

Guidance for Organisations
**Investigating
a Reportable
Conduct
Allegation**



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Commission for Children and Young People
Level 18, 570 Bourke Street, Melbourne Victoria 3000
Phone (Free call) : 1300 78 29 78
Phone: (03) 8601 5281
Email: contact@ccyp.vic.gov.au
ccyp.vic.gov.au

Introduction

Purpose of this guide

The purpose of this guide is to provide assistance to organisations and investigators that may not have formal investigation training or experience to conduct investigations into reportable allegations (allegations of reportable conduct) and to set out a series of minimum standards for these investigations. The standards that are set out in these guidelines are not prescriptive, but they do set out what the Commission for Children and Young People (Commission) expects in investigations conducted under the Reportable Conduct Scheme (scheme).

The Commission recognises that each organisation is different and will have different needs depending on the type of organisation, its size and the available resources. It is up to each organisation to decide how an investigation will be carried out, who will undertake the investigation and who will be the decision-maker responsible for making findings at the end of any investigation.

While organisations should conduct investigations in the way that works best for them, the Commission has a statutory function under the *Child Wellbeing and Safety Act 2005* (the Act) to ensure that all investigations into reportable allegations are properly conducted and are of a sufficiently high standard to achieve the purposes of the Act.

In order to achieve this objective, this guide sets out minimum standards and considerations in relation to investigations into reportable allegations.

The scheme does not seek to duplicate investigations into workplace allegations. Many organisations will already have existing policies and procedures in place for conducting investigations into alleged worker or volunteer misconduct, which in many cases will meet the requirements of the scheme.

This guide contains a number of template and example documents to assist organisations in conducting investigations into reportable allegations. The examples used, including all individual and business names, together with the incidents portrayed, are fictitious. No identification with actual persons (living or deceased), places or organisations is intended or should be inferred.

What is the Reportable Conduct Scheme?

The scheme is established by the Act and it seeks to improve how organisations identify and respond to allegations of child abuse and neglect by their workers and volunteers. These allegations are called reportable allegations. The types of reportable allegations are described on [page 8](#).

Role of the Commission

The Commission has various functions under the Act. These functions include:

- educating, providing assistance and promoting compliance by organisations that are covered by the scheme to identify reportable conduct
- supporting and guiding organisations that receive reportable allegations in order to promote fair, effective, timely and appropriate responses to reportable allegations
- independently overseeing, monitoring and, where appropriate, making recommendations to improve the responses of those organisations
- educating and providing advice to regulators that fall under the scheme.

What is an investigation into a reportable allegation?

The term 'investigation' broadly means a process of inquiry that begins after an allegation has been made.

In relation to reportable allegations under the Act, the relevant head of an organisation must investigate a reportable allegation. In the context of investigations into reportable allegations the head of an organisation must:

1. ensure that the organisation has systems in place in relation to the scheme, including systems for the prevention of reportable conduct
2. notify the Commission when a reportable allegation has been made
3. investigate the reportable allegation (this could include permitting a regulator or independent external investigator to investigate a reportable allegation)
4. provide information or documents relating to a reportable allegation to the Commission
5. ensure that the Commission (or independent investigator engaged by the Commission) is given 'any assistance' in connection with the reasonable performance of their functions
6. provide detailed information about a reportable allegation to the Commission
7. provide details of the outcome of an investigation into a reportable allegation and any proposed disciplinary actions.

This guide sets out minimum reportable allegation investigation standards set by the Commission that reflect the head of an organisation's obligations under the Act to investigate reportable allegations to the Commission.

Following an investigation into a reportable allegation, findings must be made about whether or not the reportable allegation happened. This is important so that organisations can decide what action they may need to take to keep children safe. Organisations may also be undertaking an investigation for many different purposes, such as an investigation into worker or volunteer disciplinary matters, as well as reportable conduct. Different facts might be relevant to different purposes.

Investigations into reportable allegations must make findings as to whether or not the facts meet the definition of reportable conduct under the Act. It is important for organisations to note that some facts may be substantiated, but may not amount to reportable conduct. For this reason, organisations should draw a distinction between findings of fact and findings of reportable conduct. This is explained further on [page 22](#).

A finding of reportable conduct is to be made on the 'balance of probabilities' and all findings of the investigation must be reported to the Commission.

Overlap between investigations into reportable allegations and workplace investigations

Organisations may already have obligations in respect of workplace investigations that come from different legal documents, such as an applicable employment award, an enterprise agreement, an individual contract of employment or a workplace policy. Organisations should consider the need to obtain their own advice about how these other laws or obligations work with the requirement to undertake investigations into reportable allegations under the Act. The Commission is not able to provide advice to organisations about other workplace laws.

Balance of probabilities and findings

A reportable conduct investigation must apply the 'balance of probabilities' as the standard of proof when deciding whether or not the reportable allegation is reportable conduct under the Act.

This means that an investigator should think about whether it is *more likely than not* that the reportable conduct happened. This is lower than the standard of proof needed in a criminal case, which is 'beyond reasonable doubt'.

Given the serious nature of reportable allegations, the Commission expects that the 'Briginshaw test' would generally be applied (from the case of

Briginshaw v Briginshaw (1938) 60 CLR 336).

This requires that the following be taken into account:

- seriousness of the allegation
- inherent likelihood of the conduct occurring based on the evidence
- gravity of the consequences flowing from a particular finding.

The Briginshaw test requires that the more serious the allegation and gravity of a substantiated finding, the more comfortably satisfied on the evidence the decision-maker must be before making any substantiated finding. The balance of probabilities in reportable conduct investigations is explained more on [page 20](#).

Role of the investigator

The investigator is the person who:

Collects and documents evidence

Establishes the facts based on evidence

Prepares an Investigation Report that details the outcome of the investigation and makes findings or recommendations if asked to

The investigator is responsible for gathering and assessing all relevant evidence connected to a reportable allegation. At the end of the investigation, the investigator must prepare an Investigation Report and, if requested by the head of the organisation, make findings or make recommendations about the findings that could be made based on the evidence.

Using an independent investigator

The Commission requires that an independent investigator be used for investigations into reportable allegations. An independent investigator means an independent body or person (who can come from within the organisation) with appropriate qualifications, training or experience to investigate reportable allegations.

An organisation should consider appointing an external independent investigator when:

- the organisation cannot identify anyone within the organisation with suitable experience and/or training to conduct the investigation
- internal workers, contractors or volunteers have a conflict of interest (described more on [pages 10–11](#))
- the investigation cannot be conducted internally within a reasonable timeframe
- the investigation is complex and beyond the skills, capability or experience of internal workers (for example, the allegation relates to multiple incidents, alleged victims or stakeholders).

Before engaging an external independent investigator, it is recommended that the organisation:

- consider the proposed investigator's skills and experience, in particular their experience in conducting investigations involving children
- conduct appropriate screening to make sure the proposed investigator is appropriate to work with children, including checking whether they have a Working With Children Check
- sight the investigator's certificate and/or qualifications; a Certificate IV in Government Investigations is appropriate
- check that their training is up to date and relevant to the investigation
- identify any conflicts of interest or concerns about possible bias (explained more on [pages 10–11](#))
- discuss the investigator's approach to managing the investigation and clarify the support that might be needed from the organisation

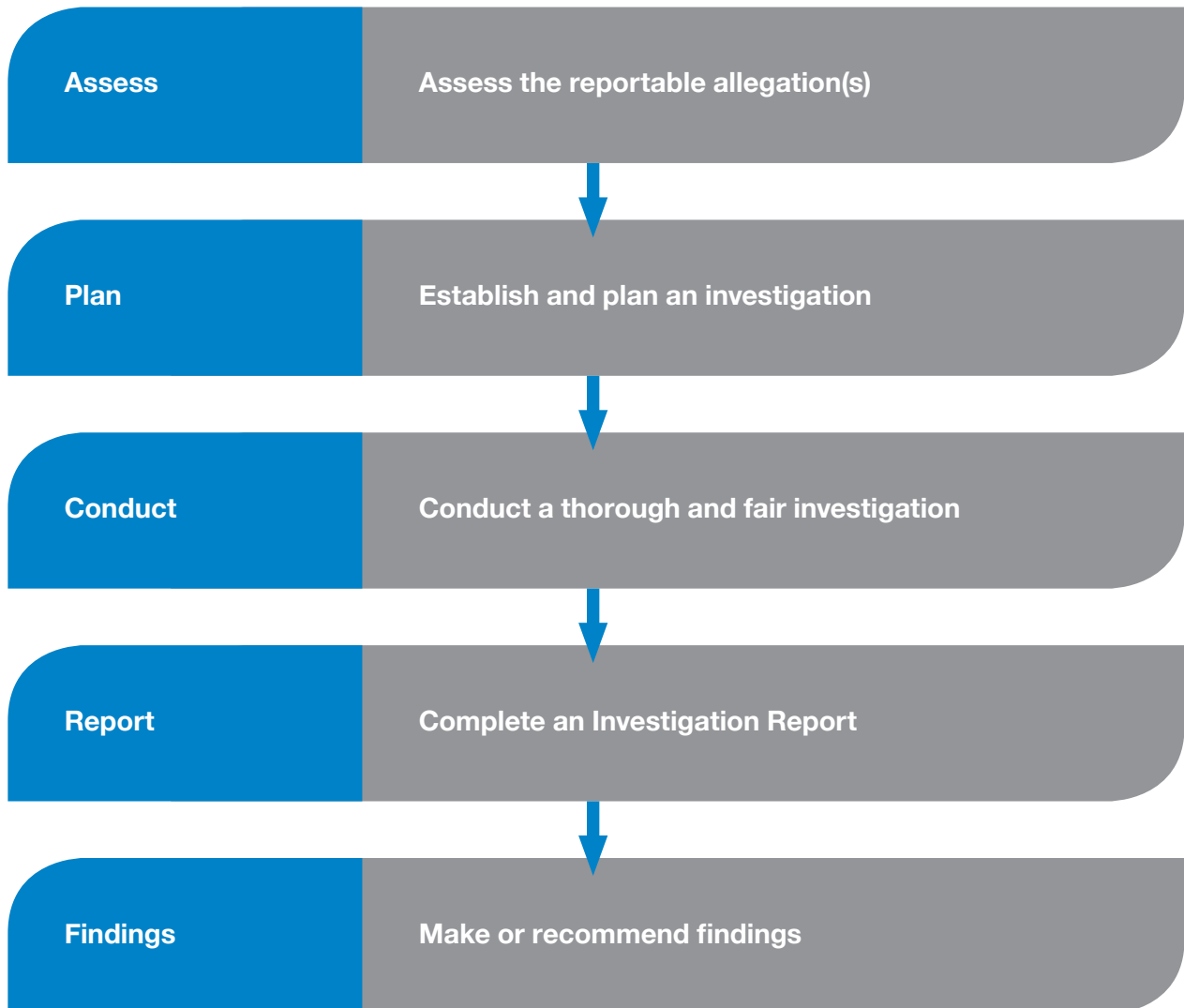
- discuss how the investigator will be paid, for example an hourly rate or a fixed price
- check the investigator's referee(s). A referee is a person who has knowledge of the investigator's experience, conduct and ability to undertake an investigation involving children. The referee should have enough knowledge about conducting investigations to be able to give this information.



