not it proves productive.
- Any witness whom the investigator thinks could throw light on a particular allegation being investigated should be asked direct questions that go to that allegation or those allegations.

Contacting Witnesses/Complainants

- Reasonable attempts should be made to identify and contact witnesses (i.e. cottage parents, social workers) that might be able to assist during the course of the investigation;
- Where witnesses are unable to be contacted, the Investigation Report should document the identification process and if witnesses are identified all contact attempts made during the course of the investigation and the outcome of those attempts should be recorded.
- Reasonable attempts should be made to contact the complainant(s).
- Where a complainant is represented by a lawyer reasonable attempts should be made to contact the lawyer.

Conducting the Interview

- Interviews should always be conducted with identified witnesses where contact is made unless the witness refuses to be interviewed;
- Where a witness who is contacted refuses to be interviewed, the identity of the witness and details of such refusal should be provided in the Investigation Report.
- Where a witness admits that s/he is suffering from a mental illness, or any condition that might impair memory, that admission should be included in the Investigation Report;
- If an investigator identifies a matter that might affect the capacity, integrity or reliability of a witness, it should be noted in short form in the report.
- If an interview is to be tape recorded, the parties to the conversation must be informed before taping commences.

- Interviews should be transcribed in a timely manner;
- All recorded and transcribed interviews should be signed by the interviewee. Where an interviewee refuses to sign that refusal should be noted by the investigator who should themselves certify on the document the time place and accuracy of the contents of the document.

Use of Additional Evidence

- Interviews that have been conducted in relation to another investigation should not be included in an investigation report unless a reason is provided in the Investigation Report as to why the particular interview is being used in the present investigation.
- Towards Healing Reports and any supporting documents should always be included in the investigation where relevant and available;
- Where included, the Investigation Report should discuss the content of the Towards Healing Report vis-à-vis the allegations;
- If the Towards Healing Report does not discuss the allegations raised, a statement should be made in the Investigation Report indicating such;
- Where civil damages proceedings arising from the same allegations are or have occurred, the outcome of those proceedings if known should be included in the investigation report.

The Investigation Report

- The following material should be included in an investigation report.
 - Executive summary of the facts learned in the investigation and any factual conclusion that the investigator has been asked to draw
 - The terms of reference of the investigation;
 - The name of the investigator and details about authorisation of the investigation;
 - Sources of information and methodology used;
 - Relevant legislation and/or policies;
 - A statement of all relevant facts and evidence;
 - The conclusions or findings reached and the basis for them (all separate allegations contained in a complaint must be addressed and a factual conclusion if possible, drawn).
- Statements and other items of evidence should be attached to the report as annexures;
- The Investigation Report should identify direct evidence;
- The Investigation should identify corroborative evidence;
- The Investigation Report should include a discussion about the factual value of the evidence of witnesses and any compromise of value that the investigator thinks may exist;
- The Investigation Report should not include an analysis as to whether the witnesses are “credible” or not.
- The Investigation Report should be scrutinised for inconsistencies before being finalised. Where inconsistencies exist in the facts it would be desirable to obtain facts that may resolve the inconsistencies. Where no additional facts can be obtained but

the inconsistencies persist, the investigator should refer to the inconsistencies and provide whatever factual explanation may exist for them.

CONCLUSION

Investigations into abuse allegations by an adult in a position of trust towards a minor person are matters that deserve close and thorough investigation. That is as true both for the minor and for the adult against whom the allegation is made.

The investigation needs to be rigorous and ethical in its methods and its approach. Lapse of time in many such matters will present numerous problems. When that occurs the task is more difficult but possible lines of inquiry should not necessarily be abandoned for that reason.

The written report that is made following an investigation should be detailed and should cover all aspects of the investigation including those aspects that were not productive. Confidentiality should be preserved including as to allegations. Allegations and the names of those involved should not be divulged unless there is a reason to do so, for example where a witness is likely to know matters directly bearing on the allegation. Where a witness may know matters directly bearing on an allegation they should be asked direct questions about the matter.