The Commission does not approve, accredit or recommend independent investigators or investigation bodies. Organisations who choose to use an independent investigator should undertake their own inquiries to make sure the investigator has the right qualifications and/or experience before appointing them to conduct an investigation. Where an investigation raises a question of law, further legal or professional advice should be sought by the organisation.

Process of an investigation

The following diagram outlines the main steps of an investigation. Each step will be explained more below.



Conducting an investigation

1. Assessing the reportable allegation

What are reportable allegations?

A 'reportable allegation' means any information that leads a person to form a 'reasonable belief' that a person has committed reportable conduct. The Act sets out the five types of reportable conduct, which are:

- sexual offences (against, with or in the presence of, a child)
- sexual misconduct (against, with or in the presence of, a child)
- physical violence (against, with or in the presence of, a child)
- behaviour that is likely to cause significant emotional or psychological harm
- significant neglect.

For more information about each of the above types of reportable conduct refer to the Commission's

Information Sheet 2 – 'What is Reportable Conduct?' found at <https://ccyp.vic.gov.au/rcs-factsheets/>

If a matter contains more than one reportable allegation, it is important to consider each allegation separately. For example, a child may make the following allegation:

'My teacher hit me hard on the head at lunchtime and called me names and told me he hates me. I don't want to go back to school any more.'

This statement includes three allegations:

1. The child has alleged that the teacher hit the child 'hard on the head' which is an allegation of physical violence.
2. The child has alleged that the teacher 'called' the child 'names', which is an allegation that may cause significant emotional or psychological harm.

3. The child has alleged that the teacher told the child that the teacher '**hates**' the '**child**', which is a comment that, if true, may also cause significant emotional or psychological harm.

The purpose of separating the allegations is to ensure that the investigator considers each of the allegations and makes separate findings. This is important because, on the evidence in any given situation, one allegation may be substantiated but another allegation not.

It is also important for investigators to separate allegations of reportable conduct from allegations of worker or volunteer misconduct. This is because some types of worker or volunteer misconduct that are investigated for workplace disciplinary reasons do not involve reportable conduct. The investigation can consider both reportable allegations and allegations of worker or volunteer misconduct at the same time, but it is important that the final report clearly addresses each allegation as either a reportable allegation, or worker or volunteer misconduct.

Other reporting requirements

It is important to remember that, depending on the situation, the head of an organisation might have more reporting obligations than just notifying the Commission of allegations of reportable conduct.

For example, if an allegation involves reportable conduct that might be criminal (including family violence), the matter should be **immediately reported** to Victoria Police in addition to the Commission being notified. Notifying the Commission alone does not mean that you have satisfied your obligation under the law to report criminal child abuse to police.

In addition, if an allegation raises concerns that a child is in need of protection, the matter should also be reported to the Department of Health and Human Services (DHHS). If you are a mandatory reporter (someone who has a legal obligation to report a

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suspicion of child abuse to DHHS), notifying the Commission alone does not mean that you have satisfied your obligations under the law to make a mandatory report to DHHS. You must still make a report to DHHS.

There are a range of other reporting requirements that apply to specific organisations such as those within the education, healthcare and early years sectors. Organisations should check with their regulators if they are unsure of their other reporting requirements.



If an allegation might involve criminal conduct and has been reported to Victoria

Police, an investigator must not start their own investigation until and unless police have told the investigator that they can start their reportable conduct investigation.

If an investigator has already started their investigation and then learns that police are investigating the same matter, the investigator must put the investigation on hold straight away and discuss the matter with police. The investigation must not continue until and unless police tell the investigator that they can restart their investigation.



If an investigator or the head of an organisation is not sure what to do, they should contact the Commission or Victoria Police for help.

If Victoria Police are investigating

It is important to remember that there will be times when investigations will need to be undertaken into allegations that involve possible criminal conduct. Even if these allegations have already been investigated by police, the organisation may still need to conduct their own investigation under the scheme. It is important to remember that the scheme uses a different standard of proof to criminal investigations. The standard of proof, the '*balance of probabilities*', is explained more on [page 20](#).

2. Establishing an investigation

Terms of Reference

It is important to establish a focus and a clear purpose of an investigation in order to achieve the best results. The purpose must be relevant, realistic, achievable and within the investigator's power. The Terms of Reference for an investigation should set out the proposed scope of the investigation while taking into consideration any matters that will limit the ability of the investigator to achieve those objectives, for example, if witnesses are unavailable.

The Terms of Reference is a document that is agreed upon by the head of the organisation that is engaging the investigator and the investigator to ensure the investigation is going to meet the needs of the organisation.

The Terms of Reference should be broad enough to allow the investigator 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 made to resolve these problems.

An example Terms of Reference is on [page 33](#).

Conducting an investigation

Determine the powers of the investigator

An investigator's powers will be what the head of the organisation allows them to do, or have access to, within the organisation. How thorough and detailed an investigation will be is influenced by the powers available to an investigator. This might include the documents or files they can look at, the staff they are allowed to interview, or where they are allowed to go within the organisation.

Investigators must be aware of whether the head of the organisation has granted them the power to:

- visit the organisation and take photographs
- ask other workers or volunteers who might be witnesses to participate in an interview or to provide a statement
- obtain information from people about policies, procedures and practices
- access relevant records
- collect evidence including documentary evidence.

The powers of the investigator, together with what they are being asked to do, should be formally documented in the Terms of Reference so that both the head of the organisation and the investigator are clear about how the investigation will be undertaken.

Planning an investigation

The key to a good investigation is planning. Planning can help to ensure that:

- the investigation is carried out methodically and in a professional way
- resources are used effectively and additional resources can be sought if required
- sources of relevant evidence are not overlooked and opportunities for people to remove, destroy or alter evidence are minimised
- alleged victims are not re-traumatised
- all relevant witnesses are identified and thought is given to which witnesses need to be interviewed and when. If a relevant witness is not going to be interviewed then the reason for this decision should be clearly recorded

- witnesses are interviewed separately
- the subject of allegation is given procedural fairness.

Developing an Investigation Plan

The primary planning tool available to an investigator is the Investigation Plan.

An Investigation Plan should be prepared before any investigation commences. An Investigation Plan should identify what questions need to be answered, what evidence is needed to answer those questions, and the best way to obtain that evidence. This will include thinking about the witnesses who need to be interviewed.

If an investigator is aware that another organisation might have been involved in investigating the same or a related matter, it might be helpful to contact the Commission to discuss whether any relevant information can be shared.

A template Investigation Plan is provided on [page 23](#). An example of how an Investigation Plan could be completed is on [page 27](#).

Conflicts of interest

It is important to ensure that an investigator does not have a conflict of interest that could give rise to a perception of bias, or actual bias, in the way they investigate reportable allegations.

There are three different types of conflict of interest:

- an actual conflict of interest, where a conflict of interest actually exists
- a potential conflict of interest, where a conflict of interest could happen in the future and steps should be taken to stop that from happening
- a perceived conflict of interest, where a reasonable person might think that an investigator could be influenced by a personal interest, regardless of whether the investigator is actually being influenced or not.

Conducting an investigation

A table setting out examples of these different types of conflicts of interest is below, together with suggestions on how these conflicts can be managed.

Type of conflict of interest	Example	Actions
Actual conflict of interest	An investigator is responsible for investigating an allegation of reportable conduct made against a member of the investigator's family.	The investigator should not conduct the investigation.
Potential conflict of interest	An investigator is responsible for conducting an investigation into a reportable allegation when the alleged victim and the investigator's child are on the same football team.	The investigator should report the potential conflict of interest to the head of the organisation and steps should be put in place to manage the potential conflict of interest or the investigator should not conduct the investigation.
Perceived conflict of interest	An investigator is asked to investigate a reportable allegation when there is a rumour that the investigator doesn't like the subject of the allegation.	The investigator should report the perceived conflict of interest to the head of the organisation and steps should be put in place to manage the perceived conflict of interest or the investigator should not conduct the investigation.

For investigators, it is important to ensure that any actual, potential or perceived conflict of interest is immediately disclosed to the head of the organisation. Where there is an actual conflict of interest, the investigator should not be appointed to conduct the investigation.

Steps can be taken to manage any potential or perceived conflicts of interest to reduce the risk of bias. If no appropriate steps can be taken to satisfactorily manage a potential or perceived conflict of interest to minimise the risk of bias, then the investigator should not be appointed to conduct the investigation.

Letter of allegation

A letter of allegation is a document written by an appropriate person within the organisation (with the head of the organisation's approval) that clearly tells the subject of allegation the details of the reportable allegations made against them.

Organisations should provide a letter of allegation to the subject of a reportable allegation so that there is a record of the information that has been provided to them. This also ensures that the subject of the allegation is clear about what has been alleged against them and is a step in providing procedural fairness to the subject of allegation.

The Act does not require that a letter of allegation be provided at a particular time in the investigation. Heads of organisations should not delay the notifications or updates that they are required to provide to the Commission in order to prepare or finalise a letter of allegation.

The head of the organisation should discuss the provision of the letter of allegation with the investigator, who will be able to provide advice about whether a particular investigation needs a different approach. Organisations are encouraged to obtain their own independent legal advice in relation to any other legal obligations that might exist beyond the Act (for example, if there are investigation requirements that

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apply to a worker that are set out in an award, enterprise agreement or workplace policy).

When a letter of allegation is provided it should clearly set out each allegation and contain enough information for the subject of allegation to be able to understand exactly what the allegations are so that they can respond to them. For example, in the case of a Foster Carer who is alleged to have physically assaulted a child, the letter of allegation should contain detailed information about the reportable allegation including:

- the name and age of the child who is the alleged victim
- the details of the reportable allegation
- when the reportable conduct is alleged to have occurred, including the date and time if it is known
- where the reportable allegation is said to have occurred, including a description of the physical location or the address if it is known.

The letter of allegation should also advise the subject of allegation that a substantiated finding of reportable conduct can be reported by the Commission to the Working with Children Check Unit which may trigger a re-assessment of the subject of allegation's Working with Children Check.

The Commission can be contacted for help in deciding what the separate reportable allegations are. This might assist when there is more than one allegation or when there is more than one date, more than one location and/or more than one victim.

When to provide a letter of allegation

Careful consideration should be given to the best timing of a letter of allegation. While the subject of allegation is entitled to know the details of a reportable allegation and be provided with an opportunity to respond, the subject of allegation might not be told about the allegation or the investigation until the evidence has been collected, including witness statements, documentation and any physical evidence.



Alerting the subject of allegation too early in the investigation may put the investigation at risk if there is some chance for evidence to be damaged or altered, or witnesses to be pressured to change their story.

The letter of allegation should inform the subject of allegation that they are entitled to nominate any person whom they consider should be interviewed as part of the investigation. The subject of an allegation should also be told that they will be given an opportunity to tell their side of the story, to respond to evidence the investigator identifies and to have a support person of their choosing present in any interview. The subject of an allegation should be invited to respond either in writing or by way of an interview. Some workers might also have a right to consult with or have a union representative or lawyer present with them during any investigation meeting, depending on the organisation's workplace policies, or any applicable workplace award, enterprise agreement or individual employment contract.



Investigators should keep in mind that the requirements of procedural fairness mean that the allegations must, at an appropriate time before any adverse findings are made, be put to the subject of allegation.

An example letter of allegation is on [page 31](#).

3. Conducting a thorough investigation

Gathering evidence

There are a number of different types of evidence that might be relevant to an investigation. Sometimes evidence can be difficult to obtain, for example in situations where time has passed since the reportable conduct allegedly occurred and witnesses are hard to locate. In these cases investigators should make reasonable efforts to gather relevant evidence and these efforts should be explained in the final report.

Types of evidence

In an investigation into a reportable allegation, the main sources of evidence are likely to be one or all of the below types:

- **Physical evidence**, including documentary evidence such as emails or photos; or records such as rosters or incident reports; or objects such as mobile phones or computers
- **Site inspections**, which may lead to an investigator taking photographs of locations or making a diagram
- **Direct evidence** from the alleged victim, the alleged victim's parents or carers, from witnesses about what they saw, heard or did as well as from the subject of allegation themselves
- **Expert evidence**, including technical or specialist advice from, for example, a doctor, psychologist or a computer expert.

Collecting evidence

Evidence collected should be relevant to the investigation, reliable and probative (providing proof of something), so that it can help to establish whether the reportable allegations amount to reportable conduct, that is, whether it is more likely than not that the reportable allegations either occurred, or did not occur.

An investigator should ensure the evidence gathered is the best available and is stored and documented properly so that, where applicable, it will be able to be relied on in any future legal proceedings that may arise (see 'Storing evidence' below).

The investigator should regularly refer back to the Investigation Plan as a reminder of what allegations the investigator is considering, and therefore what evidence is needed to substantiate those allegations.

As outlined above, the investigator should keep in mind their powers when it comes to collecting evidence. All evidence that is collected should be clearly documented.

Storing evidence

Investigators should ensure that original documents and other evidence collected during the investigation are stored securely in their original condition.

It is helpful to record how the evidence was collected and who has handled the evidence before it came into the investigator's possession.

It is good practice to place each piece of evidence in a resealable bag or envelope with a label stating what the evidence is, where it was gathered (including the date and time), and who provided the evidence to the investigator.



If you are unsure about how to handle the evidence collected, you can contact the Commission for advice.

Conducting interviews

All relevant witnesses should be identified and, where possible, interviewed. In some cases the evidence of only one witness may be enough to prove or disprove an allegation; however, gathering additional evidence that supports the evidence already collected is good practice because it gives greater support to the findings ultimately made. The Commission also expects that both the alleged victim and the subject of allegation will be interviewed unless there is a good reason not to. The reason why the alleged victim or subject of allegation was not interviewed should be documented and included in the Investigation Report.

Preparation is the key to good interviewing. Planning an interview, and having an understanding of what information a particular witness might give, will enable the investigator to plan the order they want to ask their questions in and keep the interview on track.

It may be helpful to arrange interviews with witnesses 'offsite' if appropriate. This will avoid other people, including the subject of allegation, observing or overhearing what the witnesses are saying. Often witnesses can be fearful of telling an investigator everything they know when an interview is conducted within the workplace.

If it is not possible to record an interview, or if the witness does not agree to the interview being recorded, the investigator should take very detailed notes of the discussion. The notes of the discussion should be written word for word as much as possible and should include the name, position title and professional address of the witness if appropriate. The date, time and place where the interview occurred should also be recorded.

Interviewing a child

In most reportable conduct investigations, the alleged victim of the reportable allegation will be a child or children. There is also the chance that another child or children witnessed the reportable allegation that is being investigated.



A child involved in an investigation into a reportable allegation, whether they are the alleged victim or a witness, should be interviewed unless there is a good reason why this should not occur.

The approach to interviewing a child is different to interviewing an adult and requires careful thought and planning. Depending on the reportable allegation, it may be desirable for the investigator to seek help from someone with specific and appropriate training and expertise to interview the child. It is very important that an investigator gives a child who is an alleged victim or a witness the opportunity to tell their story, where it is appropriate, being mindful to avoid causing any further trauma to the child.

In thinking about how to interview a child, the investigator should consider a range of factors including:

- if the child has been interviewed already
- the age and developmental stage of the child
- the child's level of maturity
- ensuring cultural safety and facilitating the child's participation and inclusion (see [page 15](#))
- the nature of the reportable allegation
- how the reportable allegation might have impacted upon the child
- whether the child has a disability and what that means, if anything, for the interview
- support for the child.

When interviewing the alleged victim, it is important to try to gather evidence about the reportable allegation as well as any impact the alleged reportable conduct has had on the victim. This is especially important when investigating conduct that has caused significant emotional or psychological harm.

Conducting an investigation

If it is appropriate to interview a child and it is not possible to have the interview conducted by a specialist, the following checklist is intended to provide some basic guidance to assist investigators:

Do	Don't
<ul style="list-style-type: none">• Learn the relevant background first• Respect the rights of the child• Build a rapport with the child before questioning the child about the reportable allegation• Explain the purpose of the interview to the child• Understand the developmental stage of the child• Use appropriate language when speaking to the child• Ask simple and clear questions• Ask one question at a time• Limit the number of people present• Allow the child an appropriate support person• Minimise distractions and interruptions• Keep interviews as brief as practicable	<ul style="list-style-type: none">• Ask leading questions (questions that suggest the answer)• Touch the child• Intimidate the child• Make the child feel bad about what they are disclosing• Ask more than one question at a time• Interview the child more times than is absolutely necessary



An investigator should consider seeking expert advice about how and when to interview a child, both to avoid causing harm to the child and also to ensure that the best evidence possible can be gathered from the child.

Promoting inclusion and participation of all witnesses

It is important that an investigator gives thought to how they can promote the inclusion and participation of all people who are relevant to the investigation of a reportable allegation. This will help the investigation as it will enable the investigator to gather the best possible evidence from witnesses by making sure that they feel safe, respected and heard when asked to tell their story.

Ensuring cultural safety

An important part of promoting the inclusion and participation of witnesses who are Aboriginal and/or Torres Strait Islander, or from culturally or linguistically diverse backgrounds, is to give thought to how to ensure that witnesses feel culturally safe. Cultural safety refers to the need to create an environment where there is no challenge or denial to a person's identity, who they are and what they need.

A safe and culturally responsive environment is one that acknowledges, respects and accommodates diversity, and where people feel safe and secure in their identity, culture and community. In a practical sense, investigators can facilitate cultural safety by:

- being respectful and flexible in their attitudes towards people from cultures other than their own, and recognising their own, often unconscious, cultural bias
- working to develop trust and rapport with the witness
- recognising and avoiding stereotypes.

Facilitating an inclusive, safe environment for all witnesses

Investigators should also give consideration to how they can create a safe and respectful environment to facilitate the inclusion and participation of witnesses who:

- identify as same-sex attracted, intersex or gender diverse, or
- are people with disability.

When an investigator is giving thought to how they can create a safe and respectful environment for a member of one of the above communities, it is important to be mindful of the following:

- people who identify with each of the above communities should be treated as individuals rather than as a homogeneous group
- investigators should reflect on any unconscious bias about the person who is to be interviewed and how this bias may impact upon the understanding or assumptions the investigator might make about the witnesses' needs or capabilities.

Another way to promote inclusion and participation of all witnesses is to consider whether a witness might require or benefit from some additional support or help to tell their story. This assistance might be in the form of a familiar support person who can attend an interview with the witness, or in the case of a witness with disability, they might need to use an assisted communication device or require an individualised communication approach. An investigator should seek the views of the witness's carer, guardian or advocate (when they have one).

Wherever possible, the views of specialist service providers should be sought in relation to any of the above communities to ensure that the witness is interviewed in an appropriate, respectful and safe way.

Investigations involving family violence

Physical violence committed against, with or in the presence of a child is a form of reportable conduct. Similarly, exposure to family violence perpetrated by one parent against another can cause significant psychological or emotional harm to children, which is another form of reportable conduct. This means that there will be times when an investigator is required to investigate a reportable allegation that relates to family violence committed within the home.

Family violence is extremely serious and often involves criminal behaviour. If the matter has not previously been reported to police it should be reported immediately and no further action taken until and unless police advise that the reportable conduct investigation can proceed.

Family violence is complex by nature and there is often a continuing threat to the safety or to the lives of all affected family members, including children, and sometimes to extended family members. An investigation, if not appropriately and safely managed, could result in an increased risk to those family members.

It is also possible that the reportable allegation being investigated may already have been investigated by Victoria Police. In this case, it is recommended that the investigator contact the police investigator as the police investigator may be able to provide some information or advice relevant to the reportable conduct investigation.

Victoria Police is also part of the Victorian Integrated Family Violence Service System and it works closely with other government bodies as well as non-government organisations to improve the safety of all victims of family violence. Victoria Police may be able to alert specialist services that are already engaged with the family, so that these services can provide the family with additional assistance and support during the investigation. Police will also be able to provide advice to the investigator about how the investigation can be undertaken in a safe manner and how any risks can be appropriately managed.

Conducting an investigation

It is important that the investigator remains patient and doesn't make assumptions when investigating reportable allegations that relate to, or involve, family violence. While this is relevant to any investigation, some perpetrators of family violence can be so charismatic that people often don't believe they are capable of committing family violence. In some cases, this could lead to an investigator developing an unconscious bias in favour of the subject of allegation. It is also important that investigators are aware of the risk of undue influence, power imbalances and/or possible manipulation by the subject of allegation. Investigators should not lose sight of the need to maximise the safety and support of those involved when investigating these matters.

If the alleged conduct being investigated has not previously been reported to police, the family may not have been referred to support services. For further information about various support services and the role of police in response to family violence incidents, refer to the Victoria Police website www.police.vic.gov.au and search for 'family violence publications'.

Order of interviews

The first interview is often with the person who notified the head of the organisation of the reportable allegation. This interview is generally undertaken as part of an investigator's initial inquiries to better understand what is alleged to have happened and to plan how the investigation should be undertaken. All other interviews should be conducted without delay to reduce the chance that people will start to forget the details of the incident. This is particularly relevant to the alleged victim and witnesses who are children.

The order in which the remaining witnesses are interviewed will depend on the importance of their evidence, their connection with the subject of the allegation and their availability. It is helpful not to have a lot of time between witness interviews. Avoiding delays between one witness interview and the next will minimise the opportunity for the witnesses to discuss their evidence, which could cause a witness to become confused about what they remember, or create an opportunity for one witness to influence another witness.

Where possible, the person who is the subject of allegation should be interviewed last so that the important evidence that has been collected can be explained to them and they can be given an opportunity to provide their response to all of the evidence.

Record keeping

Organisations should be aware of legal, contractual, professional and other obligations to document allegations of reportable conduct and maintain proper records.

An investigator should document all information about the investigation including everything they did and why. The investigator should also make records of all of the evidence collected. All records should be stored securely and organisations should be aware of their obligations around how long they need to keep those records.

Organisations' policies in relation to reportable allegations should identify the workers or volunteers who are permitted to access and share investigation records, the reasons for and circumstances under which they can be accessed, and who has responsibility for looking after the records and keeping them secure.

Any policies regarding reportable allegations should note that records might need to be shared with other organisations, such as regulatory bodies or law enforcement agencies.

Individuals whose personal information is contained in a record, including that of victims and the subject of an allegation, may also have a right to access such records under relevant legislation or policy (for example, the relevant freedom of information or privacy legislation).

Investigations into reportable allegations might also include the provision of medical or other health records, where more stringent disclosure and document retention obligations will apply.

Inspecting a site

If an investigator makes a site inspection as part of an investigation (that is, the investigator visits the organisation or place where the reportable allegation is alleged to have happened), the investigator should be clear about why he or she is undertaking the site visit and what evidence or other information the investigator is seeking. The investigator should take detailed notes of their visit and may think about taking photographs.

Procedural fairness

The Act provides that a worker or volunteer who is the subject of a reportable allegation is entitled to receive natural justice in investigations into their alleged conduct. Natural justice is often called procedural fairness.

It is important that the procedures an investigator applies when conducting an investigation are '*fair*' and '*reasonable*'. This will usually include ensuring that, before any findings are made or any disciplinary action is subsequently considered, the subject of allegation:

- is provided with a letter of allegation prior to any interview being undertaken
- is put on notice of the nature and scope of the allegations
- is provided with an opportunity to have a support person present (or, if entitled through an award, enterprise agreement, individual employment contract or workplace policy, a lawyer or union representative) present with them
- is provided with an opportunity to respond to the allegations and any relevant evidence that has been obtained during the course of an investigation
- is made aware of the consequences of the investigation in the event that any adverse findings are made
- has a reasonable opportunity to respond to the relevant evidence
- has a reasonable opportunity to give their side of the story

- the responses provided by the subject of an allegation are considered by the investigator, organisation or head of the organisation before any final decision is made.

Procedural fairness does not require that a subject of the allegation must be notified that a reportable allegation has been made about them straightaway. For example:

- the subject of allegation does not need to be told about allegations when the Commission is first notified or that are plainly false (for example, the subject of allegation was on holidays at the time the alleged incident occurred)
- careful consideration must be given to when the subject of allegation should be told about an allegation in order to ensure the investigation is not compromised but remains procedurally fair.

The subject of allegation should be given a reasonable opportunity to tell their side of the story. They might want to do this in person or they might want to put it in writing, for example in a letter responding to the letter of allegation.

It will be important for the investigator to think about whether they will be able to make a fair decision based on all of the relevant evidence if the subject of allegation only wants to give their response in writing and not in person. This is important because investigations into reportable allegations might involve credibility assessments. For example, where only the alleged victim and the subject of the reportable allegation witnessed the relevant events and had different recollections of events, credibility assessments may only be appropriately made by an investigator in person. In this example, an assessment of credibility may need to be undertaken where an investigator is to make a determination as to whose evidence is preferred (that is, between the person who is the subject of the reportable allegation and the alleged victim).

Conducting an investigation

Where a response is only provided in writing, the investigator will also not have a chance to ask the subject of allegation any questions to make sure there is no misunderstanding or to clarify their evidence unless those further queries are addressed in writing.

During a reportable conduct investigation, the subject of allegation may choose, but is not required, to give information or documents that support their version of events.



Organisations should comply with the requirements of procedural fairness

when investigating an allegation and determining outcomes. By observing procedural fairness, an organisation manages risk properly, ensures that it responds in a manner that is fair to everyone involved and minimises the chance that its decisions might be challenged.

Confidentiality

The details of any investigation into a reportable allegation should be kept confidential unless there is a good reason not to do so. All persons involved in an investigation into a reportable allegation should be told that the investigation must be kept confidential except to the extent that there is a need to inform those who have a need to know (for example, to manage any ongoing risks to children, to obtain legal advice or for a child to speak with their parent, guardian, etc.).

By keeping the identity of the person making the reportable allegation and the child who is the alleged victim confidential, the organisation will minimise the risk of distress, unfairness or harm to those involved.

Another important reason to keep information about the investigation confidential is to protect the integrity of the investigation. If a potential witness considers that they are unable to trust the investigator not to tell others what they have said, they may be reluctant to come forward with relevant evidence.

Where evidence obtained in an investigation is kept confidential, there is less risk of contamination of the evidence. In other words, there is less chance of witnesses discussing the evidence and either confusing each other, or else one witness encouraging another to change their story. For this reason, any witnesses interviewed in the course of an investigation must be asked not to discuss the case with other witnesses or anyone else.

Before interviewing any witnesses, investigators should check whether they have discussed the case with anyone else and record the response.

It is also likely that the organisation will have its own confidentiality or privacy policy with which an investigator will need to comply.

In some cases an organisation may wish to, or be required to, disclose some information about the reportable allegation, for example where a view is formed that a child is in need of protection, or parents are concerned about the safety of their children. Organisations may also wish to disclose some information relating to the investigation or the findings once the matter has been completed. This might be to help the organisation manage future risks to children. Before disclosing any information about an investigation or findings, organisations should consider getting their own advice regarding their legal obligations under the Act as well as other privacy laws.

Managing risks during the investigation

When an allegation has been made, the investigator should assess the risks associated with the allegation and speak to the head of the organisation about any measures needed to reduce risk. Managing risks involves assessing the safety of all children (not just the alleged victim) and other affected people, and

Conducting an investigation

deciding what actions should be taken to ensure their safety and wellbeing. Some factors that should be considered in any risk assessment include:

- the nature and seriousness of the reportable allegation
- the vulnerability of the children affected
- the position of the subject of allegation within the organisation and the nature of the work they do
- whether the subject of allegation has unsupervised access to children.

A risk assessment may also involve deciding what action (if any) should be taken with respect to the subject of allegation while the investigation is being carried out. The head of the organisation should take action that is needed to keep children and other staff safe. This could include supervising the subject of allegation, stopping them from having direct contact with children, or in very serious cases, suspending them or taking other similar action to remove them from the workplace. If the head of the organisation is considering taking immediate action against the subject of allegation, they should consider the need for advice about their obligations under other workplace laws, awards or enterprise agreements.

The head of the organisation should also keep the subject of allegation's welfare and wellbeing in mind when making decisions as far as that is appropriate. While the safety and wellbeing of children is the most important consideration in the context of investigations into reportable allegations, organisations should consider the welfare of the subject of allegation and other witnesses as far as appropriate in the circumstances.

4. Assessing the evidence

Standard of proof

A reportable conduct investigation should apply the '*balance of probabilities*' as the standard of proof. This means that an investigator 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. In determining what is more likely than not to have happened, investigators 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 evidence, that reportable conduct has occurred before making such a finding.

Assessing the evidence

When assessing the evidence, a decision-maker must make an evaluation of the strength or weight of the evidence. The more weight that can be placed on a piece of evidence, the more persuasive it is.

In order to determine how much weight to place on a piece of evidence, the decision-maker should consider:

- How reliable is the evidence?
- Is there another piece of evidence that either supports or contradicts the evidence in question?
- How plausible is the evidence in all of the circumstances – does it have a '*ring of truth*' about it?
- What is the source of the evidence? Is the evidence objective, such as CCTV footage, or is it just a rumour?
- Do relevant witnesses give consistent accounts?
- Was the person who is the subject of the allegation given an opportunity to comment on the evidence and were they given an opportunity to tell their side of the story?

A decision-maker should base their findings on evidence of weight and not on suspicion, rumours or hunches.

5. Finalising an investigation

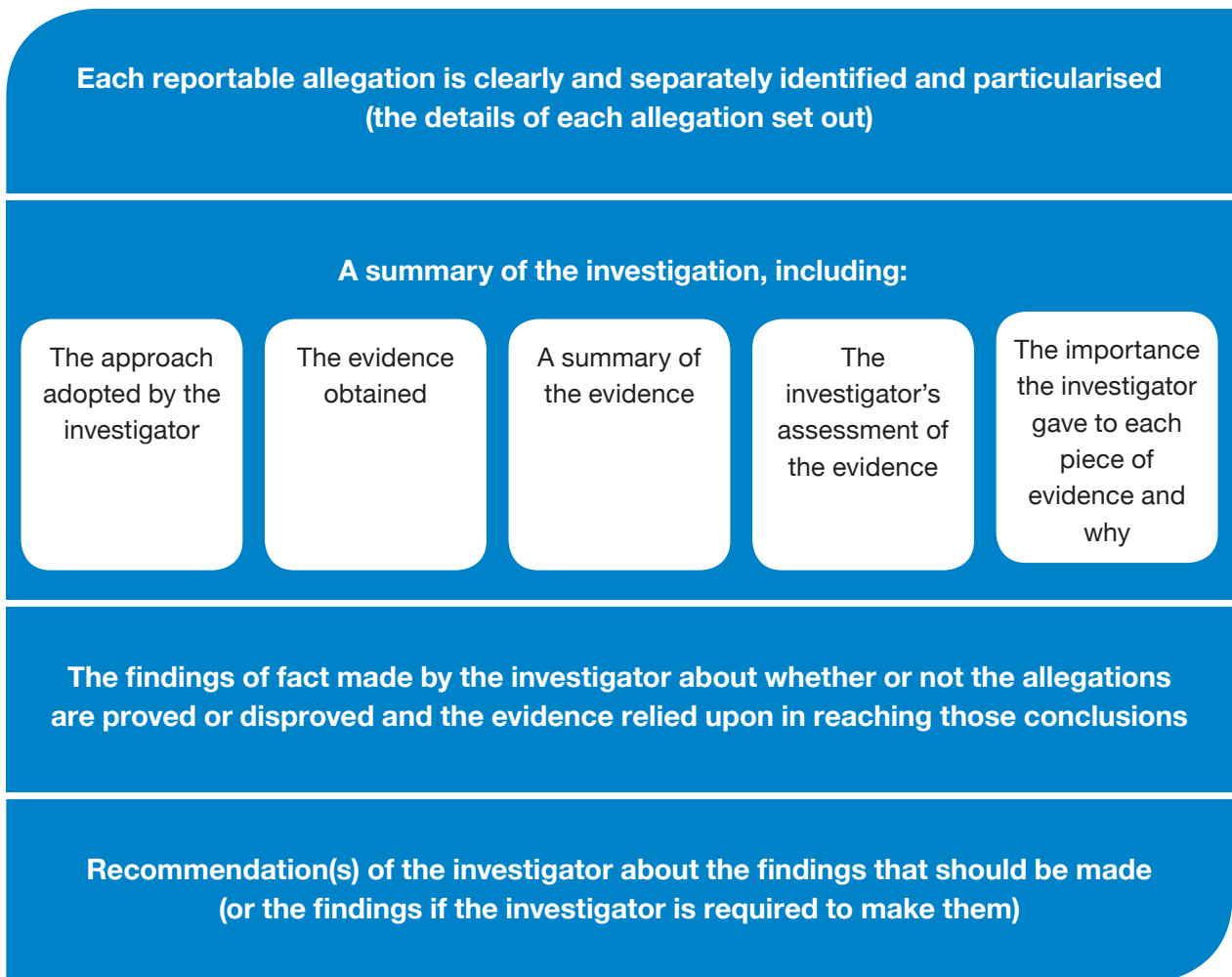
Preparing a report

Depending on the Terms of Reference, an investigator might be required to make findings or they might be required to make recommendations to assist the decision-maker to make findings.

Regardless of who will make the findings, when an investigator finishes an investigation, a report must be prepared for the head of the organisation.

The information contained in the report should allow any reader to understand how the investigation has been conducted and see that the investigation has made fair findings based on the evidence obtained during the investigation. The evidence should be set out in such a way that it clearly explains to a reader how and why the investigator reached his or her conclusions.

An Investigation Report should reflect the terms of reference and should set out, as a minimum:



An example Investigation Report is provided on [page 36](#).

6. Making or recommending findings

As outlined above, some investigations might require the investigator to make findings while other investigations will require the investigator to make a recommendation to help another decision-maker within the organisation to make the findings. This is something that should be included in the investigator’s letter of engagement or other scoping document.

In making findings or recommendations about findings, the investigator needs to understand the

different types of findings used by the Commission under the scheme.

If a decision-maker other than the investigator will be making the findings, it is important that the decision-maker reviews all of the evidence as well as the assessment the investigator made of that evidence. The decision-maker must make sure they agree with the conclusions reached by the investigator before adopting them. However, the decision-maker should not depart from the recommendation of the investigator unless there is good reason to do so based on the evidence.

Types of findings

The investigator makes findings as to whether the allegations are substantiated or not on ‘*the balance of probabilities*’. The available findings are set out and summarised below. For more information about each of the findings refer to the Commission’s **Information Sheet 8 – ‘Investigation findings’** found at <https://ccyp.vic.gov.au/rcs-factsheets/>.

Finding	Definition
Substantiated	The alleged reportable conduct occurred on the balance of probabilities.
Unsubstantiated – insufficient evidence	There was significant strong evidence that supports the allegation, but the evidence falls short of being able to make a substantiated finding.
Unsubstantiated – lack of evidence of weight	A lack of evidence made it too difficult to fully investigate an allegation despite the investigator’s reasonable efforts.
Unfounded	A positive finding, on the basis of being more likely than not, that the alleged reportable conduct did not occur.
Conduct outside the scheme	The conduct as alleged occurred, but in all of the circumstances was found not to be reportable conduct for the purposes of the Act.

Resources



Organisations and regulators that are required to comply with the Reportable Conduct Scheme should contact the Commission for further guidance:

- Telephone: 03 8601 5281
- Email: contact@ccyp.vic.gov.au

Information is also available on the Commission's website at ccyp.vic.gov.au

Example: Blank Investigation Plan

Matter details	
Subject of allegation details	
RCS reference number	
Organisation contact	
Contact title/position	
Organisation address	
Organisation phone number(s)	
Secure email	
Investigator	
Investigation overview	

- How did the information come to the attention of the organisation?
- Who are the people involved? Who is the alleged victim? Who is the subject of an allegation? Who are each of the relevant witnesses that are known at this time?
- Have any initial inquiries been carried out by the organisation – what was learned?
- Why is the investigation being conducted?
- What details are known at this time?

Allegations	
Allegation 1	<p><i>Each allegation should be separate (dates/victim/location, etc.)</i></p> <p><i>Example:</i></p> <p>On [date] or between [date] and [date] it has been alleged by [name of discloser] that [name of the subject of the allegation] may have engaged in the following conduct:</p> <ul style="list-style-type: none"> • [name of the subject of the allegation] approached [name of alleged victim] and said words to the effect of [insert words alleged to have been used] about [insert name of alleged victim] in the presence of [insert names of children who may have witnessed the allegation]. <p><i>It is alleged that the above factual allegations may constitute reportable conduct because the behaviour could cause significant emotional or psychological harm to a child.</i></p>
Allegation 2	
Subject of the allegation	
Name	
Address	
Phone number	
Email	
Position held	
Time in position	
Risks	
Risks	<ul style="list-style-type: none"> • Identify the context of the investigation and identify any risks; that is, what are the risks and why are they risks? • Evaluate each risk systematically and at regular intervals if required. Is there anything that can be done to remove or lessen the risks?
Issues/notes	<ul style="list-style-type: none"> • Consider whether the investigation should be undertaken by internal or external investigators. • Make a list of possible people affected by the investigation and possible outcome.
Conflicts of interest	<ul style="list-style-type: none"> • Consideration should be given to any actual, potential or perceived conflicts of interest of the investigator.

Scope of investigation

- What is the investigator being asked to do? This means that the allegations need to be clearly defined and set out and the investigator should be asked to make findings in relation to each of the allegations.
- Define the limit of the investigation. What questions need to be answered so that a decision can be made about whether or not the reportable conduct happened and happened in the way that is alleged? This will form the Terms of Reference of the investigation.
- The Terms of Reference are agreed to prior to the investigation starting and are recorded.
- It is essential that the scope be limited to the allegations specified and in the context of the specific legislation or policy. If any additional allegations arise during the investigation, the Investigation Plan should be updated to deal with those new matters.
- The scope of the investigation will be included in the Terms of Reference.

Decision-maker

Who is the decision-maker? This will usually be the head of the organisation.

Current information

Source	Information	Relevance (to the allegation)
<i>Example: John Smith</i>	<i>Statement made providing evidence of:</i> <ul style="list-style-type: none"> • <i>Example</i> 	<i>Allegation 1, Element 4</i>
<i>Example: ASIC</i>	<i>Historical extract of Example Pty Ltd</i>	<i>Allegation 1, Element 2</i>

Possible witnesses

Name	Information	Relevance (to the allegation)
<i>Example: Ian Franklyn</i>	<i>Example: Possible witness to alleged incident at ABC School.</i>	<i>Example: Was present when the incident is alleged to have occurred. May be able to provide insight into whether or not the alleged incident occurred at ABC School.</i>
<i>Example: Alex Tsiolkas</i>	<i>Example: May have medical evidence of injury.</i>	<i>Example: May be able to assist in establishing whether the behaviour could constitute significant emotional or psychological harm to a child.</i>

Resources

Possible evidence		
Item/document	Source	Relevance
<i>Example: Statement from Ian Franklyn</i>	<i>Example: Contact, ABC School</i>	<i>Example: Received the complaint of reportable conduct from the child and has information that has been obtained directly from the child when the complaint was received.</i>
<i>Example: Medical evidence of injury</i>	<i>Example: Contact, Ourtown Medical Centre</i>	<i>Example: May be able to provide medical evidence of injury. In order to obtain this information I will need to speak with the child's parent or guardian and ask whether they would provide their consent to obtain this information.</i>

Investigation action plan			
Action	Date/time action taken or required to be taken by	Person to action	Notes
			<ul style="list-style-type: none"> • <i>Is an expert opinion required?</i> • <i>Notes</i>

Example: Completed Investigation Plan

Matter details	
Subject of allegation details	Joan Smith
RCS reference number	RCS/2017/6938
Organisation contact	Mr Alex Tsiolkas
Contact title/position	CEO
Organisation address	Excellent Child Care Victoria Pty Ltd, 1001 Collins Street, Melbourne
Organisation phone number(s)	(03) 9123 4567
Secure email	ceo@excellentchildcare.com.au
Investigator	Julie Brown, Flash Investigations Pty Ltd

Investigation overview

The Subject of Allegation (SOA), Joan Smith, is a qualified childcare worker and is employed by Excellent Child Care Victoria Pty Ltd, 1001 Collins Street, Melbourne.

On Monday 4 July 2017, Mr Alex Tsiolkas (CEO) received a report from the alleged victim's mother, Fiona Nguyen, of a reportable allegation involving her child, Sonny, at Excellent Child Care Victoria Pty Ltd, located at 1001 Collins Street, Melbourne (the details of the reportable allegation are set out at item 2 below). Alex took careful notes of his discussion with Fiona. Fiona provided Alex with a photograph of Sonny's bruised hand.

This matter was identified as an allegation of physical violence against a child, which is a reportable allegation under the *Child Wellbeing and Safety Act 2005* (**the Act**). Victoria Police (**the police**) and the Commission for Children and Young People (**Commission**) were, within 3 business days, notified of a reportable allegation under the *Child Wellbeing and Safety Act 2005*, pursuant to Section 16M (1)(a).

On Wednesday 5 July 2017, the police advised that they would not be undertaking an investigation and advised Alex that they had no objection to Excellent Child Care Victoria Pty Ltd commencing its investigation into the reportable allegation.

Allegations

Allegation 1	<p><i>Physical violence committed against a child and/or in the alternate Misconduct as defined by the Quality of Care Policy</i></p> <ul style="list-style-type: none"> On Monday 4 July 2017, Sonny may have been in Joan's care. Sonny allegedly arrived home later that day. It is alleged that Sonny told Fiona that Joan slapped Sonny on the hand. Fiona says that she observed bruising on Sonny's hand.
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Subject of the allegation	
Name	Joan Smith
Address	1 Anywhere Street, Anytown VIC 3999
Phone number	(03) 9123 4599
Email	JS@anyemail.com
Position held	Childcare Worker
Time in position	4 years

Risks	
Risks	Alleged victim is 5 years of age.
Issues/notes	The services of an interpreter were considered, but were not required on this occasion.
Conflicts of interest	Nil

Scope of investigation

The scope of the investigation is to determine if, on the balance of probabilities, the allegation of physical violence and/or the allegation of misconduct pursuant to the Quality of Care Policy against a child by Joan Smith, as specified in Section 2 of this Investigation Plan, is substantiated or not.

Decision-maker

Mr Alex Tsiolkas
 CEO, Excellent Child Care Victoria Pty Ltd, 1001 Collins Street, Melbourne
 (03) 9123 4567

Current information

Source	Information	Relevance (to the allegation)
Alex Tsiolkas	Received report of allegation from Fiona Nguyen	Witness and CEO of Excellent Child Care Victoria Pty Ltd
Fiona Nguyen	Informed by son (Sonny) re allegation. Made report to Alex Tsiolkas.	Witness and mother of victim (Sonny Nguyen)

Possible witnesses		
Name	Information	Relevance (to the allegation)
Sonny Nguyen	Alleged victim	<ul style="list-style-type: none"> Alleged victim Can provide details of the reportable allegation
Fiona Nguyen	Mother of alleged victim	<ul style="list-style-type: none"> Provided notification of the reportable allegation Has information regarding incident, injury and the impact on Sonny Mother of alleged victim Reported the reportable allegation to Alex Tsiolkas
Penny Nguyen	Support person	<ul style="list-style-type: none"> Provided support for alleged victim
Jane Collins	Senior childcare worker	<ul style="list-style-type: none"> Subject of allegation reports directly to her (line manager) Had received other complaints re the subject of allegation May provide information on subject of allegation's performance and attitude towards the children Review note in subject of allegation's file re previous complaints
Nicole Amorosi	Childcare worker	<ul style="list-style-type: none"> May have information relevant to the previous complaint May have details regarding the alleged incident Rostered to work with the subject of allegation on the day of the alleged incident Observed alleged incident Stated in initial inquiries that the subject of allegation was rough with children
Anthony Khoury	Childcare worker	<ul style="list-style-type: none"> May have information relevant to the complaint May have details regarding the alleged incident Rostered to work with the subject of allegation on the day of the alleged incident Observed alleged incident Stated in initial inquiries that the subject of allegation was rough with children
Joan Smith	Childcare worker	<ul style="list-style-type: none"> Subject of allegation

Possible evidence		
Item/document	Source	Relevance
Staff roster	Alex Tsiolkas, CEO	May have information regarding subject of allegation working with alleged victim and other witnesses
Policies and procedures re Code of Conduct	Alex Tsiolkas, CEO	Will provide evidence of policies and procedures regarding appropriate contact with children
SOA Personnel Record and Training Record	Alex Tsiolkas, CEO	Will provide evidence of subject of allegation's Personnel Record and Training Record
Photographs of the scene	Alex Tsiolkas, CEO, or staff member	Will show scene of alleged incident

Investigation action plan			
Action	Date/time action taken or required to be taken by	Person to action	Notes
Contact all available witnesses and organise statement times.	6 July 2017	Investigator	2 hours
Obtain policies and procedures re Code of Conduct	14 July 2017	Investigator	1 hour
Obtain SOA Personnel Record and Training Record	14 July 2017	Investigator	1 hour
Photograph scene	14 July 2017	Investigator	1 hour
Conduct witness interviews and draft statements	25–28 July 2017	Investigator	10–12 hours
Interview SOA	28 July 2017	Investigator	2 hours
Analyse evidence	29 July 2017	Investigator	4 hours
Summarise evidence	29 July 2017	Investigator	4 hours
Complete and submit Investigation Report	30 July 2017	Investigator	6–8 hours

Example: Letter of allegation

Organisations should consider whether any other laws or workplace agreements, such as awards or enterprise agreements, might be relevant to a letter of allegation.

This example letter of allegation deals only with the issue of a reportable allegation. Organisations may wish to give thought to whether their requirements mean that a letter of allegation should also make reference to potential breaches of the organisation's policies, together with any consequences that may flow as a result. If an organisation is unsure of its obligations, the Commission recommends that the organisation seeks legal advice.

Private & Confidential

Ms Joan Smith
1 Anywhere Street
Anytown VIC 3999

Wednesday 6 July 2017

Dear Ms Smith,

Allegation of Reportable Conduct – Alleged Physical Violence Against a Child

I have been notified of an incident that names you as the alleged subject of a reportable allegation.

It has been alleged that you may have committed physical violence against a child. This reportable allegation has been notified to Victoria Police and the Commission for Children and Young People.

The substance of the allegation is as follows:

- On Monday 4 July 2017, Sonny Nguyen (5 years old) may have been in your care.
- Sonny allegedly returned home later that day after being in your care.
- It is alleged that Sonny told Fiona Nguyen (Sonny's mother) that you may have slapped Sonny on the hand.
- Fiona says that she observed bruising on Sonny's hand.
- Fiona also says that she has a photograph of Sonny's bruised hand.

Physical Violence Against a Child

If the above allegation is substantiated, your conduct may meet the definition of reportable conduct under the *Child Wellbeing and Safety Act 2005*. The Commission for Children and Young People will be advised of the finding. The Commission for Children and Young People may also advise the Working with Children Check Unit if a substantiated finding of reportable conduct is made, which could trigger a reassessment of your Working with Children Check. The Company may also have to make further notifications in accordance with the *Child Wellbeing and Safety Act 2005* and take any appropriate action in response to the finding.

In accordance with our policies, you have the opportunity to provide a written response to the allegation by **13 July 2017**. Your response will be taken into consideration as part of our interview and investigation process. You will be invited in writing for an interview in due course, at which time you are entitled to have a support person accompany you.

If you believe that any person may have information relevant to the investigation, please let me know.

Confidentiality

To facilitate the investigation, we ask that you keep this matter confidential. This means you should not discuss or disclose any matter relating to this investigation with any person, other than me, your representative or your support person. You should also ask them to keep this matter confidential. If you become aware of any breach of confidentiality regarding the investigation, please contact me immediately.

Harassment

It is against the Company's policies for any person to victimise, harass or retaliate against you as a result of your involvement in this matter. You should immediately contact me if you think this has occurred. Likewise, it is against our policies for you to victimise, harass or retaliate against any person or witness involved in this matter. If you do so, you may be subject to disciplinary action, up to and including termination of your employment.

Next Steps

Julie Brown (Licence # 123 345 567 DF) of Flash Investigations Pty Ltd has been appointed as the Company's independent investigator. Julie will be in contact with you directly to arrange a meeting time. If you decide to bring a support person with you to the investigation meeting, I ask that you provide Julie with advance notice of who that person will be.

Once Julie has concluded her investigation, she will compile an Investigation Report. I will then decide what (if any) further steps may be undertaken in accordance with the Reportable Conduct Scheme.

I will be your Company contact person during the course of this investigation process. Please do not hesitate to contact me in the meantime with any questions, or if you require any additional support during this time.

Yours sincerely,



Alex Tsiolkas, CEO
Excellent Child Care Victoria Pty Ltd
1001 Collins Street
Melbourne VIC 3000

Example: Terms of Reference

1. Scope of investigation

Julie Brown, Investigator at Flash Investigations Pty Ltd (**Flash Investigations**) has been engaged by Excellent Child Care Victoria Pty Ltd (**Excellent Care**) to conduct an independent investigation in relation to the allegations.

Flash Investigations is instructed by Excellent Care to conduct a fact-finding investigation in relation to the allegations. Flash Investigations is asked to find whether the facts, as found, amount to reportable conduct as defined in the *Child Wellbeing and Safety Act 2005*.

2. Reportable allegations

Excellent Care employs Joan Smith as a childcare worker. It has been alleged:

- On Monday 4 July 2017, Sonny Nguyen (5 years old) may have been in Ms Smith's care.
- Sonny allegedly returned home later that day after being in Ms Smith's care.
- Sonny told Fiona Nguyen (Sonny's mother) that Ms Smith may have slapped Sonny on the hand.
- Fiona says that she observed bruising on Sonny's hand.
- Fiona says that she has a photograph of Sonny's bruised hand.

The above facts are together referred to as the **allegations**.

3. Further allegations

If any further allegations arise during the investigation, Flash Investigations will advise Excellent Care. If Excellent Care considers that the additional allegations are relevant to this investigation, these Terms of Reference will be amended to include the investigation of the additional allegations. If this occurs, Ms Smith will be advised of the additional allegations and be provided with an opportunity to respond to the additional allegations before the investigation is finalised.

If Flash Investigations suspects further allegations potentially involve criminal conduct, those matters will be reported by Excellent Care to Victoria Police. The investigation will cease immediately, until and unless Victoria Police advise Flash Investigations that its investigation may continue.

4. Terms of engagement

The Terms of Reference are effective from 5 July 2017 and continue until the final Investigation Report is delivered or unless terminated by agreement of the parties being:

- Alex Tsiolkas, CEO, Excellent Child Care Victoria Pty Ltd, 1001 Collins Street, Melbourne, VIC 3000
- Julie Brown, Investigator, Flash Investigations Pty Ltd, 1000 Collins Street, Melbourne, VIC 3000.

5. Roles & responsibilities

Flash Investigations is accountable for, and will endeavour to meet, the following in the course of the investigation:

- evidence gathering by appropriate means, such as accessing relevant records and documents, arranging and carrying out interviews, obtaining signed statements from witnesses, and obtaining photographs where necessary
- assessing all evidence on the balance of probabilities
- preparing a final report that will make findings as outlined in the above scope of investigation
- providing recommendations if appropriate.

Flash Investigations is granted permission to attend the premises of Excellent Care, speak to any staff member as required, review any files or records held by Excellent Care and otherwise do all things reasonably necessary to carry out the above investigative functions.

6. Meetings/updates

All meetings between the parties will be arranged when required throughout the course of the investigation.

An update on the progress of the investigation will be provided to Excellent Care by telephone prior to the final report being submitted.

7. Confidentiality

All participants in the investigation will be reminded by Flash Investigations that they must maintain confidentiality in relation to the allegations investigation and sign a confidentiality acknowledgement provided by Flash Investigations.

8. Decision-maker

Alex Tsiolkas (CEO, Excellent Care) will be the decision-maker in this matter. Mr Tsiolkas will consider Flash Investigations' final Investigation Report and determine what, if any, action is required.

9. Investigation Plan

Excellent Care confirms its instructions to proceed with the Investigation Plan, which is annexed to these Terms of Reference.

10. Timing

The investigation will be completed as expeditiously as possible. At this stage, and assuming witness availability and cooperation, it is anticipated that Flash Investigations will be able to provide its final Investigation Report to Alex Tsiolkas (CEO, Excellent Care) by 30 September 2017, in accordance with the Investigation Plan.

11. Amendment, modification or variation

These Terms of Reference may be amended, varied or modified in writing after consultation and agreement by both parties.

Resources

Executed as an AGREEMENT:

A handwritten signature in blue ink, appearing to read 'Alex Tsiolkas'.

Alex Tsiolkas, for and on behalf of, **Excellent Child Care Victoria Pty Ltd**

5 July 2017

A handwritten signature in blue ink, appearing to read 'Julie Brown'.

Julie Brown, for and on behalf of, **Flash Investigations Pty Ltd**

5 July 2017

Example: Investigation Report

RCS Identification Number: RCS/2017/6938

Date of report: 30 July 2017

Subject of allegation (SOA): Joan Smith, Childcare Worker

Organisation or regulator: Excellent Child Care Victoria Pty Ltd, 1001 Collins St, Melbourne, VIC 3000

Head of organisation or delegate: Alex Tsiolkas, CEO

Investigator details (author): Julie Brown (licence # 123 345 567 DF), Investigator, Flash Investigations, 1000 Collins St, Melbourne, VIC 3000

Reportable allegations: Alleged physical violence against a child:

- On Monday 4 July 2017, Sonny Nguyen (5 years old) may have been in Ms Smith's care.
- Sonny allegedly arrived home later that day.
- Sonny allegedly told Fiona Nguyen (Sonny's mother) that the subject of allegation may have slapped Sonny on the hand.
- Fiona says that she observed bruising on Sonny's hand.
- Fiona also says that she has a photograph of Sonny's bruised hand.

1. Executive summary

The Subject of Allegation (**SOA**), Joan Smith, is a qualified childcare officer and is employed by Excellent Child Care Victoria Pty Ltd, 1001 Collins Street, Melbourne.

On 4 July 2107, Sonny Nguyen's mother (**Fiona Nguyen**) reported to Alex Tsiolkas (**Tsiolkas**), Chief Executive Officer, Excellent Child Care Victoria Pty Ltd, a reportable allegation that was allegedly committed by the SOA. The reportable allegation was that the SOA had physically assaulted Sonny Nguyen by slapping him on the hand. On receipt of this report, Tsiolkas formally engaged Flash Investigations to conduct an investigation.

On 6 July 2017, contact was made with the SOA and other relevant witnesses to arrange for interviews and statements to be obtained, and a letter of allegation was sent to the SOA (copy attached), inviting the SOA to respond by 13 July 2017.

On 12 July 2017, a letter of response from the SOA was received, denying the allegation.

On 14 July 2017 at 0900 hrs, Tsiolkas provided me with the following documents:

- Quality of Care Policy
- Code of Conduct, Staff Handbook
- SOA Personnel File
- SOA Training Record
- Performance Review Note.

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Statements were then obtained from the following people:

- Jane Collins (employee of Excellent Child Care)
- Anthony Khoury (employee of Excellent Child Care)
- Nicole Amorosi (employee of Excellent Child Care)
- Fiona Nguyen (mother of the alleged victim)
- Sonny Nguyen (alleged victim).

On 14 July 2017, an interview with the SOA was conducted. It was put to the SOA that other witnesses observed her slap Sonny on the hand and that Sonny's mother observed bruising on his hand. The SOA denied the allegation.

On assessment of the information and evidence gained in this investigation, I am of the opinion that the personal accounts of events that have been provided to me by the witnesses and victim's mother indicate that, on the balance of probabilities, Smith slapped Sonny on the hand on 4 July 2017. It is more likely than not that his injury has occurred as a result of Smith slapping him on the hand.

I have therefore found on the balance of probabilities the allegation of reportable conduct made against Smith has been **substantiated**.

2. Standard of proof

The standard of proof required in determining the outcome for this investigation is that the allegation must be proved 'on the balance of probabilities' and on the Briginshaw test being applied. In essence, the Briginshaw test requires that, the more serious the allegation and gravity of a finding, the more comfortably satisfied, on the evidence, the decision-maker must be before making any adverse finding. This means that each allegation should be more probable than not in order for it to be made out.

3. Relevant policies and procedures

This investigation was based on the following legislation, policy and procedure:

- *Child Wellbeing and Safety Act 2005*
- Excellent Child Care Victoria Pty Ltd, Quality of Care Policy
- Excellent Child Care Victoria Pty Ltd, Code of Conduct, Staff Handbook.

4. Investigation scope

The scope of the investigation is set out in the Terms of Reference, which have been set out in Appendix C of this report.

5. Background

Excellent Child Care Victoria Pty Ltd is a day care facility located at 1001 Collins Street, Melbourne. This facility offers day care services for up to fifty (50) preschool children on a daily basis (Monday to Friday) and employs twenty (20) staff members.

All staff members are qualified in childcare, hold Working with Children Checks and are also first aid certified.

On 4 July 2017, Mr Alex Tsiolkas (CEO) received a report from Fiona Nguyen of a reportable allegation involving her child, Sonny (aged 5), which occurred at Excellent Child Care Victoria Pty Ltd, located at 1001 Collins Street, Melbourne on or about 4 July 2017. This matter was identified as a reportable allegation that may involve criminal conduct and both Victoria Police and the Commission for Children and Young People were notified.

On 5 July 2017, Victoria Police advised that they would not be undertaking an investigation and advised Tsiolkas that there would be no further police action.

On 6 July 2017, Excellent Child Care Victoria Pty Ltd engaged Ms Julie Brown (licence # 123 345 567 DF) from Flash Investigations to conduct an investigation.

6. Summary of investigation

The investigation was conducted in accordance with the following legislation, policy and procedure:

- *Child Wellbeing and Safety Act 2005*
- Excellent Child Care Victoria Pty Ltd, Quality of Care Policy
- Excellent Child Care Victoria Pty Ltd, Code of Conduct, Staff Handbook.

On 4 July 2017, Mr Alex Tsiolkas received a report of a reportable conduct allegation from Fiona Nguyen.

On 6 July 2017, Tsiolkas sent a formal letter of allegation to the SOA and engaged Flash Investigations to undertake an investigation into the matter.

On 14 July 2017, I attended at Excellent Child Care and met with Alex Tsiolkas, who provided me with copies of the following documents:

- Excellent Child Care Quality of Care Policy
- Excellent Child Care Code of Conduct
- personnel file, qualifications and training record of the SOA.

On 25 July 2017 at 1200 hrs, I obtained a signed statement from Fiona Nguyen.

On 25 July 2017 at 1235 hrs, I conducted a digitally recorded interview with the alleged victim, Sonny Nguyen. Present during this interview was his aunt, Penny Nguyen.

On 26 July 2017 at 1300 hrs, I obtained a signed statement from senior childcare officer Jane Collins.

On 26 July 2017 at 1400 hrs, I obtained a signed statement from childcare officer Anthony Khoury.

On 26 July 2017 at 1500 hrs, I obtained a signed statement from childcare officer Nicole Amorosi.

On 26 July 2017 at 1600 hrs, I met with the subject of allegation, Joan Smith, and conducted a digitally recorded interview.

7. Summary of Statements

Interview with Fiona Nguyen

Nguyen stated the following:

- She was picking her son Sonny Nguyen up from Excellent Child Care Victoria as per her usual routine.
- Sonny refused to get into the car and she tried to hurry him up. He then became upset with her.
- Sonny said that Joan had slapped him on the hand and she was bad.
- Sonny appeared scared.
- She went to make a report to Alex Tsiolkas at the office.
- When asked about what, if any, injury or marks Sonny had on his arm, she stated, 'I noticed a nasty bruise on his hand but he is adventurous and has had bruises and marks on him before'.
- She was disappointed in Joan and stated, 'she is Sonny's carer'.
- She provided a photograph of Sonny's bruised hand.
- She gave permission for Sonny to be interviewed with his aunt Penny Nguyen as his support person.

Interview with Sonny Nguyen

Present during the interview with Sonny Nguyen was his aunt, Penny Nguyen. Sonny stated the following:

- He is part of the class Joan takes.
- He usually enjoys Joan looking after him but once she was bad.
- He stated, 'Mrs Smith can get angry sometimes with me'.
- She scared him when she slapped him really hard on the hand.

Interview with Jane Collins

Collins stated the following:

- She is employed as a senior childcare officer with Excellent Child Care Victoria and has been employed in her current role for approximately four years.
- Confirmed that she was working at Excellent Child Care Victoria on 4 July 2017.
- That Smith reports directly to her on a daily basis.
- Collins stated that she had occasion to 'chat to Joan regarding her quick temper towards the children'.
- That she had been informed by other staff members in confidence, 'Joan doesn't have enough patience for this job and can be rough with the children'.
- She could not recall the date on which she spoke to Joan about her temper but that she had 'entered a performance review note in Joan's file'.

Interview with Anthony Khoury

Khoury stated the following:

- Employed as a childcare officer at Excellent Child Care Victoria for 18 months.
- Confirmed that he was working at Excellent Child Care Victoria on 4 July 2017.
- He has a good working relationship with all of his colleagues but stated, 'Joan is quick to become frustrated and raises her voice unnecessarily'.
- On the morning of 4 July 2017, whilst he was in a playroom with some children, he observed, 'Sonny Nguyen left to go to the toilet and he entered the classroom and I heard a slapping sound but I didn't observe anything directly'.
- That when he arrived at the door he observed, 'Joan and Nicole standing there chatting, but Joan was the closest'.
- That he did not observe any contact being made with Sonny.
- He did not observe any injury on Sonny afterwards, but 'thought that he looked upset'.

Interview with Nicole Amorosi

Amorosi stated the following:

- Employed as a childcare officer at Excellent Child Care Victoria for two years.
- Confirmed that she was working at Excellent Child Care Victoria on 4 July 2017.
- That she was not aware of any 'incidents', but stated that she did have 'cause for concern' regarding the conduct of Smith on 4 July 2017.
- 'I was having a conversation with Joan in the corridor outside the playroom when suddenly Sonny Nguyen came out looking to go to the toilet. I presume this is what he was doing because he was trying to head in that direction. Joan had her back to Sonny but appeared angry at being interrupted and she then turned around and proceeded to slap Sonny on the hand.'
- Whilst she did not observe any injury, she would not have been surprised if an injury occurred as, 'Joan was forceful so I wouldn't be surprised, Sonny's only a little boy'.
- Amorosi said that she would have reported the incident herself but she was tied up looking after her class that afternoon and then had to rush off after work to pick up her daughter as she had been told that her daughter was ill.

Interview with Joan Smith (SOA)

Smith stated the following:

- Employed as a senior childcare officer at Excellent Child Care Victoria for approximately seven years
- Confirmed that she was working at Excellent Child Care Victoria on 4 July 2017.
- Knows Sonny Nguyen and described him as a 'mischievous little boy'.
- That she 'would've had a lot of contact with Sonny, but nothing specific that I remember'.
- When asked specifically about the allegation made against her, Smith stated, 'That's not true at all. I'm very aware of how to handle children and I would not hurt them in any way.'

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- 'I have never been aggressive or over the top with the children and take pride in my work.'
- It was put to Ms Smith that a witness observed her slap Sonny on the hand. Ms Smith stated that the witness must have been mistaken in what they thought they saw.
- It was put to Ms Smith that a witness heard a slapping sound when Sonny returned to her classroom. Ms Smith stated that the sound could have been anything and she 'definitely did not slap Sonny on the hand'.
- It was put to Ms Smith that Sonny exhibited bruising on his hand, which was noticed by his mother later that night. I put the photograph of Sonny's bruised hand to Ms Smith. Ms Smith stated that Sonny is highly active and he could have bruised his hand when he was playing with other children.

8. Findings

Following the analysis of all evidence, including the interviews and review of all relevant documents and relevant policy, an assessment of the evidence was made in regards to the allegation and is listed below:

The following evidence supports the above allegation against Joan Smith:

- Evidence was provided by witness Nicole Amorosi, who observed the SOA slap Sonny on the hand.
- Evidence was provided by witness Anthony Khoury, who said he heard a slapping sound and that the victim looked upset immediately after that.
- Smith maintains that 'nothing specific' occurred that week involving her engagement with any children, and more specifically, with Sonny Nguyen.
- Witnesses Amorosi and Khoury provided evidence of an incident where Smith used excessive force when dealing with a child, namely Sonny Nguyen.
- Line manager Collins provided evidence of having to talk to Smith regarding her temper with children and a performance note being placed on her personnel file in the week of the alleged incident.
- Collins also provided evidence of Smith being 'rough with children'. This evidence was corroborated by witnesses Amorosi and Khoury.
- Khoury stated, 'Joan is quick to be frustrated'.
- Amorosi stated, 'I was having a conversation with Joan in the corridor outside the playroom when suddenly Sonny Nguyen came out looking to go to the toilet. I presume this is what he was doing because he was trying to head in that direction. Joan had her back to Sonny but appeared angry at being interrupted and she then turned around and proceeded to slap Sonny on the hand.'

9. Conclusion

Reportable allegation

- On Monday 4 July 2017, Sonny Nguyen (5 years old) may have been in Ms Smith's care.
- Sonny allegedly arrived home later that day.
- Sonny allegedly told Fiona Nguyen (Sonny's mother) that the SOA may have slapped Sonny on the hand.
- Fiona says that she observed bruising on Sonny's hand.
- Fiona also says that she has a photograph of Sonny's bruised hand.

On the balance of probabilities, I find that each of the above allegations are **Substantiated**.

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As I have made a finding that it was more likely than not that Ms Smith slapped Sonny on the hand, I also find that this allegation is **Reportable Conduct** because the act of slapping a child on the hand constitutes physical violence committed against a child.

10. Recommendations

This Investigation Report is to be forwarded to Alex Tsiolkas, CEO of Excellent Child Care Victoria Pty Ltd for consideration.

Investigating Officer: Julie Brown (licence # 123 345 567 DF)

Company: Flash Investigations

Date: 31 July 2017

11. Appendices

- A Letter of Allegation
- B Letter of Engagement
- C Terms of Reference (TOR)
- D Letter of Response
- E Excellent Child Care Victoria Pty Ltd – Quality of Care Policy
- F Excellent Child Care Victoria Pty Ltd – Code of Conduct, Staff Handbook
- G Personnel File – Joan Smith
- H Training Record – Joan Smith
- I Performance Review Note
- J Tape-recorded Interviews (mpg file)
- K Witness Statements
- L Witness List
- M Scene Photographs
- N Contemporaneous Notes
- O Chronology/Investigator’s Log